



JPB Board of Directors  
Meeting of February 3, 2022

Correspondence as of January 28, 2022

# Subject

1 SMCTD Pathway Forward Proposal



**BOARD OF DIRECTORS 2022**

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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

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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

Cc: San Mateo County Board of Directors  
Peninsula Corridor Joint Powers Board, Board of Directors  
Jeff Tumlin, SFMTA, Director of Transportation  
Carolyn Gonot, Santa Clara Valley Transportation Authority, General Manager  
Jim Wagstaffe, Wagstaffe, von Loewenfeldt, Busch, & Radwick, LLP, Legal Counsel

## 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.