

**PENINSULA CORRIDOR JOINT POWERS BOARD
STAFF REPORT**

TO: Joint Powers Board

FROM: Michelle Bouchard
Acting Executive Director

SUBJECT: **DRAFT RECOMMENDATION ON CALTRAIN GOVERNANCE**

Finance Committee Recommendation Work Program-Legislative-Planning Staff Coordinating Council Reviewed Staff Coordinating Council Recommendation

ACTION

Staff, at the direction of the Ad Hoc Governance Committee, has developed a revised recommendation related to Caltrain's governance for discussion and potential action by the JPB at its March 2022 meeting. The Ad Hoc Governance Committee has endorsed the recommendation.

SIGNIFICANCE

The revised governance recommendation (Attachment A) is a term sheet based on the version of the proposal provided to the JPB at its February 2022 meeting. The proposal has been revised through discussions amongst the Ad Hoc Governance Committee based on its consideration of outstanding issues and SMCTD's Pathway Forward Proposal. Attachment B is a process diagram that shows how the draft term sheet contemplates that the JPB and member agencies would enter into a Memorandum of Understanding (MOU) incorporating the terms set forth in the proposal and that the member agencies would subsequently work together to codify approved changes through amendments to the JPB's governing documents.

For background information, staff has included SMCTD's Pathway Forward proposal (Attachment C) and correspondence from MTC to SMCTD regarding MTC's payment of \$19.6 million to SMCTD (Attachment D).

BUDGET IMPACT

There is no budget impact associated with receiving this report or taking any actions.

Prepared by: Sebastian Petty, Deputy Chief, Caltrain Planning

DRAFT GOVERNANCE TERM SHEET FOR DISCUSSION

March 2022

*The following draft document outlines a **revised** recommendation related to Caltrain's governance for discussion and potential action by the JPB at its March 2022 meeting. This term sheet, which is based on the version of the proposal provided to the JPB at its February 2022 meeting, has been revised by the Ad Hoc Governance Committee based on its consideration of outstanding issues and SMCTD's Pathway Forward Proposal. The draft term sheet contemplates that the JPB and member agencies would enter into a Memorandum of Understanding (MOU) incorporating the terms set forth in the proposal.*

DRAFT GOVERNANCE RECOMMENDATION FOR DISCUSSION

MARCH 3, 2022

TERM SHEET FOR MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN JPB AND MEMBER AGENCIES

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.

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.

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:

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

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

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.

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.

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.

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.

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.

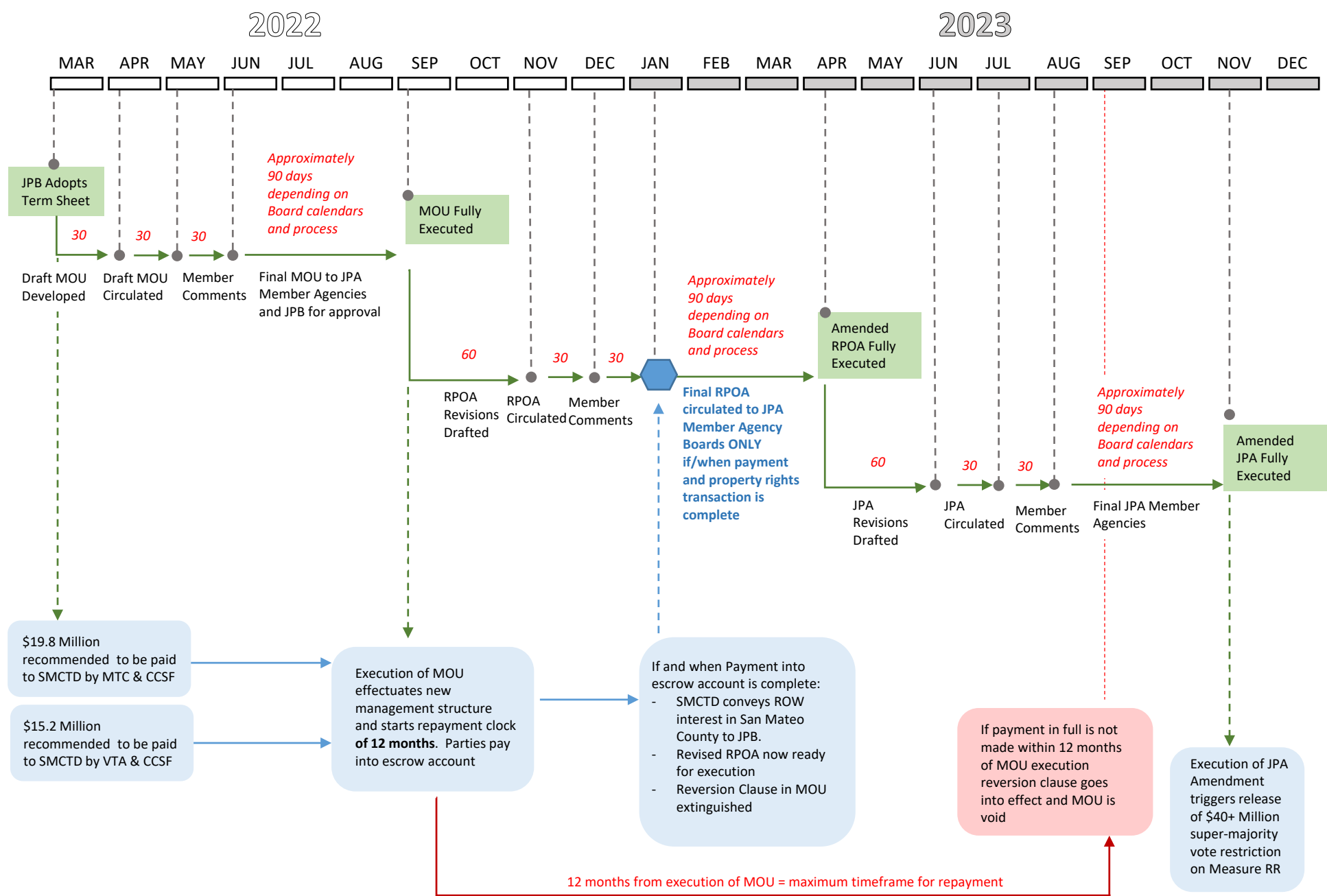
2. RPOA

- 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.

Caltrain Governance: Draft Process and Illustrative Timeline for Approval of MOU, Payment to SMCTD and Amendment of RPOA and JPA





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CARTER MAU
 ACTING GENERAL MANAGER/CEO

January 28, 2022

Steve Heminger, Chair
 Peninsula Corridor Joint Powers Board
 1250 San Carlos Avenue
 San Carlos, CA 94070

Michelle Bouchard, Acting Executive Director
 Peninsula Corridor Joint Powers Board
 1250 San Carlos Avenue
 San Carlos, CA 94070

Dear Chair Heminger and Acting Executive Director Bouchard:

Per the Chair of the SamTrans Board of Directors, I have been asked to share our Pathway Forward proposal that is scheduled to be voted on in the upcoming SamTrans Board Meeting. This document has been developed per direction from the SamTrans Board to clearly define terms acceptable to SamTrans that are consistent with the staff generated resolution of November. This action is to assist in concluding the governance review process in a timely fashion. We ask that it be incorporated in the package for the review of Caltrain's Board as they consider next steps for the February 3 Board meeting.

From the SamTrans Board perspective, the governance process and the uncertainty that comes with it have caused staff fatigue and drain, have impacted our focus on addressing mission critical challenges of the railroads operation and the crisis brought on it from COVID, and have served as a distraction and detrimental in our efforts to successfully compete for state and federal funding.

The San Mateo County Transit District (SMCTD) has historically and quite economically utilized its own General Manager, General Counsel and Auditor more to serve simultaneously in those roles for Caltrain as well. This established and contractually-confirmed practice has worked to avoid enormous duplication of effort and achieve great economies of scale.

Nevertheless, in the interest of regional cooperation SMCTD has listened to its member agency partners who are insisting that SMCTD share or cede its historic freedom to hire and fire the Caltrain Executive Director, General Counsel and Auditor. Furthermore, SMCTD understands that in the name of swift resolution and harmony, it must compromise its right to be fully reimbursed for its investments.

For all of those reasons, we believe it is in all of our interests, and the interests of the riders, voters and taxpayers we represent, to bring this process to a close. The attached document lays out terms that can be agreeable to SamTrans and will provide the Board's formal approval behind them. The document remains consistent with the important effort to address the directly appointed Executive Director position and the issues of long outstanding debts owed to SamTrans. It also seeks to define values associated with interest on that debt owed and compensation due for changes to purchased Managing Agency right.

SamTrans has faithfully, dutifully and effectively served the system in its role of Managing Agency and has always acted with the system's operational interests first. This pathway forward continues that approach

Steve Heminger
Michell Bouchard
January 28, 2022
Page 2 of 2

and seeks to work cooperatively with its partners towards speedy and full resolution to the dispute at hand and return the full focus of the partnership to the operational, funding and rider challenges facing the system.

Thus, and as reflected in the Pathway Forward Proposal, this provides an opportunity to adopt a Resolution that leads to a binding Memorandum of Understanding to be approved by the SMCTD board and the JPB board.

Sincerely,



Carter Mau
Acting GM/CEO

OVERVIEW

The San Mateo County Transit District (SMCTD) has historically and quite economically utilized its own General Manager, General Counsel and Auditor to serve simultaneously in those roles for Caltrain as well. This established and contractually-confirmed practice has worked to avoid enormous duplication of effort and achieve great economies of scale.

Nevertheless, SMCTD has listened to its member agency partners who are insisting that SMCTD share or cede its historic freedom to hire and fire the Caltrain Executive Director, General Counsel and Auditor. Furthermore, SMCTD understands that in the name of resolution and harmony, it must compromise its right to be fully reimbursed for its investments. Thus, and as reflected in its Pathway Forward Proposal, SMCTD hereby presents this definitive offer to enter into a binding Memorandum of Understanding to be approved by the JPB as follows:

PATHWAY FORWARD PROPOSAL FROM SMCTD:

A. Independent Governance at Executive Director Level:

1. The JPB board shall have the independent authority to hire, set compensation, conduct annual goal setting and performance reviews, and fire its own Caltrain Executive Director (who will not be the same person as SMCTD's General Manager), the hiring and firing of whom will be subject to a majority JPB board vote (of which at least one vote must be from a director of each of the member agencies); The Caltrain Executive Director (although remaining as an SMCTD employee subject to its personnel policies) will report directly to the JPB board, not to the SMCTD board or its General Manager;
2. The Caltrain Executive Director will have authority over those functions that are specific to the rail division (*i.e.*, Rail Operations and Maintenance, Rail Planning, Rail Contracts (*e.g.* TASI), Budgets, Rail Development, and construction (including PCEP) (so-called "direct staff");
3. All employees specific to the rail division (although remaining as SMCTD employees subject to its personnel policies) will report to the Caltrain Executive Director or his or her designee who will have full authority over these direct staff employees;
4. The JPB board shall have the independent authority to appoint its own Auditor (and shall not have the same auditor as SMCTD);
5. The JPB board shall have the independent authority to appoint its own General Counsel (and shall not have the same counsel as any member agency);

6. Upon the execution of the implementing Memorandum of Understanding (MOU, see below), the JPB board shall promptly rescind the provisions in its Resolution No. 2020-42 (Secs. B and C) as they relate to requiring a supermajority vote of six members for the described expenditures, and all such expenditures shall, as before, require only the approval of at least five (5) members of the JPB;
7. Except as so provided above, SMCTD will remain as the managing agency for Caltrain.

B. Reimbursing SMCTD for its Additional Contribution and Diminished Rights:

1. SMCTD will be repaid the principal amount owed under the terms of the 2008 RPOA -- \$19.8 million – in full within 6 months of the date the JPB board adopts a resolution accepting these terms representing SMCTD’s Pathway Forward Proposal with \$19.6 million being paid by the Metropolitan Transportation Commission (such payment with money that would not otherwise have gone to SMCTD or Caltrain) and \$200,000 by the City and County of San Francisco;
2. In consideration of the time elapsed since the 2008 RPOA and the diminution in managing agency rights as sold to SMCTD in that agreement, SMCTD will also be compensated the additional sum of \$15.2 million as a compromised sum, to be paid within 18 months of the date the JPB board adopts a resolution accepting these terms representing SMCTD’s Pathway Forward proposal (with such sum not being paid from any amounts obtained under Measure RR or funds generated by JPB operations or assets);
3. Upon full and timely payment of the \$19.6 million, \$200,000 and \$15.2 million amounts (see above), SMCTD will relinquish its rights under the 1991 Real Property Ownership Agreement (1991 RPOA) and the 2008 Amendment to Real Property Ownership Agreement (2008 RPOA) as to its status as a Tenant in Common of the San Mateo County ROW (1991 RPOA Secs. 4.1 and 8) and its right to obtain an equity interest in the remainder of the ROW (1991 RPOA Sec. 7.1);
4. Upon full and timely receipt by SMCTD of all amounts described here, the commitments of San Francisco and the VTA under Sections 3.3 and 3.4 of the 2008 RPOA will be deemed fulfilled; and

5. If all amounts owed above are not fully and timely paid, the resolution as approved by the JPB board and MOU (if executed) will be void (except as to the receipt of any monies already paid) and the managing agency arrangement will revert to the written terms of the governing JPA, the 1991 RPOA and the 2008 RPOA. This will include having SMCTD's General Manager serve as the Executive Director of Caltrain with full authority over the appointment and organization of all staff supporting the railroad.

C. Other Related Matters

1. Upon approval by a majority vote of the JPB board of a resolution accepting the terms set forth above representing SMCTD's Pathway Forward Proposal, the JPB would delegate to the Acting Executive Director of Caltrain and SMCTD would delegate to its General Manager the authority to draft an implementing MOU consisting of these terms, such MOU to be signed on behalf of the JPB board and the SMCTD board;
2. SMCTD hereby expresses its support for the stated commitment of the JPB to expeditious evaluation of any regional governance recommendations; and
3. SMCTD is amenable to negotiating at a future time (and not as a condition of the MOU) shared services arrangements with the JPB.

D. Costs Associated with any Changes Described Above

1. The JPB shall be responsible for any and all costs associated with the above, including without limitation legal expenses.
2. In the event of any claims made by or against the Caltrain Executive Director or direct staff, along with any for SMCTD carrying on its Managing Agency functions, the JPB will indemnify and hold SMCTD and any of its employees harmless from any such liability, including, but not limited, to the payment of attorney fees.



METROPOLITAN
TRANSPORTATION
COMMISSION

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February 15, 2022

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Brad Paul
Deputy Executive Director,
Local Government Services

Carter Mau
Acting General Manager
San Mateo County Transit District
1250 San Carlos Ave
San Carlos, CA 94070

Dear Mr. Mau:

I am writing to follow-up on the action MTC took on January 26, 2022 with respect to the funding commitment of \$19.6 million to SamTrans to satisfy the terms of a 2007 settlement agreement related to the purchase of Caltrain right of way (ROW).

The action was memorialized through MTC Resolution 4509, which set forth the timing and conditions of the funding commitment. Specifically, the resolution states that MTC shall identify \$19.6 million in federal, state or other grant funding to retire the principal payment identified in the Real Property Ownership Agreement (RPOA) and program, allocate or otherwise direct these funds to SamTrans for an eligible program or project subject to the following conditions:

- Principal payment of \$19.6 million constitutes full payment of any and all remaining MTC obligation for monies advanced by SamTrans for the purchase of the Caltrain right of way, with no expectation by SamTrans of future contributions by the Commission.
- Inclusion of a policy statement affirming the JPB agreement around governance does not preclude recommendations forthcoming from the Network Management Business Case and/or the Regional Rail Study.
- Inclusion in the recommendation that any future contemplated evaluation or reconvening of the Caltrain governance process include consultation with MTC regarding the status of ongoing regional governance processes including any network management recommendations that may have been adopted before that time.

It also states that MTC shall take a programming or allocation action to operationalize this funding commitment within calendar year 2022, with an accelerated goal of bringing back a recommendation for action by June 2022.

I understand my staff has met with you and your staff to discuss specific programs/projects and potential fund sources, and we welcome further conversation with you and your team to ensure that we are best able to follow-through on this funding commitment in a timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Therese W. McMillan", with a long, sweeping horizontal stroke extending to the right.

Therese W. McMillan
Executive Director

Cc: Michelle Bouchard, Caltrain JPB Acting Executive Director
Steve Heminger, Caltrain JPB Chair

Attachment A: MTC Resolution No. 4509

Date: January 26, 2022
W.I.: 1515
Referred by: Commission

ABSTRACT

Resolution No. 4509

Funding commitment of \$19.6 million to the San Mateo County Transit District (SamTrans) representing the last and final MTC payment to retire the principal identified in the Real Property Ownership Agreement (RPOA) related to the purchase of the Caltrain right of way, amended in 2008, between the Santa Clara Valley Transportation Authority, San Francisco City and County, and SamTrans.

The resolution includes the following attachment:

Attachment A – Timing and conditions of funding commitment

Further discussion of this action is contained in the Metropolitan Transportation Commission summary sheet dated January 26, 2022.

Date: January 26, 2022
W.I.: 1515
Referred by: Commission

RE: MTC Funding Commitment to SamTrans to Retire Caltrain Right of Way Principal Payment

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4509

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code § 66500 et seq.; and

WHEREAS, MTC adopted the FY 2021-22 fund estimate, including the distribution and apportionment of Transportation Development Act (TDA), State Transit Assistance (STA), State of Good Repair (SGR) Program, Assembly Bill (AB) 1107 sales tax, Low Carbon Transit Operations (LCTOP) cap-and-trade auction revenues, and transit-related bridge toll funds (MTC Resolution No. 4450, revised); and

WHEREAS, the San Mateo County Transit District (SamTrans) provided \$82 million for the 1991 Purchase Sale and Option Agreement to the Peninsula Joint Powers Board for the purchase of the Caltrain Mainline Right of Way; and

WHEREAS, in the Real Property Ownership Agreement (RPOA), amended in 2008, the Santa Clara Valley Transportation Authority, San Francisco City and County, and SamTrans agreed to reset the amount of the additional contribution attributable to VTA and San Francisco at \$53.3 million. Of the \$43.3 million to be paid by MTC, approximately 80 percent would be paid on behalf of VTA, and 20 percent on behalf of San Francisco; and

WHEREAS MTC has paid \$23.7 million of the \$43.3 million as identified in the fund estimate (MTC Resolution No. 4450, revised); now, therefore, be it

RESOLVED, that MTC shall identify \$19.6 million in federal, state or other grant funding to retire the remaining principal payment and program, allocate or otherwise direct these funds to SamTrans for an eligible program or project subject to the timing and conditions set forth in Attachment A; and, be it further

RESOLVED, that this \$19.6 million payment represents the last and final payment by MTC related to the RPOA.

METROPOLITAN TRANSPORTATION COMMISSION

A handwritten signature in black ink, consisting of the letters 'AP' followed by a long horizontal stroke extending to the right.

Alfredo Pedroza, Chair

The above resolution was approved by the Metropolitan Transportation Commission at a regular meeting of the Commission held in San Francisco, California, and at other remote Locations, on January 26, 2022.

**Timing and Conditions of MTC Payment to SamTrans to Retire Caltrain Right of Way
Principal Payment**

MTC shall identify \$19.6 million in federal, state or other grant funding to retire the principal payment identified in the Real Property Ownership Agreement (RPOA) and program, allocate or otherwise direct these funds to SamTrans for an eligible program or project subject to the following conditions:

- Principal payment of \$19.6 million constitutes full payment of any and all remaining MTC obligation for monies advanced by SamTrans for the purchase of the Caltrain right of way, with no expectation by SamTrans of future contributions by the Commission.
- Inclusion of a policy statement affirming the JPB agreement around governance does not preclude recommendations forthcoming from the Network Management Business Case and/or the Regional Rail Study.
- Inclusion in the recommendation that any future contemplated evaluation or reconvening of the Caltrain governance process include consultation with MTC regarding the status of ongoing regional governance processes including any network management recommendations that may have been adopted before that time.

MTC shall take a programming or allocation action to operationalize this funding commitment within calendar year 2022, with an accelerated goal of bringing back a recommendation for action by June 2022.