

## MEMORANDUM

DATE: July 01, 2020

TO: Joint Powers Board

FROM: Robin B. Johansen, James C. Harrison, and Thomas A. Willis

RE: Summary of Special Counsel Report

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We present to you the Special Counsel Report, which outlines a series of facts about the governance and financial history of the Peninsula Corridor Joint Powers Board (JPB).

Three basic agreements define Caltrain:

- a. The 1996 Joint Powers Agreement defines the governmental structure for the Joint Powers Authority.
- b. The 1991 Purchase Agreement of the right of way from Southern Pacific (SP) describes the property and operational rights that the JPB acquired from SP.
- c. The 1991 Real Property Ownership Agreement (RPOA) defines four types of property and the ownership rights and obligations of the JPB and each member agency with respect to those properties. (This agreement was amended in 2008.) The four types of properties are:
  - i. Mainline ROW – ROW from San Francisco to Lick, trackage rights for Gilroy Service, and other assets acquired pursuant to Purchase Agreement (except local option properties);
  - ii. System option properties – parking lots and grade separations which were available for purchase from SP pursuant to the Purchase Agreement;
  - iii. Local option properties – Moffett, San Bruno, Vasona I and II, which were available for purchase from SP pursuant to the Purchase Agreement; and
  - iv. State Transferred properties – stations, facilities, equipment, and inventory transferred from Caltrans to JPB.

These three documents (plus the 2008 RPOA amendment) govern all issues concerning JPB governance and the current relationships among the JPB and its members.

The report clarifies several issues, specifically:

1. Repayment of SamTrans. On behalf of the JPB, in 1991, SamTrans provided \$82 million of the purchase price for the ROW and various other property options. Of the \$82 million advanced by SamTrans, the portion advanced on behalf of VTA was \$34.7 million and the amount advanced on behalf of San Francisco was \$8.3 million (for a total of \$43 million). Under the 1991 Real Property Agreement, it was contemplated that when repayment occurred, SamTrans would be entitled to compounded interest, which amounted to \$48.5 million when the parties entered into the 2008 RPOA amendment. In total, by 2008, SamTrans was owed \$91.5 million. The 2008 amendment to the 1991 Real Property Agreement reset the total amount to be repaid to SamTrans at \$53.3 million.
  - a. VTA has repaid all that it agreed to pay SamTrans under the 2008 agreement;
  - b. The City and County of San Francisco still owes \$200,000 to SamTrans under the 2008 agreement.
  - c. SamTrans is still owed \$19.8 million, including the \$200,000 from the City and County of San Francisco, for repayment to be complete under the 2008 agreement, though \$19.6 million of the debt is not specific to a jurisdiction. Under the 2008 agreement, no interest is due on that amount. In addition, MTC is authorized to find alternative sources of non-local funding to use to repay SamTrans but there is no binding contractual obligation on the part of MTC or the other member agencies to repay that amount.
2. Managing Agency. As a result of the 2008 amendment to the 1991 Real Property Ownership Agreement, in which SamTrans agreed to forego the recovery of \$38.2 million of the \$48.5 million it was owed in accrued interest on its initial contribution, SamTrans is the managing agency for as long as it chooses to play that role.
3. Rights SamTrans Has Until It is Repaid. In exchange for advancing funds for both VTA and San Francisco, SamTrans holds various property rights until it is repaid. These include:
  - a. Sam Trans holds title to the ROW in San Mateo County as a “tenant in common” with the JPB.
  - b. SamTrans has the right to use net revenues from certain assets to pay itself back for the original purchase. In some cases, it has earned money from assets such as parking lots, but those funds have been used to pay Caltrain operating costs and have not gone to SamTrans.

- c. SamTrans has the right to convert its contribution towards the purchase of the railroad into an ownership interest in all or part of the ROW. There are some conditions on that right that are spelled out in detail in the report.
4. Discrepancies Between the Agreements and Practice. There are ongoing contradictions between the written agreements and current practices agreed to by the member agencies.
  - a. Under the 1996 JPA, , the Gilroy service operating costs are to be paid by VTA. Since 2001, the annual operating costs have been treated as a mainline cost and are paid by all member agencies.
  - b. Under the 1996 JPA, subsidies from the member agencies are to be allocated by a formula using AM peak ridership, adjusted annually. Over the years, the parties have changed the formula several times, the first occurring in 2001 with the introduction of a five year averaging applied to the AM boardings. As of fiscal year 2014, the practice has been to allocate costs based on average all-day boardings, adjusted annually. Finally, in 2018, the member agencies established average mid-week boardings, adjusted annually as the means of allocating operating costs amongst the member agencies
5. Withdrawal and Termination. The report indicates that there are conflicting provisions relating to withdrawal and termination of the JPA, and it recommends that if the Board decides to amend the Joint Powers Agreement, that these inconsistencies be harmonized.

These and other findings from the report will be discussed when the Board meets on July 9, 2020.

**Special Counsel Report on Caltrain Governing Documents**

**Prepared by Olson Remcho, LLP  
July 1, 2020**

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**ATTACHMENTS**

- Attachment A: Response to Member Agency Questions
- Attachment B: 1996 Joint Powers Agreement
- Attachment C: 1991 Joint Powers Agreement
- Attachment D: 2008 Real Property Ownership Agreement
- Attachment E: List of Interviewees
- Attachment F: Chart of System Operation
- Attachment G: Station Inventory

## **INTRODUCTION**

This draft report is intended to provide the Joint Powers Board (“JPB”) with a baseline set of facts about the governance and financial history of Caltrain, with an emphasis on the rights and responsibilities of each of the member agencies under the various agreements made since entry of the first Joint Powers Agreement in 1988. To that end, we have examined each of the agreements, interviewed individuals who were involved in negotiating and drafting those agreements or have historical knowledge about them, and talked with staff who were responsible for maintaining records regarding the various payments made under those agreements. We have also spoken with members of the Ad Hoc Governance Committee and with the General Managers of each of the member agencies.

The report begins with a brief history of Caltrain and the agreements that were made to guide its governance, starting in 1988. The next section covers the rights and responsibilities of the member agencies with respect to real property ownership, the repayment of the funds that SamTrans advanced on behalf of San Francisco and VTA<sup>1</sup> for the purchase of the railway right of way, the management and financial support of the system, the Gilroy service, and amendment or withdrawal from the JPA. We summarize our conclusions at the end of the report, followed by an attachment that addresses questions posed by the three member agencies. Other attachments include copies of the three main governing documents, a list of the people we interviewed for the report, and charts regarding the types and ownership of Caltrain property.

Finally, as discussed more fully below, some of the governing documents are confusing or seemingly contradictory. Others are out of date in that they do not reflect subsequent agreements among the parties that contradict some of the provisions in those agreements. Where that is the case, the parties may wish to amend the governing documents to eliminate inconsistencies or to reflect agreements that have not been incorporated into the JPA. A brief summary of those topics appears at the end of the report.

## **FACTUAL BACKGROUND**

### **I. Peninsula Railway Service Prior to Caltrain**

Passenger service on the Peninsula corridor began on October 18, 1863 under the San Francisco and San Jose Railroad Company, which was purchased by the Southern Pacific Railway in 1870. In the late 1970s, Southern Pacific determined that the rail commuter business was unprofitable and no longer sustainable as a private enterprise, and it petitioned the Public Utilities Commission to discontinue the service in 1977.

Ultimately, the Interstate Commerce Commission determined that Southern Pacific should continue to operate the commuter service but only if it received a subsidy to cover all of its costs related to the service. In 1980, the State of California executed an agreement with

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<sup>1</sup> For ease of reference, we refer to both the Santa Clara County Transit District and the Santa Clara Valley Transportation Authority as VTA, and we refer to the City and County of San Francisco and the San Francisco Municipal Transportation Agency, collectively, as San Francisco.



Southern Pacific to subsidize the rail operation, and administration of and financial responsibility for the service moved into the hands of the State and the three member agencies (SamTrans, VTA, and San Francisco) pursuant to a formal 10-year Cooperative Agreement.

The State and local partnership under the Cooperative Agreement called for a Project Management Committee with representatives from each of the parties to oversee the rail operations and to manage the contract. The four parties agreed to share the burden of the operating subsidies, with Caltrans paying 50% of the net deficit and the three local agencies sharing the balance of the operating deficit based upon a ridership formula.

In the late 1980s, California's governor announced his decision to terminate the State's role in the Peninsula commute operations as of 1990. With that announcement, San Mateo, Santa Clara and San Francisco counties began to formulate a strategy to save the rail service.

The three counties formed the Peninsula Corridor Study Joint Powers Board in 1988, which was to be responsible for development of the Peninsula Commute Service ("PCS"), including the preparation for local control and acquisition of the corridor right-of-way. The 1988 agreement did not provide for a managing agency, but it specified that the SamTrans Finance Director would serve as treasurer and controller of the JPB and that the power of the JPB was subject to the restrictions upon the manner of exercising the power of the San Mateo County Transit District. Although not specified in the agreement, the SamTrans organization headed by its General Manager/CEO served as staff to the organization.

## **II. Formation of Caltrain**

Three primary agreements define the history of Caltrain's formation:

(1) the Joint Powers Agreement, which created the Peninsula Corridor Joint Powers Board ("JPB") and which was executed by San Francisco, SamTrans, and VTA on October 18, 1991 (the "1991 JPA");

(2) the Purchase, Sale and Option Agreement, pursuant to which Southern Pacific sold the right of way between San Francisco and Tamien Station in San Jose and the trackage rights between Lick and Gilroy. The agreement provided the JPB with an option to purchase other properties and was executed by Southern Pacific, the JPB, and SamTrans on November 22, 1991 (the "Purchase Agreement"); and

(3) the Real Property Ownership Agreement, which defines the JPB and member agencies' property ownership rights and which was executed by the JPB, SamTrans, San Francisco, and VTA on December 24, 1991 (the "1991 RPOA"). The 1991 RPOA is included as Attachment C to this report.

These agreements, and the role they played in Caltrain's formation, are described below.

**A. The 1991 JPA**

In order to implement the acquisition and management of the PCS, the parties to the Peninsula Corridor Study Joint Powers Board entered into a new joint powers agreement in 1991. The 1991 JPA expanded the purposes and powers of the JPB to plan, oversee, and operate the PCS once the system was transferred to local control. The 1991 JPA designated SamTrans as managing agency, subject to replacement by the JPB on one year's written notice if SamTrans had been reimbursed for the money it advanced to purchase the right of way. The agreement also established that member agency subsidies for operating the Main Line Service would be based on an a.m. boarding formula, while VTA would be responsible for the net operating costs of the Gilroy Service. Capital replacement and enhancement projects were to be shared equally among the members to the extent other funds could not be obtained, but VTA was responsible for obtaining funding for all Gilroy service capital projects. That basic structure of cost sharing and SamTrans managing the system has continued to the present.

**B. The Purchase Agreement**

The 1991 JPA agreement was conditioned on the JPB securing funding to purchase the Main Line Right of Way (ROW) between San Francisco and Tamien Station in San Jose from Southern Pacific. In November 1990, California voters approved Proposition 116, a statewide \$1.99 billion general obligation measure to fund rail projects. Prop. 116 earmarked \$120 million in bond proceeds to the JPB to purchase the right of way. However, as negotiations with Southern Pacific advanced, it became clear the price for the right of way would exceed \$120 million, requiring additional resources.

Those negotiations culminated on November 22, 1991, when the JPB, SamTrans, and Southern Pacific entered into the Purchase Agreement. Under that Agreement, the JPB purchased the Main Line ROW for approximately \$202 million, with \$120 million from Prop. 116 funds and \$82 million advanced by SamTrans on behalf of the JPB. Under the Purchase Agreement, the JPB also purchased limited track rights between Lick and Gilroy for \$8 million, with \$4 million from Prop. 116 funds dedicated to VTA and \$4 million paid directly by VTA. Southern Pacific maintained rights to operate limited freight service on the Main Line, and its successor, Union Pacific, continues to operate such service today.

The Purchase Agreement also provided the JPB options to purchase additional property for a limited period of time. Those options included Dumbarton Branch, Vasona Branch I and II, San Bruno Branch, Moffett Drill Track, the Lick-Gilroy Line, and various station parking lot and grade separation parcels.

**C. The 1991 RPOA**

As a consequence of the purchase of the ROW and the option to acquire additional properties, the member agencies entered into a Real Property Ownership Agreement (the "1991 RPOA") on December 24, 1991. The agreement defines the various types of property subject to the agreement, establishes property rights among the JPB and member agencies, and provides two alternative mechanisms by which SamTrans could be repaid for the \$82 million it had

advanced towards the purchase of the ROW, which the parties called the “Additional Contribution.”

**1. Categories of Property**

The 1991 RPOA defines four main types of property: (1) the ROW; (2) System Option Properties; (3) Local Option Properties; and (4) State-Transferred Properties.

**a. ROW**

The 1991 RPOA defines the “ROW” to include all real property and other assets acquired by the JPB and SamTrans pursuant to the 1991 Purchase Agreement with Southern Pacific, other than local option properties, which are defined below. 1991 RPOA, § 1.15. This is the broadest category of property, encompassing the right of way, trackage, stations formerly owned by SP, structures, parking lots, and grade separations of the Peninsula Main Line from 4th and Townsend Street in San Francisco (Milepost 0.147) to Lick (Milepost 51.4), except that the right of way between Santa Clara Junction and Lick excludes one track owned by the freight operator.

**b. System Option Properties**

The 1991 RPOA divides the option properties described in the Purchase Agreement into two categories. The “System Option Properties” are defined as those properties to be acquired pursuant to the options established in the Purchase Agreement other than “Local Option Properties”. 1991 RPOA, § 1.17. The system options properties include the grade separation and parking lot options described in an exhibit to the Purchase Agreement and the Lick-Gilroy Line.

**c. Local Option Properties**

The “Local Option Properties” are properties in which member agencies had an interest but which were not directly tied to the operation of the PCS. The 1991 RPOA identified the “local option properties” as the Moffett, San Bruno, Vasona I, and Vasona II options. 1991 RPOA, § 1.5.

**d. State Transferred Properties**

The 1991 RPOA defines “State Transferred Properties” as the real property and other assets transferred from Caltrans to the JPB, including stations, facilities, equipment, and inventory. 1991 RPOA, § 1.16. This includes 26 stations and locomotives and passenger cars.

**2. Operational and Nonoperational Assets**

The 1991 RPOA also distinguishes between “operational assets” and “nonoperational assets.” 1991 RPOA, §§ 1.13 & 1.12. “Operational assets” are defined as the portion of the ROW that is used to operate and maintain the railway service, i.e., the 80-foot wide strip (40 feet on each side of the median of the ROW), and any system options properties determined by the parties to be operational assets. 1991 RPOA, § 1.13. “Nonoperational assets” are defined as all areas and assets owned and operated by the JPB (alone or with SamTrans) exclusive of

operational assets. 1991 RPOA, § 1.12. This distinction is important because as discussed below, until SamTrans is reimbursed for the funds it advanced to purchase the ROW, it has additional rights to manage and receive net revenues from “nonoperational assets.”

### **3. Additional Contribution**

The 1991 RPOA provided two alternate ways SamTrans could be reimbursed for advancing the entire additional \$82 million needed for the purchase of the ROW (referred to as the “Additional Contribution”).

Under the first option (referred to as “full reimbursement”), the parties agreed to use their best efforts to obtain non-local sources of funds to repay SamTrans the Additional Contribution (the \$82 million) plus compound interest, and agreed to dedicate net nonoperating revenues from nonoperational assets included in the system option properties and state-transferred properties to repayment.

Under the second option (referred to as “full participation”), the parties agreed that neither San Francisco nor VTA had any legal obligation to repay SamTrans but they could elect to reimburse SamTrans their share of the Additional Contribution plus compound interest from their own assets. VTA and San Francisco’s share of the Additional Contribution was based on the percentage of ROW track mileage in their respective counties (this is known as the mileage formula). Thus, VTA’s share of the Additional Contribution was \$34.7 million (42.2%), and San Francisco’s was \$8.3 million (10.1%).

Finally, the member agencies agreed that until SamTrans was repaid, SamTrans would have title to the portion of the ROW in San Mateo County as a tenant in common with the JPB, would receive net nonoperating revenue from nonoperational assets and state transferred properties, and would have the right to convert the Additional Contribution into an ownership interest in all or part of the ROW.

### **III. Changes in the Governing Documents Between 1991 and 2008**

In October 1996, the parties revised the JPA to incorporate a 1994 amendment modifying allocation of administrative and capital costs among the parties and to include changes that VTA requested regarding appointment of its representatives to the JPB. It is that document that governs the JPB today (the “1996 JPA”). The 1996 JPA, however, did not change most of the relevant provisions discussed above that were part of the original 1991 JPA. The 1996 JPA appears as Attachment B to this report.

Between 1996 and 2007, there were several attempts to revise either the 1996 JPA or the 1991 RPOA, or both, but the parties did not agree on revisions. Further, no cash payments were made to reimburse SamTrans for the Additional Contribution, and the interest grew to exceed the principal.

#### **IV. The 2008 Agreement to Revise the 1991 Real Property Agreement**

In 2007, the Metropolitan Transportation Commission (MTC) told VTA and San Francisco it would not release their shares of what were called “spillover” funds, additional funds allocated for local transit purposes from the state gasoline tax, unless they found a way to resolve the reimbursement of the Additional Contribution with SamTrans. Steve Heminger, then Executive Director at MTC, negotiated an agreement with Tom Nolan from San Francisco, Mike Scanlon of SamTrans, and Michael Burns from VTA. In 2008, the member agencies amended the 1991 RPOA to reset the Additional Contribution amounts attributable to San Francisco and VTA and to provide that part of those amounts would come from state transit funds allocated to the two member agencies and the rest from the spillover funds distributed by MTC. The amendment, which will be referred to as the 2008 RPOA, also provided that SamTrans would be designated to serve as the managing agency for as long as it chooses to do so. The 2008 RPOA appears as Attachment D to this report. There have been no further amendments to the governing documents since 2008.

### **DESCRIPTION OF AGREEMENTS AND ANALYSIS**

As noted above, it is important to establish a common understanding about how the governing documents treat certain areas of governance in order for the Board to explore whether changes are appropriate and if so, what those changes might be. The analyses that follow are based primarily on our reading of the governing documents, augmented by records and other information provided by the member agencies.

We begin with the property ownership rights of the JPB and, for certain properties, those of the member agencies. After that, we discuss the agreements regarding repayment of SamTrans’ Additional Contribution to cover the shares of San Francisco and VTA for purchase of the right of way and the payments that have been made to SamTrans under those agreements. We then turn to SamTrans’ rights and responsibilities as managing agent for the JPB, followed by the history and operation of the Gilroy Service, the cost allocation among the member agencies for Caltrain’s operating and capital budgets, and a discussion of areas in the governing documents that could be amended to include agreements reached among the parties over time and/or to clarify existing provisions in the governing documents.

#### **I. Property Ownership Rights**

The 1991 Real Property Ownership Agreement (“1991 RPOA”) is the foundational document that establishes the property rights of the JPB and its member agencies in all property acquired since 1991. It also sets forth two alternate ways SamTrans could be reimbursed for the

Additional Contribution. This section discusses the JPB and member agencies' property rights,<sup>2</sup> while Section II discusses the repayment provisions.

**A. Ownership of Property**

**1. The Mainline Right of Way**

The 1991 RPOA provides that the JPB holds title to the ROW but SamTrans holds title as a tenant in common with the JPB to all ROW property located in San Mateo County unless and until SamTrans receives reimbursement for paying all of the Additional Contribution, discussed in Section II below. *See* 1991 RPOA, § 4.1. Under California law, tenants in common each have an undivided interest in the property. This means that each of them owns a fractional share of the entire property, and their ownership does not automatically entitle them to rights to the other portion, such as through rights of survivorship if held by a natural person.

**2. System Option Properties**

Under the Purchase Agreement, the JPB was granted options to purchase the Lick-Gilroy Line and certain station parking lot and grade separation parcels, defined as “system option properties” under the 1991 RPOA.<sup>3</sup>

In 1996, the JPB, SamTrans, and Southern Pacific agreed to amend the Purchase Agreement to add additional system option properties (Redwood City-Whipple Avenue Adjacent, San Francisco-Evans Street, and Brisbane), extend the time for the JPB to exercise its option to acquire certain option properties, and authorize the San Mateo County Transportation Authority to exercise the option to purchase certain option properties.<sup>4</sup>

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<sup>2</sup> Most of these transactions occurred more than 25 years ago, and some of the records are unavailable as of this writing. As a result, we have not been able to independently confirm all of these facts. In addition, although the various sets of track maps we have reviewed identify ownership rights, these maps have not been verified. We understand that SamTrans intends to hire a district surveyor, which should provide greater certainty with respect to property ownership. Having said that, this section provides our best understanding of property ownership to date.

<sup>3</sup> The parking lot options included: 22nd Street, Bayshore, South San Francisco Station, Hillsdale Station, San Carlos Station, Palo Alto Station, Mountain View Station, Sunnyvale Station, and Lawrence Station. The grade separation parcels included Redwood City-Brewster Avenue, Redwood City-Whipple Avenue, and other grade separation parcels identified in Exhibit A to the Purchase Agreement.

<sup>4</sup> The options assigned to the San Mateo County Transportation Authority included: San Mateo-25th Avenue, Redwood City-Whipple Avenue, Redwood City-Whipple Avenue Adjacent, Redwood City-Brewster Avenue, and the Burlingame-Broadway Station. The amended agreement extended the JPB's time to acquire the following option properties: South San Francisco Station, San Mateo-Hillsdale, Mountain View Station, San Francisco-Evans Street, and Brisbane.

Ultimately, the JPB, SamTrans, and the San Mateo County Transportation Authority exercised the right to acquire the system option properties described in Attachment F to this report. In 1997, the JPB acquired several of the system option properties from the San Mateo County Transportation Authority. These properties included parking lots at the South San Francisco Station, Hillsdale Station, Mountain View Station, and Palo Alto Station, and grade separations at San Mateo-Hillsdale, Redwood City-Brewster Avenue, San Francisco-Evans Street.

The option to purchase half of the Lick-Gilroy line was not exercised.

### **3. Local Option Properties**

The 1991 RPOA assigned the right to acquire the San Bruno option to SamTrans and the Moffett and Vasona I and II options to VTA, provided that the assignment and exercise of options would not affect each member agency's percentage under the mileage formula, and provided that title to the property would vest in the member agency that exercised the option. 1991 RPOA, § 4.3.

Pursuant to the assignment in the 1991 RPOA, SamTrans acquired the San Bruno Branch, and VTA acquired the Moffett Drill Track and the Vasona I and II branches.

### **4. State Transferred Properties**

The JPB holds title to all the state transferred property, including 26 stations and locomotives and passenger cars. The stations are listed in Attachment G to this report. The JPB has a railroad easement to the station at 4th and Townsend in San Francisco, but does not own the property.

### **5. The Gilroy/Lick Trackage Rights**

Under the Purchase Agreement, the JPB also acquired limited trackage rights to the Gilroy-Lick Line (from Milepost 51.4 to Milepost 80.7) for \$8 million; VTA paid \$4 million and the remaining \$4 million came from Prop. 116 funds earmarked for VTA. Although the Purchase Agreement grants these rights to the JPB, the 1991 RPOA provides that the JPB shall assign title to the trackage rights to the Lick-Gilroy Line to VTA upon VTA's request. 1991 RPOA, § 4.4. VTA has not exercised this right to date.

### **6. Operational and Nonoperational Assets**

As discussed above, "operational assets" include the portion of the ROW that is used to operate and maintain the railway service, i.e., the 80-foot wide strip (40 feet on each side of the median of the ROW), and any system options properties (the grade separations and parking lots) determined by the parties to be operational assets. 1991 RPOA, § 1.13. As discussed above, the JPB acquired grade separations and parking lots, but to date no action has been taken to determine which, if any, of these properties should be added to the "operational assets." As a result, these properties continue to be considered "nonoperational assets," which is defined to mean all areas and assets owned and operated by the JPB (alone or in conjunction with

SamTrans) exclusive of operational assets. 1991 RPOA, § 1.12. As discussed below, this distinction is relevant because the 1991 RPOA provides that net revenue from nonoperational assets included in the system option properties and state transferred properties shall be paid to SamTrans until full reimbursement of the Additional Contribution from non-local sources of funds, or full participation in the Additional Contribution by the member agencies from their own assets, occurs. 1991 RPOA, § 6.5. According to SamTrans, it has not applied net revenues from nonoperational assets towards the Additional Contribution; instead those net revenues have been allocated to defray Caltrain rail operations costs.

## **B. SamTrans' Property Rights**

The 1991 RPOA provides SamTrans several additional property rights to secure its right to be repaid for advancing the full \$82 million as part of the 1991 Purchase Agreement.

First, the 1991 RPOA provides that SamTrans may require the JPB to assign the right to acquire system option properties to SamTrans until such time as SamTrans has been fully reimbursed for the money it advanced on behalf of San Francisco and VTA, or SamTrans withdraws its operational subsidy. 1991 RPOA, § 4.2. If SamTrans elects to pay for system option properties, the 1991 RPOA requires such payments to be added to the amount of SamTrans' Additional Contribution. 1991 RPOA, § 3.2. Although SamTrans and the San Mateo County Transportation Authority paid to acquire certain system option properties, none of these expenditures were added to SamTrans' Additional Contribution. As discussed above, the San Mateo County Transportation Authority sold some of these properties to the JPB in 1997. The San Mateo County Transportation Authority and SamTrans continue to hold title with respect to other system option properties. *See System Option Properties Chart, Att. F.*

Second, as discussed above, SamTrans holds title to the ROW in San Mateo County as a tenant in common with the JPB until such time as SamTrans is fully reimbursed for the Additional Contribution towards the purchase of the ROW, or the other member agencies contribute towards the Additional Contribution to the extent of their percentage of the mileage formula. 1991 RPOA, § 4.1. Because neither of these conditions has occurred, SamTrans continues to hold title as a tenant in common with the JPB to the ROW in San Mateo County.

Third, the 1991 RPOA gives SamTrans the right to convert its Additional Contribution into an ownership interest in all or part of the ROW until it is fully reimbursed for its Additional Contribution or the other member agencies participate in the Additional Contribution to the extent of their percentage of the mileage formula, or SamTrans withdraws its operational subsidy.<sup>5</sup> 1991 RPOA, § 7.1. SamTrans' equity conversion right does not extend to the state-transferred properties, including the 26 stations and the locomotives and passenger cars transferred to the JPB in 1991. 1991 RPOA, § 7.1. In addition, if SamTrans were to exercise its

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<sup>5</sup> SamTrans has recorded its interest in the ROW in San Francisco and Santa Clara Counties by filing a Memorandum of Real Property Ownership Agreement, which describes SamTrans option to acquire sole title to the ROW and system option properties.



conversion right, it would be required to license the operational assets to the JPB at no cost.<sup>6</sup> 1991 RPOA, § 7.2. To date, SamTrans has not exercised its equity conversion right.

If SamTrans were to exercise its equity conversion right, it would have control over and responsibility for the management, use, and development of nonoperational assets. 1991 RPOA, § 7.3. However, SamTrans' exercise of this right is subject to the JPB's continuing authority to delegate responsibility for the administration and management of "certain Nonoperational Assets" to another member agency. 1991 RPOA, §§ 7.3 & 6.3. As discussed below, while the term "certain Nonoperational Assets" is not defined, the JPB's authority to delegate responsibility for management of at least some nonoperational assets limits SamTrans' authority over nonoperational assets, even if it were to exercise its equity conversion right. The documents are not clear, however, about what would happen if, for example, the Board had delegated management of a certain asset to VTA or San Francisco, but then SamTrans exercised its equity conversion right with respect to that asset, or if SamTrans had exercised its conversion right and the Board then tried to delegate management after that. The outcome may depend upon whether SamTrans' equity rights could be made compatible with management of the asset by another agency.

SamTrans' equity conversion right is also limited by the right of the other member agencies to participate in management and development decisions regarding nonoperational assets through voting rights equal to the percentage of the member agency's participation in the principal of the Additional Contribution compared to the total Additional Contribution. 1991 RPOA, § 7.7. Although the current application of this provision is unclear, it appears to mean that VTA and San Francisco's payments under section 3.3 of the 2008 RPOA, described below, would allow them to participate in SamTrans' decisions regarding the development and management of nonoperational assets.

### **C. Restrictions on Transferring the ROW**

The 1991 RPOA prohibits the JPB or SamTrans from selling, encumbering, or transferring their interest in the ROW, system option properties, and the state-transferred properties, without the written approval of the other. 1991 RPOA, § 8. Unlike other rights assigned to SamTrans which are extinguished upon full reimbursement of, or full participation in, the Additional Contribution, such as SamTrans' right to convert the Additional Contribution into an ownership interest, this right is not contingent. That means that the JPB could not sell the ROW or a System Option Property without SamTrans' approval, and vice versa.

However, in the event that SamTrans exercises its equity conversion right, it has the right, with respect to any ROW property to which it holds title, to lease or encumber such property as necessary or desirable to develop nonoperational assets without the approval of the JPB. 1991 RPOA, § 8. Similarly, it has the right to sell nonoperational assets, without the JPB's

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<sup>6</sup> For purposes of SamTrans' equity conversion right, "station properties" are treated as nonoperational assets. 1991 RPOA, § 7.1. In light of the fact that the state transferred properties are excluded from the scope of SamTrans' equity conversion right, however, the effect of treating "station properties" as nonoperational assets is not clear.

approval, if a member agency withdraws its operational subsidy. With respect to property located outside of San Mateo County, this authority is limited to the nonoperational assets at certain locations in Mountain View, Sunnyvale, and Santa Clara. 1991 RPOA, § 8; 1991 RPOA, Ex. B (identifying locations). SamTrans also has the authority to sell any operational asset in the event that both San Francisco and VTA withdraw their operational subsidy. 1991 RPOA, § 8.

## **II. ROW Purchase and Reimbursements to SamTrans**

### **A. The 1991 RPOA**

The three member agencies entered into the 1991 RPOA to establish their rights and obligations occasioned by the fact SamTrans had contributed to the purchase of the ROW but VTA and San Francisco had not. The 1991 RPOA provided two different paths for San Francisco and VTA to repay SamTrans for their shares of the Additional Contribution. 1991 RPOA, § 1.2.

First, Section 3.3 of the 1991 RPOA required the member agencies to use “their best efforts” to advocate for and obtain funds from non-local sources to repay the Additional Contribution (the \$82 million) in full and to use net nonoperating revenues from system option properties, such as parking lots, to reimburse SamTrans for paying all of the Additional Contribution. 1991 RPOA, § 3.3. The 1991 RPOA also provided for compound interest to be added annually to the Additional Contribution amounts, at a rate equal to SamTrans’ average rate of return on its investment portfolio. 1991 RPOA, § 3.3. Repayment under section 3.3 of the 1991 RPOA is referred to as “full reimbursement.”

Second, in addition to providing a path for repayment from non-local sources, the 1991 RPOA also created an alternative mechanism, referred to as “full participation.” Under section 3.4 of the 1991 RPOA, the member agencies agreed that San Francisco and VTA had no “legal obligation to participate in the Additional Contribution,” but recognized that SamTrans had incurred a substantial financial burden that benefitted all of the parties and that their collective efforts to obtain non-local sources of funds to effect “full reimbursement” may be unavailing. 1991 RPOA, § 3.4. The member agencies therefore agreed that San Francisco and VTA could “at their election undertake good faith efforts to contribute a lump sum or equivalent assets or establish a schedule of payments to SamTrans by which they will share in the burden of the Additional Contribution to the extent of their percentages under the Mileage Formula,” plus interest as provided for in section 3.3. 1991 RPOA, § 3.4. Thus, VTA and San Francisco’s portion of the Additional Contribution under section 3.4 was tied to the mileage formula, where a member agency’s percentage was equal to the number of miles of ROW track, from San Francisco (milepost .147) to San Jose (milepost 51.4), located in their jurisdiction. Under that formula, VTA’s portion of the Additional Contribution was \$34.7 million (42.2%) and San Francisco’s was \$8.3 million (10.1%).

As discussed in Section I, the 1991 RPOA required SamTrans to reconvey its title to the ROW in San Mateo once either full reimbursement under section 3.3 or full participation under section 3.4 occurred. 1991 RPOA, § 4.1. In addition, the 1991 RPOA provided that SamTrans’ right to convert the Additional Contribution into an ownership interest in all or part of the ROW and its right to receive net nonoperating revenues from the system option properties would

terminate upon the occurrence of full reimbursement or full participation. 1991 RPOA, §§ 6.5 & 7.1. However, regardless of whether VTA and San Francisco reimbursed SamTrans, SamTrans retained a right to veto any sale, transfer, or conveyance of the ROW. 1991 RPOA, § 8.

**B. Events Leading Up to the 2008 Amendment of the RPOA**

From the time the parties entered into the 1991 RPOA until 2007, no cash payments were made to SamTrans under either alternate method of repayment. In interviews, representatives of VTA and SamTrans stated that in 1997, 1999, and 2004, they attempted to negotiate a resolution to the ROW reimbursement issue. We have not obtained all of the correspondence between the two agencies concerning those negotiations, but the parties agree that those efforts did not result in any settlement or subsequent payment of any portion of the Additional Contribution.

The issue arose again in 2007. By then, the Additional Contribution amounts for VTA and San Francisco had increased substantially due to the addition of compound interest. The initial Additional Contribution amount for VTA, \$34.7 million, had grown to \$74.2 million (including \$39.5 million in interest) and the initial amount for San Francisco, \$8.3 million, had grown to \$17.3 million (including \$9 million in interest).<sup>7</sup>

In 2007, MTC decided to condition distribution of Proposition 1B funds to VTA and San Francisco on resolution of the ROW reimbursement issue. As a result, MTC and the three member agencies entered into negotiations that resulted in an agreement in principle in June 2007. That agreement reset the amount owed to SamTrans as \$53.3 million, to be paid partly by San Francisco and VTA and partly by MTC.

On June 25, 2007, Steve Heminger, who participated in the negotiations as Executive Director of MTC, sent a memo to the MTC Board summarizing the agreement. He began by stating that MTC staff had proposed the resolution of the ROW issue as “a condition of allocation of certain new project funds to the San Francisco Metropolitan Transportation Agency and the Santa Clara Valley Transportation Authority from the Proposition 1B Regional Transit Funding Program.” June 25, 2007 Memorandum from S. Heminger to MTC Board (“June 25, 2007 MTC Memo”). Mr. Heminger then summarized the agreement:

In brief, the agreement will reimburse SamTrans for advancing its own local funds on behalf of the three agencies to purchase the Caltrain ROW nearly 16 years ago. The revenues will come from two sources of ‘spillover’ state transit funds that are expected to flow to the region over the next few years: (1) \$43 million in population-based spillover funds under the MTC’s control; and (2) \$10 million in revenue-based spillover funds, \$8 million from VTA and \$2 million from MTA. This arrangement is consistent with the three agencies’ original 1991 agreement that they would

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<sup>7</sup> See March 9, 2011 Memorandum from MTA Executive Director Steve Heminger to Programming and Allocations Committee (the “March 9, 2011 MTC Memo”).

‘use their best efforts individually and collectively to advocate for and obtain from non-local sources grants to be used for reimbursement of the additional contribution’ [i.e. San Mateo advance].<sup>8</sup>

June 25, 2007 MTC Memo.

Mr. Heminger estimated that it would take “2-4 or more years” to retire the payment to SamTrans. But he cautioned that “[s]pillover revenue carries with it some risk. It has varied widely in the past due to fluctuations in the price of gasoline. It also has been the subject to budgetary diversions in recent years. In any event we believe it is reasonable to expect that within the 10-year life of our Proposition 1B Regional Transit Funding program, [the claim] can be satisfied.” June 25, 2007 MTC Memo.

Attached to the June memo were two letters to MTC, one from VTA and one from San Francisco, confirming the agreement was contingent on MTC releasing Prop. 1B funds to those agencies. The VTA letter states that the “agreement is contingent upon the removal of the condition imposed by MTC on the allocation of \$45 million in Proposition 1B transit capital revenues to VTA for its Line 522/523 Bus Rapid Transit Project.” San Francisco’s letter states the “agreement is contingent upon the removal of the condition imposed by the MTC on the allocation of Proposition 1B transit capital revenues to the SFMTA for the Central Subway project.” June 25, 2007 MTC Memo.

The agreement was formalized a year later, in October 2008, with the execution of the 2008 amendments to the RPOA by the three member agencies. The member agencies agreed that the 2008 RPOA was meant “to fully resolve all outstanding financial issues related to the acquisition of the ROW.” 2008 RPOA, Recitals.

The boards of each member agency approved the 2008 RPOA. In addition to MTA, the San Francisco Board of Supervisors also approved the agreement through a separate resolution because San Francisco was a party to the agreement. The SamTrans and San Francisco resolutions make clear that the agreement is meant to fully resolve the financial issues among the parties related to the ROW *and* that the new agreement will designate SamTrans as the managing agency of the JPB until it no longer chooses to do so.<sup>9</sup> For example, the San Francisco Board of Supervisor’s Resolution No. 389-08 (adopted 11-0 on September 17, 2008) stated that (1) the agreement will “fully resolve all outstanding financial issues related to the repayment of SamTrans for its Additional Contribution for the acquisition of the ROW” and (2) that

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<sup>8</sup> In the 2008 RPOA, the final amount MTC was to pay from spillover funds was set at \$43.3 million, not \$43 million as stated in the June 25, 2007 MTC Memo.

<sup>9</sup> VTA’s board also approved the repayment plan in February 2008 but its resolution does not refer to the fact that the agreement provides for SamTrans to serve as managing agency for so long as it chooses to do so.

“SamTrans will be designated as the managing agency of the JPB unless and until it no longer chooses to do so.”

### **C. The 2008 RPOA**

Under the 2008 RPOA, the parties agreed to reset the amount of the Additional Contribution to be repaid to SamTrans as “full reimbursement” for its contribution towards the purchase of the ROW, with specified amounts to be paid by San Francisco (\$2 million), VTA (\$8 million), and MTC (\$43.3 million), for a total payment of \$53.3 million. The agreement, which provided that MTC “would facilitate reimbursement of the Additional Contribution,” required VTA and San Francisco to use their 2008-09 revenue-based state transit funds to pay SamTrans and stated that in subsequent years, “MTC will allocate and pay to SAMTRANS the respective shares of VTA and CCSF revenue-based spillover funds” until VTA’s and CCSF’s commitments of \$8 million and \$2 million, respectively, are fully discharged. 2008 RPOA, §§ I-3, 3.3(C). Section 3.3 of the 2008 RPOA also provided that MTC, which was not a party to the agreement, would allocate “the regional population-based spillover funds directly to SAMTRANS,” accounting for \$43.3 million of the \$53.3 million repayment amount established in the agreement. 2008 RPOA, I-3.3(C).

The new language required the parties to use their best efforts to effect full reimbursement (\$53.3 million) within a period of two to four years and in no event later than ten years. 2008 RPOA, § 3.3(C). But it also contemplated the possibility that this could not be achieved and provided that if “circumstances arise that would preclude allocation of the funds in full within ten (10) years, MTC will be authorized to identify alternative sources of non-local funds to effect full reimbursement of the Additional Contribution to SAMTRANS at the earliest practicable date.” 2008 RPOA, § I.

The language authorizing MTC to identify other funding is opaque, but Steve Heminger’s 2011 memorandum indicates his understanding that because the spillover funding had disappeared, “the four-agency agreement seeks MTC’s continued assistance in identifying an alternate source of funds for the remaining reimbursement to SamTrans for the acquisition of the Caltrain ROW two decades ago.” March 9, 2011 MTC Memo at 2. In our view, if MTC were to identify alternative sources of non-local funds to repay SamTrans, its ability to condition release of those funds on the parties reaching a new agreement would depend on the nature of the funds and whether MTC had been given authority to place conditions on their release.

The parties agreed that VTA and San Francisco’s obligations under section 3.3 of the 2008 RPOA and section 3.4 of the 1991 RPOA would be deemed fulfilled once SamTrans received all the funds provided for by section 3.3.

Although the 2008 RPOA amended section 3.3 of the 1991 RPOA “in its entirety,” it did not amend the alternate method of repayment – the “full participation” provision in section 3.4 – of the 1991 RPOA. That raises a question of whether the parties intended to apply the reset Additional Contribution amount (\$53.3 million) to the “full participation” provision in section 3.4. In other words, the 2008 RPOA could be construed to mean that in order to achieve full participation under section 3.4 of the 1991 RPOA, San Francisco and VTA would have to pay their share of the Additional Contribution, as defined in the 2008 RPOA Agreement, or that

they would have to pay their portions of the original amount of the Additional Contribution, as set forth in the 1991 RPOA.

In addition, it is also unclear whether VTA and San Francisco would be required to pay interest if the 2008 RPOA were construed to reset the amount of the Additional Contribution for purposes of section 3.4 because that section incorporates the interest provision in section 3.3 of the 1991 RPOA, which was replaced in its entirety by the 2008 RPOA and which does not include interest. In any event, even if the agreement were construed to reset the total amount of the Additional Contribution in 2008 without interest, which is the most generous construction for San Francisco and VTA, the two member agencies would still have to pay SamTrans a total of close to \$19.8 million.

The 2008 RPOA also amended section 4.1 of the 1991 agreement, which required SamTrans to reconvey title to the ROW in San Mateo County to the JPB upon full participation in the Additional Contribution pursuant to section 3.4, or full reimbursement of the Additional Contribution pursuant to section 3.3, to add that, upon full participation in, or full reimbursement of, the Additional Contribution, SamTrans' equity conversion right under section 7 of the 1991 RPOA would no longer be in effect and that section 6.5 of the 1991 RPOA, which provided for the use of net nonoperating revenues to repay SamTrans for the Additional Contribution, would be repealed. 2008 RPOA, § II.

Finally, the 2008 RPOA states that the "parties have agreed that SAMTRANS is designated as the managing agency of the JPB and will serve in that capacity unless and until it no longer chooses to do so." The parties also agreed to incorporate this agreement in a formal amendment of the JPA at a future date. 2008 RPOA, § III. As discussed below, this has not yet occurred.

The 2008 RPOA did not amend the other provisions of the 1991 RPOA or the 1996 JPA.

#### **D. Repayment Under the 2008 RPOA**

In the course of our review, the only record we have found that tracks all payments made by MTC, VTA, and San Francisco under the 2008 RPOA is a spreadsheet created by April Chan, Executive Officer, Planning and Development at SamTrans (the "ROW History Spreadsheet").<sup>10</sup> Other records are consistent with the spreadsheet, and none of the individuals we interviewed from the member agencies raised any questions about the history of payments after the 2008 RPOA. Put differently, we believe there is no dispute among the member agencies about the repayment history under the 2008 RPOA.

In 2008, MTC began making payments to SamTrans under the 2008 RPOA from the population-based spillover funds, paying a total of \$4,442,174. But shortly thereafter, the financial recession occurred and the population-based spillover funds identified as a source of

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<sup>10</sup> The 1991 RPOA requires SamTrans, as managing agency, to maintain records of the member agencies' contributions towards the Additional Contribution. 1991 RPOA, § 12.1.

payment essentially dried up. As result, MTC made no other payments from spillover funds after 2008.

In the 2011 memo discussed above, Mr. Heminger summarized this history and noted that “as it turned out, only one year of spillover funds was made available to MTC and the other local agencies. . . . Subsequently, state budget raids and the gas tax/sales tax swap eliminated spillover funds and eventually the spillover mechanism itself.”<sup>11</sup> Mr. Heminger went on to state “that MTC has continued to make payments to SamTrans with a replacement source of funding from our flexible federal highway program, but SFMTA and VTA have not.” Attached to the memo is a spreadsheet showing the payments to date and anticipated/programmed future payments from the federal grants identified by MTC. That spreadsheet is consistent with the ROW History Spreadsheet, namely that in the intervening years, SamTrans received \$19.3 million in additional payments from federal grants identified and distributed by MTC.

As noted earlier, Mr. Heminger concluded his memo by saying that given the repeal of the statutory funding mechanism, “the four-agency agreement seeks MTC’s continued assistance in identifying an alternate source of funds for the remaining reimbursement to SamTrans for the acquisition of the Caltrain ROW two decades ago.” March 9, 2011 MTC Memo at 2.

Despite Mr. Heminger’s suggestion, no additional sources of funds to pay the remaining amounts were identified. However, both VTA and San Francisco made payments to SamTrans after 2011; VTA fully satisfied its obligation to pay \$8 million, and San Francisco paid all but \$200,000 of its similar obligation to pay SamTrans \$2 million.

In sum, the ROW History Spreadsheet shows the following:

- VTA fully paid the \$8 million that the 2008 RPOA identified as its obligation to pay to SamTrans from revenue-based “spillover” funds. VTA made the following payments to SamTrans: (1) \$822,730 on June 26, 2008; (2) \$2,000,000 on November 17, 2011; and (3) \$5,177,270 on January 9, 2013.
- San Francisco paid all but \$200,000 of the \$2,000,000 that the 2008 RPOA identified as its obligation to pay to SamTrans through revenue-based “spillover” funds. San Francisco paid SamTrans \$1,800,000 on December 14, 2012.
- MTC paid \$23,711,087 of the \$43.3 million the 2008 RPOA identified it would pay directly to SamTrans from regional population-based “spillover” money. Of that amount, MTC paid \$4,422,174 from the spillover funds in 2008, and \$19,288,913 through federal grants. SamTrans received the federal grant money through the following payments: (1) \$6,000,000 on June 30, 2013; and

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<sup>11</sup> March 9, 2011 MTC Memo from Executive Director to Programming and Allocations Committee (“March 9, 2011 Memo”).

(2) \$13,288,913 on June 30, 2015.<sup>12</sup> See ROW History Spreadsheet. There have been no subsequent payments since that time. However, as discussed above, MTC was not a party to the 2008 RPOA and has no continuing obligation to make payments to SamTrans. It is, however, “authorized” by the parties to “identify alternate sources of non-local funds to effect full reimbursement of the Additional Contribution [\$53.3 million] to SAMTRANS at the earliest practicable date.” 2008 RPOA, § 1-3.3(C).

- Of the \$53.3 million expected to be paid under the 2008 RPOA, \$33,511,087 has been paid, and \$19,788,913 has not. Of the amount that has not been paid, \$200,000 was to come directly from San Francisco and \$19,588,913 was to come from MTC. No funds have been paid since June 30, 2015.

The parties agree there have been no successful efforts to identify additional sources of funds to pay the balance under the 2008 RPOA or to reengage MTC in the reimbursement process. Several interviewees said that there were some nascent efforts to resolve the issue as part of the negotiations over the Caltrain electrification project, but according to those individuals, those efforts never resulted in a formal proposal.

### **III. Caltrain Management**

#### **A. SamTrans as Managing Agency**

The 1991 Joint Powers Agreement appointed SamTrans as the managing agency of the Peninsula Commute Service, and the 1996 revision of that Agreement does the same. Both agreements, however, provided that SamTrans was subject to replacement “upon one (1) year’s prior written notice given at the end of any fiscal year after SamTrans has been fully repaid monies advanced by it to cover the ROW (right of way) purchase price.”

As noted above, the 2008 RPOA made a significant change to this arrangement by designating SamTrans as the managing agency of the JPB for as long as it chooses to do so. The operative language of the 2008 RPOA reads as follows:

In consideration of the understandings reached pursuant to this Amendment to the RPOA, and in keeping with the shared commitment of the parties to continue their collaborative support of Caltrain, the parties have agreed that SAMTRANS is designated as the managing agency of the JPB and will serve in that capacity unless and until it no longer chooses to do so. The parties also agree to incorporate this agreement in a formal amendment of the JPA at a future date.

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<sup>12</sup> Although SamTrans did not book the receipt of the federal grant money until June 30, 2013, those funds had already been identified and set aside for SamTrans in 2011, and were identified in Mr. Heminger’s March 9, 2011 memorandum and attachment.



### 2008 RPOA, § III.

The term “in consideration of the understanding reached pursuant to this Amendment” has legal significance as a matter of contract law. In California, as in other states, in order for a contract to be valid, each party must give something of value to the other. The thing of value is known as “consideration,” and it can be a promise or something tangible worth almost any amount. Cal. Civ. Code §§ 1550, 1605-1615.

In this case, the consideration for the promise that SamTrans will be the managing agency for as long as it wishes was SamTrans’ agreement to forego most of 17 years’ worth of compounded interest on its Additional Contribution towards the purchase of the Southern Pacific right of way. San Francisco and VTA had agreed to use their best efforts individually and collectively to try to obtain grants from non-local sources to reimburse SamTrans, with compound interest, under the original RPOA. 1991 RPOA, § 3.3. SamTrans’ willingness to reset the amounts based on a renegotiated amount was sufficient legal consideration for the other agencies’ promise that SamTrans could serve as managing agency for as long as it wished to do so. March 9, 2011 Memo at 1. That promise is binding on the parties to the 2008 RPOA, which are the same as the parties to the Joint Powers Agreement.

#### **B. Failure to Amend the Joint Powers Agreement**

The 2008 RPOA provides, in two separate places, that the parties would amend the Joint Powers Agreement to reflect their agreement that SamTrans will be the managing agency for as long as it wishes. Section III states: “The parties also agree to incorporate this agreement in a formal amendment of the JPA at a future date.” 2008 RPOA, § III.<sup>13</sup>

The parties have not amended the 1996 JPA to reflect SamTrans’ designation as managing agency for as long as it chooses. In our opinion, that does not affect the validity of the agreement because the fact that all parties have already agreed to the term designating SamTrans as managing agency in the 2008 RPOA effectively makes adding the term to the JPA unnecessary and duplicative.

The agreement to amend the JPA, however, still has effect. Section 1957 of the California Civil Code states: “If no time is specified for the performance of an act required to be performed, a reasonable time is allowed.” What constitutes reasonable time for performance is usually a question of fact. *Pico Citizens Bank v. Tafco, Inc.*, 201 Cal. App. 2d 131, 137 (1962). The general rule is that time is not of essence in the performance of a contract term unless it has been made so by express terms of the contract or is necessarily so from the nature of the contract. *Leiter v. Handelsman*, 125 Cal. App. 2d 243, 270 (1959). In these circumstances, a strong argument can be made that it is reasonable that the term has yet to be acted upon, because the JPA has not been amended since 1996. Nothing in the contract indicates that time is of the

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<sup>13</sup> Paragraph G of the Recitals provides: “In conjunction with the Amendment of the RPOA, the parties have agreed that SAMTRANS will be designated as the managing agency of the JPB unless and until it no longer chooses to do so, it being agreed and understood that a formal amendment to the JPA incorporating this commitment will be implemented at a future date.”

essence, and the nature of the contract does not render it so, especially considering the term to be added is already contractually agreed upon in the 2008 agreement.

**C. SamTrans' Responsibilities as Managing Agency**

SamTrans' responsibilities as managing agency are spelled out in the 1996 JPA:

- Award the operating contract for the rail service, subject to concurrence of the JPB, and administer and modify the contract consistent with the JPB's operating budget;
- Maintain and manage the ROW and other system assets "unless the administration of particular station sites is delegated by the JPB to an individual Member Agency;"
- Implement capital programs in the approved rail service budget "unless the administration of particular capital projects is delegated by the JPB to an individual Member Agency;"
- Seek, obtain and administer grants;
- Develop and implement marketing programs;
- Prepare and submit financial reports;
- Recommend changes in fare structure, scheduling, and levels of service to the JPB and prepare and implement changes in scheduling other than those requiring the approval of the JPB;
- Prepare capital and operating budgets for presentation to the JPB;
- Keep staff of Member Agencies advised on rail service matters; and
- Report regularly to the JPB regarding rail service issues.

1996 JPA, § 6(C).

In addition, Section 10 of the JPA provides that the managing agency's General Manager shall be the Executive Director of the JPB and the Finance Director of the Managing Agency shall serve as treasurer and controller of the JPB. 1996 JPA, § 10(C)-(E).

Section 10 also provides that the JPB shall designate its legal counsel and independent auditors. 1996 JPA, § 10(B).

**D. JPB Authority to Delegate Management Responsibility for Certain Assets to Another Member Agency**

As noted above, the JPB retains the right to delegate responsibility for managing certain station sites or capital projects to a different member agency than SamTrans. In addition, under the 1991 RPOA, the JPB retains the right to delegate management of certain operational assets to another member agency:

**6.1 Management of Operational Assets.** Pursuant to the JPA, the JPB will provide oversight, and SAMTRANS will manage the Operational Assets. Nothing herein shall preclude the delegation by the JPB of management responsibilities for certain Operational Assets to another Member Agency, with such rights and responsibilities as may be designated by the JPB.

1991 RPOA, § 6.1.

Section 6.3 contains the same language with respect to nonoperational assets.<sup>14</sup>

Neither section was changed by the 2008 RPOA, which designates SamTrans as managing agency for as long as it wishes. Thus, because the parties understood that the JPB could delegate management authority to certain operational and nonoperational assets under the 1991 RPOA, that authority remains with the JPB today.

The scope of that authority is by no means clear, however. The reference to “certain” assets indicates that the authority does not extend to delegating management of *all* of the operational or nonoperational assets, but the scope of the term is not defined. Presumably, it means that the JPB could decide to delegate management authority over particular assets that would have to be identified separately. There is nothing in the agreement, however, that describes how many of the assets could be delegated this way.

**IV. Gilroy Service**

When the JPB purchased the ROW from Southern Pacific in 1991, it also purchased, for \$8 million, perpetual and exclusive track rights between Lick (milepost 51.4) and Gilroy (milepost 80.7) to provide commuter service. Under a separate agreement with Southern Pacific, the JPB could operate eight scheduled commuter service trains per day (four in each direction). In 2002, the JPB acquired the right to operate a fifth train per day in each direction.

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<sup>14</sup> Operational assets are “that portion of the ROW that will be used to operate and maintain the PCS as of the date of the acquisition of the ROW by the JPB and SAMTRANS,” and nonoperational assets are “[a]ll of the areas and assets owned and operated by the JPB (alone or in conjunction with SAMTRANS) exclusive of Operational Assets.” 1991 RPOA, §§ 1.13, 1.12.

The 1991 RPOA provides that the JPB would assign all of its rights, title, and obligations under the Trackage Rights Agreement to VTA upon request, but to date the assignment has not occurred. 1991 RPOA, § 4.4. VTA has not requested such an assignment.

As discussed in Section I of this report, the 1991 Purchase Agreement also provided the JPB an option to purchase the Lick-Gilroy line comprising one-half of the width of such Right-of-Way for \$12 million (\$20 million less a credit back for the \$8 million trackage right purchase). 1991 Purchase Agreement, § 3.1(a)(vi). This right was not exercised, and it lapsed.<sup>15</sup>

Under the 1996 JPA, the Gilroy Service is considered part of the Peninsula Commute Service and therefore is overseen, managed and operated in the same manner as the Main Line Service. *See* 1996 JPA, § 1. The 1996 JPA states that VTA is responsible for the net operating costs of the Gilroy Service and is responsible for obtaining funding for all Gilroy Service capital projects. 1996 JPA, § 7(B). As discussed in more detail below, however, since 2001 the operating costs of the Gilroy Service have been included in the operating costs of the Main Line Service, which the member agencies share based on the all-day boarding formula. As a result, since at least 2001, the member agencies have shared the costs of the Gilroy Service.

## **V. Operating and Capital Costs**

### **A. Annual Operating Costs**

Under the 1996 JPA, the member agencies agree “to share in the operating costs associated with the PCS,” or the Main Line Service, which is defined as the PCS service between San Francisco and Tamien Station in San Jose. 1996 JPA, §§ 7(A), 1. The 1996 JPA further states that VTA “shall be responsible for all net operating costs of the Gilroy Service based upon the fully allocated cost methodology.” 1996 JPA, § 7(A).

In addition, the Member Agency “subsidies for the Main Line Service shall be based on the existing passenger boarding formula which is predicated upon county of origin a.m. peak hour boarding of passengers as adjusted annually prior to the JPB’s adoption of the operating budget.” 1996 JPA, § 7(A). The member agencies are required to pay the operational subsidies on a monthly basis. 1996 JPA, § 7(D).

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<sup>15</sup> Under the 1991 RPOA, which assigns other local option properties to member agencies, the Lick-Gilroy option was defined as a “system option property” to be exercised by the JPB. Although the Lick-Gilroy option was included in the Purchase Agreement at VTA’s request, the parties agreed that the JPB would retain the option to ensure that VTA would have to obtain the JPB’s assent in order for the option to be exercised. However, it appears the parties may have had an understanding that VTA would be responsible for funding the exercise of that option. Under the 1991 RPOA, VTA is responsible for funding capital costs associated with the Lick-Gilroy line, which could be understood to imply that VTA was responsible for paying the costs of exercising that option. 1996 JPA, § 7(B). Although the records of the parties’ negotiations on this point are not entirely clear, they appear to suggest that this was the understanding at the time that the parties agreed to the 1991 RPOA.

The 1996 JPA separately addresses how the administrative expenses of the managing agency are shared: “expenses for personnel and resources of the Managing Agency to administer the affairs of the JPB, including the administration of the operating contract, shall be shared by the Member Agencies based on the a.m. boarding formula as provided.” 1996 JPA, § 7(C). In other words, JPB administrative costs are shared in the same way as the operating costs and therefore are considered as part of the annual operating costs.

Over time, the parties have departed from this agreement in three main respects. First, in June 2000, the member agencies agreed that for the 2001 Caltrain budget, the net operating costs of the Gilroy Service would be included in the Main Line operating costs shared by the three member agencies rather than paid solely by VTA. JPB Resolution 200-21 (June 1, 2000). At the same time, apparently at the request of San Francisco, the JPB modified the a.m. boarding formula on which operating costs were shared to one based on a five-year historical statistical average, rather than the current boarding survey. The resolution, however, stated that agreement “creates no precedent for subsequent calculations of operating or capital costs.” *Id.* In practice, however, the member agencies have continued to include the costs of the Gilroy Service in Caltrain’s operational costs shared by the three members. As a result, SamTrans, as managing agency, does not run the Gilroy Service as an independent cost center and does not separately track the costs associated with that service.

Second, in 2013, the member agencies agreed, as part of the 2014 budget process, to change the allocation formula again. Instead of basing the allocation on a five-year historical average of a.m. peak boarding, the members agreed to apportion net operating costs among them based on an “Average Weekday (All Day) Passenger Count in February FY 2013, by County, including stations from Capitol to Gilroy.”<sup>16</sup> This was meant to apply only to fiscal year 2014 but the parties continued to allocate costs in this manner until 2018, when the allocation was tweaked again to be based on mid-week boarding. Thus, currently costs are allocated on an average mid-week (all day) boarding formula, adjusted annually. The 1996 JPA, however, has not been amended to reflect these changes. This agreement changed the percentages such that San Francisco assumed more of the overall costs of operations. Based on the 2019 Annual Passenger Count, the member agencies’ percentage obligations for net operating cost are: VTA - 42.4%; SamTrans - 30.6%, and SFMTA,<sup>17</sup> - 27.0%. 2019 Annual Passenger Count, dated July 11, 2019.<sup>18</sup>

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<sup>16</sup> This was memorialized in a memorandum dated April 19, 2013 from Michael Scanlon to Michael Burns (VTA) and Ed Reiskin (SFMTA).

<sup>17</sup> The San Francisco Municipal Transportation Agency is the San Francisco entity responsible for paying San Francisco’s share of the operational budget.

<sup>18</sup> The Caltrain 2020 budget provided that “[c]ontributions from the member agencies are calculated in accordance with an allocation methodology based on the average mid-weekday boarding data including Gilroy and adjusted for FY20 to reflect passenger data collected in FY19. The FY20 Proposed budget shows an increase of \$4.5 million over the FY19 Forecast.” Peninsula Corridor JPB Staff Report, 6 (June 6, 2019).

Third, since the parties have treated the payment of the JPB's administrative costs in the same manner as operating costs for the Main Line Service, the change to allocating the Main Line Service operating costs based on the all-day boarding formula meant that administrative costs are now shared in the same manner.

The 2020 budget anticipated member subsidies totaling \$29,921,971, which would have resulted in the following member subsidies under the 2019 passenger survey: VTA - \$12,686,915; SamTrans - \$9,156,123; SFMTA - \$8,078,932.

Under the 1996 JPA, the JPB approves the annual operational budget by March 31 of each year, and the budget is also "subject to the approval of the governing board of each member agency." 1996 JPA, § 5.B. In practice, the member agencies do not approve the Caltrain annual budget. In addition, we understand that the annual budgeting process involves SamTrans holding initial discussions with the member agencies to determine their ability to pay operational subsidies in a given year, and those discussions in large part drive the overall budget process, including the decision about whether Caltrain must use reserve funds to meet operational needs. The budgeting process is further complicated by the fact that VTA and SFMTA are subject to two-year budget planning, but SamTrans and Caltrain use an annual budget, and further that VTA and SFMTA are on different two-year budget cycles.

## **B. Capital Costs**

The provision establishing how the member agencies must share capital costs also appears in the 1996 JPA and states that member agencies "will use their best efforts to fully fund from state, federal and JPB Proposition 116 resources, capital projects contained in the approved capital budget." 1996 JPA, § 7(B). To the extent the parties agree to fund capital projects that require member subsidies, the projects are funded as follows: (1) for capital replacement and enhancement projects, the member agencies share those costs equally; (2) for "expansion projects," which include the downtown terminal relocation and the Gilroy Service, member contributions are decided on a case-by-case basis. The Agreement further states that VTA "shall assume full responsibility for obtaining funding for all Gilroy Service capital projects." 1996 JPA, § 7(B). In addition, each member is responsible for contributing an equal share to a capital contingency fund to "cover unanticipated, necessary capital improvements." 1996 JPA, § 7(B).

## **VI. Parties' Rights to Revise, Amend or Terminate the JPA**

### **A. Revision and Amendment**

Section 17 of the 1996 JPA says only that the agreement "may be amended at any time by agreement of all of the parties." 1996 JPA, § 17. Thus, any changes to the JPA must have the unanimous consent of all three member agencies.

### **B. Withdrawal and Termination of the JPA**

Under Section 12 of both the 1991 and 1996 Joint Powers Agreements, if one member withdraws from the JPB, the JPB continues to exist, and withdrawal by a single party does not

entitle that party to reimbursement for past capital contributions or to distribution of any assets or funds of the JPB. 1996 JPA, § 12. If two or more parties withdraw, then the Joint Powers Agreement “shall terminate at the end of the fiscal year following expiration of the one-year’s notice given by the second party to withdraw” from the JPA. 1996 JPA, § 12.

Section 9 of the 1991 RPOA, however, provides that it “supersedes and amends Section 12 of the JPA,” and it says something different. 1991 RPOA, § 9. First, it says that any party “may cease to support operations of the PCS” at the end of any fiscal year upon one year’s written notice. It then says that “[t]he decision of one or more Member Agencies to cease their support for operations shall not cause the termination of the JPB” and “withdrawal of operational subsidies by any Member Agency shall not constitute a withdrawal from the JPB” and it will not entitle the Member Agency “to reimbursement for past capital contributions, a distribution of any assets, or to participation in any future net revenues derived from operating activities, from either JPB or SAMTRANS.” Once a member agency withdraws operational subsidies, it is no longer entitled to vote on any matter involving operational issues. It is also no longer obligated to subsidize the PCS or participate in capital projects. It remains entitled to its share of Net Nonoperating Revenues as that relates to reimbursement of the member agency’s share of the Additional Contribution “until the ROW and all system assets are finally disposed of.” Section 9 concludes with “[u]pon effectuation of the sale of the ROW and PCS assets, the JPB shall be deemed dissolved.”

The difficulty with Section 9 of the 1991 RPOA is that the parties amended and restated the entire Joint Powers Agreement five years later without changing the withdrawal or termination provisions of section 12 to conform to the 1991 RPOA. Instead, as noted above, section 12 remains essentially as it did in October, 1991, with the addition of a mediation requirement added in a 1994 amendment to the Joint Powers Agreement.

We believe that the two provisions can and should be harmonized. Section 12 of the JPA deals with total withdrawal by one or more member agencies. If one agency withdraws, the JPB goes on; if two members withdraw, it terminates.

By contrast, Section 9 of the 1991 RPOA deals only with what happens when one or more member agencies withdraw *operational support* for the rail service, but do not withdraw from the JPB altogether. The consequences of that decision are limited to the agencies’ right to vote upon operational issues and their financial rights and obligations regarding capital projects and nonoperating deficits. If two or more agencies withdraw their operational support, presumably the remaining agency would have the right to continue rail service if it could identify a source of funding to replace the agencies’ support.<sup>19</sup>

The one difficulty with this analysis is the final sentence of Section 9 of the 1991 RPOA: “Upon the effectuation of the sale of the ROW and PCS assets, the JPB shall be deemed dissolved.” 1991 RPOA, § 9. We do not read this to mean that the *only* way the JPB is

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<sup>19</sup> Because Section 9 deals with a hypothetical situation that could occur in a variety of ways depending on which member agency were to withdraw operating support, we have not attempted to determine how any Net Nonoperating Revenues might be divided.

dissolved is by sale of the assets; instead, we believe that sale of the assets is only one way in which the JPB can be dissolved.

### **C. Disposition of Property and Funds**

The provisions for disposition of assets upon termination of the JPA appear in Section 13 of the JPA, which reads as follows:

At such time as this Agreement is terminated, any property interest remaining in the JPB, following discharge of all obligations due by the Board, shall be disposed of and the proceeds or property shall be allocated in accordance with a separate agreement to be entered into between the parties.

1996 JPA, § 13.

The same language appeared as Section 13 of the October 1991 version of the JPA.

Again, however, there is separate language in the 1991 RPOA that must be taken into account. Section 5 of the 1991 RPOA provides that the RPOA “shall continue in full force and effect until disposition of the ROW pursuant to Section 10 below is effected. *This Agreement shall govern the disposition of the ROW and represents the ‘separate agreement’ referenced in Section 13 of the JPA.*” 1991 RPOA, § 5 (emphasis added). Thus, approximately two months after the parties entered into the 1991 JPA, they provided for disposition of the ROW, which the agreement defines as “[a]ll real property and other assets to be acquired by the JPB and SAMTRANS pursuant to the Purchase Agreement other than the Local Option Properties.” 1991 RPOA, § 1.15.

Section 10 of the 1991 RPOA is titled Mandatory Disposition of Assets, but it appears to apply only “in the event the ROW is not used by any Member Agency to provide a minimum level of PCS equal to 44 trains per day for a period of seven consecutive years,” in which case “the JPB or SAMTRANS shall sell the ROW System Option Properties at the earliest practicable opportunity.” 1991 RPOA, § 10. This section follows directly after the section that allows any member agency to withdraw operational support without terminating the JPA. Presumably the language means that if a member or members choose to continue operational support but they run fewer than 44 trains per day for a period of seven years, then the JPB or SamTrans must sell the properties used to run the system.<sup>20</sup>

Section 10 goes on to say that proceeds from the sale will be used to satisfy any contractual obligations, then to pay any amounts still unpaid on the Additional Contribution provided by SamTrans, including compound interest equal to the amount SamTrans earned each

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<sup>20</sup> The requirement applies only to “system option properties,” which are defined as the parking lot and grade separation parcels acquired from Southern Pacific. These are discussed in Section I, above.



year on its investments. 1991 RPOA, § 10.<sup>21</sup> Any remaining proceeds would be shared among the member agencies in accordance with the mileage formula set in Section 2 of the RPOA, which established the respective percentages of the ROW in each of the member agencies.

## **VII. Possible Areas for Amendment of the Governing Documents**

As a possible next phase of its work, the JPB could consider whether to amend the governance provisions of the JPA. Our review of the documents as well as our interviews with the member agencies make clear that the issue of fully reimbursing SamTrans for its 1991 contribution to the purchase of the ROW will have to be part of that discussion. In addition to those two issues, we suggest that if the parties decide to amend the JPA or the RPOA, they should consider addressing the following issues at that time:

1. Whether to amend the JPA to include operational and capital costs for the Gilroy service in the costs shared by all three members;
2. Whether to amend the JPA to reflect the parties' current practice of sharing operating and JPB administrative costs based on the mid-week, all-day boarding formula, adjusted annually;
3. Whether to amend the JPA to remove the requirement that the annual operational budget is subject to the approval of the governing board of each member agency. 1996 JPA, § 5(B).

## **SUMMARY OF CONCLUSIONS**

The following summarizes our conclusions regarding the current governing documents of the JPB:

### **I. Property Ownership and Rights**

The JPB member agencies' real property ownership interests can be summarized as follows:

- The JPB owns the right of way, trackage, and structures between 4th and Townsend in San Francisco to Lick (excluding one track between Santa Clara Junction and Lick that is owned by Union Pacific). The JPB owns certain trackage rights between Lick and Gilroy, but is required to assign those rights to VTA upon request. SamTrans is a tenant in common with the JPB with respect to that portion of the ROW in San Mateo County.
- Caltrans transferred ownership of 26 stations from 22nd Street in San Francisco to Tamien in San Jose to the JPB. The property transfer included parking lots at the

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<sup>21</sup> Once again, the documents are unclear as to whether the 2008 RPOA amendment affected the compound interest component of this section.

Burlingame, Hayward Park, and Diridon stations. The JPB has a railroad easement to the station at 4th and Townsend, but Prologis, a developer, owns the real property.

- In addition to the parking lots transferred by Caltrans, the JPB acquired a number of other parking lots at the following stations: South San Francisco Station, San Carlos Station (with SamTrans), Hillsdale Station, Palo Alto Station, and Mountain View Station.
- SamTrans owns the Dumbarton and San Bruno branches, and VTA owns the Moffett Drill Track, and the Vasona I and II branches.
- The JPB holds title to the ROW, with SamTrans as a tenant in common to the ROW in San Mateo County until such time as SamTrans is fully reimbursed for its Additional Contribution towards the purchase of the ROW, or the other member agencies contribute towards the Additional Contribution to the extent of their percentage of the mileage formula. Because neither of these conditions has occurred, SamTrans continues to hold title as a tenant in common with the JPB to the ROW in San Mateo County.
- The JPB holds title to the assets transferred by Caltrans, including stations, facilities, equipment, and inventory.
- SamTrans has the right to convert its Additional Contribution into an ownership interest by taking title to all or part of the ROW until such time as full reimbursement of SamTrans' Additional Contribution occurs or the member agencies pay their share of the Additional Contribution to the extent of their percentages under the mileage formula. Because neither of these conditions has occurred, SamTrans continues to enjoy the right to convert its Additional Contribution into an ownership interest.
- The agreement also provides that in the event of an equity conversion, the other member agencies may participate in management and development decisions through voting rights equal to the percentage of their participation in the Additional Contribution. In addition, the agreement requires that if SamTrans exercises its equity conversion right and takes title to part or all of the ROW, it must license that portion of the ROW that is used to operate and maintain the PCS to the JPB at no cost.

## **II. ROW Purchase and Reimbursements to SamTrans**

### **A. Legal Rights and Obligations**

In the 1991 RPOA, the parties agreed that:

- The member agencies would use their best efforts to identify non-local sources of funds to fully reimburse SamTrans for the Additional Contribution, plus interest. The agreement refers to this as “full reimbursement.”
- Although they had no legal obligation to do so, San Francisco and VTA could elect to pay SamTrans for the Additional Contribution, plus interest, in an amount equal to their percentage of the mileage formula. The agreement refers to this as “full participation.”
- Until full reimbursement or full participation occurred, SamTrans would retain title as tenant in common with the JPB to the ROW in San Mateo County, would continue to receive net nonoperating revenue from the system option properties as reimbursement towards the Additional Contribution, and would have the right to convert the Additional Contribution into an ownership interest in all or part of the ROW.

In 2008, the member agencies agreed to amend the 1991 Real Property Ownership Agreement (the “2008 RPOA”). In key part, the parties agreed that:

- The amounts to be repaid by VTA and San Francisco to SamTrans in “full reimbursement” of the Additional Contribution would be fixed at \$53.3 million, with VTA and San Francisco to pay \$8 million and \$2 million, respectively, and with the remainder to be allocated by MTC to SamTrans from population-based state transit funds over which it had control.
- If these amounts were not repaid within 10 years, MTC would be “authorized” to identify additional sources of non-local funds to effect “full reimbursement” of SamTrans. The agreement does not address the parties’ obligations if MTC were to identify additional funds nor does it address whether they are obligated to ask MTC to identify such funds.
- Once “full reimbursement” of, or “full participation” in, the Additional Contribution occurred, SamTrans would reconvey title to the ROW in San Mateo County to the JPB and would no longer have the right to convert the Additional Contribution into an ownership interest in all or part of the ROW or be entitled to receive net nonoperating revenues from the system option properties.
- SamTrans may serve as managing agency “unless and until it no longer chooses to do so.” This right continues in existence regardless of whether VTA and San Francisco satisfy the requirements for full reimbursement or full participation.

**B. History of Repayment**

- No cash payments were made to SamTrans for the Additional Contribution before 2008. Since 2008, VTA has paid SamTrans \$8 million, as required by the 2008 RPOA; San Francisco has paid all but \$200,000 of the \$2 million to

SamTrans as required by the 2008 RPOA; and MTC has paid \$23.7 million of the \$43.3 million it was to pay SamTrans through population-based “spillover” funds. That leaves a total amount of \$19,788,913 that has not been paid under the 2008 RPOA, \$19,588,913 of which was to come from MTC and \$200,000 of which was to come from San Francisco. As a result, “full reimbursement” of the Additional Contribution has not occurred.

### **C. Current Status**

- Because SamTrans has not received the funds that were to come from MTC under the 2008 RPOA, section 3.4 of the 1991 RPOA remains in effect. Under section 3.4, VTA and San Francisco have no legal obligation to participate in the Additional Contribution, but they may, “at their election,” undertake good faith efforts to pay an amount to SamTrans sufficient to achieve full participation. To date, this has not occurred.
- SamTrans continues to hold title as tenant in common with the JPB to the right of way in San Mateo County, and SamTrans maintains the right to convert its Additional Contribution into an ownership interest in all or part of the right of way and to receive net non-operating revenues from the system option properties.

### **III. SamTrans as Managing Agency**

- SamTrans has an enforceable legal right to serve as managing agency of the JPB for as long as it wishes to do so while the JPB remains in existence, regardless of whether full reimbursement or full participation occurs.
- Under the 1996 JPA, the managing agency’s General Manager shall be the Executive Director of the JPB, and the Finance Director of the Managing Agency shall serve as treasurer and controller of the JPB. 1996 JPA, § 10 (C)-(E). As is true with the other governing documents, the JPA could be amended to change these provisions by unanimous agreement of the member agencies.
- SamTrans is responsible for managing the operational and nonoperational assets, provided that the JPB may delegate responsibility for the management of certain operational and nonoperational assets to another member agency.

### **IV. Gilroy Service**

Although the 1996 JPA requires VTA to be responsible for the operating costs of the Gilroy Service, the member agencies have, since 2001, shared those costs in the same manner as they share operating costs for the service between San Francisco and San Jose. The practice could be affirmed by amending Section 7(A) of the 1996 JPA, which currently states that VTA shall be responsible for those costs. Under the 1996 JPA, VTA is responsible for obtaining funding for all Gilroy Service capital projects.

**V. Allocation of Operating and Capital Costs**

Under the 1996 JPA, member agencies must subsidize operating costs in an amount equal to the a.m. boarding formula, and must share most capital costs equally. Although the 1996 JPA provisions remain in effect, the parties have, over the years, informally departed from those provisions with respect to sharing operating costs. Currently, the parties contribute subsidies for operations based on a mid-week, all-day boarding formula, adjusted annually.  
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## **QUESTIONS FOR SPECIAL COUNSEL FROM JPB PARTNERS**

The following are a partial list of the questions submitted by the member agencies that appear to be within the scope of both the Ad Hoc Committee's charge and this initial report, which is intended to provide the JPB with a common understanding of the members' rights and responsibilities under the governing documents as they exist today.

### **A. Finances, Debt and ROW Repayment**

#### **1. Caltrain Debts or Repayment to SamTrans (and Partners to Either)**

##### **a. Are there any legacy/remaining IOUs for historic ROW purchase by San Mateo?**

In 2008, the parties entered into the 2008 RPOA and agreed that MTC would "facilitate reimbursement" of the \$82 million SamTrans had advanced towards the purchase of the ROW known as the Additional Contribution. The agreement reset the amounts of the Additional Contribution attributable to (1) VTA to \$43 million, of which \$8 million would be paid by VTA from revenue-based spillover funds (which were additional funds allocated for local transit purposes from State gasoline taxes and \$35 million would be paid by MTC from population-based spillover funds; and (2) San Francisco to \$10.3 million, of which \$2 million would be paid by San Francisco from revenue-based spillover funds, and \$8.3 million would be paid by MTC from population-based spillover funds. VTA has fulfilled its obligation to pay \$8 million to SamTrans. San Francisco fulfilled most of its obligation by paying \$1.8 million of the \$2 million to SamTrans. Of the \$43.3 million MTC was to allocate and pay to SamTrans, \$19,588,913 remains unpaid. Under the Agreement, the parties "acknowledge and agree" that MTC continues to be "authorized to identify alternative sources of non-local funds to effect full reimbursement" of the remaining balance "at the earliest practicable date." 2008 RPOA, § I-3.3(C).

##### **b. As background: Are there any special financial agreements or arrangements (not just debt) between Caltrain and SamTrans?**

No. We are unaware of any special financial agreement or arrangements between Caltrain and SamTrans other than those set forth in the main operating agreements among the parties, namely in the 1996 JPA, the 1991 RPOA, and the 2008 RPOA. As described in the accompanying Preliminary Report, those agreements give SamTrans certain property rights in Caltrain's real property and certain rights to net operating revenues from nonoperational assets (such as parking lot and grade separation parcels) and state transferred properties until SamTrans is fully reimbursed under the 2008 RPOA, or until VTA and San Francisco pay their portions of the Additional Contribution under section 3.4 of the 1991 RPOA.

#### **2. Under the JPA, what are the financial obligations each member agency has to the JPB for operating and annual capital contributions?**

Under the 1996 JPA, which remains in effect, the member agencies must subsidize the operating costs of the Main Line Service in an amount based on the a.m. boarding formula. JPB administrative costs are also shared by the member agencies based on the a.m. boarding formula.

Capital costs related to the replacement or enhancement of PCS assets are shared equally by the member agencies, while capital cost allocations for expansion projects are to be determined on a case-by-case basis. The member agencies also must contribute equally to a capital contingency fund.

Under the 1996 JPA, VTA is responsible for the net operating costs of the Gilroy Service, and for obtaining funding for all Gilroy Service capital projects.

However, over the years, the parties have departed from these provisions in the following ways: (1) for operating costs, the members no longer share costs based on the a.m. boarding formula but instead base the allocation on an annual survey of all-day, midweek passenger boarding; (2) JPB administrative costs are folded into operating costs, and therefore also are shared based on the all-day boarding formula; and (3) the operating costs for the Gilroy Service are included in the overall operating costs of the Main Line Service and also are shared by the three member agencies based on the all-day boarding formula..

**3. What claims may the San Mateo County Transit District have against the JPB and Member Agencies for repayment of the advance made by the District for purchase of the right of way?**

We do not believe SamTrans has any formal contractual right to require VTA to reimburse it for the remaining \$19.8 million that SamTrans has not received to date under the 2008 RPOA. Whether San Francisco has any remaining obligation to pay the remaining \$200,000 of the \$2 million it was to pay turns on whether it received sufficient revenue-based spillover funds before the financial recession occurred to repay SamTrans the full amount of its \$2 million obligation. However, either on its own or as a party to the 2008 RPOA, SamTrans could seek to have MTC identify non-local funds that could be used to reimburse SamTrans for the \$19.8 million. Moreover, until it is fully reimbursed under the 2008 RPOA, SamTrans continues to hold title as a tenant in common with the JPB to the ROW in San Mateo County and has a right to net nonoperating revenues from nonoperational assets, such as the system option properties, and from state transferred properties.

SamTrans also has a right to take title to part or all of the ROW until it has been fully repaid. If it were to exercise that right, SamTrans would have to license the operating assets to the JPB at no cost so the JPB could continue running the PCS service uninterrupted, but it could use and develop the nonoperational assets (such as parking lot parcels) without JPB approval and presumably retain the net proceeds of that use or development for its own use. However, the JPB retains the right to delegate administration or management of certain nonoperational assets to a different member agency, even if SamTrans has exercised its conversion right. Finally, SamTrans would be required to retransfer title in the ROW to the JPB if it were fully paid back.

**4. In the Real Property Agreement, what role does the Metropolitan Transportation Commission play in ensuring the San Mateo County Transit District receives funding for the advance purchase of the Right of**

**Way from the member agencies? What authority, if any, does the MTC have to ensure this repayment?**

As discussed above, in 2008, the parties entered into the 2008 RPOA and agreed that MTC would “facilitate reimbursement” of the Additional Contribution provided by SamTrans. There remains an outstanding balance of \$19,788,913 under the 2008 RPOA, with all but \$200,000 attributable to MTC. Under the Agreement, the parties “acknowledge and agree” that MTC continues to be “authorized to identify alternative sources of non-local funds to effect full reimbursement” of the remaining balance “at the earliest practicable date.” 2008 RPOA, § I-3.3(C). If MTC were to identify alternative sources of non-local funds to repay SamTrans, its ability to condition release of those funds would depend on the nature of the funds and MTC’s authority to place conditions on their release.

**B. Change of Managing Agency**

**1. What does the JPA and Real Property Agreement state about the rights of the San Mateo County Transit District to be the Managing Agency of the JPB? Is there any ambiguity to the agreements?**

Under the 2008 RPOA, the parties “agreed that SAMTRANS is designated as the managing agency of the JPB and will serve in that capacity unless and until it no longer chooses to do so.” 2008 RPOA, § III. The Agreement further states that the parties “agree to incorporate this agreement in a formal amendment of the JPA at a future date.” Although the JPA has not been amended to reflect that change, we do not believe the parties’ failure to do so in any way calls into question the validity of the agreement. We believe the provision is unambiguous and controlling.

**2. What claims might the San Mateo County Transit District have against the JPB and the Member Agencies should the District no longer be the Managing Agency?**

Under the 2008 RPOA, SamTrans has a legally enforceable right to remain the managing agency for as long as it chooses. It would therefore have to agree voluntarily to relinquish its managing agency role. However, if it chose to do so without imposing other conditions, it would not have any claims against the JPB or the member agencies.

**3. What is the basis for the requirement from the prior right of way agreement that SamTrans must concur if JPB wishes to become a fully independent entity, and what would it take to revisit that provision if true?**

Under the 1991 RPOA, neither the JPB nor Samtrans can “sell, transfer, convey, alienate, encumber, hypothecate, pledge, or otherwise dispose of its interest in the ROW, System Option Properties and State Transferred Properties” without “the written approval of the other.” 1991 RPOA, § 8. That provision remains in effect and applies regardless of whether the \$19.8 million that remains to be reimbursed under the RPOA is repaid. Thus, SamTrans would have to agree if the JPB decided to transfer title in the ROW to a new agency.



## **C. Gilroy Service Provisions**

### **1. If the provisions in the JPA were not adhered to, such as Santa Clara County being responsible for the funding of Gilroy Service, what claims may be available to the member agencies impacted by the failure to follow the JPA?**

The 1996 JPA states that VTA “shall be responsible for all net operating costs of the Gilroy Service based upon the fully allocated cost methodology” and shall “assume full responsibility for obtaining funding for all Gilroy Service capital projects.” 1996 JPA, § 7(A), (B). Under the 1991 RPOA, upon the request of VTA, the JPB shall transfer all rights title and obligations under the Trackage Rights Agreement – Lick/Gilroy Line to VTA. 1991 RPOA, § 4.4.

However, in June 2000, the member agencies agreed that for the 2001 Caltrain budget, the net operating costs of the Gilroy Service would be included in the Main Line operating costs shared by the three member agencies based on the a.m. boarding formula rather than paid solely by VTA. JPB Resolution 200-21 (June 1, 2000). The resolution stated that the agreement “creates no precedent for subsequent calculations of operating or capital costs.” In practice, however, the member agencies have continued to include the costs of the Gilroy Service in Caltrain’s operational costs shared by the three members. Given that the JPB, and the representatives of the member agencies, approve each annual budget resolution that contains that adjustment, we do not believe the other member agencies would have viable claims against VTA for the parties’ decision to depart from the 1996 JPA provisions with respect to operating costs.

### **2. Under the JPA, what are the member agency financial obligations for other contributions including additional capital contributions and Gilroy Service?**

The 1996 JPA states that member agencies “will use their best efforts to fully fund from state, federal and JPB Proposition 116 resources, capital projects contained in the approved capital budget.” 1996 JPA, § 7(B). To the extent the parties agree to fund capital projects that require member subsidies, the projects are funded as follows: (1) for capital replacement and enhancement projects, the member agencies share those costs equally; (2) for “expansion projects,” which include the downtown terminal relocation and the Gilroy Service, member contributions are decided on a case-by-case basis. The Agreement further states that VTA “shall assume full responsibility for obtaining funding for all Gilroy Service capital projects.” 1996 JPA, § 7(B). In addition, each member is responsible for contributing an equal share to a capital contingency fund to “cover unanticipated, necessary capital improvements.” 1996 JPA, § 7(B).

### **3. What steps can be taken to affirm the long standing Caltrain practice of incorporating Gilroy Service into the Caltrain operating costs?**

As discussed above, the member agencies have shared the operating costs of the Gilroy Service since 2001, even though that practice deviates from the plain language of the 1996 JPA. In order to affirm and make permanent that long-standing practice, the member agencies could amend section 7(A) of the 1996 JPA to reflect that change. Any amendment to the 1996 JPA requires the approval of all of the member agencies.

**ATTACHMENT B:  
1996 JOINT POWERS AGREEMENT**

**JOINT POWERS AGREEMENT**  
**PENINSULA CORRIDOR PROJECT**

This Agreement is made and entered into this 3<sup>rd</sup> day of October, 1996, by and between the Santa Clara County Transit District, dba Santa Clara Valley Transportation Authority ("SCCTD" or "SCVTA"), the City and County of San Francisco ("CCSF"), and the San Mateo County Transit District ("SamTrans") (collectively referred to herein as "Member Agencies").

**RECITALS**

WHEREAS, in 1988, SCCTD, CCSF and SamTrans entered into a Joint Powers Agreement (the "1988 Agreement") creating the Peninsula Corridor Study Joint Powers Board ("JPB") pursuant to Title 1, Division 7, Chapter 5, Article I (§6500 et seq.) of the California Government Code, for the purpose of conducting planning studies related to the Peninsula Commute Service ("PCS"); and

WHEREAS, based upon the planning studies and other activities conducted by the JPB, including, among other things, the negotiation of an agreement to acquire the full corridor right-of-way owned by Southern Pacific Transportation needed for operation and future expansion of the PCS, the parties determined that it would be beneficial to residents of their respective counties that the purposes and powers of the JPB be expanded to enable the JPB to plan, oversee and operate the PCS following

transfer of the system assets from the State of California to local control; and

WHEREAS, such planning, oversight, and operation of the PCS required the maintenance and improvement of the Southern Pacific Right of Way and related system assets, as well as the application for and obtainment of State and federal funding; and

WHEREAS, in 1991 SCCTD, CCSF and SamTrans amended and restated in its entirety the 1988 Joint Powers Agreement to reflect their expanded objectives and executed a Joint Powers Agreement dated August 18, 1991 ("1991 Agreement"); and

WHEREAS, the 1991 Agreement provided for the allocation among the parties of the administrative, capital and operating expenses attendant to ownership of the Peninsula Corridor right-of-way ("ROW") and operation of the PCS; and

WHEREAS, pursuant to an Amendment adopted on November 3, 1994, the JPB amended the 1991 Agreement to modify the basis for allocation of administrative and capital costs among the parties and to effect certain other related changes to the 1991 Agreement ("1994 Amendment"); and

WHEREAS, SCTVA has proposed further revisions to the 1991 Agreement pertaining to SCTVA's powers to appoint representatives to the JPB; and

WHEREAS, the parties now desire to restate the 1991 Agreement as amended by the 1994 Amendment to include SCTVA's proposed revisions.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

**Section 1. DEFINITIONS**

The terms defined in this section shall for all purposes of this Agreement have the meanings specified herein.

"Agreement" means this Joint Powers Agreement as it now exists or as it may hereafter be amended.

"Gilroy Service" means the PCS Service between the Tamien Station in San Jose and Gilroy.

"Local Funds" means funds generated by a Member Agency or allocated to a Member Agency by another agency on a non-discretionary basis.

"Main Line Service" means the PCS service between the City and County of San Francisco and the Tamien Station in San Jose.

"Project" means (a) the maintenance and improvement of the ROW, (b) the planning, administration, operation and expansion of the PCS, including the Gilroy Service that will be run on the ROW, and (c) the application for and obtainment of State and federal funding to achieve the aforesaid Project objectives.

**Section 2. PURPOSE**

The purpose of the Agreement is to establish an organization that shall be responsible for implementing the objectives of the Project and related actions pertaining to the PCS.

**Section 3. TERM**

This Agreement shall be effective upon execution of this Agreement by all parties.

Upon becoming effective, this Agreement shall continue in full force and effect for ten (10) years from the October 18, 1991 execution of the Joint Powers Agreement, subject, however, to each party's right to withdraw upon one (1) year's prior written notice given to the other parties at the end of any fiscal year in the manner prescribed in Section 19 below. At the end of ten (10) years, this Agreement shall continue in full force and effect on a year-to-year basis until such time as two or more parties withdraw pursuant to the terms of Section 12 below.

**Section 4. JOINT POWERS BOARD**

There is hereby created the JPB as a public entity separate and apart from CCSF, SCVTA and SamTrans, or any current combination thereof. This new entity shall be known as the Peninsula Corridor Joint Powers Board. The Board shall consist of nine (9) members representing their respective Member Agencies as follows:

A. Representing SamTrans

1. Member of SamTrans Board designated by Board;
2. Member of SamTrans Board appointed by San Mateo County Board of Supervisors; and

3. Member of SamTrans Board appointed by the Cities Selection Committee of the Council of Mayors of San Mateo County.

B. Representing the Santa Clara Valley Transportation Authority

1. Member of SCVTA Board of Directors representing the City of San Jose or the County of Santa Clara, as appointed by the SCVTA Board;

2. Member of SCVTA Board of Directors representing the County of Santa Clara or a city in Santa Clara County other than the City of San Jose, as appointed by the SCVTA Board; and

3. The County of Santa Clara's representative to the Metropolitan Transportation Commission ("MTC"), or if this person declines to serve, then the MTC appointee of the Cities Selection Committee, or if this person also declines to serve, then a member of the SCVTA Board of Directors as appointed by the SCVTA Board.

No more than two members of the County of Santa Clara Board of Supervisors may serve on the JPB Board at the same time.

C. Representing the City and County of San Francisco

1. An appointment of the Mayor;  
2. An appointment of the Board of Supervisors;  
and

3. An appointment of the San Francisco Public Transportation Commission.

Each of the nine (9) members shall serve in his or her individual capacity, but at the pleasure of the party appointing him or her.

**Section 5.            POWERS OF THE JPB**

The JPB shall be the policy-making body for the Project and shall have all such powers to implement the Project as may be exercised under applicable laws by joint powers agencies. The JPB hereby is authorized, in its own name, to do all acts deemed necessary or convenient for the exercise of said power, including, but not limited to, any or all of the following: to make and enter into contracts; to acquire, own, and maintain real and personal property; to employ agents and employees; to incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of the State, CCSF, SamTrans, or SCVTA; to sue and be sued in its own name; and to apply for, receive, and utilize State, local, and Federal funding and funds from all other sources given to it for the purpose of accomplishing the Project. Without limiting the generality of the foregoing, the JPB shall:

- A.    Approve short-range plans for PCS.
- B.    Approve by March 31 of each year the annual PCS operating budget, subject to the approval of the governing board of each Member Agency.
- C.    Approve the annual capital budget by March 31 of each year, and approve other proposed actions pertaining to the level of service, changes in service schedules that add or delete



service to or from a station, fares, and capital improvement programs.

D. Commit Proposition 116 Funds earmarked for the JPB to specific capital projects approved in the capital budget without the approval of the Member Agency governing boards. Approve all other specific capital projects requiring use of Local Funds, subject to the approval of the Member Agency governing boards.

E. Concur in the award by the Managing Agency of the operating contract for the PCS.

F. Advise, review and make recommendations to the Managing Agency regarding the following:

1. marketing programs;
2. financial reports;
3. other reports for public distribution;
4. interagency cooperation; and
5. management plan.

G. Award a contract to perform an independent audit of the financial condition of the JPB.

Pursuant to Government Code Section 6509, the power of the JPB is subject to the restrictions upon the manner of exercising the power of SamTrans.

**Section 6.        MANAGING AGENCY; DELEGATION OF AUTHORITY**

A. The JPB shall appoint a managing agency ("Managing Agency") to implement the objectives of the Project.

B. SamTrans hereby is appointed as Managing Agency for the duration of the term, provided, however, that the JPB may replace SamTrans as the Managing Agency upon one (1) year's prior written notice given at the end of any fiscal year after SamTrans has been fully repaid monies advanced by it to cover the ROW purchase price.

C. The Managing Agency shall be delegated the following authority and required to perform the following responsibilities:

(i) Award the operating contract for the PCS, subject to the concurrence of the JPB as provided in Section 5 above, and administer and modify said contract consistent with the JPB's operating budget;

(ii) Maintain and manage the ROW and other system assets unless the administration of particular station sites is delegated by the JPB to an individual Member Agency.

(iii) Implement capital programs contained in the approved PCS capital budget unless the administration of particular capital projects is delegated by the JPB to an individual Member Agency;

(iv) Seek, obtain and administer grants;

(v) Develop and implement marketing programs;

(vi) Prepare and submit financial reports;

(vii) Recommend changes in fare structure to the

JPB;

(viii) Recommend changes in scheduling and levels of service to the JPB;

(ix) Prepare and implement changes in scheduling other than those requiring the approval of the JPB as provided in Section 5(C) above.

(x) Prepare capital and operating budgets for presentation to the JPB;

(xi) Keep staff of Member Agencies advised on PCS matters; and

(xii) Report regularly to the JPB regarding PCS issues.

#### Section 7. FINANCIAL COMMITMENTS

##### A. Operations

Each Member Agency agrees to share in the operating costs associated with the PCS. Member Agency subsidies for the Main Line Service shall be based on the existing passenger boarding formula which is predicated upon county of origin a.m. peak hour boardings of passengers as adjusted annually prior to the JPB's adoption of the operating budget. SCVTA shall be responsible for all net operating costs of the Gilroy Service based upon the fully allocated cost methodology.

##### B. Capital Projects

The JPB and the Member Agencies shall use their best efforts to fully fund from state, Federal and JPB Proposition 116 resources, capital projects contained in the approved capital budget. If approved by Member Agencies pursuant to Section 5(D),

Member Agencies shall share in the remaining costs of capital projects according to the following guidelines: Proposed capital projects shall be categorized in the capital-program process as being designed to replace, enhance or expand PCS assets. Costs of capital replacement and enhancement projects that are not covered by outside funding sources shall be shared equally by the Member Agencies. Furthermore, Member Agencies shall support the equal sharing of Federal funding for replacement and enhancement projects with the understanding that the method for allocating the Federal funds will be reviewed by the Metropolitan Transportation Commission Regional Transit Coordinating Council Finance Committee. Cost allocation among the JPB members for expansion projects such as the downtown terminal relocation, the Gilroy Service and the Bayshore Corridor Service shall be determined on a case-by-case basis. SCVTA shall assume full responsibility for obtaining funding for all Gilroy Service capital projects.

In addition to the costs for capital projects to be shared by the Member Agencies as provided in this Section 7.B, on an annual basis the JPB shall determine an amount to be contributed by the Member Agencies into a capital contingency fund to cover unanticipated, necessary capital improvements. Each Member Agency shall contribute an equal share of this capital contingency fund.

C. JPB Administrative Costs

Expenses for personnel and resources of the Managing Agency to administer the affairs of the JPB, including the administration of the operating contract, shall be shared by the Member Agencies based on the a.m. boarding formula as provided in Section 7.A above.

D. Procedures for Making Monthly Contributions.

(i) Operational Subsidies. Operational subsidies shall be paid monthly in advance by each Member Agency to the Managing Agency in accordance with procedures to be enacted by the JPB.

(ii) Capital Contributions. Commitments by Member Agency governing boards to provide Local Funds for a particular capital project shall be obtained prior to the filing of grant applications for each said project. Actual contributions shall be paid as and when they are due and owing. All contributions to the capital contingency fund provided in Section 7.B above shall be delivered to the Managing Agency within sixty (60) days of the JPB's determination of the amount to be funded.

(iii) JPB Administrative Costs. Administrative costs of the JPB shall be billed by the Managing Agency and paid by the Member Agencies on a monthly basis.

(iv) Late Payments. Member Agencies who fail to pay or who are delinquent in any financial commitment hereunder shall be assessed interest charges based on the Managing Agency's average rate of return on its investment portfolio.

E. Duration.

All allocations of expenses and costs established in this Section 7 shall be subject to re-evaluation during the JPB's 1998-1999 fiscal year. Any changes made as a result of this re-evaluation shall become effective during the fiscal year 1999-2000. In the event any allocation method is hereafter revised, any capital projects in progress at the time of the revision shall be carried to completion using the allocation methods in place at the time of the award of the construction/procurement contract for the capital project.

F. Covenant.

Each Member Agency hereby affirmatively covenants to the other Member Agencies henceforth to pay any and all financial obligations to the JPB promptly as and when such obligations become due and owing to the JPB as provided in Section 7 or otherwise in this Agreement.

G. Obligations of the City and County of San Francisco.

CCSF shall pay to the Managing Agency CCSF's portion of the JPB start-up costs in the amount of \$557,485.00, plus interest at the rate of seven percent (7%) per annum in accordance with the schedule of payments contained in Exhibit "A" attached hereto and incorporated herein by this reference. CCSF shall have the right to prepay its outstanding obligation, including accrued interest, at any time. In consideration for the foregoing, and provided that CCSF makes the payments provided

for in Schedule A on a timely basis, the JPB shall waive its right to receive from CCSF interest on late payments made by CCSF for fiscal year 1993-94 financial obligations, The CCSF Board of Supervisors' representative on the JPB shall introduce legislation to approve CCSF's payment of the amounts referenced in this Paragraph 4, as well as to approve all other revisions of the 1991 Agreement contained in this Agreement, within sixty (60) days following JPB's action approving the 1994 Amendment to the 1991 Agreement. This Agreement is subject to the budget and fiscal provisions of the Charter of CCSF. Charges will accrue only after appropriation of funds by CCSF's Board of Supervisors and after prior written authorization certified by CCSF's Controller, and the amount of CCSF's obligation hereunder shall not at any time exceed the amount appropriated and certified for the purpose and period stated in such advance authorization.

**Section 8. MEETINGS OF THE JPB**

**A. Regular and Special Meetings.**

The JPB shall hold at least one (1) regular meeting each month. The date, hour and place of said regular meetings shall be fixed by resolution of the JPB. The Managing Agency may call a special meeting of the JPB by providing written or telephone notice to each member of the JPB at least 72 hours prior to the date of said special meeting, which said notice shall specify the purpose for said meeting.

B. Conduct of Meetings

All meetings of the JPB shall be held subject to the provisions of Section 54950 et seq. of the Government Code of the State of California.

C. Minutes

The Secretary shall cause minutes of all meetings of the JPB to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Member of the JPB.

D. Quorum

A majority of the members of the JPB shall constitute a quorum for the transaction of business. No action may be taken by the JPB except upon the affirmative vote of five or more of its members.

Section 9. BYLAWS

The JPB shall have the power to adopt such bylaws that it, in its sole discretion, may deem necessary or desirable for the conduct of its business.

Section 10. OFFICERS AND EMPLOYEES

A. The JPB shall elect annually a chairperson and a vice-chairperson from among its members. The JPB also shall appoint a secretary who may, but need not be, a member of the JPB.

B. The JPB shall designate its legal counsel.

C. The Managing Agency's General Manager shall be the Executive Director of the JPB.



D. The Finance Director of the Managing Agency shall be the treasurer of the JPB and shall have custody of all the moneys of the JPB from whatever source and shall perform the function of treasurer and have all the powers, duties, and responsibilities of said office as set forth in Government Code Section 6505.5.

E. The Finance Director of the Managing Agency shall act as controller of the JPB and shall perform the functions and have the powers, duties, and responsibilities of said office set forth in Government Code Section 6505.5. The controller shall draw warrants to pay demands against the Managing Agency or the JPB pursuant to authorization of the JPB.

F. The JPB shall designate such independent auditors as it deems appropriate for the purpose of reporting on the JPB's operations and its financial condition.

**Section 12. WITHDRAWAL FROM AGENCY**

Any party may withdraw from this Agreement upon one (1) year's prior written notice to the other parties given at the end of any fiscal year. Upon delivery of such a notice, the Member Agencies shall jointly request the Metropolitan Transportation Commission ("MTC") to mediate the issues giving rise to the withdrawal notice, and shall participate in such mediation if undertaken by the MTC. In addition, should a withdrawal result despite such mediation efforts, each Member Agency, including the withdrawing party, shall participate with MTC in a further mediated negotiation relative to disbursement of regional funds

to assure the remaining Member Agencies are not subject to undue financial hardship. In the event of such a withdrawal by a single party, the JPB shall continue to exist, with the membership adjusted to reflect the withdrawal. Withdrawal by a single party shall not entitle that party to reimbursement for past capital contributions or to distribution of any assets or funds of the JPB. If two or more of the parties to this Agreement withdraw, then this Agreement shall terminate at the end of the fiscal year following expiration of the one-year's notice given by the second party to withdraw from the Agreement, at which time the property and funds of the JPB shall be distributed to the Member Agencies pursuant to the terms of Section 13.

**Section 13. DISPOSITION OF PROPERTY AND FUNDS**

At such time as this Agreement is terminated, any property interest remaining in the JPB, following discharge of all obligations due by the Board, shall be disposed of and the proceeds or property shall be allocated in accordance with a separate agreement to be entered into between the parties.

**Section 14. ACCOUNTS AND REPORTS**

The JPB shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the JPB shall be open to inspection at all reasonable times to the parties to this Agreement and their representatives. The JPB, within one hundred twenty (120) days after the close of each fiscal year (which shall be the period

from July 1 of each year to and including the following June 30), shall give a complete written report of all financial activities for such fiscal year to the parties. The Controller shall prepare and maintain such accounts and reports.

**Section 15. OBLIGATIONS OF THE JPB**

The debts, liabilities and obligations of the JPB shall not be debts, liabilities and obligations of any of the parties to this Agreement unless and to the extent specifically provided by agreement in writing with any of such parties.

**Section 16. INDEMNIFICATION**

The JPB shall acquire such insurance protection as it deems necessary to protect the interests of the JPB, the parties to this Agreement and the public. The JPB shall assume the defense of and indemnify and save harmless each party to this Agreement and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the JPB not delegated to the Managing Agency or the activities of the JPB undertaken pursuant to this Agreement.

**Section 17. AMENDMENTS**

This Agreement may be amended at any time by agreement of all of the parties.

**Section 18. ENTIRE AGREEMENT**

This Agreement constitutes the entire Joint Powers Agreement among the parties, and supersedes any prior oral or

written understandings between them pertaining to the same subject matter, including, but not limited to, the 1988 Agreement, the 1991 Agreement and all amendments to these agreements.

**Section 19.      NOTICES**

All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the second day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

CCSF:	Public Transportation Commission 949 Presidio Avenue San Francisco, CA 94115 Attn: Director of Public Transportation
SamTrans:	San Mateo County Transit District 1245 San Carlos Drive San Carlos, California Attn: General Manager
SCCTD:	Santa Clara Valley Transportation Authority 3331 North First Street Bldg. C, 2nd Floor San Jose, California 95134-1906 Attn: Assistant Executive Officer

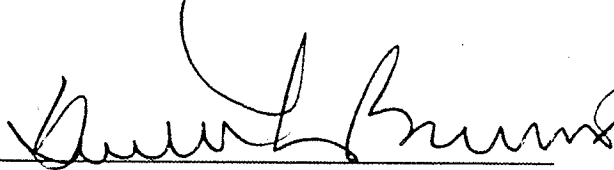
Any party may change its address for purposes of this Section by giving the other parties written notice thereof in the manner set forth above.

**Section 20. COUNTERPARTS**

This Agreement may be entered into in counterparts each of which shall be deemed an original, but all of which together shall be deemed an entire Agreement.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY AND COUNTY OF SAN FRANCISCO

By   
MAYOR

APPROVED  
PUBLIC TRANSPORTATION  
COMMISSION  
Resolution No. 96-136  
Dated: Nov. 26, 1996

Approved as to Form and Legality  
Louise H. Renne, City Attorney

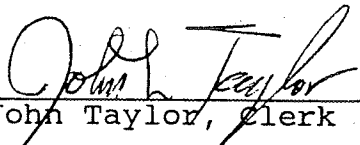
By   
Deputy City Attorney

ATTEST:

  
Secretary, PUBLIC  
TRANSPORTATION COMMISSION

CITY AND COUNTY OF SAN FRANCISCO  
BOARD OF SUPERVISORS  
Ordinance No. 22-97

ATTEST:

  
John Taylor, Clerk

SANTA CLARA COUNTY TRANSIT DISTRICT

By *Paul M. Cipolla*

Approved as to Form and Legality

By *Suzanne Gifford* 2-25-97

SAN MATEO COUNTY TRANSIT DISTRICT

By *[Signature]*

Approved as to Form and Legality

By *Davey Miller*

**ATTACHMENT C:  
1991 REAL PROPERTY OWNERSHIP AGREEMENT**

## REAL PROPERTY OWNERSHIP AGREEMENT

This Real Property Ownership Agreement (the "Agreement") is entered into by and among the Peninsula Corridor Joint Powers Board ("JPB"), San Mateo County Transit District ("SAMTRANS"), the City and County of San Francisco ("CCSF") and the Santa Clara County Transit District ("SCCTD") this 24th day of December, 1991.

### RECITALS

A. SAMTRANS, CCSF, and SCCTD, as the Member Agencies of the JPB, have entered into the JPA, which reconstructs the JPB and its authority and responsibilities in light of the impending acquisition of the ROW from Southern Pacific Transportation Company ("SPTC").

B. Pursuant to the JPA, the purposes and powers of the JPB will be expanded to allow the JPB to maintain and improve the ROW, and to operate the Peninsula Commute Service ("PCS").

C. Under the JPA, SAMTRANS has been appointed the Managing Agency that will be responsible for the management and operation of the PCS.

D. Due to current unavailability of adequate funds from other sources, SAMTRANS is willing to facilitate acquisition of the ROW by contributing toward the total purchase price for it, other than Proposition 116 funds, from certain of its funds and certain funds of the San Mateo County Transportation Authority, subject to the terms and conditions established in this Agreement.

E. In light of the impending acquisition of the ROW, and of SAMTRANS' agreement to contribute additional funds necessary to



purchase it, the parties desire to provide for an orderly system of management, development and eventual disposition of the ROW, and for appropriate rights and protections relative to the Additional Contribution.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

**1. DEFINITIONS.**

**1.1 Additional Operating Grants.** Operating grants for the PCS received from state or federal sources that exceed the amount or level of such grants as of the date of this Agreement.

**1.2 Additional Contribution.** That portion of the purchase price of the ROW that will not be funded by Proposition 116 funds upon closing of the ROW transaction, plus any additions thereto as provided in Section 3.2 below.

**1.3 Closing Date.** The date of transfer of the ROW as specified in the Notice of Exercise of Option provided for in Section 7.1 below.

**1.4 JPA.** The Agreement dated October 18, 1991 by and between CCSF, SCCTD and SAMTRANS, which Agreement expands the powers and purposes of the JPB so as to enable the JPB to plan, oversee operation, maintain and improve the PCS.

**1.5 Local Option Properties.** Those properties to be acquired pursuant to the options known as the Moffett, San Bruno, Vasona I and Vasona II options in the Purchase Agreement.

**1.6 Member Agencies.** The signatories of the JPA being CCSF, SCCTD and SAMTRANS.

1.7 Mileage Formula. With respect to the three Member Agencies, a percentage equal to the number of miles of the main line ROW, from mile post 0.147 in San Francisco to Mile post 51.4 in San Jose, located in each of their jurisdictions, respectively.

1.8 Net Nonoperating Deficit. Any deficit between Nonoperating Revenues and Nonoperating Expenses for each fiscal year this Agreement is in effect.

1.9 Net Nonoperating Revenues. Any excess between Nonoperating Revenues and Nonoperating Expenses for each fiscal year this Agreement is in effect.

1.10 Nonoperating Expenses. All ownership and maintenance expenses of the Nonoperational Assets.

1.11 Nonoperating Revenues. All revenues generated from ownership and management of the Nonoperational Assets other than fares and other revenues used to support the operating budget for the PCS as of the date of this Agreement.

1.12 Nonoperational Assets. All of the areas and assets owned and operated by the JPB (alone or in conjunction with SAMTRANS) exclusive of Operational Assets.

1.13 Operational Assets. That portion of the ROW that will be used to operate and maintain the PCS as of the date of the acquisition of the ROW by the JPB and SAMTRANS, as fully described in Exhibit A which is attached to this Agreement and incorporated into it by this reference. When System Option Properties are subsequently acquired, the parties will determine what portions of said properties, if any, are Operational Assets and expand Exhibit A accordingly.

1.14 Purchase Agreement. The purchase agreement by and among the JPB, SAMTRANS and SPTC pursuant to which the JPB will acquire the ROW.

1.15 ROW. All real property and other assets to be acquired by the JPB and SAMTRANS pursuant to the Purchase Agreement other than the Local Option Properties.

1.16 State Transferred Properties. All real property and other assets to be transferred from the State of California, Department of Transportation to the JPB following the closing of the transaction contemplated in the Purchase Agreement.

1.17 System Option Properties. Those properties to be acquired pursuant to the options established in the Purchase Agreement other than the Local Option Properties.

## 2. PURPOSE; MILEAGE FORMULA.

The purpose of this Agreement is to allocate the respective rights and obligations of the parties relative to the ownership, maintenance, management and eventual disposition of the ROW. For the purposes set forth hereinafter, the parties agree to allocate such rights and responsibilities based on the Mileage Formula. The parties stipulate that their respective percentages under the Mileage Formula are CCSF (10.1%), SAMTRANS (47.7%) and SCCTD (42.2%).

## 3. ADDITIONAL CONTRIBUTION.

3.1 Initial Additional Contribution. To facilitate completion of the acquisition of the ROW and in recognition of the fact that CCSF and SCCTD do not have funds currently available for this purpose, SAMTRANS will provide the Additional Contribution upon closing of the ROW transaction.

**3.2 Further Additional Contribution.** Pursuant to the Purchase Agreement, the JPB will acquire options to purchase the System Option Properties. As and when the options to purchase such System Option Properties are exercised, should SAMTRANS elect, without obligation, to pay the exercise price for any or all of them from its own funds, such payments made by SAMTRANS shall be included within the total amount of the Additional Contribution for all purposes.

**3.3 Reimbursement of Additional Contribution.** The parties to this Agreement will use their best efforts individually and collectively to advocate for and obtain from non-local sources grants to be used for reimbursement of the Additional Contribution. Subject to the provisions of Section 7 below, the parties further agree to dedicate all Net Nonoperating Revenues from System Option Properties to reduce the Additional Contribution by reimbursing SAMTRANS and any other Member Agency that has provided the Additional Contribution pursuant to Section 3.4 below.

It is understood and agreed that full reimbursement of the Additional Contribution will include an amount equal to interest on the Additional Contribution from the dates of closing the ROW transaction and each System Option Property purchase transaction at a rate equal to the average rate of return that SAMTRANS earns on its investment portfolio, determined and compounded annually and verified in written investment reports prepared on a regular basis and presented to the SAMTRANS Board of Directors. As the foregoing sources of revenue are obtained to reimburse the Additional Contribution or any other source is obtained for that purpose, the amounts so received shall be applied first to pay off

accrued interest at the rate specified above and then to reduce the principal balance of the Additional Contribution. Any amounts received in reimbursement of the Additional Contribution or any accrued interest thereon shall be shared among those Member Agencies who have fully participated in the Additional Contribution as provided in Section 3.4 in proportion to each such Member Agency's percentage participation toward the Additional Contribution.

**3.4 Additional Contribution Participation.** It is understood and agreed by all the parties hereto that neither CCSF nor SCCTD have any legal obligation to participate in the Additional Contribution. With the understanding and acknowledgment that **(a)** in making the Additional Contribution, SAMTRANS is incurring a substantial financial burden that will benefit all of the parties to this Agreement, and **(b)** the efforts of the parties to reimburse SAMTRANS for the Additional Contribution from non-local sources as described in Section 3.3 may be unavailing, CCSF and SCCTD may at their election undertake good faith efforts to contribute a lump sum or equivalent assets or to establish a schedule of payments to SAMTRANS by which they will share in the burden of the Additional Contribution to the extent of their percentages under the Mileage Formula, plus interest to be applied in the manner and at the rate set forth in Section 3.3 above.

In particular, CCSF commits to take the necessary steps that may make it possible, subject to preparation of appraisals and performance of other due diligence investigations, to transfer to SAMTRANS certain land owned by CCSF that will be of special

benefit to SAMTRANS in connection with non-PCS services of interest to SAMTRANS, as a means of sharing in the burden of the Additional Contribution. This transfer, if feasible, will be documented by separate contract to be negotiated between CCSF and SAMTRANS. In the event that the value of the land to be transferred exceeds or is less than CCSF's percentage under the Mileage Formula, said contract will address the manner in which such excess or shortfall in value will be treated.

Any party which contributes to SAMTRANS funds or other assets that are applied to the principal of the Additional Contribution shall share, pro rata, based on the percentage such contribution to principal bears to the total Additional Contribution, in SAMTRANS' right to be reimbursed as set forth in Section 3.3 from (a) all Net Nonoperating Revenues generated from System Option Properties, and (b) all other non-system, non-Member sources of revenue that may be made available for reimbursement of the Additional Contribution.

SCCTD will consider the creation of a source of funds to be applied in a manner that contributes toward the Additional Contribution from potential new transit revenue sources.

**3.5 Additional Operating Grants.** Any Member Agency which has not voluntarily provided the full percentage under the Mileage Formula toward the Additional Contribution and which has not withdrawn its operating subsidy pursuant to Section 9 below, shall maintain its level of operational subsidy of the PCS as determined under the JPA, notwithstanding the receipt by the JPB or any other party of Additional Operating Grants which might otherwise reduce its local operational subsidy. Any and all such

Additional Operating Grants shall be used for their specified operational purposes. As among the Member Agencies, (a) each fully participating Member Agency may reduce its level of operational subsidies by an amount of the Additional Operating Grant equal to its percentage participation in the Additional Contribution, and (b) the Additional Contribution shall be deemed to be reimbursed as set forth in Section 3.3 in the amount by which the local operational subsidy of the non-contributing Member Agency would have been reduced by the Additional Operating Grant based on the Mileage Formula.

#### 4. OWNERSHIP OF ROW.

4.1 ROW. Title to the ROW shall vest initially in the JPB; provided, however, that title shall vest in the JPB and SAMTRANS as tenants in common (not as partners) as to all ROW property located in San Mateo County. Upon full participation in the Additional Contribution by all Member Agencies, or full reimbursement of the Additional Contribution to SAMTRANS as provided in Section 3.3 above, SAMTRANS shall reconvey to the JPB all of its interests in title to the ROW. Title to State Transferred Properties shall vest in the JPB.

4.2 ROW System Options. Provided SAMTRANS has not withdrawn its operational subsidy pursuant to Section 9 below, at any time prior to full reimbursement of the Additional Contribution as provided in Section 3.3 or full participation in the Additional Contribution as provided in Section 3.4, SAMTRANS may require the JPB to assign any or all of the option rights to System Option Properties to SAMTRANS.

4.3 Local Options. The JPB assigns the options to purchase the Local Option Properties as follows:

To SAMTRANS - San Bruno

To SCCTD - Moffett, Vasona I, Vasona II.

Neither the exercise of such an option by any party hereto nor the assignment by the JPB of such an option shall affect each Member Agency's percentage under the Mileage Formula as stipulated herein. Upon the exercise of an option to purchase a Local Option Property by a Member Agency which has received an assignment from the JPB, title to the property covered by such option shall vest in the Member Agency, which shall pay the option price.

4.4 Gilroy Trackage Rights. At the request of SCCTD, the JPB shall assign all of its rights, title and obligations under the Trackage Rights Agreement - Lick/Gilroy Line to SCCTD and upon such assignment SCCTD shall succeed JPB as the owner thereof.

5. **TERM.**

This Agreement shall become effective upon the acquisition of the ROW by the JPB and SAMTRANS, and shall continue in full force and effect until disposition of the ROW pursuant to Section 10 below is effected. This Agreement shall govern the disposition of the ROW and represents the "separate agreement" referenced in Section 13 of the JPA.

6. **MANAGEMENT OF THE ROW; DIVISION OF EXPENSES AND NET REVENUES.**

6.1 Management of Operational Assets. Pursuant to the JPA, the JPB will provide oversight, and SAMTRANS will manage the Operational Assets. Nothing herein shall preclude the delegation



by the JPB of management responsibilities for certain Operational Assets to another Member Agency, with such rights and responsibilities as may be designated by the JPB.

**6.2 Operating Expenses and Revenues.** Expenses incurred in operating the PCS and the cost of all ROW capital projects shall be shared among the Member Agencies or borne by an individual Member Agency as provided in the JPA. Similarly, revenues earned by the JPB and used to support the operating budget of the PCS at the time of execution of this Agreement shall continue to be used to reduce operating expenses as provided in the JPA.

**6.3 Management of Nonoperational Assets.** SAMTRANS will manage the Nonoperational Assets, and in this regard hereby is authorized to (a) manage and oversee existing leases, licenses, franchises and development projects, and (b) pay applicable taxes and take all other actions as may be necessary to manage effectively the Nonoperational Assets. Renewals of existing leases, licenses, and franchises, as well as proposed new lease, license, franchise and development arrangements and projects must first be approved by the JPB. Any lease, license, franchise and/or development project so approved shall be managed by SAMTRANS as provided above. Nothing herein will preclude the delegation by the JPB of the administration or management of certain Nonoperational Assets to another Member Agency, with such rights and responsibilities as may be designated by the JPB.

**6.4 Nonoperating Expenses and Revenues - ROW.** With respect to all Nonoperational Assets comprising the ROW, exclusive of System Option Properties, for each fiscal year this Agreement

is in effect, the responsibility to pay for all Nonoperating Expenses shall be shared by the Member Agencies in accordance with the Mileage Formula. The JPB will determine the use of all Nonoperating Revenues generated by said assets in accordance with the terms and conditions of CTC Resolution #PA-91-01. To the extent such revenues are applied to operations, to the extent possible they will be used and accounted for within the provisions of Section 3.5 above.

**6.5 Nonoperating Expenses and Revenues - System Option Properties and State Transferred Properties.** With respect to all Nonoperational Assets included in System Option Properties and State Transferred Properties, for each fiscal year this Agreement is in effect, all Nonoperating Expenses shall be paid first from all Nonoperating Revenues. Any Net Nonoperating Deficit shall be borne by each Member Agency, pro rata, in accordance with the Mileage Formula. Any Net Nonoperating Revenues shall be paid to SAMTRANS and any other Member Agencies entitled thereto pursuant to Section 3.3 above. Upon full reimbursement of the Additional Contribution, or full participation by all Member Agencies as set forth in Section 3.4, any such Net Nonoperating Revenues will be distributed annually among the Member Agencies in accordance with the Mileage Formula. Any such distributions may be used by each Member Agency which receives them for any purpose.

**7. SAMTRANS' OPTION TO CONVERT ADDITIONAL CONTRIBUTION TO EQUITY INTEREST.**

**7.1 Conversion to Equity.** Notwithstanding any other provision of this Agreement, and provided that SAMTRANS has not withdrawn its operational subsidy pursuant to Section 9 below at

any time prior to full reimbursement of the Additional Contribution as provided in Section 3.3 or full participation in the Additional Contribution by all Member Agencies as set forth in Section 3.4, SAMTRANS may elect to treat the Additional Contribution as an equity contribution towards the ROW purchase by exercising an option to take title to part or all of the ROW. The JPB hereby grants such option to SAMTRANS. The option may be exercised by SAMTRANS upon a minimum of ninety (90) days' written notice to the JPB, CCSF and SCCTD, which notice will designate the Closing Date.

Upon the Closing Date, the JPB will transfer to SAMTRANS all of its right, title and interest in the ROW selected by SAMTRANS for transfer, with SAMTRANS assuming responsibility for closing costs. Title to State Transferred Properties shall remain in the JPB. Station properties shall be treated as Nonoperational Assets for all purposes as contemplated in this Section 7 to the extent that these properties can be used for nonoperational purposes without detriment to the transportation operations.

**7.2 Management of Operational Assets.** SAMTRANS shall license the Operational Assets to the JPB at no cost, which will continue to operate the PCS in a manner consistent with the JPA as set forth in Sections 6.1 and 6.2.

**7.3 Management of Nonoperational Assets.** Upon the Closing Date, SAMTRANS will assume control over and responsibility for management, use and development of all Nonoperational Assets, subject to the participation rights established in Sections 7.6 and 7.7 and the management of Operational Assets as set forth in Section 7.2. Section 6.3 of this Agreement, except for the last

sentence thereof, shall be deemed suspended during the period of time that SAMTRANS owns the ROW pursuant to this Section 7.

**7.4 Nonoperating Expenses and Revenues - ROW Other Than System Option Properties.** With respect to all Nonoperational Assets comprising the ROW exclusive of Nonoperational Assets of System Option Properties, for each fiscal year that SAMTRANS owns the ROW, the responsibility to pay for all Nonoperating Expenses and the use and treatment of all Nonoperating Revenues shall be as provided in Section 6.4 above.

**7.5 Nonoperating Expenses Revenues - System Option Properties and State Transferred Properties.** With respect to all Nonoperational Assets of the System Option Properties and the State Transferred Properties, for each fiscal year that SAMTRANS owns the ROW, all Nonoperating Expenses shall be paid first from all Nonoperating Revenues. Any Net Nonoperating Deficit shall be borne by the Member Agencies in accordance with their respective percentage participation in the Additional Contribution. Any Net Nonoperating Revenue shall be paid to SAMTRANS and any other Member Agencies entitled thereto pursuant to Section 3.4 above. Any such distributions may be used by each Member Agency which receives them for any purpose.

**7.6 Fully Contributing Member Agency.** Upon the transfer contemplated in Section 7.1, any Member Agency which has provided its total percentage under the Mileage Formula toward the Additional Contribution as set forth in Section 3.4 above will be granted participatory rights and responsibilities, as follows:

(a) voting rights on management and development decisions as specified in Section 6.3 above equal to its percentage share under

the Mileage Formula, and (b) a right to veto any proposed development that lies within its jurisdiction.

**7.7 Partially Contributing Member Agencies.** Upon the transfer contemplated in Section 7.1 above, any Member Agency which has participated in the Additional Contribution less than the Member Agency's total percentage under the Mileage Formula as provided in Section 3.4 will be granted participatory rights and responsibilities only to the extent of voting rights on management and development decisions as specified in Section 7.3 equal to the percentage said Member Agency's participation in the principal of the Additional Contribution bears to the total Additional Contribution.

**7.8 Restoration of Title in JPB.** When each Member Agency has fully participated in the Additional Contribution under the Mileage Formula, or when the Additional Contribution has been fully reimbursed as provided in this Agreement, or at such time as SAMTRANS withdraws its operating subsidy pursuant to Section 9, SAMTRANS shall reconvey all of its right, title and interest in the ROW to the JPB, and the provisions of Section 6 shall be deemed restored in all respects.

**8. RESTRICTIONS ON TRANSFER AND ENCUMBRANCES.**

Neither the JPB nor SAMTRANS shall be permitted to sell, transfer, convey, alienate, encumber, hypothecate, pledge, or otherwise dispose of its interest in the ROW, System Option Properties and State Transferred Properties voluntarily or involuntarily, by operation of law or otherwise, without the written approval of the other, except as otherwise expressly provided herein. Any attempt to transfer in violation of this

Section 8 shall be void and confer no rights on the transferee.

Notwithstanding the foregoing, in the event SAMTRANS exercises its option and receives title to the ROW pursuant to Section 7 and until such time as SAMTRANS withdraws its operating subsidy pursuant to Section 9, SAMTRANS, without the prior approval of the JPB, shall, with respect to any ROW property to which it holds title, be entitled: (a) to lease, encumber, pledge and take any other action necessary or desirable to manage or develop the Nonoperational Assets (in counties outside San Mateo County these actions shall be limited to the Nonoperational Assets at the locations described in Exhibit B which is attached to this Agreement and incorporated into it by this reference); (b) to transfer, sell, convey or otherwise dispose of any of the Nonoperational Assets (in counties outside San Mateo County these actions shall be limited to the Nonoperational Assets at the locations described in Exhibit B) in the event that any Member Agency withdraws its operational support pursuant to Section 9 below, provided, however, that a fully participating Member Agency will be granted voting rights on any such decision to transfer, sell, convey or otherwise dispose of a Nonoperational Asset equal to its percentage under the Mileage Formula; and (c) to transfer, sell, convey or otherwise dispose of any Operational Asset in the event that CCSF and SCCTD have both withdrawn their operational support pursuant to Section 9, below. In the event of any such transfer, sale, conveyance or disposition of Nonoperational or Operational Assets, the proceeds shall be dispersed in the manner set forth in Section 10.

**9. AMENDMENT OF THE JPA.**

This Section supersedes and amends Section 12 of the JPA. Any party may cease to support operations of the PCS at the end of any fiscal year upon one (1) year's prior written notice to the other parties. The decision of one or more Member Agencies to cease their support for operations shall not cause the termination of the JPB. The withdrawal of operational subsidies by any Member Agency shall not constitute a withdrawal from the JPB by said Member Agency, nor shall it entitle said Member Agency to reimbursement for past capital contributions, a distribution of any assets, or to participation in any future net revenues derived from operating activities, from either JPB or SAMTRANS. Upon the effective date of a Member Agency's withdrawal of operational subsidies, it shall (a) no longer be entitled to vote on any matter involving operational issues, (b) no longer be obligated to subsidize the PCS as provided herein or to participate in capital projects, (c) remain entitled to its share of Net Nonoperating Revenues in accordance with Section 3.4, 6.5 or 7.5, as the case may be, up to such time as its participation in the Additional Contribution has been repaid in full, and (d) remain obligated to contribute its share of any Net Nonoperating Deficit in accordance with Section 6.5 or 7.5, as the case may be, until the ROW and all system assets are finally disposed of. Upon the effectuation of the sale of the ROW and PCS assets, the JPB shall be deemed dissolved.

**10. MANDATORY DISPOSITION OF ASSETS.**

Unless otherwise agreed by the parties or otherwise required

by laws, regulations, or contractual obligations, and notwithstanding the transfer of title of the ROW to SAMTRANS pursuant to Section 7 above, in the event the ROW is not used by any Member Agency to provide a minimum level of PCS equal to 44 trains per day for a period of seven consecutive years, the JPB or SAMTRANS shall sell the ROW System Option Properties at the earliest practicable opportunity. Upon disposition, the proceeds of the sale will be used first to satisfy any contractual obligations, second, to pay to any Member Agency any amount it has contributed to the principal of the Additional Contribution which has not been reimbursed previously, with interest on said amount from the date of said principal contribution at the rate provided in Section 3.3 above. The remainder of the sales proceeds, if any, shall be shared among CCSF, SAMTRANS and SCCTD in accordance with the Mileage Formula.

#### **11. WAIVER OF PARTITION.**

As long as this Agreement is in full force and effect, each party hereto hereby waives the right it would otherwise have to institute an action or otherwise require partition of the ROW or any part thereof, or any similar remedy, and each party also waives the same on behalf of its successors and assigns.

#### **12. REPORTS AND RECORDS.**

**12.1 Records.** SAMTRANS, in its capacity as Managing Agency under the JPA, shall maintain proper and complete books as may be required by this Agreement, including records of contributions, to the Additional Contribution, Nonoperating Revenues and Nonoperating Expenses. Such records shall be available to all Member Agencies upon request.



12.2 Annual Report. The annual report of JPB financial activities that shall be prepared pursuant to Section 14 of the JPA shall include a report on the Net Nonoperating Revenues or Net Nonoperating Deficit during the prior year.

**13. LIMITATION OF LIABILITY.**

13.1 Limitation of Liability. SAMTRANS, its directors, officers, employees and agents will not be liable to the JPB or any one of its Member Agencies for any action taken or omission to act on behalf of the JPB, whether negligent or not, unless such act or omission is fraudulent, in bad faith, or constitutes gross negligence.

13.2 Indemnity. The JPB shall defend, indemnify, and hold harmless SAMTRANS, CCSF and SCCTD and their directors, officers, employees and agents from and against any loss, expense, damage or injury suffered or sustained by reason of any of their acts or omissions or alleged acts or omissions, whether negligent or not, in performing the obligations undertaken by any of them hereunder, including but not limited to any judgment, award, settlement, reasonable attorney's fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided, however, that no Member Agency or its directors, officers, employees or agents shall be indemnified by the JPB in connection with any liabilities incurred arising out of acts or omissions which are fraudulent, in bad faith, or grossly negligent.

**14. RECORDATION OF MEMORANDUM OF AGREEMENT.**

The parties agree to sign and record in the counties of Santa Clara, San Mateo and San Francisco a Memorandum of Agreement that

summarizes all salient provisions of this Agreement, including specifically SAMTRANS' option to convert the Additional Contribution to an equity interest in the ROW and the restrictions on transfer and encumbrances set forth herein.

**15. MISCELLANEOUS.**

**15.1 Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the meaning given to them in the JPA.

**15.2 Further Acts.** Each party to this Agreement agrees to execute and deliver all documents and to perform all additional acts which may be reasonably necessary to carry out the provisions of this Agreement.

**15.3 Notices.** All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

**SAMTRANS:** San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, CA 94070  
Attn: General Manager

**JPB:** Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue  
San Carlos, CA 94070  
Attn: Executive Director

**SCCTD:** Santa Clara County Transit District  
1555 Berger Drive  
San Jose, CA 95112  
Attn: Assistant Executive Officer

CCSF:                   Public Utilities Commission  
                          425 Mason Street  
                          San Francisco, CA 94102  
                          Attn: Director of Finance

15.4 Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

15.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns.

15.6 Amendments. This Agreement may be amended at any time and from time to time, provided such amendments are in writing and executed by all parties.

15.7 Representation. SCCTD, SAMTRANS and CCSF have each been represented by independent counsel with respect to the negotiation and approval of this Agreement. The JPB has not been represented by independent counsel, it being understood that this Agreement has been approved by the three member agencies which constitute the JPB, which in turn have authorized the JPB to enter into this Agreement and to perform its obligations hereunder.

15.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior oral or written understandings on the same subject.

15.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall be deemed an entire Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above with the intent to be legally bound.

SAN MATEO COUNTY TRANSIT DISTRICT

John R. Brown

Approved as to Form and Legality:

By: David Miller

PENINSULA CORRIDOR JOINT POWERS BOARD

Tom Nolan

Approved as to Form and Legality:

By: David Miller

CITY AND COUNTY OF SAN FRANCISCO

[Signature]  
MAYOR

Approved as to Form and Legality:

By: Robin Haber  
Deputy City Attorney

Approved  
SAN FRANCISCO PUBLIC  
UTILITIES RESOLUTION NO. 91-0388  
Dated: November 26, 1991

ATTEST:

Romaine A. Boldridge  
Secretary, PUBLIC UTILITIES  
COMMISSION

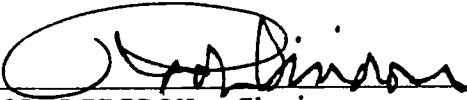
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 1075-91

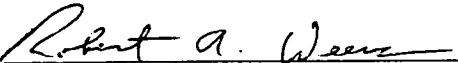
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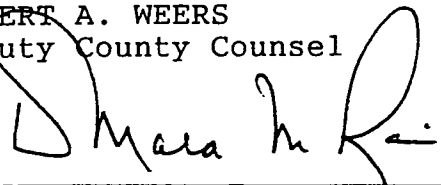
John Taylor  
JOHN TAYLOR, Clerk

SANTA CLARA COUNTY TRANSIT DISTRICT

  
\_\_\_\_\_  
ROD DIRIDON, Chairperson  
Santa Clara County Transit District  
Board of Supervisors

Approved as to Form and Legality:

By:   
\_\_\_\_\_  
ROBERT A. WEERS  
Deputy County Counsel

ATTEST:   
\_\_\_\_\_  
DONALD M. RAINS, Clerk  
Santa Clara County Board of  
Supervisors

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## EXHIBIT A

### OPERATIONAL ASSETS

The term "Operational Assets" as defined in Section 1.13 of the Real Property Ownership Agreement will include that portion of the property and assets of the ROW consisting of an 80-foot wide strip (said strip to be measured 40 feet on each side of the median of the ROW) in those areas where the width of the ROW is in excess of 80 feet and the entire right of way in those areas where the width of the ROW is less than 80 feet, as more particularly shown on Exhibit A attached to and incorporated in the Purchase, Sale and Option Agreement, dated November 22, 1991, CE Drawing 43820 Sheets 1 through 40, approved August 12, 1991, September 9, 1991 and November 1, 1991.

EXHIBIT B

LOCATIONS IN SANTA CLARA COUNTY AND IN CITY AND  
COUNTY OF SAN FRANCISCO WHERE THE PCS CORRIDOR IS OVER  
80 FEET WIDE AND HAS POTENTIAL FOR DEVELOPMENT OR SALE

CITY AND COUNTY OF SAN FRANCISCO

NONE

COUNTY OF SANTA CLARA

<u>Val. Map</u>	<u>SH</u>	<u>W</u>	<u>L</u>	<u>AC</u>	<u>Location</u>	<u>Limits</u>
1. V-74/12	(26)	100- 125	2000'	1.5	Mt. View	San Antonio to Calderon
2. V-74/16	(30)	140'	2400'	3.3	Sunnyvale	Uranium Rd. to Saratoga Cr.
3. V-74/17	(31)	100- 125	7000'	5.0	Santa Clara	San Tomas Cr. to Lafayette

**ATTACHMENT D:  
2008 REAL PROPERTY OWNERSHIP AGREEMENT**



## AMENDMENT TO REAL PROPERTY OWNERSHIP AGREEMENT

This First Amendment to Real Property Ownership Agreement (the "Agreement") is entered into by and among the Peninsula Corridor Joint Powers Board ("JPB"), San Mateo County Transit District ("SAMTRANS"), the City and County of San Francisco ("CCSF"), and the Santa Clara Valley Transportation Authority ("VTA"), formerly known as the Santa Clara County Transit District, this 31st day of October, 2008.

### RECITALS

A. SAMTRANS, CCSF and VTA are member agencies of the JPB, which is governed by an amended and restated joint exercise of powers agreement ("JPA") dated October 3, 1996. Among the enumerated purposes of the JPB are the planning, administration, operation and expansion of the commuter rail system commonly known as Caltrain, and the maintenance, improvement and management of the rail corridor on which the Caltrain system is operated, together with other real estate assets necessary for the operation of Caltrain.

B. Under the JPA, SAMTRANS serves as the Managing Agency responsible for the management and operation of the Caltrain rail service and all of the assets of the JPB.

C. SAMTRANS, CCSF, VTA and JPB also are parties to a Real Property Ownership Agreement ("RPOA") dated December 24, 1991.

D. Among other things, the RPOA sets forth the understandings of SAMTRANS, CCSF and VTA associated with financing the acquisition by the JPB of the former Southern Pacific Transportation Company ("SP") right-of-way extending from 4th and Townsend Streets in San Francisco 51.4 miles to Lick Junction (the "ROW"), together with various other property rights all as memorialized in a Purchase, Sale and Option Agreement dated November 22, 1991 between SP, JPB and SAMTRANS. More specifically, pursuant to the RPOA, SAMTRANS agreed to facilitate acquisition of the ROW by advancing certain of its funds, and arranging for the contribution of certain funds of the San Mateo County Transportation Authority, which were necessary to complete the purchase of the ROW (the "Additional Contribution"). In consideration of SAMTRANS' willingness to facilitate acquisition of the ROW in said fashion, CCSF and VTA agreed to enter into the RPOA to acknowledge, safeguard and protect the Additional Contribution,

made by SAMTRANS as defined in Section 1.2 of the RPOA. Among the provisions contained in the RPOA to protect SAMTRANS' advance of funds were the following:

(1) Title to the ROW located in San Mateo County was vested in both the JPB and SAMTRANS, as tenants in common;

(2) SAMTRANS was granted an equity conversion option pursuant to which SAMTRANS was granted the right to take sole title to part or all of the ROW at any time prior to reimbursement of the Additional Contribution; and

(3) CCSF and VTA agreed to use their best efforts individually and collectively to advocate for and obtain grants from non-local sources to reimburse SAMTRANS for the Additional Contribution .

E. In recognition of the voluntary advance of funds to acquire the ROW made by SAMTRANS and the commitment of the parties to the RPOA to use best efforts to effect reimbursement of that advance, the Metropolitan Transportation Commission ("MTC") has assumed a leadership role in identifying grant funds from non-local sources to be used to reimburse SAMTRANS for its Additional Contribution. Specifically, as stated in a report to the MTC dated June 25, 2007, MTC's Executive Director has identified "spillover" state transit funds projected to flow to the San Francisco Bay Area region over a period of several years as a viable repayment source for the SAMTRANS Additional Contribution. More specifically, \$43.3 million in population-based spillover funds that fall under MTC's control and jurisdiction and \$10 million in revenue-based spillover funds (\$8 million from VTA and \$2 million from CCSF), have been identified as proposed sources of funds to be allocated to SAMTRANS in full reimbursement of the Additional Contribution.

F. By this Amendment to the RPOA, the JPB, SAMTRANS, CCSF and VTA desire to memorialize their understandings pertaining to the proposed reimbursement of the SAMTRANS Additional Contribution and to fully resolve all outstanding financial issues related to the acquisition of the ROW.

G. In conjunction with the Amendment of the RPOA, the parties have agreed that SAMTRANS will be designated as the managing agency of the JPB unless and until it no longer

chooses to do so, it being agreed and understood that a formal amendment to the JPA incorporating this commitment will be implemented at a future date.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

I. Section 3.3 of the Agreement (Reimbursement Of Additional Contribution) is amended in its entirety to read as follows:

**3.3 Reimbursement of Additional Contribution.** The parties agree that the Metropolitan Transportation Commission (“MTC”) will facilitate reimbursement of the Additional Contribution provided by SAMTRANS for the purchase of the ROW in the following manner:

A. **VTA Contribution.** The amount of the Additional Contribution attributable to VTA, \$43 million, will be paid to SAMTRANS through future gasoline sales tax “spillover” money: \$35 million in regional population-based “spillover” money to be allocated directly by MTC to SAMTRANS; and \$8 million in revenue-based “spillover” money from VTA to SAMTRANS.

B. **CCSF Contribution.** The amount of the Additional Contribution attributable to CCSF, \$10.3 million, will be paid to SAMTRANS through future gasoline sales tax “spillover” money: \$8.3 million in regional population-based “spillover” money to be allocated directly by MTC; and \$2 million in revenue-based “spillover” money from CCSF, through the San Francisco Municipal Transportation Agency.

C. **Timing and Method of Allocation of Funds.** The parties recognize that the precise time frame for allocation of the funds described in subsections A and B above is uncertain. The parties agree that they will use best efforts to effect allocation in full within a period of two (2) to four (4) years and in no event later than ten (10) years from the date of execution of this Amendment to the Agreement; provided that if and when MTC determines that the schedule of payments can be accelerated based upon greater availability of spillover funds made available from time to time by the State of

California, incremental revenue-based spillover funds otherwise allocable to VTA and CCSF will be paid to SAMTRANS in a ratio that equals or exceeds the incremental MTC allocation of regional population-based spillover funds.

If circumstances arise that would preclude allocation of the funds in full within ten (10) years, the parties acknowledge and agree that MTC will be authorized to identify alternative sources of non-local funds to effect full reimbursement of the Additional Contribution to SAMTRANS at the earliest practicable date.

MTC will allocate the regional population-based spillover funds directly to SAMTRANS. For Fiscal Year 2008-09, VTA and CCSF will pay the revenue-based spillover funds referred to in subparagraphs A and B to SAMTRANS. In subsequent years, if required, and until VTA's and CCSF's commitments are fully discharged, MTC will allocate and pay to SAMTRANS the respective shares of VTA and CCSF revenue-based spillover funds.

Upon receipt by SAMTRANS of all funds in satisfaction of the Additional Contribution, the commitments of CCSF and VTA under Sections 3.3 and 3.4 of the Agreement will be deemed fulfilled.

**II.** Section 4.1 of the Agreement (ROW) is amended in its entirety to read as follows:

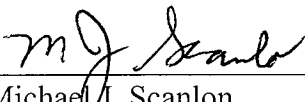
Title to the ROW shall vest initially in the JPB; provided, however, that title shall vest in the JPB and SAMTRANS as tenants in common (not as partners) as to all ROW property located in San Mateo County. Upon full participation in the Additional Contribution by all Member Agencies, or full reimbursement of the Additional Contribution to SAMTRANS as provided in Section 3.3 above, SAMTRANS shall reconvey to the JPB all of its interests in title to the ROW. At such time, Section 7 of the RPOA granting SAMTRANS an option to convert its Additional Contribution to an equity interest in the ROW shall no longer be in effect and Section 6.5 of the RPOA shall be repealed. Title to State Transferred Properties shall vest in the JPB.

**III. AGREEMENT TO AMEND JOINT POWERS AGREEMENT.**

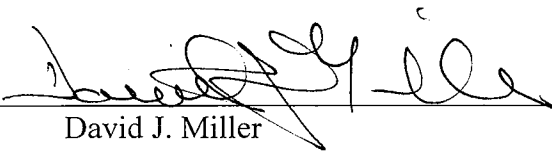
In consideration of the understandings reached pursuant to this Amendment to the RPOA, and in keeping with the shared commitment of the parties to continue their collaborative support of Caltrain, the parties have agreed that SAMTRANS is designated as the managing agency of the JPB and will serve in that capacity unless and until it no longer chooses to do so. The parties also agree to incorporate this agreement in a formal amendment of the JPA at a future date.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above, with the intent to be legally bound.

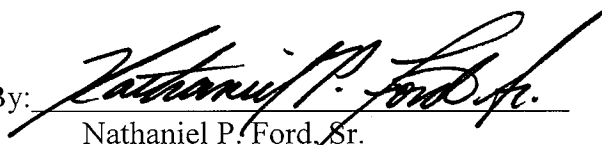
SAN MATEO COUNTY TRANSIT DISTRICT

By:   
Michael J. Scanlon  
General Manager/CEO

Approval as to form:

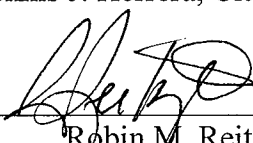
  
David J. Miller  
Attorney

CITY AND COUNTY OF SAN FRANCISCO

By:   
Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

Approved as to form:

Dennis J. Herrera, City Attorney

  
Robin M. Reitzes  
Deputy City Attorney

Municipal Transportation Agency  
Board of Directors  
Resolution No. 08-099  
Dated: June 17, 2008

Board of Supervisors  
Resolution No. 389-08  
Dated: September 16, 2008

Attest:

Attest:

R. Boomer  
Secretary

Angel Calvete  
Clerk of the Board

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: Michael T. Burns  
Michael T. Burns, General Manager

Approved as to form:

Kevin D. Allmand  
Kevin D. Allmand  
Acting General Counsel

PENINSULA CORRIDOR JOINT POWERS BOARD

By: Michael J. Scanlon  
Michael J. Scanlon  
Executive Director

Approved as to form:

David J. Miller  
David J. Miller  
Attorney

**ATTACHMENT E:  
LIST OF INTERVIEWEES**

## LIST OF INTERVIEWEES

- **Alix Bockelman** – MTC, Deputy Executive Director, Policy
- **Michael Burns** – Former JPB Board Member; SFMTA, former GM; and VTA, former GM
- **April Chan** – SamTrans, Chief Officer, Planning, Grants, and Transportation Authority
- **Cindy Chavez** – JPB Board Member; Santa Clara Board of Supervisors; VTA Board Chair; and Governance Ad Hoc Committee Member
- **Rod Diridon** – Former JPB Board Member and Santa Clara County Supervisor
- **Sean Elsbernd** – Former JPB Board Member; CCSF, Chief of Staff to Mayor London Breed
- **Nuria Fernandez** – VTA, General Manager, and Governance Ad Hoc Committee Member
- **Brian Fitzpatrick** – SamTrans, Director of Real Estate and Development
- **Derek Hansel** – Caltrain and SamTrans Chief Financial Officer
- **Jim Hartnett** – Peninsula Corridor Joint Powers Board, Executive Director; SamTrans, General Manager/Chief Executive Officer; and San Mateo County Transportation Authority, Executive Director; Governance Ad Hoc Committee Member; and Former JPB Board Member
- **Steve Heminger** – JPB Board Member; SFMTA Board Member; and MTC, former Executive Director
- **Jim Lawson** – VTA, Chief of External Affairs, and former JPB Board Member
- **Zoe Lofgren** – Member of Congress; former member of Santa Clara County Board of Supervisors
- **Carter Mau** – San Mateo County Transportation District, Deputy GM, and JPB Governance Ad Hoc Committee Member
- **David Miller** – Hanson Bridgett, LLP; Former General Counsel for JPB and San Mateo County Transportation District
- **Seamus Murphy** – San Mateo County Transportation District, Chief Communications Officer
- **Tom Nolan** – former JPB Board Member; SFMTA, former Board Chair
- **Howard Permut** – author of CalTrain Organizational Assessment Report



- **Dave Pine** – JPB Board Chair; San Mateo Board of Supervisors; and Governance Ad Hoc Committee Member
- **Mike Scanlon** – SamTrans, former General Manager/Chief Executive Officer of SamTrans; Peninsula Corridor Joint Powers Board, former Executive Director; and San Mateo County Transportation Authority, former Executive Director
- **Jeff Tumlin** – SFMTA, General Manager, and Governance Ad Hoc Committee Member
- **Shamann Walton** – JPB Board Member; San Francisco Board of Supervisors; and Governance Ad Hoc Committee Member
- **Monique Webster** – SFMTA, Regional Government Affairs Manager

**ATTACHMENT F:  
CHART OF SYSTEM OPERATION**

Location	City	Type	Purchaser	Closing Date	Recording Information	Title Report	Val Map Reference	Price	Comments	
<b>Parking Lot Option Parcels</b>										
22nd Street	San Francisco	Parking				SF-15-2	V-2/2 pp. 11, 13, 14,		Never Purchased?	
Bayshore	San Francisco	Parking				SF-82-2	V-2/6 pp. 1 & 2		Never Purchased?	
S. San Francisco Station	South San Francisco	Parking	Transportation Authority	6/28/1996 12/18/1997	96-078893 97-167437	SM-22-2	V-2/10 p. 1		2 <sup>nd</sup> deed corrects description	
Hillsdale Station	San Mateo	G/S II Parking	Transportation Authority	6/28/1996	96-078893	SM-136-2-B SM-130	← V-74/5 P. 24 ← V-74/5 p.18 &		Not in deed SM-134, 135 (see below)	
San Carlos Station	San Carlos	Parking	JPB and SamTrans/TA	3/29/1996	96-037465 96-037472	SM-179-2 SM-XXX Street Q.C. SM-180 SM-181	V-74/7 p. 5 v-74/7 p. 52 V-74/7 p. 12 V-74/7 p. 6		Samtrans and JPB own NE 20' only, TA owns remainder	
Palo Alto Station	Palo Alto	Parking	Transportation Authority	3/29/1996	P397 Page 0644 Doc. No. 13349805	SC-01-2	V-74/10 p. 6		Quitclaimed to JPB 12/18/97 via 13982032 Portion of initial option parcel	Purchased by Tenth Amendment 2/6/97
	Palo Alto	Parking				SC-04-2	V-74/10 p. 8 (portion)			
Mt. View Station	Mountain View	Parking	Transportation Authority	6/28/1996	P397 Page 0644 Doc. No. 13349805	SC-36	V-74/13 p. 9		Quitclaimed to JPB 12/18/97 via 13982032 Portion of initial option parcel	
						???	V-74/15 p. 1 (Letter "C") Q.C. Street			
Sunnyvale Station	Sunnyvale	Parking				SC-40-2	V-74/15 p. 1			
Lawrence Station	Sunnyvale	Parking				SC-65	V-74/16 p. 17		Sold to 3 <sup>rd</sup> party	
<b>Grade Separation Option Parcels</b>										
Center Street	Millbrae	G/S II G/S II G/S II				SM-44 SM-45 SM-46 SM-47 SM-48 SM-49 SM-50 SM-51 SM-52 SM-57 SM-61 SM-62 SM-93-2	V-74/1 p. 7 V-74/1 p. 8 V-74/1 p. 9 V-74/1 p. 10 V-74/1 p. 11 V-74/1 V-74/1 p. 13 V-74/1 p. 14 V-74/1 p. 15 V-74/1 p. 20 V-74/1 p. 24 V-74/1 p. 25 V-74/4 P. 25		Purchased by SamTrans for BART SFO Extension Project	
Broadway Station	Burlingame	G/S I	TA	6/28/1996	96-078893	SM-70-2	V-74/3 p.2			
Howard Avenue	Burlingame	G/S I				SM-75A	V-74/3 p. 13			
Peninsula Avenue	Burlingame	G/S I				SM-80A	V-74/3 p. 23			
Fifth Avenue	San Mateo	G/S II				SM-96	V-74/4 p. 26			

Ninth Avenue	San Mateo	G/S II G/S III				SM-101 SM-262	V-74/4 p. 52 NWP V-B/19 p. 1		
						SM-134 SM-135	V-74/5 p. 24 V-74/5 p. 24		
Twenty-Fifth Avenue	San Mateo			6/28/1996	96-078893	SM-136-2A	V-74/5 p. 24 (part)	Quitclaimed to JPB on 12/18/97 via 97-167438	
Ralston Avenue	Belmont	G/S I G/S I G/S I	JPB/SamTrans	3/2/1994	94038074	SM-155-2 SM-157-2	V-74/6 p. 5 V-74/6 p. 10 (portion)	Portion of SM-158	
						SM-158	V-74/6 p. 22		
Harbor Boulevard	Belmont	G/S II G/S II G/S II G/S II G/S II G/S II	JPB/SamTrans	3/2/1994	94038074	SM-159 SM-160 SM-161 SM-162 SM-163 SM-164	V-74/6 p. 24 V-74/6 p. 34 V-74/6 p. 14 V-74/6 p. 11 V-74/6 p. 15 V-74/6 p. 12	Not in deal 161-2, 162, 163, 164	
Holly Street	San Carlos	G/S II G/S II G/S II	TA TA JPB/SamTrans JPB/SamTrans	3/24/1996 3/29/1996 12/15/1995	96037465 96037472 95136493	SM-173 ? SM-175 SM-176	V-74/6 p. 19 + Portion P. 2&3  V-74/6 p. 34 (portion)  V-74/6 p. 27  V-74/6 p. 10	TA owns to SW of line 75' from RR ROW line  Portion of O'Neill Avenue	
Whipple Avenue	Redwood City	G/S I G/S I G/S I G/S I G/S I G/S I G/S I G/S I	Transportation Authority	6/28/1996	96-078893	SM-194 SM-195 SM-196 SM-197 SM-198 SM-205 SM-206 SM-207 SM-208 SM-209 ?	V-74/7 p. 36 (portion) V-74/7 par. 23 V-74/7 par. 25 V-74/7 par. 26 V-74/7 par. 36 V-74/7 par. 30 V-74/7 par. 31 V-74/7 par. 48 V-74/7 par. 37 V-74/7 par. 32 V-74/7 p. 57 (Whipple Street Q.C.)	Partial Reconveyance: SM-198 #50651	
Brewster Avenue	Redwood City	G/S I G/S I G/S I G/S I	Transportation Authority	6/28/1996	96-078893	SM-211-2 SM-212 SM-213-2 SM-215	V-74/8 p. 2 V-74/8 p. 42 V-74/8 p. 3 V-74/8 p. 42	Quitclaimed to JPB on 12/18/97 via 97-167438	Purchased by Tenth Amendment 2/6/97
Maple Street	Redwood City	G/S I G/S I				SM-225 SM-226	V-74/8 p. 18 V-74/8 p. 19		
Whipple Add'l	Redwood City	G/S I				SM-201 SM-218-2	V-74/7 p. 28 V-74/7 pp. 26, 47, 58		
Evans/Jerrold	San Francisco	N/A	TA	?	?	?		Sold to JPB via Quitclaim 12/18/97 Service 97-6274/03-00	
	Brisbane	N/A				?		Never purchased	
Station	Palo Alto	N/A							
	Redwood City	N/A							
	San Mateo	N/A				No record	V-74/5 p.5, 10, 27		
			JPB/SamTrans	6/28/1996	96-078891	SM-97-2	V-74/5 p.1 (portion)	No recording info	10 <sup>th</sup> Avenue



**ATTACHMENT G:  
STATION INVENTORY**

PENINSULA COMMUTE SERVICE (CALTRAIN)  
STATION INVENTORY

Station	Parcel No.	Purchase Date	Purchase Price	Federal Grant No.	% Federal Share	LOCATION	STRUCTURE TYPE
1. San Francisco (e)	N/A	N/A	N/A	N/A	N/A	4th & Townsend San Francisco	Reinforced Concrete Building
2. 22nd Street (a)	47209-1-2	12/29/89	\$0	None	0%	22nd St. & Pennsylvania Ave. San Francisco	None
3. Paul Avenue (a)	47210-1	12/29/89	\$0	None	0%	Paul Ave & Gould St. San Francisco	Sheet Metal Shelter
4. Bayshore (b)	47211-1	6/13/85	\$168,500	None	0%	Tunnel Avenue San Francisco	Wood Frame Shelter
5. So. San Francisco (a)	47213-1	12/29/89	\$598,600	CA-90-X105	80%	Dubuque & Grand Ave. San Mateo County	Brick Building
6. San Bruno (a)	47214-1-3	12/29/89	\$297,000	CA-90-X105	80%	Huntington & Sylvan Aves. San Mateo County	Stone & Glass Shelters (2)
7. Millbrae (b)	47215-1	12/14/84	\$1,200,000	None	0%	21 E. Millbrae & California Dr. San Mateo County	Wood Frame Building
8. Broadway (a)	47216-1	12/29/89	\$640,000	CA-90-X105	80%	Broadway & California Dr. Burlingame	Stucco Building
9. Burlingame Station (b)	47217-1	12/18/84	\$850,000	None	0%	Burlingame Ave & Calif. Dr. San Mateo County	Stucco Building
Parking (a)	47234-1	12/29/89	\$535,000	CA-90-X105	80%		
10. San Mateo (b)	47218-1-2	5/22/85	\$1,450,000	None	0%	2nd & So. Railroad Ave San Mateo County	Tile & Concrete Building
11. Hayward Park Station (a)	47219-1	12/29/89	\$0	None	0%	16th Ave. & So. B St. City of San Mateo	Lexan Shelter
Parking	47241-1	4/27/90	\$1,721,000	CA-03-0315	75%		

REEMENT NO. 04A0294  
ATTACHMENT Iia  
SHEET 6 OF 9

Station	Parcel No.	Purchase Date	Purchase Price	Federal Grant No.	% Federal Share	LOCATION	STRUCTURE TYPE
12. Hillsdale (a)	47220-1-2	12/29/89	\$2,510,000	CA-90-X105	80%	E.Hillsdale Ave/EI Camino Real - San Mateo County	Stucco Bldg 2 Wood Shelters
13. Belmont (b)	4722-1	6/24/83	\$546,000	None	0%	EI Camino Real/Ralston Ave San Mateo County.	1-Glass/Stone Shelter 2-Glass/Steel Shelters
14. San Carlos (b)	472222-1	10/21/82	\$914,400	None	0%	EI Camino Real/San Carlos Ave. - San Mateo County	Stone Masonry Bldg.
15. Redwood City (a)	47235-1	12/29/89	\$4,415,000	CA-90-X105	80%	James & Franklin Avenues San Mateo County	Large Wood Frame Shelter
16. Atherton (a)	47224-1	12/29/89	\$0	None	0%	Fair Oaks/Dinkelspiel Lane San Mateo County	Wood/Glass Shelter
17. Menlo Park (b)	47225-1	11/7/83	\$1,353,400	None	0%	Santa Cruz & Merrill Streets San Mateo County	Wood Frame Building & Shelter
18. Palo Alto	47226-2 47226-3 47226-8	6/12/91	\$3,500,000	CA-90-X544 (JPB)	75%	University Ave/Alma Street Santa Clara County	Stucco Shelter
19. California Ave (a)	47227-1	12/29/89	\$1,130,000	CA-90-X182	80%	Park Blvd/California Ave Palo Alto, Santa Clara Co.	Stucco Building
20. Castro (a)	47228-1	12/29/89	\$6,000	CA-90-X182	80%	So. Rengstorff/Crisanto Ave Mtn View, Santa Clara County	Wood Frame Shelter
21. Mountain View (b)	47229-1	6/24/83	\$1,521,100	None	0%	View St./West Evelyn Ave. Santa Clara County	Concrete Block Shelter
22. Sunnyvale (b)	47230-1	6/24/83	\$690,500	None	0%	Evelyn Ave./So. Frances St. Santa Clara County	Concrete Block Building

AGREEMENT NO. 04A0294  
 ATTACHMENT IIA  
 SHEET 7 OF 9



Station	Parcel No.	Purchase Date	Purchase Price	Federal Grant No.	% Federal Share	LOCATION	STRUCTURE TYPE
23. Lawrence (b)	47236-1	6/18/84	\$870,000	None	0%	Lawrence Exp./Lawr.Sta. Rd. Sunnyvale/Santa Clara Co.	Lexan Shelters
24. Santa Clara (b)	47231-1	6/24/83	\$317,400	None	0%	Railroad Ave./Franklin St. Santa Clara County	Wood Frame Building
	47237-1	6/18/84	\$186,700	None	0%		
25. College Park (a)(c)	N/A	12/29/89	\$0	None	0%	Stockton Ave/Emory St. San Jose, Santa Clara Co.	Wood Frame Shelter
26. San Jose Diridon San Jose Parking S.J. Extended Park.	47232-1 (first)	12/28/90	\$2,962,300	CA-90-X182	80%	65 Cahill St. Santa Clara County	2 Story Brick Building Including Roofing System Guarantee on accompanying pages 4 & 5 of the attachment.
	47232-2			CA-90-X370	80%		
	47232-1 (2nd)	6/15/92	\$3,432,374	CA-03-0411 (JPB)	75%		
	Various	1990-96	\$5,000,000*	CA-03-0328	75%		
27. Tamien (d)	N/A	7/1/92	\$14,733,000	CA-03-0328	75%	Alma and Lick Avenues San Jose, Santa Clara Co.	Reinforced Concrete Structure
Totals			\$46,548,274				
28. All completed and pending federal and state grant capital improvements made to the Peninsula Commute Service operating right of way and station properties by the California Department of Transportation between July 1, 1980 and the date of transfer of these improvements to the Peninsula Corridor Joint Powers Board.							

(a) \*Gang of 13\* station purchase. Purchase price is less lease option credits.

(b) First purchase of 11 stations. Purchase price is net less lease option credits totalling \$398,300.

(c) Improvements only.

(d) Improvements only. Date shown is when construction completed.

(e) State owns no fee title and is transferring whatever rights it holds.

\* This amount is approximate. Purchase of last parcel still being finalized.