

Draft Recommendation on Caltrain Governance

March 3, 2022



Agenda for Today

1. Introduction
2. Report from Ad Hoc Committee
3. Review of Materials
 - Overview of Term sheet
 - Process Diagram
4. Clarifying Questions
5. Public Comment
6. Board Discussion & Potential Action

Note – full text of term sheet (Attachment A) and detail of process diagram (Attachment B) are included in appendix slides and can be put on-screen as needed

Overview of Revised Term sheet

Development and Organization

- Term sheet constitutes a revised ‘proposal’ for governance developed through discussions of Ad Hoc Committee over course of three meetings
- Language and organization has changed throughout. Builds on prior versions of recommendations brought to JPB as well as SMCTD “Pathway Forward” proposal
- Organized as a “term sheet” that outlines contents of an initial proposed MOU between the JPB and all of the JPA member agencies
- Organized in three main sections
 - A. Recitals
 - B. Terms
 - C. Process and Timeline

Overview of Revised Term sheet

Recitals

1. Affirmation of intent to address Resolution 2020-42
2. Affirmation of SMCTD as Managing Agency
3. Affirmation Regarding Effect of Repayment to SMCTD
4. Affirmation of JPB appointment of General Counsel and Auditor
5. Affirmation of Rail Service Provider Contract
6. Statement Related to Regional Governance

Overview of Revised Term sheet

Terms

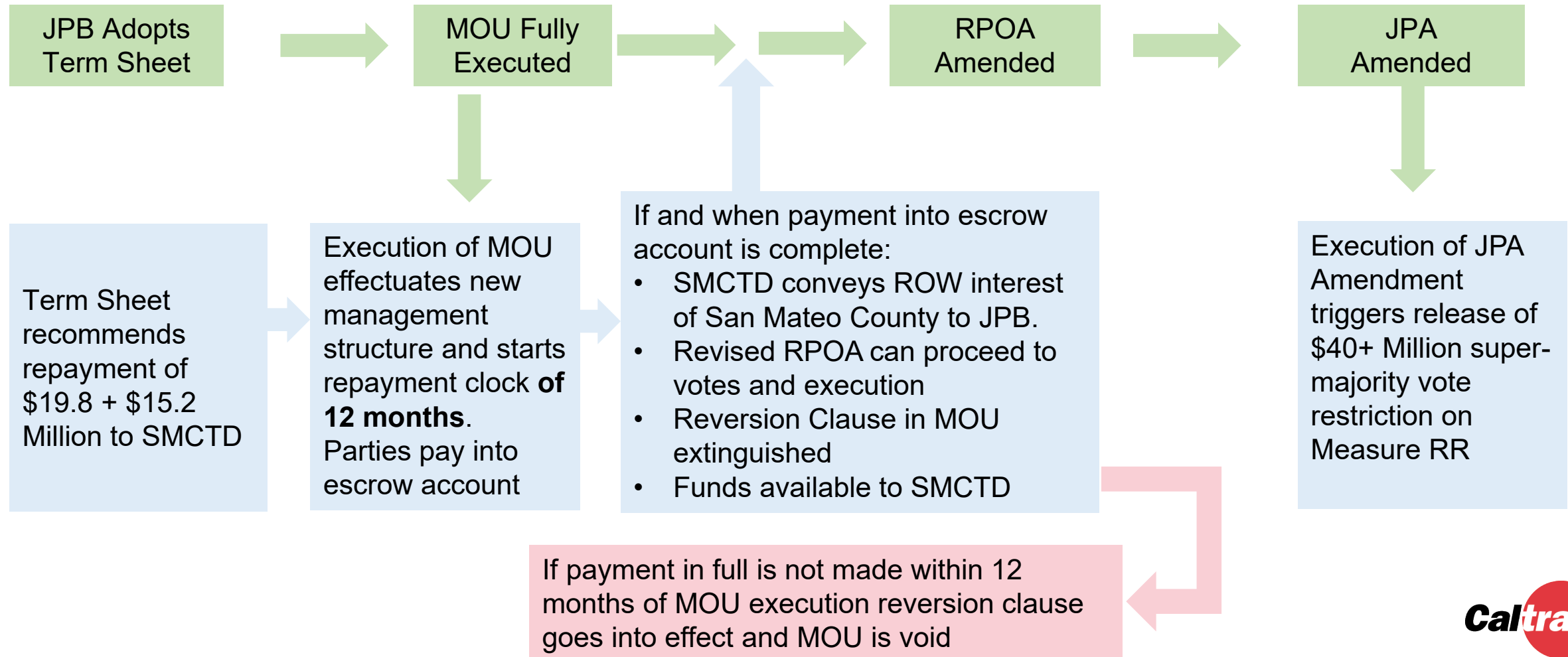
1. **Caltrain Executive Director:** *Dedicated Caltrain ED - hired/fired by JPB with majority vote (at least one vote per county)*
2. **Staff Reporting:** *4 added “direct services” positions*
3. **Right of Way Repayment:** *\$19.6 Million from MTC, \$0.2 million from SFMTA for principal; \$15.2 million from SFMTA/VTA for escalation*
4. Reversion
5. **Future Amendment of the Real Property Agreement (RPOA) and Joint Powers Agreement (JPA)**
6. **Indemnification:** *Mutual between SamTrans and JPB*
7. Shared Services Agreement
8. **Attorney’s Fees:** *Each party bears its own legal costs*
9. Term of MOU

Overview of Revised Term sheet

Process and Timeline for Approval of MOU and Amendment of RPOA and JPA

1. MOU
2. RPOA
3. JPA

Process and Timeline for Approval of MOU and Amendment of RPOA and JPA (Simplified from attachment B)



Public Comment

Board Discussion

Appendix

Revised Term sheet - Recitals

MOU PART A: RECITALS

1. Affirmation of Intent to Address Resolution 2020-42: Resolution 2020-42 contemplated that the JPB would recommend governance changes including enabling a majority of the JPB to appoint its own Executive Director and providing for the reimbursement of SMCTD for its investment in Caltrain. The resolution further provided that the expenditure of more than \$40 million annually from Measure RR revenues would be subject to a supermajority vote until such time as the JPA has been amended to modify the JPB's governance structure in a manner satisfactory to the three member agencies. The proposed Memorandum of Understanding (MOU) between the member agencies and the JPB would provide a pathway and timeline for consideration of amendments to the JPA to conform it with the MOU, address conflicts between the JPA and RPOA, resolve ambiguities, and codify certain current practices that are inconsistent with the JPA. Upon adoption of an amended JPA, the supermajority vote requirement would be repealed.

2. Affirmation of SMCTD as the Managing Agency for Caltrain. The San Mateo County Transit District (SMCTD) will remain as the managing agency for Caltrain, as modified by the MOU.

3. Affirmation regarding Effect of Repayment to SMCTD: Upon payment in a non-credit form of the outstanding balance of \$19.8 million owed to SMCTD under the 2008 amendment to the 1991 Real Property Ownership Agreement and the payment of \$15.2 million to account for the delay in payment of the outstanding balance and SMCTD's agreement to assign certain rights as Managing Agency to the JPB, SMCTD's tenancy in common and equity conversion interests would be extinguished and San Francisco, VTA, and MTC's commitments under the 2008 agreement will be deemed satisfied.

4. Affirmation of JPB Appointment of General Counsel and Auditor. As of 2021, the JPB has appointed, and will maintain, both its own general counsel and auditor separate from those of any of the Joint Powers Agreement (JPA) Member Agencies.

5. Affirmation of Rail Service Provider Contract. The following recommendation does not alter the ongoing contractual relationship between the JPB and its selected Rail Service Provider whereby the contractor maintains responsibility for providing the JPB with rail operations, maintenance and support services that include administration/safety; operations and dispatch; maintenance of equipment, track, communications and signals, and stations; construction support; and state of good repair.

Revised Term sheet - Recitals

MOU PART A: RECITALS

6. **Statement Related to Regional Governance.** The following recommendation does not preclude Caltrain's ongoing participation in processes related to potential regional governance changes, including the consideration of recommendations forthcoming from the Network Management Business Case and/or Regional Rail study. Further, the JPB commits to work with stakeholders, including the Metropolitan Transportation Commission, to develop a deadline for expeditious consideration of regional governance recommendations.

Revised Term sheet - Terms

MOU PART B: TERMS

1. Caltrain Executive Director

- a) A separate, permanent Caltrain Executive Director position ("Caltrain ED") will be established. Although this position will remain as an SMCTD employee, the Caltrain ED will exclusively report to, and take direction from, the JPB.
- b) The JPB shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the Caltrain ED position.
- c) The appointment and termination of the Caltrain ED shall be subject to a simple majority vote of five members of the JPB, provided that at least one Director appointed from each county concurs.

2. Staff Reporting

- a. The following functions, which are currently included as "direct services" within the existing Rail Division, shall continue to report to the Caltrain ED:
 - o Rail Operations and Maintenance (includes management, oversight, and operational direction of TASI's operations and maintenance activities as well as management of other aspects of the customer interface in coordination with the communications and marketing group)
 - o Rail Planning (includes planning for service planning, capital planning, transit oriented development planning and policy development)
 - o Rail Contracts and Budgets (includes management of TASI contract and other on-call contracts supporting the rail division)
 - o Rail Development (includes capital program management, capital program delivery, engineering, and quality assurance/ quality control)
 - o The PCEP (CalMod) Program
- b. The following functions shall be added as "direct services" reporting to the Caltrain ED as described in the table below and none of these positions shall serve a similar role for SMCTD:

Revised Term sheet - Terms

Table 1: Functions proposed to shift from “shared” to “direct” services

Function	New “direct” position(s) to be added	Proposed reporting structure	Description of responsibilities	Relationship to Shared Services provided by SMCTD
Executive administration (eg chief of staff)	Chief of Staff (note, this position already exists in salary ordinance and has been filled)	Reports directly to Caltrain ED	Provides executive administrative support to the Caltrain ED and oversees multiple individual positions within the Rail Division	Works alongside the Caltrain ED to comprehensively manage relationship with SMCTD shared services
Communications, government, and external affairs	Director of government and community affairs	Reports directly to Caltrain ED	Provides direction, policy guidance and strategy on all government and external affairs matters related to Caltrain	Determines the Caltrain work plan for Communications (as pertinent to external affairs only) and coordinates with the SMCTD Communications Chief to implement the direction of the JPB and the Caltrain ED
Finance and Budgets	Director of Budgets and Financial Analysis	Reports to Deputy Chief of Rail and Commercial Business Development	Provides policy level guidance and direction on all financial analysis and budgeting matters related to Caltrain.	Determines the Caltrain work plan for Finance and budgets and coordinates with the SMCTD CFO to implement the direction of the JPB and the Caltrain ED

Revised Term sheet - Terms

Table 1: Functions proposed to shift from “shared” to “direct” services

Function	New “direct” position(s) to be added	Proposed reporting structure	Description of responsibilities	Relationship to Shared Services provided by SMCTD
Real Estate	Director of Real Estate Development	Reports to Deputy Chief of Rail and Commercial Business Development	Provides policy level guidance and direction on all real estate transactions pertaining to Caltrain	Determines the Caltrain work plan for Real Estate and coordinates with the SMCTD Real Estate Director and/or Chief of Planning, Grants and the Transportation Authority to implement the direction of the JPB and the Caltrain ED
Grants	Director of Grants and Funds Management	Reports to Deputy Chief of Rail and Commercial Business Development	Provides policy level guidance on the pursuit and management of all grants and public funding sources of interest to Caltrain	Determines the Caltrain work plan for Grants and coordinates with the SMCTD Director of Grants and Fund Management and/or Chief of Planning, Grants and the Transportation Authority to implement the direction of the JPB and the Caltrain ED



Revised Term sheet - Terms

2. Staff Reporting

c. The following functions shall continue as fully shared services under the direction of the SMCTD GM and in coordination with the Caltrain ED:

- o Human Resources
- o Contracts and Procurement
- o Information Technology
- o Civil Rights
- o Marketing and Customer Service
- o Accounting and Treasury

d. The following functions shall continue as partially shared services with policy level direction provided by direct Caltrain positions listed in table 1:

- o Communications, Government and External affairs
- o Finance and Budgets
- o Real Estate
- o Grants

e. **Role of the Managing Agency:** The role of the managing agency shall be to support the JPB through the employment of all staff directly supporting the railroad and the Caltrain ED and through the provision of fully or partially shared services in the areas of Human Resources, Contracts and Procurements, Civil Rights, Accounting, Treasury, Budgets, Finance, Communications, Government and External Affairs, Real Estate and Grants.

f. **Limitation on Replacement of Shared Services with Direct Reports:** With the exception of the Chief of Staff and the four direct report positions identified above, the JPB shall not have the authority to replace a function currently being performed through shared services with a direct report, unless SMCTD consents to the change.

Revised Term sheet - Terms

3. Right of Way Repayment

a. MTC shall pay SMCTD \$19.6M for the outstanding balance owed pursuant to the 2008 agreement. Payment shall be made within 12 months of execution of the MOU into an escrow account established by the JPB and the funds shall be disbursed to SMCTD upon satisfaction of the conditions specified in paragraph (c), below. San Francisco shall pay \$200,000 directly to SMCTD.

b. San Francisco and VTA shall pay SMCTD \$6,080,000 and \$9,120,000, respectively, to compensate SamTrans for the delay in payment of the principal. Payment shall be made within 12 months of execution of the MOU into an escrow account established by the JPB and the funds shall be disbursed to SMCTD upon satisfaction of the conditions specified in paragraph (c), below.

c. The funds in the escrow account shall be disbursed to SMCTD upon: (1) receipt in the escrow account of all of the payments set forth in paragraphs (a) and (b) and (2) SMCTD's conveyance of its interest in the ROW in San Mateo County to the JPB. Upon full payment of the agreed amount, SMCTD will relinquish its rights under the 1991 Real Property Ownership Agreement and the 2008 Amendment to Real Property Ownership Agreement as to its property ownership status, option rights, conversion to equity and as to its status as a Tenant in Common of the San Mateo County ROW. Thereafter, all ownership of the ROW will vest with the JPB, which will have sole authority over the management, acquisition, and disposition of the real property.

4. Reversion

a. If the payments required by section B.3 have not been received in the escrow account within 12 months of the execution of the MOU, the MOU will be void and the managing agency arrangement will revert to the written terms of the Joint Powers Agreement and the 1991 Real Property Ownership Agreement, as amended in 2008. Once escrow funds are disbursed to SMCTD, this clause shall be void.

b. In the event of reversion under paragraph (a), the two-thirds vote requirement under Resolution No. 2020-42 shall continue to apply and shall remain in effect until such time as each member agency has approved amendments to the JPA.

Revised Term sheet - Terms

5. Future Amendment of RPOA and JPA

a. The member agencies shall commit to a process and timeline for consideration of amendments to the RPOA and JPA. These amendments are not intended to be an opportunity to re-negotiate the governing agreements from whole cloth, but rather shall be limited to:

i. Conforming the agreements with the terms of the MOU, which shall take precedence over any conflicting terms in the RPOA and JPA;

ii. Resolving inconsistencies between the RPOA and JPA;

iii. Clarifying ambiguities in the RPOA and JPA; and

iv. Codifying certain practices that are inconsistent with the JPA: **[identification of practices to be codified -- TBD]**.

b. Amendments to the JPA and RPOA require the approval of each member agency. If each of the member agencies does not approve the amendments to the JPA and RPOA contemplated by the MOU, the terms of the MOU shall continue to apply and shall take precedence over conflicting provisions of the JPA and RPOA.

c. Upon approval of the amendments to the JPA by each member agency, the super-majority vote requirement in JPB Resolution No. 2020-42 shall be deemed repealed.

Revised Term sheet - Terms

6. Indemnification

- a. JPB shall indemnify SMCTD for any liability that SMCTD incurs that arises from:
- SMCTD's employment of, and the performance of functions undertaken by, JPB direct reports, unless such liability arises from SMCTD's negligence, recklessness, or willful misconduct.
 - JPB's breach of MOU
 - JPB's breach of law
 - JPB's negligence, recklessness, or willful misconduct
- b. SMCTD shall indemnify the JPB for any liability that JPB incurs that arises from:
- SMCTD's provision of shared services, unless such liability arises from JPB's negligence, recklessness, or willful misconduct.
 - SMCTD's breach of MOU
 - SMCTD's breach of law
 - SMCTD's negligence, recklessness, or willful misconduct
- c. Except as provided above, JPB shall indemnify member agencies for activities undertaken by JPB as provided in JPA.

7. Shared Services Agreement

The MOU shall include:

- a. A process and a timeline for the negotiation of a shared services agreement in which shared services provided to Caltrain by SMCTD would be defined, periodically evaluated, and adjusted as mutually agreed.
- b. A process and timeline whereby both the assets of the JPB and the provision of shared services would be documented for the JPB and the JPA member agencies

8. Attorneys' Fees

Each party to the MOU shall bear its own costs in connection with the MOU and the amendment of the RPOA and JPA.

9. Term of MOU

The MOU shall remain in effect until such time as the member agencies approve amendments to both the RPOA and JPA or the member agencies and JPB mutually agree to amend or terminate the MOU. The MOU shall take precedence over conflicting provisions of the JPA and RPOA as long as the MOU remains in effect.

Revised Term sheet - Process

PROCESS AND TIMELINE FOR APPROVAL OF MOU AND AMENDMENT OF RPOA AND JPA

1. MOU

- a. JPB adopts a resolution incorporating terms and recommending that member agencies approve MOU reflecting these terms.
- b. Within 30 days of JPB action, JPB shall circulate draft MOU to counsel for member agencies to obtain their input, which shall be provided within 30 days of receipt.
- c. MOU shall be finalized within 30 days of receipt of member agency comments and shall be presented to each member agency board and the JPB for approval at each agency's next regularly scheduled meeting.
- d. If an impasse is reached at any time prior to final approval of the MOU by each party, the Governance Ad Hoc Committee shall convene to consider any disputed issues and to make a recommendation to the JPB, if necessary. The JPB shall consider and make a recommendation to the member agencies to resolve the matter. The member agencies shall consider any recommendation made by the JPB at the agency's next regularly scheduled meeting.

2. RPOA

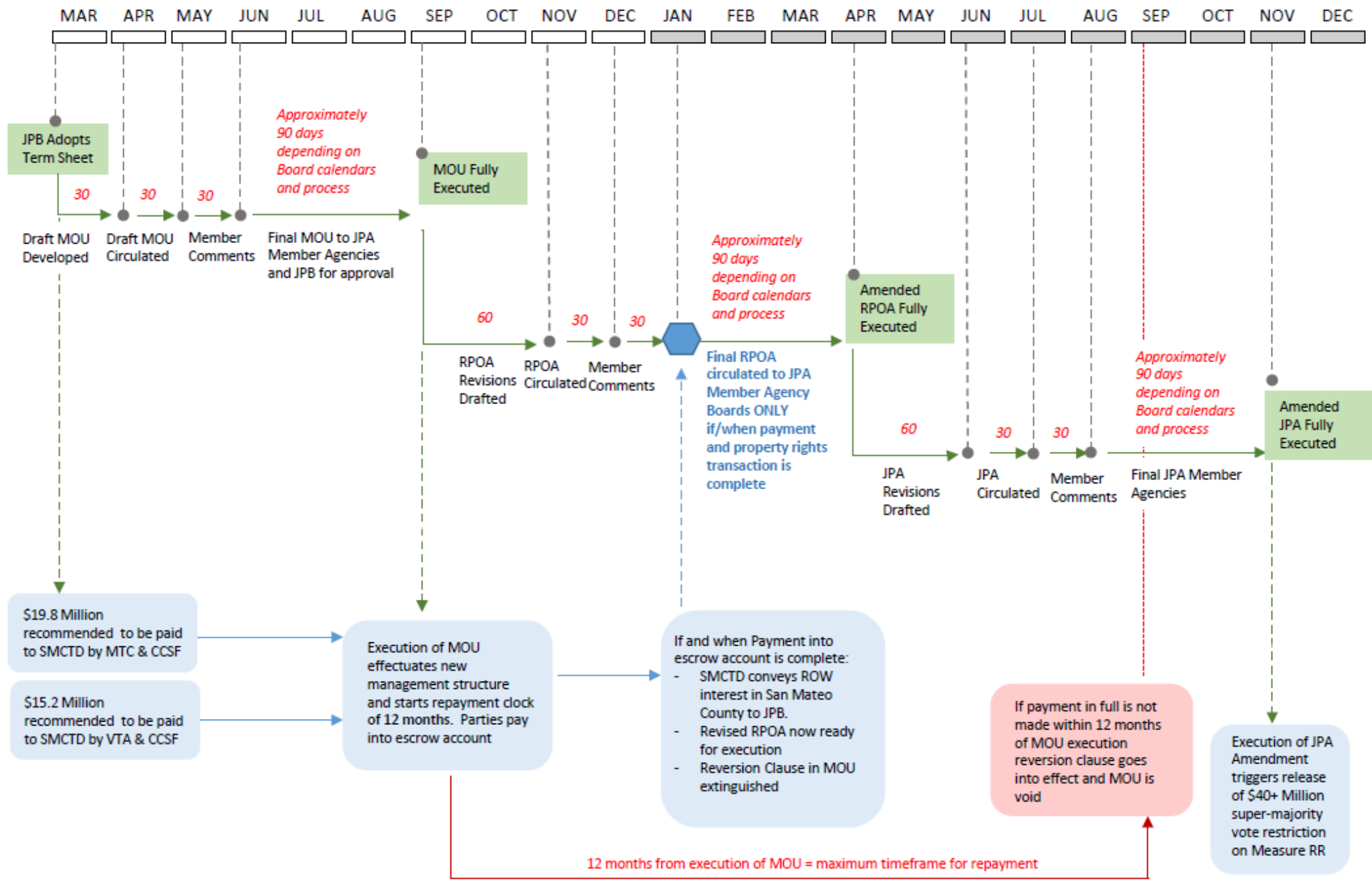
- a. Within two months of execution of MOU, JPB shall develop draft revisions to the RPOA, as limited by MOU, Section 5.a. JPB shall circulate draft revisions to RPOA to counsel for member agencies to obtain their input, which shall be provided within 30 days of receipt.
- b. RPOA amendments shall be finalized within 30 days of receipt of member agency comments and shall be presented for approval to each member agency board at the agency's next regularly scheduled meeting following the disbursement of funds from escrow to SMCTD.

3. JPA

- a. Within 2 months of approval of RPOA, JPB shall develop draft revisions to JPA, as limited by MOU, Section 5.a. JPB shall circulate revisions to counsel for member agencies to obtain their input, which shall be provided within 2 months of receipt.
- b. JPA amendments shall be finalized within 2 months of receipt of member agency comments and shall be presented to each member agency board at the agency's next regularly scheduled meeting.

2022

2023



\$19.8 Million recommended to be paid to SMCTD by MTC & CCSF

\$15.2 Million recommended to be paid to SMCTD by VTA & CCSF

Execution of MOU effectuates new management structure and starts repayment clock of 12 months. Parties pay into escrow account

If and when Payment into escrow account is complete:
- SMCTD conveys ROW interest in San Mateo County to JPB.
- Revised RPOA now ready for execution
- Reversion Clause in MOU extinguished

If payment in full is not made within 12 months of MOU execution reversion clause goes into effect and MOU is void

Execution of JPA Amendment triggers release of \$40+ Million super-majority vote restriction on Measure RR

12 months from execution of MOU = maximum timeframe for repayment

