



BOARD OF DIRECTORS 2021

DEVORA "DEV" DAVIS, CHAIR  
STEVE HEMINGER, VICE CHAIR  
CINDY CHAVEZ  
JEFF GEE  
GLENN HENDRICKS  
DAVE PINE  
CHARLES STONE  
SHAMANN WALTON  
MONIQUE ZMUDA

MICHELLE BOUCHARD  
ACTING EXECUTIVE DIRECTOR

# AGENDA

## PENINSULA CORRIDOR JOINT POWERS BOARD

**Due to COVID-19, this meeting will be conducted via teleconference only (no physical location) pursuant to the [Governor's Executive Orders N-25-20 and N-29-20](#).**

Directors, staff and the public may participate remotely via Zoom at

<https://zoom.us/j/91412776292?pwd=cVdKa01PK2FKdm1CSUwwZXR3RmlkUT09>

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<http://www.caltrain.com/about/bod/video.html>

**Public Comments: Members of the public are encouraged to participate remotely.** Public comments may be submitted to [publiccomment@caltrain.com](mailto:publiccomment@caltrain.com) prior to the meeting's call to order so that they can be sent to the Board as soon as possible, while those received during or after an agenda item is heard will be included into the Board's weekly correspondence and posted online at <http://www.caltrain.com/about/bod/Board of Directors Meeting Calendar.html>.

Oral public comments will also be accepted during the meeting through \*Zoom or via the teleconference number listed above. Public comments on individual agenda items are limited to one per person PER AGENDA ITEM. Use the Raise Hand feature to request to speak. For public participants calling in, dial \*67 if you do not want your telephone number to appear on the live broadcast. Callers may dial \*9 to use the Raise the Hand feature for public comment and press \*6 to accept being unmuted when recognized to speak for two minutes or less. Each commenter will be automatically notified when they are unmuted to speak for two minutes or less. The Board Chair shall have the discretion to manage the Public Comment process in a manner that achieves the purpose of public communication and assures the orderly conduct of the meeting.

### **August 5, 2021 – Thursday**

#### **PART I OF MEETING (CALL TO ORDER): 9:00 am**

1. Call to Order / Pledge of Allegiance
2. Roll Call

#### **PART II OF MEETING (CLOSED SESSION): 9:05 am estimated**

#### **3. General Counsel Report – Closed Sessions:**

- a. Closed Session: Conference with Legal Counsel – Anticipated Litigation. Initiation of Litigation pursuant to Government Code Section 54956.9(d)(4): One potential case

Note: All items appearing on the agenda are subject to action by the Board. Staff recommendations are subject to change by the Board

- b. Closed Session: Conference with Legal Counsel – Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): JPB v. Parsons, et al, San Mateo County Superior Court, Case No. 17CIV00786
- c. Closed Session: Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): JPB v. Golden Bay Fence Plus Iron Works, Inc., City & County of San Francisco, Caltrans, San Francisco County Superior Court, Case No. Case No. CGC-19-573781

**PART III OF MEETING (REGULAR SESSION): 10:25 am estimated**

- 4. General Counsel Report – Report Out from Above Closed Session INFORMATIONAL
- 5. Public Comment for Items Not on the Agenda  
Comments by each individual speaker shall be limited to two (2) minutes. Items raised that require a response will be deferred for staff reply.
- 6. Consent Calendar  
Members of the Board may request that an item under the Consent Calendar be considered separately
  - a. Approve Regular Meeting Minutes of July 1, 2021 and Special Meeting Minutes of June 25, 2021 MOTION
  - b. Receive Key Caltrain Performance Statistics – June 2021 MOTION
  - c. Appointment of the Citizens Advisory Committee Representative MOTION
  - d. Authorize the Executive Director to Execute a Change Order to the Peninsula Corridor Electrification Project (PCEP) Contract with Balfour Beatty, Inc. for Removal and Disposal of Contaminated Soil for a Total Not-To-Exceed Amount of \$2,800,000 RESOLUTION
  - e. Award of Contract for On-Call Ambassador Services RESOLUTION
  - f. Amendment to Increase the Fiscal Year 2022 Capital Budget by \$2.0 Million for the Caltrain San Francisco Railyards Preliminary Business Case RESOLUTION
  - g. Report of the Chief Financial Officer (CFO) INFORMATIONAL
  - h. Staff Report on Statement of Revenues and Expenses for the Period Ended June 30, 2021 MOTION
  - i. Redwood City Planning and Real Estate Update INFORMATIONAL
  - j. State and Federal Legislative Update INFORMATIONAL
  - k. Upcoming Marketing Efforts Related to Increasing Ridership INFORMATIONAL
- 7. Reports
  - a. Report of the Citizens Advisory Committee INFORMATIONAL
  - b. Report of the Chair (*oral*) INFORMATIONAL
  - c. Report of the Local Policy Maker Group (LPMG) (*oral*) INFORMATIONAL

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|--|---------------|
| d. Report of the Transbay Joint Powers Authority ( <i>oral</i> )   | INFORMATIONAL |
| e. Report of the Executive Director  | INFORMATIONAL |
| i. Peninsula Corridor Electrification Project (PCEP) Monthly Progress Report – July  | INFORMATIONAL |
| 8. Approval of Measure RR Interim Financing Transactions and Related Transaction Documents   | RESOLUTION    |
| 9. Update on Service Restoration   | INFORMATIONAL |
| 10. Correspondence   |               |
| 11. Board Member Requests  |               |
| 12. General Counsel Report   |               |
| 13. Date/Time of Next Regular Meeting: Thursday, September 2, 2021 at 9:00 am via Zoom (additional location, if any, to be determined) |               |
| 14. Adjourn  |               |

## **INFORMATION FOR THE PUBLIC**

All items appearing on the agenda are subject to action by the Board. Staff recommendations are subject to change by the Board. If you have questions on the agenda, please contact the JPB Secretary at 650.508.6242. Agendas are available on the Caltrain website at [www.caltrain.com](http://www.caltrain.com). Communications to the Board of Directors can be e-mailed to [board@caltrain.com](mailto:board@caltrain.com).

*Free translation is available; Para traducción llama al 1.800.660.4287; 如需翻译 请电 1.800.660.4287*

### **Date and Time of Board and Committee Meetings**

JPB Board: First Thursday of the month, 9:00 am; JPB Finance Committee: Fourth Monday of the month, 2:30 pm; JPB WPLP Committee: Fourth Wednesday of the month, 3:00 pm. Date, time and location of meetings may be changed as necessary. Meeting schedules for the Board and committees are available on the website.

### **Location of Meeting**

**Due to COVID-19, the meeting will only be via teleconference as per the information provided at the top of the agenda. the Public may not attend this meeting in person.** \*Should Zoom not be operational, please check online at [http://www.caltrain.com/about/bod/Board\\_of\\_Directors\\_Meeting\\_Calendar.html](http://www.caltrain.com/about/bod/Board_of_Directors_Meeting_Calendar.html) for any updates or further instruction.

### **Public Comment\***

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### **Accessible Public Meetings/Translation**

Upon request, the JPB will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, auxiliary aid, service or alternative format requested at least at least 72 hours in advance of the meeting or hearing. Please direct requests for disability-related modification and/or interpreter services to the Title VI Administrator at San Mateo County Transit District, 1250 San Carlos Avenue, San Carlos, CA 94070-1306; or email [titlevi@samtrans.com](mailto:titlevi@samtrans.com); or request by phone at 650-622-7864 or TTY 650-508-6448.

### **Availability of Public Records**

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at 1250 San Carlos Avenue, San Carlos, CA 94070-1306, at the same time that the public records are distributed or made available to the legislative body.

**Peninsula Corridor Joint Powers Board  
Board of Directors Meeting  
1250 San Carlos Avenue, San Carlos CA**

**DRAFT MINUTES OF JUNE 25, 2021  
SPECIAL MEETING #3 - GOVERNANCE**

**MEMBERS PRESENT:** D. Davis (Chair), J. Gee, S. Heminger (Vice Chair), D. Pine, C. Stone, M. Zmuda

**MEMBERS ABSENT:** C. Chavez, G. Hendricks, S. Walton,

**STAFF PRESENT:** C. Mau, M. Bouchard, D. Hansel, S. Petty, R. Johansen, J. Harrison, R. Rios, S. Petty, H. Husain, H. Permut, M. Jones, K. Miller, D. Seamans, S. Wong

**1. CALL TO ORDER/ROLL CALL**

Chair Dev Davis called the meeting to order at 8:30 am.

District Secretary Dora Seamans called the roll and a quorum was confirmed.

**2. CALTRAIN GOVERNANCE SPECIAL MEETING #3 (INCLUDING APPROACH TO REGIONAL AND NON-SELF-DIRECTED RELATIONSHIPS; ACTIVE AND EMERGING DISCUSSIONS; STRATEGIC ISSUES; AND NEXT STEPS)**

Chair Davis introduced the purpose of the meeting regarding regional and non-self-directed options and stated uncertainty regarding having this discussion today in light of a recent resolution passed by the SamTrans Board regarding the initiation of litigation. She explained the resolution requested reimbursement from Joint Powers Agreement partner agencies for the initial right of way purchase in 1991. Chair Davis said she saw the resolution as being outside the current discussion and how there was concern about what the initiation of litigation meant for this governance discussion.

Chair Davis said they could decide as a group whether to go forward with today's meeting and would allow public comment on issues not on the agenda today.

Director Charles Stone stated that the letters and resolution sent by SamTrans have no bearing on the governance process and stated its obligations to see this through for tax payers.

The Board members had a discussion on the following topics:

- Whether or not to proceed with the meeting and why
- Not having a majority of members from each of the three agencies present
- The resolution asking member agencies about their efforts to seek reimbursement
- The purpose of the letter emphasizing the importance of repayment to SamTrans
- The letter/resolution not precluding a discussion today

Chair Davis suggested adjourning the meeting after public comment and to agendize the right of way discussion at the next special meeting.

#### Public Comment

Ray Mueller, Menlo Park, commented on Boards proceeding all the time under threat of litigation, tax payers expecting the Board to meet due to fiduciary duties, the Board meeting despite disagreement between parties. Tax payers in all three jurisdictions expecting Board members to continue to operate despite disagreements and disputes.

Vaughn Wolffe, Pleasanton, commented on previous Board disputes on right of way purchase and electrification, and moving electrification along before irreversible climate change.

Ethan Mizzi, South San Francisco, commented on disputes, creating a world class transit system, seamless transit, integrating BART, annexing San Mateo and Santa Clara, BART owning Caltrain, and working in the best interest of riders.

Roland Lebrun, San Jose, commented on the letter from the Bay Area Council, Board members coming to conclusions, sales tax measures passed over the last 20 years being untangled if BART merges with Caltrain, the 1996 agreement that SamTrans manages without agencies paying back for the right of way, and railroad crossings in San Jose.

Aleta Dupree, Oakland, commented on Caltrain being an independent agency and simplifying the system.

Cliff Barger, San Francisco, commented on the meeting being cancelled and on the system not working for people without direct rides.

Remi Tan, Pacifica, commented on the meeting not going forward, creating a regional system by consolidating train and bus systems.

Elizabeth Alexis, Palo Alto, commented on how the current resolution was arrived at, the importance of high quality transit, not holding two different positions on one Board, disagreeing with the Caltrain BART merger, and continuing with governance discussions.

Laura Tolkoff, San Francisco Planning and Urban Research Association (SPUR), commented on disputes, isolated planning, regional projects, thousands of people depending on this transportation and climate change.

Ian Griffith, Seamless Bay Area, expressed disappointment in a cancelled meeting and commented on not having representatives that span multiple jurisdictions not tied to specific counties.

Julia Mates, Belmont, expressed disappointment and commented on a duty to the public taxpayers to hold board meetings.

Mark Roest, San Mateo, commented on unified system maps connecting systems to major pathways building over BART and having escalator systems down to BART with protected mobility device paths.

Adina Levin, Friends of Caltrain, expressed disappointment on not convening and commented on the importance of regional options discussions and governing for the benefit of riders in the region.

Jason Baker, Silicon Valley Leadership Group, commented on the public saving Caltrain last year, the Board pulling together to pass a difficult Measure and being able to pull together on governance.

Alicia Gary, Redwood City, expressed disappointment on not having a meeting today, and commented on prioritizing the regional Caltrain system over local needs and having a transportation agency that covers everyone.

Jeff Carter, Millbrae, expressed disappointment in the cancellation and commented on having a regional view, repaying SamTrans, and solving this tactfully.

Adrian Brandt, Redwood City, commented on members missing the meeting due to inquiry into efforts to settle a 30-year-old debt, and loyalties split between ridership and various governmental agencies.

Motion/Second: Davis/Zmuda to adjourn the meeting and agendize the discussion of repayment of SamTrans for the next Special Meeting.

Ayes: Zmuda, Heminger, Davis

Noes: Gee, Pine, Stone,

Absent: Chavez, Hendricks, Walton

Board members noted that they would not like to discuss governance matters with the bare majority of the Board present.

*Director Heminger left at 9:23 am.*

*Director Zmuda left at 9:24 am.*

Chair Davis announced a lack of quorum.

### **3. ADJOURN**

The meeting adjourned at 9:25 am.

An audio/video recording of this meeting is available online at [www.Caltrain.com](http://www.Caltrain.com). Questions may be referred to the Board Secretary's office by phone at 650.508.6242 or by email to [Board@Caltrain.com](mailto:Board@Caltrain.com).

**Peninsula Corridor Joint Powers Board  
Board of Directors Meeting  
1250 San Carlos Avenue, San Carlos CA**

**DRAFT MINUTES OF JULY 1, 2021**

**MEMBERS PRESENT:** C. Chavez (left at 11:32\_am), D. Davis (Chair), J. Gee, G. Hendricks, S. Heminger (Vice Chair), D. Pine, C. Stone S. Walton (left at 11:32 am), M. Zmuda

**MEMBERS ABSENT:** None-

**STAFF PRESENT:** M. Bouchard, D. Hansel, J. Harrison, , S. Petty, K. Yin, J. Funghi, B. Shaw, R. Rios, A. Simmons, B. Tietjen, R. Barnard, L. Leung, T. Burgwyn, T. Bartholomew, D. Seamans, S. Wong

**1. CALL TO ORDER / PLEDGE OF ALLEGIANCE**

Chair Dev Davis called the meeting to order at 9:00 am and led the pledge of allegiance.

**2. ROLL CALL**

District Secretary Dora Seamans called the roll and a quorum was confirmed.

Public Comment

Roland Lebrun, San Jose, commented on Samtrans management, new station designs, right of way, and project losses.

**3. GENERAL COUNSEL REPORT – CLOSED SESSION:**

- a. **Closed Session: Conference with Legal Counsel – Anticipated Litigation. Initiation of Litigation pursuant to Government Code Section 54956.9(d)(4): One potential case**
- b. **Closed Session: Conference with Legal Counsel – Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): JPB v. Parsons, et al, San Mateo County Superior Court, Case No. 17CIV00786**
- c. **Closed Session: Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): JPB v. Golden Bay Fence Plus Iron Works, Inc., City & County of San Francisco, Caltrans, San Francisco County Superior Court, Case No. Case No. CGC-19-573781**

*The Board convened in closed session at 9:05 am  
The Board reconvened in regular session at 11:33 am*



Director Cindy Chavez left at 11:32am  
Director Shamann Walton left at 11:32am.

District Secretary Dora Seamans called the roll and a quorum was confirmed.

**4. GENERAL COUNSEL REPORT – REPORT OUT FROM ABOVE CLOSED SESSION**

General Counsel James Harrison stated that there was no action to report.

**5. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

Roland Lebrun, San Jose, commented on the Peninsula Corridor Electrification Project, an incident in San Jose, and the San Jose station design.

Aleta Dupree, Oakland, commented on hopes to be on the new trains soon, operating fully on Clipper cards, and running trains every half hour.

Adina Levin, Friends of Caltrain, commented on the re-scheduling the Special Meeting on regional processes, and Caltrain guidance on upcoming goals.

**6. CONSENT CALENDAR**

- a. **Approve Regular Meeting Minutes of June 3, 2021**
- b. **Receive Key Caltrain Performance Statistics – May 2021**
- c. **Award of Contract to Provide Third Party Administrator Services for Public Liability Claims**
- d. **Approve and Ratify Fiscal Year 2022 Property Casualty Insurance Program**
- e. **Authorize Execution of Memorandum of Understanding with Prologis 4th & King LLC for Joint Delivery of the Caltrain San Francisco Railyards Preliminary Business Case**
- f. **Report of the Chief Financial Officer (CFO)**
- g. **Accept Statement of Revenues and Expenses for the Period Ended May 31, 2021**
- h. **Accept On-Call Transportation Planning and Consultant Support Services Update**
- i. **State and Federal Legislative Update**
- j. **Update on Service Restoration**

Director Charles Stone requested items 6e and 6j be pulled for further discussion.

Public Comment

Roland Lebrun, San Jose, commented on costs for item 6h, contracts with Kimley-Horn, Google parcels at Diridon in affordable housing, historical depot, and contracts for Transbay.

Jeff Carter, Millbrae, commented on performance statistics, recent chart months, and providing the source for these charts on the website.

Motion/Second: Hendricks/Stone to approve the consent calendar with the exception of items 6e and 6j

Ayes: Gee, Hendricks, Pine, Stone, Heminger, Davis

Noes: None

Absent: Chavez, Walton, Zmuda

**6e. Authorize Execution of Memorandum of Understanding with Prologis 4th & King LLC for Joint Delivery of the Caltrain San Francisco Railyards Preliminary Business Case**

Anthony Simmons, System Wide Planning and Policy Director, provided a presentation that included the following:

- Background on Prologis--owned railyard at 4<sup>th</sup> and King
- Caltrain's needs at the site
- MOU group ensuring coordination with several projects
- Prologis' work to date
- Caltrain Interests
- Next phase of work

Public Comment

Roland Lebrun, San Jose, commented on the SF Planning Department's planning, platform length, and staff locations.

Jeff Carter, Millbrae, commented on customer service, convenience, and longer platforms.

Aleta Dupree, Oakland, commented on railroad development.

The Board members had a discussion and staff provided further clarification in response to the Board comments and questions on the following topic:

- How air rides work at this location (who owns them)
- Director Stone asked for regular (quarterly) updates on this item

Motion/Second: Stone/Heminger moved to approve item 6e.

Ayes: Gee, Hendricks, Pine, Stone, Zmuda, Heminger, Davis

Noes: None

Absent: Chavez, Walton

**6j. Update on Service Restoration**

Ted Burgwyn, Director of Rail Networks and Operations Planning, provided a brief presentation. He spoke about the service planning strategy, Fall 2021 service expansion, ongoing analysis, and next steps (timetable, partner agencies, and marketing).

Public Comment

Roland Lebrun, San Jose, commented on restoring ridership by proving safety and increasing baby bullets and new Caltrain schedule.

Adina Levin, Friends of Caltrain, commented on, weekend baby bullet service, restoring to full number of trains prior to COVID, and following ridership data.

Jeff Carter, Millbrae, commented on mix of express and baby bullet service throughout the day, and weekend baby bullets.

David, Burlingame, commented on commuting to school with hourly schedules, lack of frequency causing issues commuting to school, missing stops, and reaching every stop.

Hayden Miller commented on service restoration, more baby bullet service during midday and weekends, and offering free transfers to Samtrans.

Adrian Brandt, San Mateo County, commented on moving from commuter schedule to an off peak schedule and moving to distance based fare structure.

Abigail Renteria, San Jose, commented on transfers with shuttles and shuttles with Stanford.

Kueller commented on restoring service to pre-pandemic levels minimally and electric trains.

The Board members had a discussion and staff provided further clarification in response to the Board comments and questions on the following topic:

- Financial data on service restoration (run rate before and after, percentage of service increase compared to cost increase)
- A more thorough presentation next month
- Tighter connections at Millbrae BART connection since we worked 20 years for the connection

Chair Davis moved Item #8 up to precede Item #7.

**8. CONDITIONALLY AUTHORIZING INCREASES OF \$20,000,000 TO SOUTH SAN FRANCISCO STATION IMPROVEMENT CONTRACT, AND \$25,000,000 TO BOTH THE PROJECT BUDGET AND THE FISCAL YEAR 2022 CAPITAL BUDGET**

*Director Jeff Gee recused himself from this item.*

Michelle Bouchard, Acting Executive Director, stated this item would provide the authority to use resources for project completion.

Rob Barnard, Deputy Chief of Rail Development, provided a presentation. He spoke about construction cost, schedule, and progress. Mr. Barnard shared the staff recommendation to seek supplemental funding for timely completion of work and timely resolution of commercial issues.

Public Comment

Roland Lebrun, San Jose, commented on staff experience, building for high speed rail, federal regulations, and eventually replacing center platform with level boarding passing tracks,

The Board members had a robust discussion and staff provided further clarification in response to the Board comments and questions regarding:

- System issues with delivering large capital projects
- Dealing with capital projects in closed session or ad hoc committees that are not in the public eye (constituent transparency)
- Having potential challenges with capital projects heard at a committee level with the public and stakeholders present
- Is there any JPB money in this project
- Whether the funding was entirely from South San Francisco

Motion/Second: Stone/Zmuda

Ayes: Hendricks, Pine, Stone, Zmuda, Heminger, Davis

Noes: None

Recused: Gee

Absent: Chavez, Walton

**7. REPORTS**

**a. Report of the Citizens Advisory Committee (CAC)**

Brian Shaw, Chair, reported that the Committee passed a resolution to promote distance based fares and for JPB to take this issue up at its earliest convenience, they also requested a return of the safety and security report. He stated they would have an update on COVID 19 cleaning efforts, Blue Ribbon Task Force work, and a return to service update.

**b. Report of the Chair**

**i. Report on Governance**

Chair Davis stated a special meeting was scheduled last Friday and adjourned with lack of quorum. She briefly discussed the Samtrans resolution passed June 22 regarding efforts at reimbursement of Samtrans funds and requested this item come back after internal discussions at a future special meeting. Chair Davis announced the agenda for the next Special Meeting #4 for financial and legal analyses and would like to reschedule the governance meeting.

**ii. Pride Month Resolution**

Chair Davis announced June as Pride month and put forward resolution reaffirming commitment to diversity access and inclusion

Public Comment

Aleta Dupree, Oakland, commented on ensuring equity and welcome year round and Caltrain is a peoples' train.

Motion/Second: Hendricks/Heminger

Ayes: Gee, Hendricks, Pine, Stone, Zmuda, Heminger, Davis

Noes: None

Absent: Chavez, Walton

*Director Stone left the meeting at 1:00pm*

**c. Report of the Local Policy Maker**

Director Jeff Gee deferred to next month.

**d. Report of the Transbay Joint Powers Authority**

Director Jeff Gee deferred to next month

**e. Report of the Executive Director**

**i. Peninsula Corridor Electrification Project (PCEP)  
Monthly Progress Report – May**

Michelle Bouchard, Acting Executive Director, reported on the following:

- 144 foundations completed (2<sup>nd</sup> highest productivity month)
- In August, bringing a business strategy to the board regarding COVID recovery work and strategies to move forward (financial and organizational resourcing)

Public Comment

Aleta Dupree, Oakland, commented on maintain momentum of foundations completed.

Jeff Carter, Millbrae, commented on pride resolution vote, foundations report, CAC resolution, and urged staff to move on this resolution.

Roland Lebrun, San Jose, commented on Blue Ribbon Task Force and governance, PCEP meetings in public, electric train storage, and testing diesel motors to test in Colorado.

Paul Wendt, Belmont, commented on distance based fares.

**9. CORRESPONDENCE**

Correspondence was available online.

**10. BOARD MEMBER REQUESTS**

Director Stone requested regular updates on the MOU with Prologis (quarterly).

Director Hendricks requested financial data on service restoration (run rate before and after, percentage of service increase compared to cost increase)

Director Heminger requested tighter service connection with Millbrae BART station since it took about twenty years to get it.

Director Heminger requested capital projects be heard at the committee level rather than ad hoc committees for public and stakeholder input.

**11. GENERAL COUNSEL REPORT**

There was none.

**12. DATE/TIME OF NEXT REGULAR MEETING:**

Thursday, August 5, 2021 at 9:00 am via Zoom

**13. ADJOURN**

The meeting adjourned at 1:06 pm

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DRAFT

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board  
THROUGH: Michelle Bouchard  
Acting Executive Director  
FROM: Joe Navarro  
Deputy Chief, Rail Operations

SUBJECT: **KEY CALTRAIN PERFORMANCE STATISTICS – JUNE 2021**

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

**ACTION**

Staff Coordinating Council recommends that the Board receive the Performance Statistics Report for June 2021.

**SIGNIFICANCE**

Staff will provide monthly updates to Key Caltrain Performance Statistics, Caltrain Shuttle Ridership, Communications and Marketing Promotions, and Digital Communications. It should be noted that this report reflects impacts from the COVID-19 pandemic.

**BUDGET IMPACT**

There is no budget impact.

**MONTHLY UPDATE**

Since April 2020 ridership estimates have been developed using daily conductor counts at 14 key stations and Clipper tag-ons at all stations due to significant impacts to ticket sales and usage patterns from the COVID-19 pandemic

In June 2021, Caltrain's ridership was estimated as follows:

- Average Weekday Ridership (AWR) increased by 146.8 percent to 7,118 from June 2020 (revised: 2,884) but decreased by 90.2 percent from June 2019 (72,370).
- Average Saturday Ridership increased by 906.5 percent to 6,331 from June 2020 (629). There is no comparable data from June 2019 due to estimation methodology used before March 2020.

- Average Sunday Ridership increased by 266 percent to 4,830 from June 2020 (1,320). There is no comparable data from June 2019 due to estimation methodology used before March 2020.
- Total ridership increased by 168.7 percent to 201,244 from June 2020 (revised: 74,908) but decreased by 87.3 percent from June 2019 (1,590,653).

The large increase in ridership from a year ago is due to significant improvements of the COVID-19 pandemic, easing of COVID-19 restrictions and resumption of special events such as professional sports games played with spectators at the venues. Even though the ridership has been gradually recovering in recent months, June 2021 ridership was approximately 10 percent of the pre-pandemic ridership.

Divergence in ridership recovery between weekdays and weekends insists that the recovery could be potentially driven by return of non-commute demands. As discussed in the Performance Report from previous months, slower recovery of ridership (particularly on weekdays or when compared to other commuter railroads in North America) is attributed to dominance of tech industry and white-collar jobs within the Caltrain service area and telecommuting flexibility that has continued throughout the pandemic.

With the opening of the economy, many companies are modifying and adjusting telecommuting policies and return to office policies while some employees are changing to new jobs with greater telecommuting and permanent relocation flexibility, which will impact future ridership. Staff will continue to monitor other commuter railways' ridership recovery trends and research on innovative measures to accelerate ridership recovery.

This month ticket sales changed from June 2020 for:

- One Way tickets: +208.9 percent
- ED One Way tickets: +148.7 percent
- Day Passes: +459.8 percent
- ED Day Passes: +377.5 percent
- Monthly Passes: +138.6 percent
- ED Monthly Passes: +116.1 percent

Other ticket sales and farebox revenue statistics trended as follows:

- Caltrain Mobile Ticketing accounted for 13.2 percent (26,635 rides) of the monthly ridership and 8.2 percent (\$177,231) of the monthly ticket sales revenue
- Number of Eligible Go Pass Employees decreased to 45,416 from 87,395 from June 2020
- Number of the participating Go Pass Companies decreased to 32 in June 2021 from 121 in June 2020
- Total Preliminary Farebox Revenue increased by 941 percent to \$2,088,203 from June 2020 (\$200,593) but decreased 73.4 percent from June 2019 (\$7,856,642)

On-time performance (OTP) for June 2021 was 91.5 percent compared to 96.3 percent for June 2020.



Regarding customer service statistics, the number of complaints per 100,000 passengers in June 2021 is not provided due to the significant decrease in ridership due to COVID-19 pandemic.

Shuttle AWR ridership for June 2021 decreased 77 percent to 190 from June 2020 (827). As of June 2021, ten shuttle routes are operating, two routes are suspended by the employer and six services have been removed from the shuttle program since January 2021 due to operational, partner, or granting changes/loses.

### **FISCAL YEAR (FY) 2021**

Looking back at FY2021 AWR decreased 91.9 percent to 4,099 from FY2020 AWR 50,379. Total ridership for the fiscal year also decreased 90.7 percent to 1,294,937 from 13,853,873 in FY2020. Preliminary Farebox Revenue for the FY2021 decreased by 58.1 percent to \$31,889,224 from \$76,094,889 in FY2020. This includes the 6.2 million revenue adjustment for the 2020 Go Pass contract extension. Both ridership and farebox revenue were significantly impacted by the ongoing COVID-19 pandemic. Staff continues to work on efforts to restore ridership and farebox recovery.

FY2021 OTP was 93.5 percent (1.5 percent shy of the 95 percent OTP performance goal) which is slightly down 0.7 percent from 94.2 percent in FY2020. Rail Operations management continues to work with staff from various departments to mitigate varying delays including incidents, project construction, single tracking delays and mechanical equipment delays.

Shuttle AWR was 175 for FY2021, which is a decrease of 89.9 percent below the 1,725 AWR in FY2020. Although shuttle ridership has been slowly decreasing in the past few years, shuttle ridership worsened due to impacts from the ongoing COVID-19 pandemic.

**Table A**

**June 2021**

	<b>FY2019</b>	<b>FY2020*</b>	<b>FY2021**</b>
Total Ridership*	1,590,653	74,908	201,244
Average Weekday Ridership	72,370	2,884	7,118
Total Farebox Revenue**	\$ 7,856,642	\$ 200,593	\$ 2,088,203
On-time Performance	90.7%	96.3%	91.5%
Average Weekday Caltrain Shuttle Ridership	8,828	827	190

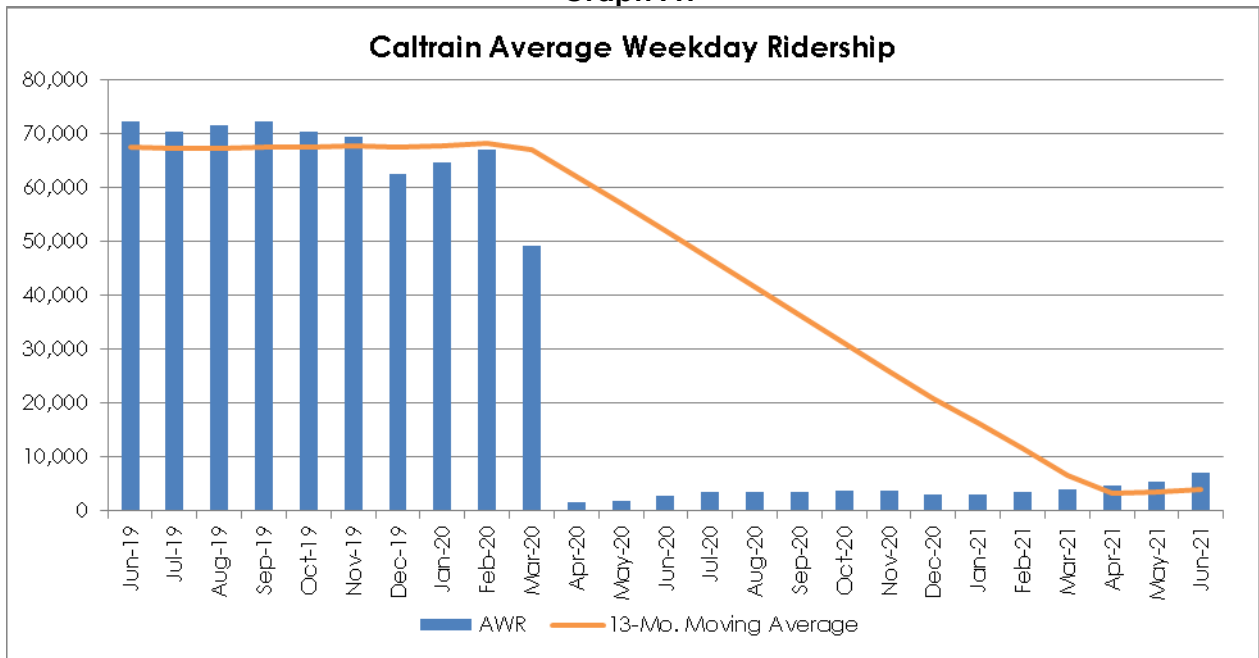
**Fiscal Year to Date**

	<b>FY2019</b>	<b>FY2020*</b>	<b>FY2021**</b>
Total Ridership*	18,365,489	13,853,873	1,294,937
Average Weekday Ridership	67,164	50,379	4,099
Total Farebox Revenue**	\$ 102,668,114	\$ 76,094,433	\$ 31,889,224
On-time Performance	93.1%	94.2%	93.5%
Average Weekday Caltrain Shuttle Ridership	8,393	6,391	1,013

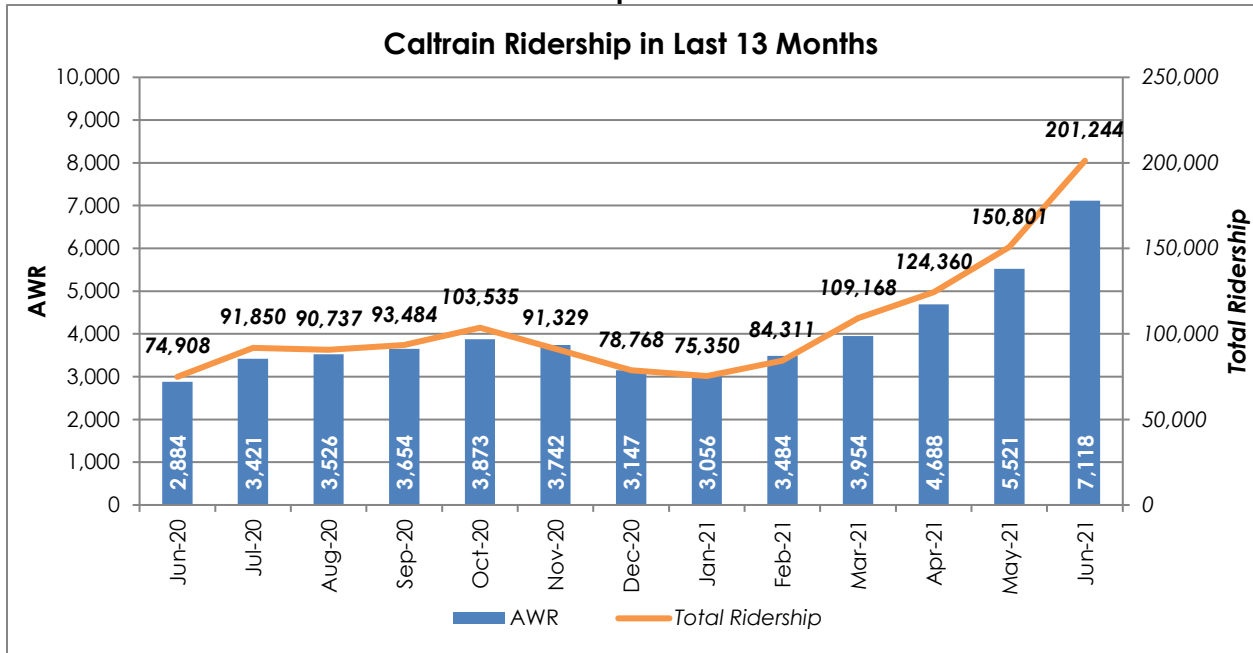
\*FY2020 Adjusted Total Ridership

\*\*Preliminary FY2021 Farebox Revenue

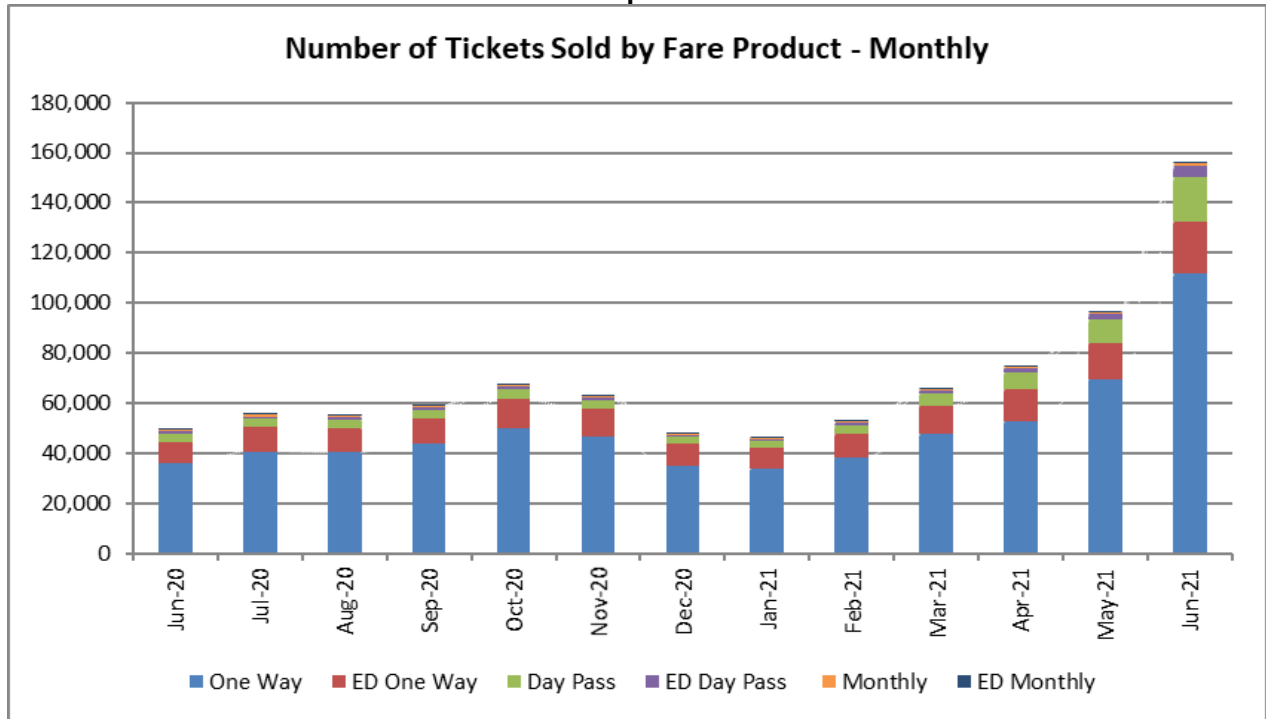
**Graph A1**



**Graph A2**

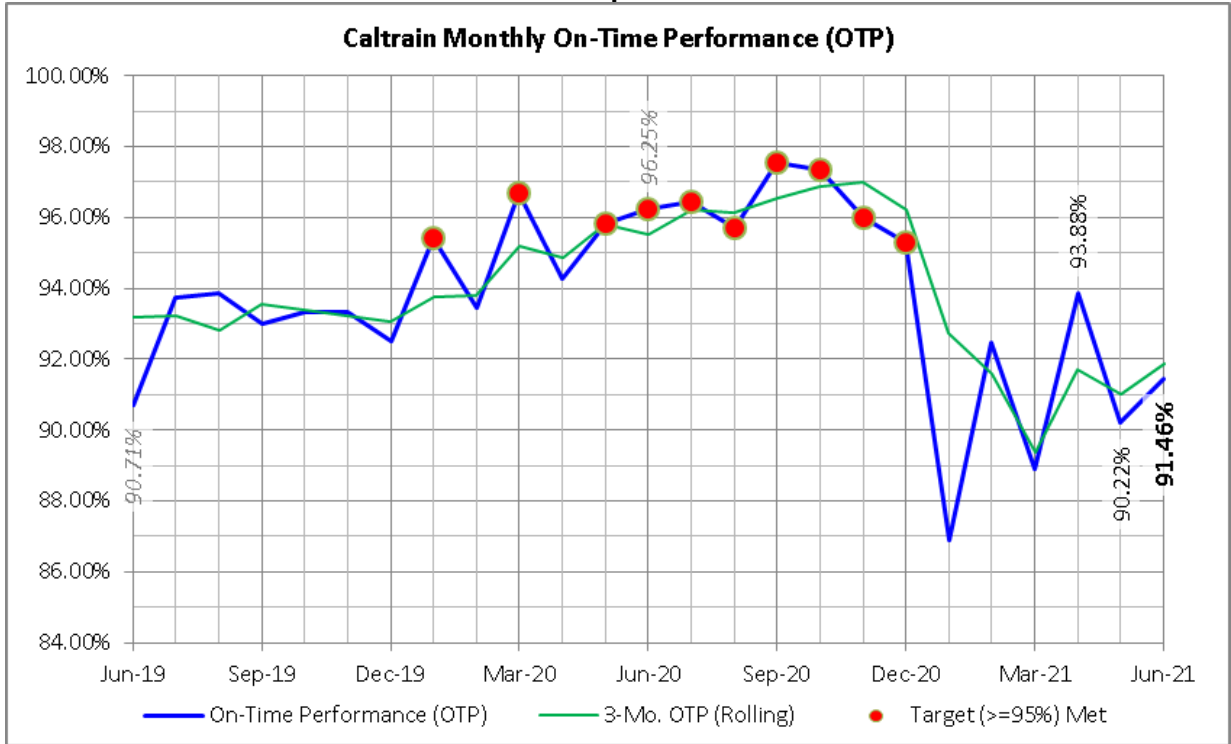


**Graph B**

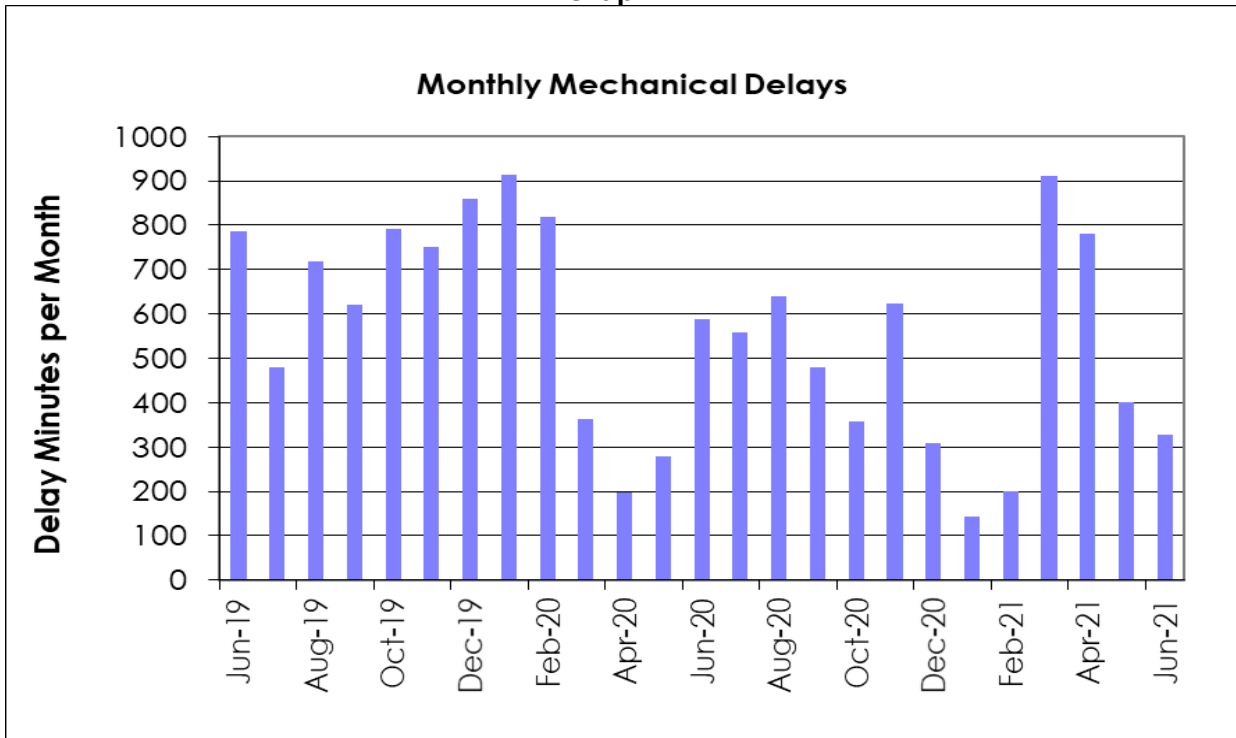


*\*Go Passes tracked by Monthly Number of Eligible Employees (not by Sales)*

Graph C



Graph D



## **Caltrain Communication and Marketing Campaigns for June 2021:**

- Take Caltrain to the Game - SF Giants Baseball (Extra Post-Game Service, Millbrae Express)
- Clipper Mobile (ongoing)
- 20% Off Caltrain Monthly Pass (ongoing)
- Clipper Start (ongoing)
- Customer Experience Outreach: San Mateo County Fair
- Customer Experience Campaign: Movie Night with Friends, Ride Caltrain
- Customer Experience Campaign: Re-Explore the Peninsula
- Press Release: "Caltrain and SamTrans Offer Fourth of July Service & Observed Holiday Service"
- Press Release: "Caltrain Brings Back Giants Millbrae Express Post-Game Service"
- Press Release: "Caltrain Board of Directors Approves Operating and Capital Budgets, Discusses Plans to Restore Service"
- Press Release: "Caltrain Provides Service to First Ever Pride Movie Night at Oracle Park"
- Press Release: "Caltrain Extends Fare Discounts for Clipper® Users"
- Press Release: "Caltrain Electrification Delayed to 2024"

## **Digital Communications Report:**

In June Caltrain achieved over 1 million impressions on Twitter, although the account is decreasing engagement. Caltrain continued to welcome back customers (welcome back series), discussed the delay of electrification, and promoted service to SF Giants game and adding additional Caltrain Giants service. Caltrain Twitter account is losing followers, but Caltrain Alerts has gained followers as well as the TikTok and Instagram accounts. Staff continues to monitor trends.

## **June 2021 Highlights:**

- Electrification Delay
- California Reopening June 15th

## **Website Replacement Project:**

The web team and contractors continue work to develop the new Caltrain website, which will be a mobile-first design and feature robust real-time information and route finding. Currently staff is auditing content on the current website before transferring to the new site.

Prepared by: Patrice Givens - Administrative Analyst II 650.508.6347  
Robert Casumbal - Director, Marketing & Research 650.508.7924  
Jeremy Lipps - Manager, Digital Communication 650.622.7845

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Dora Seamans  
JPB Secretary

SUBJECT: **APPOINTMENT/REAPPOINTMENT OF THE CITIZENS ADVISORY COMMITTEE REPRESENTATIVES AND ALTERNATES**

**ACTION**

The Board of Directors representing the City and County of San Francisco and the Santa Clara County Valley Transportation Authority (VTA), recommend the following appointments and reappointments to the Joint Powers Board Citizens Advisory Committee:

- Jean-Paul Torres, as a regular member, representing San Francisco County, to a term ending June 30, 2024
- Rob Jaques, as an alternate member, representing San Francisco County, to an unexpired term ending June 30, 2023
- Larry Klein, as a regular member, representing Santa Clara County, to a term ending June 30, 2024
- San Mateo County representative(s) to be determined at a future Board meeting.

**SIGNIFICANCE**

The CAC Bylaws state:

1. Article 1 – Membership, Section 1: As prescribed by the Peninsula Corridor Joint Powers Board (“JPB” or “Board”), the Citizens Advisory Committee (“CAC” or “Committee”) shall consist of nine (9) members, three appointed from each constituent county (San Francisco County, San Mateo County, Santa Clara County). Each county will select its county committee members and the JPB will affirm these appointments. CAC members should reflect the demographics of Caltrain riders. The Citizens Advisory Committee shall act in an advisory capacity to the JPB. Its activities shall include seeking the views of various groups of users and potential users of Caltrain and ancillary transit facilities; develop proposals and recommendations for meeting the needs of the various groups; reviewing and commenting on staff proposals and actions as requested by the JPB; and assisting the JPB in any matter which the Board may deem appropriate.
2. Article 1 – Membership, Section 2: CAC members shall serve three (3) year terms.

**BUDGET IMPACT**

There is no impact on the budget.

**BACKGROUND**

The CAC was established as a JPB advisory group by Resolution No. 1992-28, dated June 3, 1992. The CAC serves as a forum for conveying community information, ideas and comments to the Board. The Board adopted a set of Bylaws under Resolution No. 2002-13, dated May 2, 2002, to formalize the rules of procedure governing the manner in which the CAC functions. The Board amended the Bylaws under Resolution No. 2019-45, dated December 5, 2019, to add one alternate member from each of the Counties to help ensure presence of a quorum in case of periodic CAC member absences and vacancies.

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: John Funghi  
Chief Officer, CalMod Program

SUBJECT: **AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE A CHANGE ORDER TO THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT (PCEP) CONTRACT WITH BALFOUR BEATTY, INC. FOR REMOVAL AND DISPOSAL OF CONTAMINATED SOIL FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$2,800,000**



Finance Committee  
Recommendation



Work Program-  
Legislative-Planning



Staff Coordinating  
Council Reviewed



Staff Coordinating Council  
Recommendation

**ACTION**

Staff Coordinating Council recommends that the Board authorize a change order to the PCEP design-build contract with Balfour Beatty, Inc. (BBII) for removal and disposal of contaminated soil for an amount not to exceed \$2,800,000 and in a form approved by legal counsel.

**SIGNIFICANCE**

The PCEP design-build contract with BBII includes an allowance for excavation, handling and disposal of 8,000 tons of Class II contaminated soil at BBII's bid unit rate of \$475 per ton.

By mid-2019, the entire allowance amount had been expended, and the value of the allowance had to be increased to pay for removal and disposal of additional Class II contaminated soil. The Change Management Board (CMB) previously approved payment for removal and disposal of an additional 31,940 tons of Class II contaminated soil through a change order to the Contract. The increase in the Class II contaminated soil quantity above the original quantity of 8,000 tons occurred because a significant amount of the excavated contaminated soil could not be re-used as structural backfill and had to be disposed off property.

The amount approved by the CMB for removal and disposal of the additional 31,940 tons of Class II contaminated material was based on two different unit rates. The CMB approved the bid unit rate of \$475 per ton for the first 2,000 tons because the Contract allows payment using the bid unit rate for an additional 25% of the original allowance quantity.



For the remaining 29,940 tons, the CMB approved a unit rate of \$53 per ton based on Staff's estimate for removal and disposal of Class II contaminated material.

BBII disputed the unit rate of \$53 per ton and maintained that the bid unit rate of \$475 per ton should be used to pay for removal and disposal of all Class II contaminated soil. Staff entered into negotiations with BBII to resolve this dispute, and BBII agreed to reduce its rate from \$475 per ton to an average rate of \$145 per ton.

Because the revised average unit rate of \$145 per ton is higher than the previously approved rate of \$53 per ton, a change order is required to pay for the unit rate difference of \$92 per ton. The resulting value of the change order is a not-to-exceed total of \$2.8 million. The table below compares BBII's cost proposal, the JPB's estimate and the final settlement amounts for removal and disposal of the remaining 29,940 tons of contaminated soil.

Contaminated Soil Quantity	BBII Cost Proposal (A)		JPB Staff Estimate (B)		Final Settlement (C)		Cost Difference (D) = (C) - (B)	
	Unit Rate	Total	Unit Rate	Total	Unit Rate	Total	Unit Rate	Total
29,940 tons	\$475	\$14.2M	\$53	\$1.6M	\$145	\$4.3M	\$92	\$2.8M

This change has been approved by the CMB.

**BUDGET IMPACT**

The Contract change orders will be funded from the contingency included in the Board-approved PCEP Budget without requiring a budget amendment.

**BACKGROUND**

The PCEP is a key component of the Caltrain Modernization (CalMod) Program. The PCEP will electrify the Caltrain Corridor from San Francisco's 4th and King Caltrain Station to approximately the Tamien Caltrain Station, convert diesel-hauled to electric trainsets ("Electric Multiple Unit" or "EMU"), and increase service to up to six Caltrain trains per peak hour per direction.

The PCEP design-build and EMU contracts, which are the cornerstone contracts of the Caltrain Electrification Program, represent approximately 60 percent of the CalMod Program budget.

The Board of Directors has authorized the Executive Director to enter into change orders of up to 5%. As the proposed Contract change order would be specifically approved by the Board, the proposed action will not decrease the Executive Director's remaining change order authority.

Prepared By: Liria C. Larano  
Deputy Chief Officer, CalMod Program

650.288.9151

**RESOLUTION NO. 2021-**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STATE OF CALIFORNIA**

**\* \* \***

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CHANGE ORDER TO THE  
PENINSULA CORRIDOR ELECTRIFICATION PROJECT DESIGN-BUILD CONTRACT WITH  
BALFOUR BEATTY, INC. FOR REMOVAL AND DISPOSAL OF CONTAMINATED SOIL FOR A  
TOTAL NOT-TO-EXCEED AMOUNT OF \$2,800,000**

**WHEREAS**, the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB) awarded the CalMod Electrification Design-Build Services Contract to Balfour Beatty, Inc. (BBII) on July 7, 2016; and

**WHEREAS**, the PCEP Design-Build Contract includes an allowance for excavation, handling and disposal of Class II contaminated soil in the amount of 8,000 tons at BBII's bid unit rate of \$475 per ton. The entire allowance amount included in the original PCEP Design-Build Contract now has been expended. In order to facilitate the removal of an additional 31,940 tons of Class II contaminated soil, the Change Management Board (CMB) previously approved payment for removal and disposal through a change order to the Contract; and

**WHEREAS**, the previous amount approved by the CMB for removal and disposal of contaminated material was based on two different unit rates; the CMB approved the bid unit rate of \$475 per ton for the first 2,000 tons of the additional 31,940 tons of Class II contaminated soil, consistent with the provision in the Contract allowing use of the bid unit rate for an additional 25% of the original allowance quantity. For the remaining 29,940 tons, the CMB approved a unit rate of \$53 per ton based on Staff's estimate for removal and disposal of Class II contaminated material.

**WHEREAS**, BBII disputed the unit rate of \$53 per ton and maintained that the bid unit rate of \$475 per ton should be used to pay for removal and disposal of all Class II contaminated soil. Staff entered into negotiations with BBII to resolve this dispute, and BBII agreed to reduce its rate from \$475 per ton to an average rate of \$145 per ton for removal of the additional Class II contaminated soil. As the revised average unit rate of \$145 per ton is higher than the previously approved rate of \$53 per ton, a change order is required to pay for the unit rate difference of \$92 per ton in the total amount of \$2.8 million; and

**WHEREAS**, the CMB has had an opportunity to review and approve the increased amount for the additional removal of the Class II contaminated soil; and

**WHEREAS**, the Staff Coordinating Council recommends that the Board authorize the increased amount be funded from the contingency included in the Board-approved PCEP Budget and that the change order be executed with BBII.

**NOW, THEREFORE, BE IT RESOLVED** that the Board authorizes the Acting Executive Director, or designee, to execute a change order on behalf of the JPB with BBII for removal and disposal of contaminated soil for a total not-to-exceed amount of \$2,800,000, and in a form approved by legal counsel.

Regularly passed and adopted this 5<sup>th</sup> day of August 2021 by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

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Chair, Peninsula Corridor Joint Powers Board

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JPB Secretary

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Derek Hansel Rona Rios  
Chief Financial Officer Acting Chief Communications Officer

SUBJECT: **AWARD OF CONTRACT TO PROVIDE ON-CALL AMBASSADOR SERVICES**



Finance Committee  
Recommendation



Work Program-Legislative-Planning  
Committee Recommendation



Staff Coordinating  
Council Reviewed



Staff Coordinating Council  
Recommendation

**ACTION**

Staff recommends that the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB):

1. Award a contract to JBR Partners, Inc. (JBR Partners) of San Francisco, California to provide On-Call Ambassador Services (Services) for a not-to-exceed amount of \$557,513 for a five-year term.
2. Authorize the Acting Executive Director or designee to execute a contract with JBR Partners, Inc. in full conformity with the terms and conditions set forth in the solicitation documents and in a form approved by legal counsel.

**SIGNIFICANCE**

Historically, in-house passenger and potential passenger outreach efforts for Caltrain have been constrained by staff availability and multilingual capabilities. Having outreach ambassadors working under this contract on behalf of the JPB boosts its ability to engage with the riding public of Caltrain. This allows the JPB to reach more people in more languages, expand the geographic reach of JPB outreach, and strengthen JPB's relationships with specific communities and constituencies.

Approval of the above actions will ensure an experienced firm provides the Services on an as-needed basis.

**BUDGET IMPACT**

Funds for this contract are included in the current adopted operating budget and will be included in future years' operating budgets.

## **BACKGROUND**

The Customer Experience Department, in consultation with the Communications Division and Rail Operations, has identified a need for specialized outreach professionals in support of the JPB's broader outreach efforts. Ambassadors will provide multilingual capabilities, expanding JPB's geographic reach and ability to connect with diverse constituencies and communities. Examples of future assignments for ambassadors involve public outreach pertaining to construction work, major public events including sports games, fare changes, service changes, community fairs and planned and sudden service disruptions requiring ambassadors to directly engage with the riding public on the JPB's behalf.

A joint Request for Proposals (RFP 21-S-J-P-018) to provide the Services was issued on March 8, 2021 by the JPB and the San Mateo County Transit District (District). The solicitation was advertised on the JPB's and District's websites. Solicitation notices were sent to interested firms, small business enterprises (SBEs) and disadvantaged business enterprises. As part of the JPB and District outreach effort, staff published a notice of upcoming solicitation on our e-Procurement websites prior to the issuance of the solicitation.

A Selection Committee (Committee), composed of qualified staff representing the JPB, reviewed and scored the proposals in accordance with the following weighted criteria:

- Approach to Providing Services 30 points
- Company Qualifications, Experience & References 25 points
- Qualifications & Experience of Key Personnel 25 points
- Reasonableness of Cost 20 points
- SBE Preference 5 points

A five-point preference was available to the proposer with the highest SBE utilization. All three proposers are local certified SBE firms and pledged 100% SBE participation; therefore, each proposer received five preference points.

Following the initial proposal review, the Committee found all three firms were responsive and within the competitive range, and invited the three firms to proceed in the evaluation and selection process, including interviews. Upon completion of interviews, review and rescoring of the three firms' proposals, the Committee determined that JBR Partners is best-positioned to meet the JPB's Services needs as detailed in the RFP scope of work, and identified JBR Partners as the highest-ranked proposer.

The Project Manager completed reference checks and found JBR Partners to be in good standing with its clients. Staff conducted a price analysis and determined JBR Partners' negotiated cost proposal to be fair and reasonable. Therefore, staff recommends award of this contract to JBR Partners.

Prepared By:	Linda Tamtum, Procurement Administrator II	650.508.7933
Project Manager:	Simon Oh, Customer Experience Specialist	650.508.6247

**RESOLUTION NO. 2021 –**

**BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD  
STATE OF CALIFORNIA**

**\* \* \***

**AWARD A CONTRACT TO JBR PARTNERS, INC.  
TO PROVIDE ON-CALL AMBASSADOR SERVICES  
FOR A NOT-TO-EXCEED AMOUNT OF \$557,513 FOR A FIVE-YEAR TERM**

**WHEREAS**, the Peninsula Corridor Joint Powers Board (JPB) and the San Mateo County Transit District (District) jointly issued Request for Proposals (RFP) 21-S-J-P-018 to provide On-Call Ambassador Services (Services); and

**WHEREAS**, in response to the RFP, the JPB received three proposals; and

**WHEREAS**, a Selection Committee (Committee) comprised of qualified JPB and District staff reviewed and scored the proposals according to the evaluation criteria set forth in the RFP, then conducted interviews with all three firms, and determined JBR Partners, Inc. (JBR) of San Francisco, California received the highest consensus ranking; and

**WHEREAS**, staff conducted successful negotiations with JBR and determined JBR will perform the requested work at fair and reasonable prices; and

**WHEREAS**, staff and legal counsel reviewed JBR's proposal and determined that it complies with the requirements of the solicitation documents; and

**WHEREAS**, staff recommends that the Board of Directors award a contract to JBR for provision of the Services for a five-year term for a not-to-exceed total of \$557,513.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby awards a contract to provide On-Call Ambassador

Services to JBR Partners, Inc. for a five-year term at a not-to-exceed total of \$557,513;  
and

**BE IT FURTHER RESOLVED** that the Acting Executive Director, or designee, is authorized to execute a contract on behalf of the JPB with JBR Partners in full conformity with the terms and conditions of the solicitation documents and negotiated agreement, and in a form approved by legal counsel.

Regularly passed and adopted this 5<sup>th</sup> day of August, 2021 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Chair, Peninsula Corridor Joint Powers Board

ATTEST:

\_\_\_\_\_  
JPB Secretary



**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Derek Hansel  
Chief Financial Officer

SUBJECT: **AMENDMENT TO INCREASE THE FISCAL YEAR 2022 CAPITAL BUDGET BY \$2.0 MILLION FOR THE CALTRAIN SAN FRANCISCO RAILYARDS PRELIMINARY BUSINESS CASE**



Finance Committee  
Recommendation



Work Program-Legislative-Planning  
Committee Recommendation



Staff Coordinating  
Council Reviewed



Staff Coordinating Council  
Recommendation

**ACTION**

Staff proposes the Finance Committee recommend the Board of Directors (Board) to increase the Fiscal Year (FY) 2022 Capital Budget by \$2.0 million, from \$64.2 million to \$66.2 million, for the San Francisco Railyards Preliminary Business Case (PBC).

**SIGNIFICANCE**

At the July 1, 2021 Peninsula Corridor Joint Powers Board (JPB) meeting, the Board of Directors (Board) authorized the Acting Executive Director to execute a memorandum of understanding with Prologis 4<sup>th</sup> and King LLC (Prologis) for delivery of the San Francisco Railyards PBC.

The Caltrain-Prologis MOU commits both parties to a cooperative working relationship to deliver the PBC. Work will be contracted by Caltrain through its planning on-call contracts, with funding provided by Prologis. After completion of the expected 24 - month process, the PBC will culminate in a recommended redevelopment approach for the site. The PBC will seek to satisfy Caltrain's current and future operational needs and business objectives, the goals of Prologis, and the requirements of the Railyards MOU group partners. The results of the PBC will be presented to the Board for consideration and action and will be used to inform subsequent steps should redevelopment of the site move forward.

This action is the follow-up item to increase the FY22 Capital Budget so the JPB is able to accept up to \$2.0 million in funding from Prologis for the delivery of the PBC.

**BUDGET IMPACT**

This action increases the Capital Budget by \$2.0 million to enable the receipt of up to \$2.0 million in funding from Prologis to complete the San Francisco Railyards PBC (and the

expenditure thereof).The requested amendment will increase the FY22 Capital Budget from \$64.2 million to \$66.2 million, as shown in the JPB Capital Budget Attachment B.

## **BACKGROUND**

The Caltrain San Francisco Railyards (4<sup>th</sup> and King Station) in Mission Bay is Caltrain's current San Francisco terminus and a critical operational asset. The underlying site is owned by Prologis (previously known as Catellus) and Caltrain operates the railyards and station through a perpetual operational easement on the surface as well as a limited height above the surface.

Interest in the potential redevelopment of the railyard was formalized in 2018 through the creation of a railyards-focused MOU working group ("the Railyards MOU group") that includes Caltrain, the City and County of San Francisco's Planning Department, Prologis, the Transbay Joint Powers Authority, the San Francisco County Transportation Authority, and the California High Speed Rail Authority. This group has served as a staff forum for the advancement of work related to the potential development of the site and for coordination of different projects and plans that have the potential to impact the railyard.

Based on initial technical studies by Prologis, Caltrain and Prologis have agreed to undertake a robust PBC to further investigate the feasibility and options related to the redevelopment of the railyards and to inform the decision making of both parties. The PBC would be based on the United Kingdom's "Green Book", which is used in various forms internationally to equip decision makers with the information needed to make investment decisions for a wide range of projects, including railroads, highways, dams, power stations, stadiums, and major events. A modified Business Case approach was used to develop Caltrain's Long Range Service Vision and the methodology is broadly considered a global best practice for analyzing significant public projects and investments.

The San Francisco Railyards PBC is the next major milestone needed in order to provide clarity on the optimal potential future of the railyards, and will seek to deliver an evidence-based recommendation for advancement of its redevelopment for future endorsement by the JPB, Prologis leadership, and Railyards MOU group members.

Prepared by:

Anthony Simmons, Director of Systemwide Planning, Caltrain Planning 650.622.7831

**RESOLUTION NO. 2021-**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STATE OF CALIFORNIA**

**\* \* \***

**AMENDMENT TO INCREASE THE FISCAL YEAR 2022 CAPITAL BUDGET BY \$2.0 MILLION  
FOR THE CALTRAIN SAN FRANCISCO RAILYARDS PRELIMINARY BUSINESS CASE**

**WHEREAS**, Prologis 4<sup>th</sup> & King, LLC ("Prologis") is the fee owner of the San Francisco Railyards ("Railyards"), bounded by 4<sup>th</sup> Street, King Street, 7<sup>th</sup> Street, and Townsend Street in San Francisco; and

**WHEREAS**, the Peninsula Corridor Joint Powers Board ("JPB") owns and operates Caltrain services, whose San Francisco services currently terminate on the Railyards at a "temporary" station building constructed in the 1970s; and

**WHEREAS**, the JPB has a perpetual operating easement on the Railyards for railroad, transportation, and communications purposes, which it inherited through historical agreements made by JPB predecessors (Southern Pacific and the State of California) with Prologis' predecessor (Catellus); and

**WHEREAS**, Caltrain and Prologis have now agreed to proceed with a formal robust and evidence-based joint investigation, a "San Francisco Railyards Preliminary Business Case" ("PBC") into potential site redevelopment outcomes that accommodate Caltrain's and Prologis' future needs; and

**WHEREAS**, on July 1, 2021, the Board authorized the execution of a Memorandum of Understanding ("MOU") with Prologis for completion of the PBC; and

**WHEREAS**, Prologis will provide funding for the cost of the PBC in accordance with the MOU; and

**WHEREAS**, Caltrain and Prologis have estimated the cost for PBC completion of approximately \$2 million; and

**WHEREAS**, the Executive Director recommends and the Staff Coordinating Council concurs that the Board of Directors amend to increase the Fiscal Year 2022 Capital Budget by \$2.0 million, from \$64.2 to \$66.2 million, for the San Francisco Railyards PBC

**NOW, THEREFORE, BE IT RESOLVED** that Peninsula Corridor Joint Powers Board hereby approves the execution of a Memorandum of Understanding with Prologis 4<sup>th</sup> & King, LLC for the completion of the San Francisco Railyards Preliminary Business Case.

Regularly passed and adopted this 5<sup>th</sup> day of August, 2021 by the following vote:

AYES:

NOES:

ABSENT:

Board  
ATTEST:

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Chair, Peninsula Corridor Joint Powers

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JPB Secretary



FY2022 CAPITAL BUDGET

Attachment B  
Amendment 2  
August 2021

Item #	PROJECT NAME	PRIOR YEARS APPROVED	AMENDED FY2022 CAPITAL BUDGET	Federal Funds	STA SOGR Funds	Measure RR	Others	AMENDED FY2022 CAPITAL BUDGET
<b>i. STATE OF GOOD REPAIR</b>								
<b>Bridges</b>								
1	Guadalupe River Bridge Replacement and Extension	12,400,000	1,989,000	1,591,200	397,800	-	-	1,989,000
			1,989,000	1,591,200	397,800	-	-	1,989,000
<b>Right of Way</b>								
2	Track SOGR	11,220,000	5,437,771	4,350,217	1,087,554	-	-	5,437,771
3	Right of Way Fencing	585,000	156,000	-	-	156,000	-	156,000
			5,593,771	4,350,217	1,087,554	156,000	-	5,593,771
<b>Signal &amp; Communications</b>								
4	Communications SOGR	2,000,000	416,000	332,800	5,667	77,533	-	416,000
5	Fiber Optics SOGR	1,000,000	572,000	457,600	-	114,400	-	572,000
6	Signal SOGR	-	1,248,000	998,400	-	249,600	-	1,248,000
7	Migration To Digital Voice Radio System	700,000	832,000	665,600	-	166,400	-	832,000
			3,068,000	2,454,400	5,667	607,933	-	3,068,000
<b>Rolling Stock</b>								
			-	-	-	-	-	-
<b>Facilities &amp; Intermodal Access</b>								
8	Stations SOGR	1,500,000	208,000	-	-	208,000	-	208,000
9	Historic Stations SOGR	-	1,352,000	-	-	1,352,000	-	1,352,000
29	South San Francisco Station Improvement <sup>3</sup>	71,600,000	25,000,000	-	-	-	25,000,000	25,000,000
			26,560,000	-	-	1,560,000	25,000,000	26,560,000
	<b>Total SOGR</b>		<b>37,210,771</b>	<b>8,395,817</b>	<b>1,491,021</b>	<b>2,323,933</b>	<b>25,000,000</b>	<b>37,210,771</b>
<b>ii. LEGAL MANDATES AND ELECTRIFIED SERVICE RAIL PROGRAM INTEGRATION</b>								
10	Rail Program Integration and Transition	-	4,658,148	-	-	4,658,148	-	4,658,148
11	Hayward Park Remediation	-	51,000	-	-	51,000	-	51,000
			4,709,148	-	-	4,709,148	-	4,709,148
<b>iii. OPERATIONAL IMPROVEMENTS/ENHANCEMENTS</b>								
12	PADS Replacement	-	1,040,000	-	-	1,040,000	-	1,040,000
13	Grade Crossing Improvements Construction	500,000	1,040,000	-	-	1,040,000	-	1,040,000
14	Caltrain VoIP	-	520,000	-	-	520,000	-	520,000
15	TVM Upgrade Phase 5	2,795,000	1,040,000	832,000	-	208,000	-	1,040,000
16	Caltrain Fiber Connectivity to Caltrain Stations and Digital Voice Base Station	-	624,000	-	-	624,000	-	624,000
17	Next Gen Clipper Validators Site Prep	2,500,000	1,560,000	1,248,000	-	312,000	-	1,560,000
18	Mountain View Transit Center Grade Separation and Access Project <sup>1</sup>	-	11,200,000	-	-	-	11,200,000	11,200,000
			17,024,000	2,080,000	-	3,744,000	11,200,000	17,024,000
<b>iv. PLANNING/STUDIES</b>								
19	Operations, Access and Customer Interface Planning	-	260,000	-	-	260,000	-	260,000
20	Business Strategy and Policy Development	-	780,000	-	-	780,000	-	780,000
21	Electrification Expansion and Integration - Preliminary Planning	-	520,000	-	-	520,000	-	520,000
22	Capital Planning Technical Support	-	286,000	-	-	286,000	-	286,000
23	Transit-oriented Development Studies	-	1,040,000	-	-	1,040,000	-	1,040,000
24	Diridon Integrated Station Concept Plan (DISC) <sup>2</sup>	-	720,000	-	-	-	720,000	720,000
30	SF Railyards Preliminary Business Case <sup>4</sup>	-	2,000,000	-	-	-	2,000,000	2,000,000
			5,606,000	-	-	2,886,000	2,720,000	5,606,000
<b>iv. CAPITAL CONTINGENCY FUNDS</b>								
25	Capital Contingency Funds - Engineering	-	330,000	-	-	330,000	-	330,000
26	Capital Contingency Funds - Rail	-	660,000	-	-	660,000	-	660,000
27	Capital Project Development	-	335,000	-	-	335,000	-	335,000
28	Capital Program Management	-	335,000	-	-	335,000	-	335,000
		106,800,000	1,660,000	-	-	1,660,000	-	1,660,000
	<b>Total FY2022 Capital Budget</b>		<b>66,209,919</b>	<b>10,475,817</b>	<b>1,491,021</b>	<b>15,323,081</b>	<b>38,920,000</b>	<b>66,209,919</b>

<sup>1</sup> \$10.0 million from Santa Clara Valley Transportation Authority (VTA) per Reso 2020-39 and \$1.2 million from the City of Mountain View

<sup>2</sup> City of San Jose

<sup>3</sup> San Mateo County Transportation Authority and City of South San Francisco

<sup>4</sup> Prologis LLC

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

DATE: July 21, 2021

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Derek Hansel  
Chief Financial Officer

SUBJECT: July 28, 2021 Finance Committee Report of the Chief Financial Officer

**HIGHLIGHTS**

- Staff is working to complete final accruals for Fiscal Year 2021, after which unaudited statements for June 2021 will be presented to the Finance Committee.
- With approval of the Fiscal Year 2022 operating budget, Budget staff has “loaded in” the budget so that expense control procedures are ready for the new fiscal year.
- We have continued the process of approval of the comprehensive financing plan discussed with the Board earlier this month. VTA has approved execution of the two new lines of credit. The San Mateo County Transit District Board approved the comprehensive financing plan at its July 2021 meeting. The SFMTA has recommended the comprehensive financing plan, and staff is working with San Francisco to get their approval for all elements in July.
- The JPB has drawn approximately \$42.6 million of the \$46.7 million CRRSAA funding (Tranche 2), with a balance of \$4.1 million that will be drawn shortly. The MTC Planning and Allocation Committee has recommended a Phase 1 distribution plan of ARPA funding that would provide \$41.1 million to Caltrain. This is in excess of the \$14.8 million of ARPA funding included in the adopted Fiscal Year 2022 Operating Budget.

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Derek Hansel  
Chief Financial Officer

**SUBJECT: INFORMATION ON STATEMENT OF REVENUES AND EXPENSES FOR THE PERIOD  
ENDED JUNE 30, 2021**

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

The Finance Division engages in many activities following the end of the June 30 fiscal year both to close out the old fiscal year and set up the new fiscal year. The demands of these activities require a longer time to produce a complete Statement of Revenues and Expenses than allowed by the normal board meeting cycle. Consequently, staff will present a Statement of Revenues and Expenses for June at the October 7th meeting of the Board of Directors. The auditors, Brown Armstrong Accountancy Corporation, expect to finish the audit in late October. We expect to have the Comprehensive Annual Financial Statement finalized by November 2021.

Prepared by: Jennifer Ye, Acting Director, Accounting 650.622.7890

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Sebastian Petty  
Deputy Chief of Planning

SUBJECT: **REDWOOD CITY PLANNING AND REAL ESTATE UPDATE**

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

**ACTION**

This report is for information only. No Board action is required.

**SIGNIFICANCE**

The Caltrain planning team has been involved in multiple joint planning efforts in Redwood City. These efforts are multifaceted and interconnected and include long range, system wide, capital, access, station area, and land use planning elements. This report demonstrates the extent and importance of such planning efforts as they will enable the 2040 Long Range Service Vision's designation of Redwood City as the mid-peninsula hub and transfer station. These joint planning efforts will span many years and require extensive staff time as well as financial commitments from public and private funding sources.

This report also highlights related property and real estate issues for Board consideration. Near-term development being considered adjacent to the Redwood City Transit Center at El Camino Real, between James Avenue and Winklebleck Street, presents an opportunity to swap land with the developer and City to form more contiguous parcels, realign streets, and for Caltrain to acquire property that would likely be impacted by future transit improvements. Additionally, the Sequoia Station Shopping Center redevelopment presents an opportunity for Caltrain to have land dedicated for future transit improvements and JPB-owned property integrated in land use approvals. Staff intends to return to the Board in subsequent months for further consideration of these real estate and property issues and potential action.



## **BUDGET IMPACT**

There is no impact on the budget for this item. Separate future efforts may potentially have budget impacts, which will be identified as required.

## **BACKGROUND**

Redwood City is a key mid-line station in the Caltrain system today and is envisioned to become a significant transfer hub in the future under the 2040 Service Vision. Today, Redwood City Station features higher density land uses, a connection point to SamTrans bus service, higher ridership and significant JPB property holdings. In the future, Redwood City is the most logical location for a potential four-track mid-line hub station identified in the Service Vision that will facilitate transfers between express and local services. Not only are densities around Redwood City Station projected to further increase but there is the potential for a connection to a future Dumbarton fixed guideway service. While Redwood City Station is constrained today by existing development adjacent to the railroad, there are near-term land use development opportunities at Sequoia Station that would allow for the dedication of space for future transit infrastructure.

Additional and related joint planning efforts in Redwood City are described below:

### **Whipple Avenue Grade Separation Study (led by City of Redwood City)**

The City of Redwood City initiated the Whipple Avenue Grade Separation Study in 2019 in partnership with Caltrain. While the study initially prioritized a grade separation at Whipple Avenue, the focus was expanded to cover five additional at-grade crossings including Brewster Avenue, Broadway, Maple Street, Main Street and Chestnut Street. Whipple Avenue, Brewster Avenue and Broadway would be grade separated in tandem with the construction of a future four-track Redwood City Station. The City and Caltrain continue to work together to further analyze the elevated grade separation alternatives.

### **Redwood City Transit District (led by City of Redwood City)**

The City of Redwood City is investigating the near-term redevelopment of the "Redwood City Transit District," which includes the Sequoia Station Shopping Center, and the area transit facilities (including the Caltrain station, the Caltrain Perry Street parking lot, the James Street parking lot, and SamTrans' Redwood City Transit Center). The Sequoia Station redevelopment provides a unique opportunity due to current developer willingness to dedicate trackside space to accommodate the future four-track Redwood City Station. Caltrain continues to closely coordinate with Redwood City and the developer as transit and development plans advance.

### **Transit Center Planning (led by Caltrain)**

To further aid short-term coordination associated with the Transit District redevelopment, Caltrain, SamTrans and Redwood City are collaborating on a transit center planning exercise to refine the future transit envelope to ensure ample land is dedicated. The study assumes an elevated four-track station between Brewster Avenue and Broadway and the grade separations of the northern at-grade crossings and is examining locations for future multimodal access facilities.

**Dumbarton Rail Corridor (led by SamTrans)**

The proposed Dumbarton Rail Corridor Project would provide a new mass transit system between the Peninsula and the East Bay, connecting Redwood City Station to the Union City BART Station. The alignments under study would support one of several potential electric transit technologies, including commuter rail, light rail, and other mass transit technologies. SamTrans continues to coordinate with Redwood City and Caltrain on ways to connect services and provide seamless mobility

Project Manager: Anthony Simmons, Director,  
Systemwide Planning and Policy

650.508.6283

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Casey Fromson  
Chief Communications Officer, Acting

SUBJECT: **STATE AND FEDERAL LEGISLATIVE UPDATE**

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

**ACTION**

Staff recommends that the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB) receive the attached memos. Staff will provide regular updates to the Board in accordance with the Legislative Program.

**SIGNIFICANCE**

The 2021 Legislative Program establishes the principles that will guide the legislative and regulatory advocacy efforts. Based on those principles, staff coordinates closely with our Federal and State advocates on a wide variety of issues that are considered in Congress and the State legislature. The attached reports highlight the recent issues and actions that are relevant to the Board.

Prepared By: Lori Low, Government and Community  
Relations Officer

650-508-6391



July 9, 2021

TO: Caltrain Board of Directors

FM: Joshua W. Shaw, Matt Robinson & Michael Pimentel, Shaw Yoder Antwih Schmelzer & Lange  
Mike Robson & Bridget McGowan, Edelstein Gilbert Robson & Smith LLC

RE: **STATE LEGISLATIVE UPDATE – August 2021**

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### **General Update**

At this point in the legislative calendar, committee hearings for bills in their second house are well under way. To remain viable, bills must pass out of policy committees in the second house by July 14, the policy committee deadline.

After this deadline, the Legislature will adjourn for summer recess for four weeks. When they return on August 16, bills will have roughly two weeks to pass out of their respective Appropriations committees before the fiscal deadline of August 27.

### **Fiscal Year 2021-22 State Budget**

On July 12, Governor Newsom signed [SB 129 \(Skinner\) \[Chapter 69, Statutes of 2021\]](#), the Budget Bill Jr. I, which modifies the main budget bill, [AB 128 \(Ting\) \[Chapter 21, Statutes of 2021\]](#). Together, these bills comprise the provisions of the Fiscal Year 2021-22 State Budget to which the Governor and Legislative Leaders have so far agreed upon and implement an unprecedented level of state-level economic stimulus to accelerate our recovery from the pandemic.

The Budget, which totals \$262.6 billion, includes the following supplemental investments that support public transit and rail agencies and that help deliver clean mobility options.

- \$2.5 billion for the Transit and Intercity Rail Capital Program;
- \$2.7 billion for a Zero-Emission Vehicles and Infrastructure, an investment that supports zero-emission vehicle deployment, including by California's transit agencies;
- \$600 million for Planning and Implementation Grants for Infill Developments and Strategies to Reduce Vehicle Miles Traveled;
- \$500 million for the Active Transportation Program;
- \$400 million for Climate Adaptation on Transportation Infrastructure; and,
- \$10 million for the UC Institute of Transportation Studies.

The Budget does not currently include the Governor's proposed \$4.2 billion investment in the California high-speed rail project, which is still the subject of ongoing negotiations between Legislative Leaders and Governor Newsom. Importantly, funding for TIRCP, the Active Transportation Program, and Climate

Adaptation will only become available to eligible recipients upon the enactment of additional legislation (presumably also related to an agreement on high-speed rail funding).

### **Statutory Relief for Transit Agencies**

On July 16, Governor Newsom signed [AB 149 \(Committee on Budget\) \[Chapter 81, Statutes of 2021\]](#), the transportation budget trailer bill, which expands on the statutory relief secured last year through [AB 90 \(Committee on Budget\) \[Chapter 17, Statutes of 2020\]](#) and [AB 107 \(Committee on Budget\) \[Chapter 264, Statutes of 2020\]](#).

Specifically, these measures:

- Extend the hold harmless provision for the calculation and allocation of State Transit Assistance Program, Low Carbon Transit Operations Program, and STA-State of Good Repair allocations (Local Revenue Basis Only) included in AB 90 by one year to fiscal year 2022-2023;
- Extend the suspension of the financial penalties associated with the Transportation Development Act's requirements that transit agencies obtain specified fixed percentages of their operating budgets from passenger fares (TDA farebox recovery requirements) included in AB 90 by two years to fiscal year 2022-2023;
- Extend the suspension of the financial penalties associated with the State Transit Assistance Program's requirement that transit agencies' operating cost per revenue vehicle hour may not exceed operating cost per revenue vehicle hour adjusted by regional CPI, year over year, (STA efficiency criteria) included in AB 90 by one year to fiscal year 2022-23;
- Extend the flexibility for the use of State Transit Assistance - State of Good Repair funds included in AB 107 by one year to fiscal year 2022-23;
- Institute a review of TDA performance audit requirements to identify opportunities for streamlining and identification of more effective measures;
- Exclude from the definition of "operating cost" for the purposes of TDA farebox recovery and STA efficiency the costs of operating ADA paratransit service; the costs to operate demand-response and microtransit services that expand access to transit service beyond fixed route corridors; the costs of security services and public safety contracts; any expense greater than the actuarially determined contribution associated with pensions and other post-employment benefits as required by Governmental Accounting Board Statement Numbers 68 and 75; the costs of funding or improving payment and ticketing systems and services; and the costs of planning for improvements in transit operations, integration with other operators and agencies, zero emission transition, and for compliance with state and federal mandates;
- Authorize federal funds to be counted as "local funds" for the purposes of calculating TDA farebox recovery and STA efficiency criteria;
- Authorize discount and fare free transit passes to be counted at their full retail value for the purposes of calculating TDA farebox recovery; and,
- Suspend until July 1, 2026, TDA farebox recovery requirements and STA efficiency criteria for transit agencies that can demonstrate that they maintained their existing commitments of local

funds for transit operations at an amount not less than the expenditures from local funds for transit operations during fiscal year 2018-19.

### **Climate Action Plan for Transportation Infrastructure**

On July 12, the California State Transportation Agency adopted the Climate Action Plan for Transportation Infrastructure (CAPTI). In adopting the [CAPTI](#), the state commits to investing billions of discretionary transportation dollars annually to aggressively combat and adapt to climate change while supporting public health, safety and equity. The plan builds on executive orders signed by Governor Gavin Newsom in [2019](#) and [2020](#) targeted at reducing greenhouse gas emissions in transportation – which account for more than 40 percent of all emissions – to reach the state’s ambitious climate goals.

### **Grants**

In late-2020, the California Transportation Commission [awarded grants](#) for three SB 1 programs – the [Solutions for Congested Corridors Program](#) (SCCP), [Local Partnership Program](#) (LPP), and the [Trade Corridor Enhancement Program](#) (TCEP). In total, approximately \$2 billion was awarded for 56 new projects throughout the state to reduce traffic, improve goods movement, increase transit service, expand California’s managed lanes network, and invest in bicycle and pedestrian improvements. According to the CTC, the funded projects would create more than 100,000 jobs over the next several years. The CTC will solicit applications for the next round of funding in the fall of 2021. Additionally, we expect the [Transit and Intercity Rail Capital Program](#) (TIRCP) to follow a similar schedule. We will provide more information as it becomes available.

***Grade Separation Funding*** - Below is a list of the funding sources that we are aware of and/or that have been used to fund grade separations in the recent years. The funding sources below are managed across various state agencies and departments, including the Public Utilities Commission (PUC), the California State Transportation Agency (CalSTA), the California Transportation Commission (CTC), and Caltrans.

PUC Section 190 Grade Separation Program – The Program is a [state funding program](#) to grade separate crossings between roadways and railroad tracks and provides approximately \$15 million annually, transferred from Caltrans. Agencies apply to the PUC for project funding.

State Transportation Improvement Program – The STIP, managed by Caltrans and programmed by the CTC, is primarily used to fund highway expansion projects throughout the state, but also supports grade separations. The STIP is programmed every two years (currently the 2018 STIP added \$2.2 billion in new funding). Local agencies receive a share of STIP funding, as does the State. The STIP is funded with gasoline excise tax revenues.

Transit and Intercity Rail Capital Program – The TIRCP is managed by CalSTA and is available to fund rail and transit projects that reduce greenhouse gas emissions. The program receives funding from Cap and Trade and the recently created Transportation Improvement Fee to the tune of approximately \$500 million per year. The TIRCP is programmed over 5 years, with the most recent cycle beginning in May 2018. Caltrain received \$160 million for the CalMod project.

Proposition 1A – This \$9.9 billion Bond Act is the primary funding source for the high-speed rail project and has been used to fund a very limited number of grade separation projects in the past, including in the City of San Mateo.

# Caltrain

## State Legislative Matrix 7/8/2021

### Active Bills

Bill Number (Author)	Summary	Location	Position
<p><a href="#">AB 339</a> (<a href="#">Lee D</a>)</p> <p>Local government: open and public meetings.</p>	<p>Existing law, the Ralph M. Brown Act, requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. Under existing law, a member of the legislative body who attends a meeting where action is taken in violation of this provision, with the intent to deprive the public of information that the member knows the public is entitled to, is guilty of a crime. This bill would require local agencies to conduct meetings subject to the act consistent with applicable state and federal civil rights laws, as specified. This bill contains other related provisions and other existing laws.</p> <p>Amended: 7/5/2021</p>	Senate Judiciary	Watch
<p><a href="#">AB 361</a> (<a href="#">Rivas, Robert D</a>)</p> <p>Open meetings: local agencies: teleconferences.</p>	<p>Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void. This bill, until January 1, 2024, would authorize a local agency to use</p>	Senate Judiciary	Watch

Bill Number (Author)	Summary	Location	Position
	<p>teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided. This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified. This bill contains other related provisions and other existing laws.</p> <p>Amended: 7/6/2021</p>		
<p><a href="#">AB 1157</a> (<a href="#">Lee D</a>)</p> <p>Controller: transportation funds: distribution and reporting requirements.</p>	<p>Existing law, for purposes of the State Transit Assistance Program, requires local transportation agencies to report to the Controller by June 15 of each year the public transportation operators within its jurisdiction that are eligible to claim specified local transportation funds. This bill would instead require local transportation agencies to report this information within 7 months after the end of each fiscal year. This bill contains other related provisions and other existing laws.</p> <p>Amended: 3/15/2021</p>	Senate Appropriations	Watch
<p><a href="#">AB 1260</a> (<a href="#">Chen R</a>)</p> <p>California Environmental Quality Act: exemptions: transportation-related projects.</p>	<p>The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. This bill</p>	Senate Appropriations	Watch



Bill Number (Author)	Summary	Location	Position
	<p>would further exempt from the requirements of CEQA projects by a public transit agency to construct or maintain infrastructure to charge or refuel zero-emission trains, provided certain requirements are met, including giving prior notice to the public and holding a noticed public meeting, as provided. This bill contains other existing laws.</p> <p>Amended: 7/6/2021</p>		
<p><a href="#"><u>ACA 1 (Aguiar-Curry D)</u></a></p> <p>Local government financing: affordable housing and public infrastructure: voter approval.</p>	<p>(1)The California Constitution prohibits the ad valorem tax rate on real property from exceeding 1% of the full cash value of the property, subject to certain exceptions. This measure would create an additional exception to the 1% limit that would authorize a city, county, city and county, or special district to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing, or the acquisition or lease of real property for those purposes, if the proposition proposing that tax is approved by 55% of the voters of the city, county, or city and county, as applicable, and the proposition includes specified accountability requirements. The measure would specify that these provisions apply to any city, county, city and county, or special district measure imposing an ad valorem tax to pay the interest and redemption charges on bonded indebtedness for these purposes that is submitted at the same election as this measure. This bill contains other related provisions and other existing laws.</p> <p>Introduced: 12/7/2020</p>	<p>Assembly Local Government</p>	<p>Supported February 2021</p>
<p><a href="#"><u>SB 44 (Allen D)</u></a></p> <p>California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects.</p>	<p>The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA. This bill would provide that no reimbursement is required by this act for a specified reason. This bill contains other existing laws.</p> <p>Amended: 6/28/2021</p>	<p>Assembly Judiciary</p>	<p>Support February 2021</p>
<p><a href="#"><u>SB 339 (Wiener D)</u></a></p> <p>Vehicles: road usage charge pilot program.</p>	<p>Existing law requires the Chair of the California Transportation Commission to create a Road Usage Charge (RUC) Technical Advisory Committee in consultation with the Secretary of Transportation. Under existing law, the purpose of the technical advisory committee is to guide the development and evaluation of a pilot program to assess the potential for mileage-based revenue</p>	<p>Assembly Appropriations</p>	<p>Supported April 2021</p>

Bill Number (Author)	Summary	Location	Position
	<p>collection as an alternative to the gas tax system. Existing law requires the technical advisory committee to study RUC alternatives to the gas tax, gather public comment on issues and concerns related to the pilot program, and make recommendations to the Secretary of Transportation on the design of a pilot program, as specified. Existing law repeals these provisions on January 1, 2023. This bill would extend the operation of these provisions until January 1, 2027. The bill would require the Transportation Agency, in consultation with the California Transportation Commission, to implement a pilot program to identify and evaluate issues related to the collection of revenue for a road charge program, as specified. The bill would require the RUC Technical Advisory Committee to make recommendations to the Transportation Agency on the design of the pilot program, including the group of vehicles to participate. The bill would require that if a group of vehicles other than state-owned vehicles is selected, that participation in the program be voluntary. The bill would require the Transportation Agency to convene a state agency work group, as specified, to implement the pilot program and to design a process for collecting road charge revenue from vehicles. The bill would require that participants in the program be charged a mileage-based fee, as specified, and receive a credit or a refund for fuel taxes or electric vehicle fees, as specified. The bill would require that the pilot program not affect funding levels for a program or purpose supported by state fuel tax and electric vehicle fee revenues. The bill would require the Transportation Agency to submit reports to the Legislature, as specified.</p> <p>Amended: 6/14/2021</p>		
<p><a href="#">SB 674</a> (<a href="#">Durazo D</a>)</p> <p>Public Contracts: workforce development: covered public contracts.</p>	<p>Existing law establishes the Labor and Workforce Development Agency, under the supervision of the Secretary of Labor and Workforce Development. Existing law establishes within the Labor and Workforce Development Agency, the Department of Industrial Relations, to foster, promote, and develop the welfare of the wage earners of California and to advance their opportunities for profitable employment, among other duties. This bill would require the Labor and Workforce Development Agency to create 2 programs, to be known as the California Jobs Plan Program and the United States Jobs Plan Program. The bill would require the programs to meet specified objectives, including supporting the creation and retention of quality, nontemporary full-time jobs, as specified, and the hiring of displaced workers and individuals facing barriers to employment. The bill would require, as a component of applications for covered public contracts, as defined, the creation of forms for each program that state the minimum numbers of proposed jobs that are projected to be retained and created if the applicant wins the covered public contract. These components of the application would be known as the California Jobs Plan and the United States Jobs Plan, which the bill would define. Pursuant to these definitions, applicants for covered public contracts would state the minimum number of jobs, proposed wages, benefits, investment in training, specific protections for worker health and safety, and targeted hiring plans for displaced workers and individuals facing barriers to jobs, as specified, in exchange for covered public</p>	<p>Assembly Appropriations</p>	<p>Watch</p>

Bill Number (Author)	Summary	Location	Position
	<p>contracts. The bill would require an applicant for a covered public contract that uses entirely state and local funds to complete a California Jobs Plan form, while applicants for covered public contracts that use any amount of federal funds would complete the United States Jobs Plan. This bill contains other related provisions and other existing laws.</p> <p>Amended: 7/7/2021</p>		
<p><a href="#">SB 771</a> (<a href="#">Becker D</a>)</p> <p>Sales and Use Tax Law: zero emissions vehicle exemption.</p>	<p>Existing state sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The Sales and Use Tax Law provides various exemptions from those taxes. This bill, on or after January 1, 2022, would provide an exemption from those taxes with respect to the sale in this state of, and the storage, use, or other consumption in this state of, a qualified motor vehicle, as defined, sold to a qualified buyer, as defined. The bill would provide that this exemption does not apply to specified state sales and use taxes from which the proceeds are deposited into the Local Revenue Fund, the Local Revenue Fund 2011, or the Local Public Safety Fund. This bill contains other related provisions and other existing laws.</p> <p>Amended: 5/11/2021</p>	<p>Assembly Desk</p>	<p>Watch</p>
<b>Inactive Bills</b>			
<p><a href="#">AB 5</a> (<a href="#">Fong R</a>)</p> <p>Greenhouse Gas Reduction Fund: High-Speed Rail Authority: K-12 education: transfer.</p>	<p>The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act authorizes the state board to include in its regulation of those emissions the use of market-based compliance mechanisms. Existing law requires all moneys, except for fines and penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund. Existing law continuously appropriates 25% of the annual proceeds of the fund to the High-Speed Rail Authority for certain purposes. This bill would suspend the appropriation to the High-Speed Rail Authority for the 2023-24 and 2024-25 fiscal years and would require the transfer of those amounts from moneys collected by the state board to the General Fund. The bill would specify that the transferred amounts shall be available, upon appropriation, to augment funding for K-12 education and to support full-time in-person instruction for all students.</p> <p>Amended: 3/17/2021</p>	<p>Assembly 2 year</p>	<p>Watch</p>
<p><a href="#">AB 476</a> (<a href="#">Mullin D</a>)</p> <p>Department of Transportation: state</p>	<p>Existing law vests the Department of Transportation with full possession and control of the state highway system and associated real property. Existing law generally requires vehicles to be driven upon the right 1/2 of a roadway, defined to include only that portion of a highway improved, designed, or ordinarily used</p>	<p>Assembly 2 year</p>	<p>Watch</p>

Bill Number (Author)	Summary	Location	Position
highways: transit bus pilot program.	<p>for vehicular travel. Existing law generally prohibits the driver of a vehicle from overtaking and passing another vehicle by driving off the paved or main-traveled portion of the roadway. Existing law authorizes the Monterey-Salinas Transit District and the Santa Cruz Metropolitan Transit District to conduct a transit bus-only program using the shoulders of certain state highways as transit bus-only traffic corridors, subject to approval by the Department of Transportation and the Department of the California Highway Patrol. Existing law requires that the highway segments to be used for the program are to be jointly determined by the districts, the department, and the Department of the California Highway Patrol, as provided. This bill would authorize the Department of Transportation to establish a pilot program to authorize a transit operator or operators to operate transit buses on the shoulders of state highways, under a project selected under the program. The bill would authorize an operator or operators, in partnership with a regional transportation agency that meets specified requirements, to submit an application to the department to establish and operate a project under the program. The bill would authorize the department to select no more than 8 total projects under the program using guidelines developed with input from the Department of the California Highway Patrol and the public. The bill would require the department, the Department of the California Highway Patrol, and the operator or operators and regional transportation agency that submitted the application to jointly determine the state highways, or segment of state highways, that will be used in a project. The bill would require the applicable regional transportation agency to be responsible for all costs attributable to the project. Two years after commencing a project, the bill would require an operator or operators, in conjunction with the applicable regional transportation agency, to submit a report to the Legislature that includes certain information about the project.</p> <p>Amended: 3/16/2021</p>		
<p><a href="#">AB 629</a> (<a href="#">Chiu D</a>)</p> <p>San Francisco Bay area: public transportation.</p>	<p>(1) Existing law creates the Metropolitan Transportation Commission as a local area planning agency for the 9-county San Francisco Bay area with comprehensive regional transportation planning and other related responsibilities. Existing law creates various transit districts located in the San Francisco Bay area, with specified powers and duties relative to providing public transit services. This bill would require the commission on or before February 1, 2022, to submit a copy of a specified transit fare study undertaken by the commission to certain committees of the Legislature. The bill would require the commission to submit a report on or before January 1, 2023, to those entities on the progress of implementing the recommendations of that study. This bill contains other related provisions and other existing laws.</p> <p>Amended: 3/22/2021</p>	Assembly 2 year	Watch
<p><a href="#">AB 703</a> (<a href="#">Rubio, Blanca D</a>)</p>	<p>Existing law, the Ralph M. Brown Act, requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate.</p>	Assembly 2 year	Watch

Bill Number (Author)	Summary	Location	Position
Open meetings: local agencies: teleconferences.	<p>The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to observe and provide comment. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. This bill would remove the notice requirements particular to teleconferencing and would revise the requirements of the act to allow for teleconferencing subject to existing provisions regarding the posting of notice of an agenda, provided that the public is allowed to observe the meeting and address the legislative body directly both in person and remotely via a call-in option or internet-based service option, and that a quorum of members participate in person from a singular physical location clearly identified on the agenda that is open to the public and situated within the jurisdiction. The bill would require that, in each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the local agency also give notice of the means by which members of the public may observe the meeting and offer public comment and that the legislative body have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act, as provided. This bill contains other related provisions and other existing laws.</p> <p>Amended: 4/29/2021</p>		
<p><a href="#">AB 823</a> (<a href="#">Gray D</a>)</p> <p>High-Speed Rail Authority: trains powered by fossil fuel combustion engines.</p>	<p>The California High-Speed Rail Act creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law requires the high-speed rail system to be designed to use electric trains. Existing law authorizes the authority, upon receiving legislative or voter approval, to enter into contracts with private or public entities for the design, construction, and operation of high-speed trains. This bill would prohibit the authority from directly or indirectly using local, state, federal, or any other public or private funding to purchase, lease, operate, or maintain a passenger or freight train powered by a diesel engine or other type of fossil fuel combustion engine, and from enabling such a train to operate on authority-owned rail infrastructure designed for speeds in excess of 125 miles per hour, except as specified.</p> <p>Introduced: 2/16/2021</p>	Assembly 2 year	Watch
<a href="#">AB</a>	Existing law creates the High-Speed Rail Authority with specified powers and	Assembly 2 year	Watch

Bill Number (Author)	Summary	Location	Position
<p><a href="#">1116</a> (<a href="#">Friedman D</a>)</p> <p>High-Speed Rail Authority: oversight: Legislative Analyst's Office.</p>	<p>duties related to the development and implementation of a high-speed train system. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, statewide general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related rail purposes. This bill would require the Legislative Analyst's Office, for the purpose of reviewing the planning, financing, expenditures, and other elements of the statewide high-speed rail system, to review any materials submitted to the authority and documents the authority requests from contractors, consultants, or external parties, as specified, and to provide recommendations to the policy and budget committees of the Legislature regarding the statewide high-speed rail system and the development of shared mobility systems statewide. The bill would require the authority, and any entity contracting with the authority, to provide to the Legislative Analyst's Office any information that it requests and to permit representatives of the Legislative Analyst's Office to attend the authority's internal meetings. The bill would repeal these requirements on January 1, 2031.</p> <p>Introduced: 2/18/2021</p>		
<p><a href="#">AB 1235</a> (<a href="#">Patterson R</a>)</p> <p>High-speed rail: legislative oversight.</p>	<p>The California High-Speed Rail Act creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law requires the authority, on or before March 1, 2017, and every 2 years thereafter, to provide a project update report, approved by the Secretary of Transportation as consistent with specified criteria, to the budget committees and the appropriate policy committees of both houses of the Legislature, on the development and implementation of intercity high-speed train service, as provided. This bill would create the Joint Legislative High-Speed Rail Oversight Committee consisting of 3 Members of the Senate and 3 Members of the Assembly to provide ongoing and independent oversight of the high-speed rail project by performing specified duties, and would require the committee to make recommendations to the appropriate standing policy and budget committees of both houses of the Legislature to guide decisions concerning the state's programs, policies, and investments related to high-speed rail. The bill would require the authority to provide the committee with certain documents and information within prescribed timelines, and would require the authority to permit the chairperson of the committee, or the chairperson's designee, to attend meetings of any internal governance committees related to project oversight, as provided.</p> <p>Introduced: 2/19/2021</p>	<p>Assembly 2 year</p>	<p>Watch</p>

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## Caltrain As of July 21, 2021 Transportation Report

### **House Passes INVEST in America Act, Senate Process Continues to Move Forward**

- On July 1, the House of Representatives completed its consideration of a \$715 billion package combining the House Transportation and Infrastructure Committee-approved \$547 billion [surface transportation bill](#), the INVEST in America Act, with wastewater and drinking water infrastructure legislation. The overall package passed by a largely party-line [vote](#) of 221-201, with opposition from Republicans who criticized climate provisions and a lack of funding measures.
  - Unlike the Senate, the House legislation includes Member Designated Projects, which elevate local priorities through earmarked funding.
- Two of four Senate committees have approved their portions of the surface transportation reauthorization with bipartisan support.
- On June 16, the Senate Committee on Commerce, Science, and Transportation voted 25-3 to approve the “[Surface Transportation Investment Act](#)” ([S. 2016](#)), which authorizes \$78 billion over five years for rail, freight, and safety programs in the reauthorization.
- On May 26, the Senate Committee on Environment and Public Works voted unanimously to approve the “[Surface Transportation Reauthorization Act of 2021](#)” ([S. 1931](#)) to reauthorize highway programs. The measure sets a new baseline funding level at a historic high of \$303.5 billion for Department of Transportation programs for highways, roads, and bridges (a 34 percent increase from the FAST Act). The committee’s reauthorization bill includes Democratic proposals such as boosting infrastructure for electric vehicle charging and reconnecting communities cut off by highways. It also addresses GOP priorities of reducing regulation, giving states more flexibility, and streamlining the environmental review process for major projects.
- The Senate Committee on Banking, Housing, and Urban Affairs, which handles the transit portion, has not unveiled its bill yet.
- Congress must pass surface transportation legislation before the expiration date on September 30, 2021. As summarized below, the bipartisan group of Senators are hoping to finalize the infrastructure bill which will include surface transportation authorization.
- The following provides an overview of key provisions in the surface transportation reauthorization proposals in Congress:



## Key Provisions in the Surface Transportation Reauthorization

### SENATE

<p>Committee on Environment and Public Works – <i>passed Committee on May 26, 2021</i></p>	<p><b>\$304 billion over five years, 22% increase over current funding.</b></p> <ul style="list-style-type: none"> <li>• Establishes a \$3.265 billion new competitive bridge grant program</li> <li>• Includes \$1 billion for grants to connect walking and biking infrastructure into active transportation networks</li> <li>• Creates a \$2.5 billion EV grant program</li> <li>• Increases funding for the existing INFRA freight and goods movement grant program</li> <li>• Creates a \$6.4 billion carbon reduction formula program to reduce transportation emissions</li> <li>• Establishes a \$250 million congestion relief competitive grant program for projects in the largest, most congested urbanized areas</li> <li>• Creates a \$1.4 billion formula and competitive grant program for resiliency improvement, community resilience and evacuation route grants, and at-risk coastal infrastructure</li> <li>• Establishes a \$500 million community connectivity pilot grant program to study the feasibility and impacts of removing or mitigating existing transportation facilities that create barriers to mobility, access, or economic development and to construct projects to remove or mitigate these barriers</li> </ul>
<p>Committee on Commerce, Science and Transportation – <i>passed Committee June 16, 2021</i></p>	<p><b>\$78 billion over five years</b></p> <ul style="list-style-type: none"> <li>• Multimodal Investment - \$28 billion             <ul style="list-style-type: none"> <li>○ Authorizes the U.S. DOT’s <a href="#">Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant program</a> at \$1.5 billion annually and creates a new program to fund big dollar value projects of national significance at \$2 billion annually.</li> </ul> </li> <li>• Rail - \$36 billion             <ul style="list-style-type: none"> <li>○ \$25 billion for passenger rail</li> <li>○ \$7.5 billion for rail safety and improvement projects</li> <li>○ Requires the DOT Secretary to establish a program to develop intercity passenger rail corridors.</li> </ul> </li> <li>• Safety - \$13 billion             <ul style="list-style-type: none"> <li>○ Establishes a \$10 billion National Infrastructure Project Assistance Program to provide grants to project that generate national or regional economic, mobility or safety benefits</li> <li>○ Creates a \$1 billion Safe Streets and Roads for All Grant Program for MPOs and local governments to develop and implement carry out comprehensive Vision Zero safety plans</li> </ul> </li> <li>• Research</li> </ul>



	<ul style="list-style-type: none"> <li>○ \$1 billion for research</li> <li>○ Would create a 25-member electric vehicle (EV) working group that would offer guidance for the development and deployment of electric vehicles.</li> </ul>
Committee on Banking, Housing and Urban Affairs	N/A
<b>HOUSE</b>	
<p>Committee on Transportation &amp; Infrastructure – <i>passed Committee on June 10, 2021.</i></p> <p><i>Expanded version passed the full House on July 1, 2021.</i></p>	<p><b>\$547 billion over five years, 38% increase over current funding.</b></p> <ul style="list-style-type: none"> <li>● Roads, Bridges, and Safety - \$343 billion <ul style="list-style-type: none"> <li>○ \$4 billion in EV charging infrastructure</li> <li>○ \$8.3 billion for activities targeted to reduce carbon pollution and provides \$6.2 billion for mitigation and resiliency improvements</li> <li>○ Focuses transportation planning to promote mobility and facilitate access to jobs and other essential services; and reconnects communities that were divided by highways with a new \$3 billion program to correct planning mistakes of the past.</li> </ul> </li> <li>● Transit - \$109 billion <ul style="list-style-type: none"> <li>○ \$6.25 billion for new pre-disaster mitigation and resiliency formula programs</li> <li>○ Creates a reduced-fare pilot program to improve access for low-income transit riders</li> <li>○ Scales up investment in zero-emission transit vehicles, supporting fleet conversion to reduce local air pollution and related health impacts.</li> <li>○ Provides funding incentives for sustainable transit-oriented development that is more accessible and promotes walkable communities.</li> <li>○ Streamlines the Capital Investment Grant program to improve project delivery, reduce red tape, and achieve cost savings for transit agencies.</li> </ul> </li> <li>● Rail - \$95 billion <ul style="list-style-type: none"> <li>○ Provides funding for corridor planning and high-speed rail projects, reducing traffic congestion and shortening travel times.</li> </ul> </li> </ul>

**Infrastructure Update**

- Senate Majority Leader Chuck Schumer (D-N.Y.) has scheduled a cloture vote on Wednesday, July 21, for the bipartisan infrastructure package to put pressure on the group of 22 bipartisan senators negotiating the \$579 billion infrastructure plan.

- On the Bipartisan Infrastructure Framework, negotiators are hashing out how to pay for the package. Last week, Sen. Rob Portman (R-OH) said that increasing Internal Revenue Service (IRS) as a way to raise new revenues was officially off the table as a means for funding for the \$1.2 trillion bipartisan infrastructure framework.
- The Bipartisan Infrastructure Framework will incorporate the text of the surface transportation bill ([S. 1931](#)) approved by the Senate Environment and Public Works Committee and the Senate Commerce Committee's bill summarized above.

### **House Appropriators Approve All 12 Spending Bills for Floor Consideration**

- The House Appropriations Committee completed its work during the week of July 12<sup>th</sup> on the twelve spending measures to fund the government for the fiscal year (FY) beginning on October 1. It advanced most of the bills on party-line votes.
  - Last week, the panel approved the remaining six bills—[Commerce-Justice-Science](#), [Defense](#), [Energy-Water](#), [Homeland Security](#), [Labor-HHS-Education](#), and [Transportation-HUD](#)—after acting on the first six measures before the July 4 recess.
- Appropriations Committee Republicans broadly criticized the measures, including the topline spending numbers for each bill. The bills approved by the committee would provide a modest increase for the Pentagon alongside a more significant boost for domestic programs.
- House Democrats are seeking to pass a seven-bill appropriations package, or minibus, during the last week of July, which will include the Agriculture-FDA, Energy and Water, Financial Services, Interior-Environment, Labor-HHS-Education, Military Construction-VA, and Transportation-HUD spending bills, [according to](#) House Majority Leader Steny Hoyer (D-Md.). Other spending measures could also be considered that week.
- With the start of the new fiscal year on October 1 fast approaching, Congress is very likely to pass a continuing resolution to maintain existing spending levels beyond the expiration of the FY 2021 budget. The Senate Appropriations Committee has not announced a markup schedule.

### **National Environmental Policy Act Changes Possible by End of 2021**

- On June 29, the White House Council on Environmental Quality (CEQ) announced that the CEQ is working on revising Trump-era changes to the National Environmental Policy Act (NEPA) and “hope” for publication of new rules by the end of 2021.
  - This development was announced as CEQ [published](#) a two-year extension for agencies to develop NEPA compliance plans originally due September 14, 2021, under a July 2020 Trump administration rule.

- The updated date for agencies to propose revised NEPA compliance plans is September 14, 2023.
- The additional two years gives the Biden administration more time to determine how to tweak existing rules related to NEPA and whether the rules should be scrapped or modified.
  - The Trump administration’s revisions attempted to shorten permitting timelines, limit environmental considerations on projects directly to the finished product rather than considering all future emissions that would be produced. Opponents argue that the entire process did not follow proper public comment period protocol and left many impacted communities without input.
  - CEQ Chair Brenda Mallory stated that the Biden administration disagrees with the Trump administration’s interpretation of agencies’ responsibility to broadly consider climate change in their decisions. She also argued that previous revisions to the law had limited outside community input and suggested this would be changed.
  - The CEQ is currently reviewing Trump’s 2020 NEPA rules, but it remains unclear if some rules—such as expedited timelines for clean energy projects—may stay in place. Mallory has previously stated in April 2021 that some changes “could” be repealed, including time limits on environmental assessments limits on the length of environmental impact statements.
- This change is part of a broader effort by the Biden administration to review Trump administration policies that failed to tackle climate change or environmental justice. Biden signed an executive order in January 2021 requiring all agencies to review their rules based on these guidelines

### **House Holds Hearing on Solving the Climate Crisis through Transportation Infrastructure**

- On June 30, the House Select Committee on the Climate Crisis held a hearing to discuss measures to address carbon emissions and the climate crisis through transportation and infrastructure investments.
- Rep. Sean Casten (D-IL) [highlighted](#) the need for market-based electric vehicle incentives to lower costs for consumers and the need to invest in the separation of rail commuter and freight lines in cities like Chicago.
- Rep. Kelly Armstrong (R-ND) expressed concern over the cost burden of transitioning to electric vehicles. He said EVs — which tend to be heavier than gas-powered cars — would create significant “wear and tear” on the state’s roads and require infrastructure reconstruction to accommodate the weight increase.
- Witnesses included:

- **Margaret Anderson Kelliher**, Commissioner, Minnesota Department of Transportation. [\[Testimony\]](#)
- **Bill Van Amburg**, Executive Vice President, CALSTART. [\[Testimony\]](#)
- **Beth Osborne**, Director, Transportation for America. [\[Testimony\]](#)
- **Robert Bryce**, Visiting Fellow, The Foundation for Research on Equal Opportunity. [\[Testimony\]](#)

### **Grant Opportunities & Award Announcements**

- **Advanced Transportation and Congestion Management Technologies Deployment Initiative**: \$60 million available. Applications are due by August 23, 2021.
- **FY 2021 Competitive Funding Opportunity: Areas of Persistent Poverty Program**: \$1 million available. Applications are due by August 30, 2021.
- **Accelerated Innovation Deployment (AID) Demonstration Program**: \$10 million available. Applications are due by September 28, 2021.

### **Caltrain Earmarks Moving Forward:**

Please note, these earmarks are subject to final bill passage.

#### **THUD Appropriations**

House:

Caltrain

- Additional Mini-highs (Speier) - \$460,000

#### **Surface Transportation Reauthorization (House T&I):**

Caltrain

- Additional Mini-highs (Eshoo) - \$306,000
- Additional Mini-highs (Lofgren) - \$550,000
- Caltrain Optimization Project (Lofgren) - \$315,000

Caltrain relevant projects:

- Middle Avenue Pedestrian/Bicycle Rail Crossing (Eshoo) – Submitted by Menlo Park – \$6.5M
- At-grade Caltrain Crossing Safety Project – E. Bellevue Avenue and Villa Terrace (Speier) – Submitted by City of San Mateo – \$3M

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board  
THROUGH: Michelle Bouchard  
Acting Executive Director  
FROM: Casey Fromson  
Chief Communications Officer, Acting  
SUBJECT:

**UPCOMING MARKETING EFFORTS RELATED TO INCREASING RIDERSHIP**

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

**ACTION**

This item is information only.

**SIGNIFICANCE**

The return to transit marketing will focus on communication and promotion of Caltrain fare and services through the All Aboard Bay Area Transit campaign. The attached presentation highlights the strategy, regional and local approach of the campaign.

Prepared By: Christina Valiente, Manager, Marketing Outreach

650-508-7763

**CITIZENS ADVISORY COMMITTEE (CAC)  
PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)  
SAN MATEO COUNTY TRANSIT DISTRICT ADMINISTRATIVE BUILDING**

Bacciocco Auditorium, 2<sup>nd</sup> Floor  
1250 San Carlos Avenue, San Carlos CA 94070

**DRAFT MINUTES OF JULY 21, 2021**

**MEMBERS PRESENT:** A. Brandt (Vice Chair), L. Klein, R. Kutler, P. Leung, K. Maxwell (Alternate), N. Mathur (Alternate), D. Tuzman,

**MEMBERS ABSENT:** P. Flautt, B. Shaw (Chair)

**STAFF PRESENT:** T. Burgwyn J. Navarrete, J. Navarro,

Due to COVID-19, this meeting was conducted as a teleconference pursuant to the provisions of the Governor's Executive Orders N-25-20 and N-29-20, which suspends certain requirements of the Ralph M. Brown Act.

Vice Chair Adrian Brandt called the meeting to order at 5:41 p.m. and led the Pledge of Allegiance.

**APPROVAL OF MINUTES OF JUNE 16, 2021**

Vice Chair Brandt requested that the "draft" watermark be removed from the final version of the Distance Based Fare Resolution that passed at last month's meeting.

Motion/Second: Brandt / Klein

Ayes: Kutler, Leung, Tuzman

Absent: Shaw, Flautt

**PUBLIC COMMENT**

Jeff Carter, Millbrae, via Zoom Q&A, referred to his correspondence in the CAC packet and stated that although discussion regarding technology limitations that prevents Caltrain from real time ridership reporting will be discussed later in October, he hopes that staff can identify those limitations. He stated that the SMART train posts daily ridership, Clipper tags, conductor counts and data from their mobile app. Jeff is looking forward to hearing more about any comprehensive fare package Caltrain may be working on and the results of the Distance Based Fares Resolution that passed the last month.

July 21, 2021

Adina Levin, via Zoom Q&A, identified herself as having a role as Chair of the Advisory body to the Fare Study and reported that on August 2<sup>nd</sup>, the Advisory body will hear an update on the Fare Study, including preliminary information about the recommendations on the Fare Study. She encouraged anyone who is interested to join the meeting. She then stated that the Fare Integration Task Force would be looking at an update on the fare study and recommendations (e.g. free transfers, multi-agency passes and accumulators, potentially standardizing regional fares). Lastly, Adina shared her concern regarding staff mentioning that a presentation would be shared to the Board prior to it being shared with the Citizen's Advisory Committee. She shared her confusion as the Board has asked the Citizen's Advisory Committee to give advice through staff and directly to the Board. She asked whether it made sense to present to the CAC first, so the CAC can make recommendations to the Board.

Roland Lebrun, San Jose, via Zoom Q&A, shared that the Blue Ribbon Transit Recovery Task Force will meet on Monday July 26, at 1:00 p.m. and that more information can be found on the MTC website. He then shared information regarding the DTX, the Downtown extension. He stated that the ESC, Executive Steering Committee has agreed to conduct a study on the Transit Center as a true station and analyze capacity. Roland then reported that he was disappointed to hear that regardless of the outcome of the capacity analysis, it was voted that there would be no changes to the DTX as currently designed. He said that he has written letters to the appropriate parties with further information.

### **CHAIRPERS'S REPORT**

Vice Chair Adrian Brandt reported that he was filling in for Chair Brian Shaw during his absence. Vice Chair Brandt provided details from the ESC, Executive Steering Committee meeting. He then stated that Caltrain and other commuter railroads are struggling with what to do with service, wanting to avoid service cuts in the future. There is concern, once the COVID relief funds are expended, what ridership will look like post-pandemic.

### **COMMITTEE COMMENTS**

Member David Tuzman reported that Melissa Jones, Caltrain staff, informed him that the CAC could receive a presentation after presented to the Agency Boards, in the second half of October. He stated that he would continue to follow-up to, potentially, have something sooner. He then referred to public comment from Adina stating that the CAC is supposed to be representing the riders and feeding recommendations up to the Board. He requested staff to further review the timing of the presentation.

Member Rosalind Kutler thanked staff for their coordination during construction at the Bayshore station. She then stated that the timed transfers are extremely helpful. Lastly, she reported a construction issue at the Redwood City platform. Joe Navarro, Deputy Chief, Rail Operations stated that he would look into the issue.



July 21, 2021

Public Comments:

Roland Lebrun, San Jose, via Zoom Q&A, referred to Government Code section 14954.3, which mandates that Brown Act meetings take public comment either before or immediately after every single item on the agenda, which includes the Chairperson's Report. He stated that he would be commenting on that. He said that the reason it is believed that BART technology is coming to the Transbay Terminal is because there is a concerted effort to suppress information. Specifically, an email he sent out in March regarding the DTX and another recent email that informs the true station capacity analysis that is currently under study. He stated that his correspondence is not appearing in the Agenda packets. He explained that BART technology will indeed not be in the Transbay terminal and that, between Emeryville and Brisbane, it will be able to support thirty trains an hour in each direction.

**UPDATE ON SERVICE RESTORATION**

Ted Burgwyn, Director, Rail Network & Ops Planning, presented an Update on Service Restoration.

The full presentation can be found on [caltrain.com](http://caltrain.com)

Public Comments:

Roland Lebrun, San Jose, via Zoom Q&A, said he believes that this is a step in the correct direction. He also stated that staff is listening and that he has been waiting for this presentation to write to the Board. Roland commented on several slides of the presentation. He talked about the previous success of the Baby Bullets. He made a note that some of the market research is three months old. He said that staff needs to capture the pre-pandemic market. He then stated that passengers make decisions to ride Caltrain based on travel time, not the rate of speed. He stated that Baby Bullet service is needed throughout the day, at least once per hour. He went on to say that staff has eliminated half of the Baby Bullet market and that he has no choice but to drive, right now. He suggested that Baby Bullets originate out of Gilroy. He mentioned that during special events, if the trains are full, to run more trains. He then mentioned equity and referred to slide sixteen. Lastly, he said that the fare box would remain low as long as previous customers are being targeted.

Jeff Carter, Millbrae, via Zoom Q&A, appreciated the report and stated that staff is on the right track. He then stated that Caltrain should explore new fare options for riders that are not working the normal five days a week; he suggested staff to keep the monthly pass at low enough prices to encourage those passengers to ride. Jeff mentioned the distance based fares. Jeff then suggested running more bullet or express trains on weekends. Regarding equity, he stated that lower fares would help encourage the lower income riders. He then stated that he is glad to see more than one train during the off peak and that it should help encourage ridership.

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Andy Chow, via Zoom Q&A, stated that he is glad that Measure RR passed to pay for this expanded service, given that ridership is still coming back, and may not come back very quickly. He remembers when Caltrain could not afford to expand service beyond the peak period because of cost. He hopes that the schedule will help transform the system, as Caltrain continues with electrification. He mentioned that he liked the half-half semi local service schedule, pre-pandemic. He is hopeful to see the Agency react accordingly to ridership.

Drew, via Zoom Q&A, thanked staff for the presentation. He enjoyed the heat diagrams on Highway 101 and mentioned that rush hour traffic patterns are different throughout the day depending on people's type of work and schedule. He stated that he would like to see Caltrain address the VTA transfer connection, not just the BART connection. Drew then advocated that Sunnyvale be a Bullet train stop instead of Mt. View, if a second Bullet Train is added. He pointed out the typo with the Gilroy train time. He then expressed that he would like to see express trains on the weekends. He stated that there are great things about this schedule with equity. He stated that he would like to see a fare structure that goes hand in hand with this schedule.

Adina Levin, via Zoom Q&A, thanked staff for the schedule that has taken into account a lot of the changes that are happening, including looking to bring back commuters in a world with different commuting patterns, less peak oriented and new travel behavior as well as supporting different types of trips and different types of riders. She hopes that Caltrain will pay attention to how people are using the service and make changes accordingly, if necessary. She was happy to see the BART connections made during the pandemic, however is concerned with BART connections on nights and weekends. She stated that having information at the stations and on the websites would be helpful for passengers on what to expect. Lastly, she expressed her concerns with Sunnyvale not having a Bullet train stop.

#### Committee Comments:

Member Tuzman thanked Mr. Burgwyn for the very informative presentation and thanked staff for their work in balancing many competing goals and taking into account the new way that people are traveling. He then expressed the importance of not shying away from express and bullet trains during mid-day. He stated that with flexible work schedules, it would likely increase car usage, particularly mid-day because folks are home and would take more incidental trips. If Caltrain can provide convenient service during those mid-day irregular times, staff would help avoid congestion and pollution of more cars on the road. He then asked what the latest train would be on Sundays. Mr. Burgwyn responded that the Sunday and Saturday scheduled match and that the latest northbound will get into San Francisco at 12:52 a.m. and the latest southbound train leave San Francisco at 12:05 a.m. gets into San Jose at 1:44am. Member Tuzman then asked regarding the Millbrae BART connection schedule difficulty and asked what is the longest a passenger would wait on the platform for a connection and Mr. Burgwyn responded a little bit over 30 minutes.

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Mr. Burgwyn acknowledged the typo on the Gilroy slide at stated that it should read 6:52 a.m., not 5:52 a.m.

Member Larry Klein asked Mr. Burgwyn whether the Baby Bullet stops listed are exactly the same going north and south in peak hours. Mr. Burgwyn confirmed, however with the only difference being 22nd street. Member Klein asked how that was decided. He stated that as heard in public comment from Roland, Adina and Drew there is concern regarding Sunnyvale not having a Baby Bullet stop. Member Klein then said that Sunnyvale had northbound Baby Bullets in the morning; it was split between Mountain View and Sunnyvale, but none going south. Ultimately, there were many riders boarding going in the northbound direction in the mornings and asked why the new schedule will not meet those rider's needs anymore. Mr. Burgwyn stated that the Sunnyvale issue was one that staff looked at carefully and that the problem with that specific train is that if a Sunnyvale stop were added, it would interfere with Bullet train overtaking the local. How that was balanced out was that Sunnyvale will get three trains per hour in the peak and one of those trains is a limited train that provides pretty good travel time between Sunnyvale going into San Francisco. Mr. Burgwyn also mentioned that staff is looking at different options for the second potential Baby Bullet train. Member Klein expressed his worry that people will now get in their cars, because they cannot walk to the station to take the Baby Bullet to the city. He hopes that whatever decision-making was done with the 22nd street station that it could conceivably be done in Sunnyvale. Member Klein then asked what the monitoring thresholds to add another Baby Bullet are. Mr. Burgwyn responded that staff would be looking at ridership, not just trends across the system, but train by train. Mr. Klein said that he is afraid that it would not capture those riders no longer riding Caltrain and choosing to drive instead, because the Baby Bullet will no longer be an option with the new schedule.

Member Rosalind Kutler thanked Mr. Burgwyn for the presentation and mentioned that is a sophisticated schedule that answers many of the current needs and builds on the equity issues. She then stated that the Bayshore station serves a huge equity need and hopes staff keeps that in mind. She mentioned that she is very happy to see the growth of ridership and hopes to keep a strong schedule there to keep those new riders.

Vice Chair Brandt thanked staff for the presentation and commented on distance based fares versus the current inequitable zone based system and stated that the distance based fares would attract a new demographic. He then stated that Caltrain is fortunate to have a bidirectional, all day market with all different types of trips and recommended increasing off peak service. He shared his concern with the proposed schedule because for many stations, it remains an hourly-based service, even though there are two trains per hour. He acknowledged that the more popular stations get two trains per hour. Additionally, he agreed with the previous comments expressing the need for express service on the weekends. Vice Chair Brandt also agreed with previous comments regarding the Sunnyvale service. He mentioned that although staff will monitor ridership, there is an epistemological problem with figuring out what the actual

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demand is versus what people are doing. Lastly, he stated that he agrees with public comment regarding Bullets going to or from Gilroy.

### **COVID-19 CLEANING EFFORTS COST**

Joe Navarro, Deputy Chief, Rail Operations reported COVID-19 Cleaning Efforts Cost

(The full verbal report can be found on [caltrain.com](http://caltrain.com))

#### Committee Comments:

Vice Chair Brandt asked whether the \$100K per month includes labor or just materials cost. Mr. Navarro responded that it includes everything for example, labor, materials and third party contractors. Vice Chair then asked what, if any, vaccine policy does Caltrain have for employees. Mr. Navarro stated that masks continue to be mandatory on the trains and throughout all departments, including operations and maintenance departments. Vice Chair Brandt then asked what, if any, is the vaccine policy for employees that have customer contact. Mr. Navarro responded that staff set up vaccination sites in Santa Clara and held three events that gave employees the opportunity to receive their vaccinations. Additionally, there was an incentive for employees to get vaccinated and voluntarily share their vaccination status. Approximately sixty-three percent of employees have been vaccinated, according to the voluntary vaccination status reported. Vice Chair Brandt shared his concern knowing that potentially approximately thirty percent are unvaccinated. He suggested looking into what employers can do to ascertain vaccination status. Mr. Navarro clarified that the percent includes all departments, which include operations, signal and mechanical departments, just to name a few and does not include just customer facing employees; that percent may be higher. Vice Chair Brandt then asked Mr. Navarro to speak to the air treatment. Mr. Navarro stated that the fleet is equipped with MERV 13s, which is the highest range of filtration. He then stated that there was a study on the airflow, which had previously been presented to the CAC by the Deputy Director, Rail Vehicle Maintenance. Vice Chair Brandt did indeed recall that presentation and thought it was worth mentioning again.

#### Public Comments:

Roland Lebrun, San Jose, via Zoom Q&A, commented on airflow with the Stadler EMUs. He mentioned that Amtrak is testing the new Alstom trains and TCCI had some significant input on how to modify the air flow in the in the train, to have the air originate from the ceiling going down being extracted and then going through the ventilation system, rather than just blowing air horizontal. Roland then asked staff to touch base with TCCI regarding this feedback for a future staff report.

#### Continued Committee Comments:

Alternate Member Kathleen Maxwell suggested that vaccination be required for conductors and those employees that are on the train. Vice Chair Brandt reiterated

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Joe to look into making the vaccination a condition of being able to work. Mr. Navarro responded that he would follow-up with the exact percent breakdown by department of those vaccinated. Vice Chair Brandt then asked what staff could proactively do to ensure customer-facing employees are vaccinated.

Continued Public Comments:

Jeff Carter, Millbrae via Zoom Q&A, stated that he works for the City and County of San Francisco and that they are required to submit their vaccination card, and is mandating city employees get a vaccination, unless there is a medical or other reason that they cannot. He then stated that when work is being done on site, they are required to complete a health check online. He stated that the city has imposed these safety measures to help reduce the spread of the COVID virus and the Delta variant.

### **STAFF REPORT UPDATE**

Joe Navarro, Deputy Chief, Rail Operations reported:  
(The full report can be found on [caltrain.com](http://caltrain.com))

#### **On-time Performance (OTP) –**

- **June:** The June 2021 OTP was 91.5% compared to 96.3% for June 2020.
  - **Vehicle Strikes** – There was one vehicle strike on June 18.
  - **Vehicle on Tracks** – There was one day, June 23 with a vehicle on the tracks that caused train delays.
  - **Mechanical Delays** – In June 2021 there were 329 minutes of delay due to mechanical issues compared to 589 minutes in June 2020.
  - **Trespasser Strikes** – There was one trespasser strike on June 3, resulting in a fatality.
- **May:** The May 2021 OTP was 90.1% compared to 95.8% for May 2020.
  - **Trespasser Strikes** – There was one trespasser strike on May 4, resulting in a fatality.

Mr. Navarro then shared an Average Weekday Ridership slide comparing months April, May and June in 2019, 2020 and 2021. He mentioned that ridership is coming back as the bar graph reflects an increase in 2021 over 2020. He stated that the weekends are also picking up with the hourly service.

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Vice Chair Brandt asked to confirm that ridership in June 2021 is just below ten percent and Joe confirmed. Vice Chair Brandt then pointed out that graph's visual is misleading and makes it look like ridership is ninety percent back. Mr. Navarro explained that the chart would appear small and would not be easy to see and decided to zoom in on the slide. Vice Chair Brandt understood and mentioned that the trend is heading in the right direction. He then asked whether the Safety and Security reports are being worked on. Mr. Navarro confirmed and stated that he may have it ready for next month's meeting. Lastly, Vice Chair Brandt followed-up on whether station boards will have highlighter across the station times. Member Kutler reminded Vice Chair Brandt that Mr. Navarro already addressed this concern and stated that the visual disability community will not be able to see that. Mr. Navarro then stated that what has been done is that the station name of the passenger's location is indeed highlighted. Vice Chair Brandt stated that he has not been to Redwood City to check. Member Kutler confirmed that the station name is highlighted in green.

Public comments:

Roland Lebrun, via Zoom Q&A, requested staff to provide further details regarding vehicles on the track, specifically the location, time of day and whether the intersection had special treatment to deter. Roland then asked staff to consider starting special event trains from Tamien and not San Jose to encourage passengers to ride the train and save on parking. Lastly, Roland agreed with Vice Chair Brandt that it is misleading and said that he would send staff examples of other agency's ridership report.

Drew, via Zoom Q&A, appreciated the chart and understands the mixed views on the Y legend and appreciated how it showed the last three months, year over year for 2019, 2020 and 2021 and was able to follow the data on the right side.

Jeff Carter, Millbrae, via Zoom Q&A, agreed with previous public comment from Roland regarding Tamien parking. He stated that riders can benefit from free parking. Jeff expressed his appreciation with the Ridership chart and asked staff to add the percentage to the chart.

Continued Committee Comments:

Vice Chair Brandt asked how costs are covered for special event trains. Mr. Navarro stated that it is minimal with just fuel and overtime and that Special Event trains are budgeted for every year. Vice Chair asked whether Caltrain charges for Special Event trains that are not in the budget. Mr. Navarro explained that prior to the pandemic, staff was pursuing MOUs for cost revenue service, and however efforts have halted. Mr. Navarro also clarified that with ridership, the service pays for itself as passengers purchase tickets to ride. Vice Chair Brandt stated that it sounds like a win-win. He then asked for further details regarding vehicles on the tracks. Mr. Navarro stated that they could discuss adding a presentation to the Work Plan at the Agenda setting meeting.

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Continues Public comments:

Adina Levin, via Zoom Q&A, requested staff to look into providing real time ridership data or as close as possible to real time, but understands that Caltrain may not be able to provide ridership data as BART does.

Mr. Navarro advised the committee that for next month's meeting, he would look into providing additional data that includes month to date information. He said that he would use the same format, as he did this month, and provide an additional slide that includes month to date data.

### **JPB CAC Work Plan**

August 18, 2021

- High Speed Rail
- PCEP Update (Schedule)
- South San Francisco

September 15, 2021

- Rail Safety Month
  - JPB
  - TASI

October 20, 2021

- Code of Conduct
- Clipper Data Availability

November 17, 2021

December 15, 2021

- Customer Experience Completions & Recommendations

Suggested Items:

- Go Pass cost per ride factors – requested by Chair, Brian Shaw on 6/19/19
- San Mateo County Climate Action Plan – requested by Member Rosalind Kutler on 10/16/19
- MTC Means-Based Discount Fare program update
- Caltrain connections with other agencies – requested by Member Rosalind Kutler on 12/18/19
- Update on grade crossing pilot six months after installation – requested by Member, Patrick Flautt on 12/18/19

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- Summary video of the CAC meetings by the Social Media Officer – requested by Chair, Brian Shaw on 12/18/19
- Operating Costs – requested by Member Adrian Brandt on 2/13/20
- Rail Corridor Use Policy – requested by Member Anna Dagum on 10/21/20
- South San Francisco
- Overview of COVID19 train schedule
- Industry Safe Functionality
- Regional Fare Integration Task Force – requested by Member David Tuzman on 6/1/21
- Blue Ribbon Task Force

**DATE, TIME AND LOCATION OF NEXT REGULAR MEETING:**

August 18, 2021 at 5:40 p.m., San Mateo County Transit District Administrative Building, 2<sup>nd</sup> Floor Bacciocco Auditorium, 1250 San Carlos Avenue, San Carlos, CA.

Adjourned at 7:34 pm





## Memorandum

BOARD OF DIRECTORS 2021

DEVORA "DEV" DAVIS, CHAIR  
STEVE HEMINGER, VICE CHAIR  
CINDY CHAVEZ  
JEFF GEE  
GLENN HENDRICKS  
DAVE PINE  
CHARLES STONE  
SHAMANN WALTON  
MONIQUE ZMUDA

MICHELLE BOUCHARD  
ACTING EXECUTIVE DIRECTOR

**Date:** July 26, 2021  
**To:** Board of Directors  
**From:** Michelle Bouchard, Acting Executive Director  
**Subject:** August 5, 2021, JPB Board Meeting Executive Director's Report

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- **On-time Performance –**
  - **Through July 25:** The preliminary July 2021 OTP was 89.2 percent compared to 96.4 for July 2020.
    - **Trespasser Strike –** There were two trespasser strikes on July 9 and 23, one resulting in a fatality.
  - **June:** The June 2021 OTP was 91.5 percent compared to 96.3 percent for June 2020.
    - **Trespasser Strikes –** There was one trespasser strike on June 3, resulting in a fatality.
- **Caltrain August Service Change –** Caltrain is finalizing plans to restore and expand service in August 2021. This restoration will allow Caltrain to provide a competitive service as employees return to work and in-person education resumes in the region. The planned service change also provides a further opportunity to continue implementation of the Equity, Connectivity Recovery and Growth Framework adopted by the Board in 2020 with an emphasis on providing improved service at all times of day, a simplified set of service patterns, and coordinated connections at key regional transfer points.

The Service Structure will:

- Increase peak period service to 4 trains per hour
  - Maintain off-peak service at 2 trains per hour and expand evening service
  - Maintain hourly weekend service and add four trains on Sunday
  - Restore Baby Bullet service
  - Restore Gilroy service to 3 round trips per day
- **CAC Meeting** – The Citizens Advisory Committee met on Wednesday, July 21, via teleconference. Ted Burgwyn, Director – Rail Network & Operations Planning, provided a presentation on Service Restoration. Joe Navarro, Deputy Chief – Rail Operations, provided an update on COVID-19 Cleaning Efforts Cost. Joe also provided the Staff Report. The next CAC meeting is scheduled for Wednesday, August 18, via teleconference or in San Carlos.
  - **BAC Meeting** – The Bicycle Advisory Committee met on Thursday, July 15, via teleconference. Anthony Simmons, Director, Systemwide Planning, provided a presentation on Caltrain Station and Terminal Planning. Lori Low, Government & Affairs Community Officer & Matt Kove from AECOM, provided a presentation on Rengstorff Grade Separation Project. Lori also provided the Staff Report. The next BAC meeting is scheduled for Thursday, September 16, via teleconference or in San Carlos.
  - **Special Event Service –**

**Services Performed:**

- **SF Giants** – The SF Giants hosted 15 home games in June, 12 games at limited capacity and three games with no capacity restrictions starting on June 25. Average additional ridership per game, boarding and alighting at San Francisco station, was 1,753, an increase of 107% compared to May 2021. Total additional ridership for June was 26,290. Year-to-date additional ridership is 39,723.

The Giants hosted 14 home games in July. July Monthly Giants Ridership will be reported in September.

- **SF Pride Movie Nights –**
  - June 11: total additional riders boarding and alighting at San Francisco station was 312.
  - June 12: total additional riders boarding and alighting at San Francisco station was 390.

- **Independence Day Service & SF Waterfront Fireworks** – On Sunday, July 4th, Caltrain operated a Sunday schedule. Caltrain also operated two post-event local trains after the Independence Day fireworks along the SF waterfront.

Ridership to and from the event will be reported in September.

- **Observed Independence Day Service** – On Monday, July 5th, Caltrain operated a Holiday/Sunday schedule in observance of Independence Day.

**Services Scheduled:**

- **SF Giants** – The Giants will host 12 home games at Oracle Park at full capacity in August. Caltrain will continue to operate the Millbrae Express special post-event service for all Weekday night and Weekend night games that was implemented with the opening of the economy starting June 15. Caltrain will continue to monitor ridership arriving and departing SF station to support customer needs.
- **SF 49ers Pre-Season** – The 49ers will host two pre-season homes at Levi's Stadium on Saturday, August 14 (vs. the Kansas City Chiefs) and Sunday, August 29 (vs. the Las Vegas Raiders) with no capacity restrictions. Caltrain & VTA connecting service to Levi's Stadium is still to be determined. The VTA has developed a plan to resume light rail service and is moving through phases to achieve this goal by the middle of August.
- **Hella Mega Tour Concert** – The Hella Mega Tour Concert will be held at Oracle Park on Friday August 27, 2021 and will feature bands including Green Day, Fall Out Boy, Weezer and the Interrupters. Special Event Service is still to be determined.
- **Capital Projects** – The Capital Projects information is current as of July 16, 2021 and is subject to change between July 16 and August 5, 2021 (Board Meeting).
  - **San Mateo 25th Avenue Grade Separation Project:** This project raises the elevation of the alignment from Hillside Boulevard to south of the Highway 92 Overcrossing in the city of San Mateo. The project creates a grade separation at 25th Avenue, relocates the Hillside Station to the north, and creates two new east-west street grade-separated connections at 28th and 31st Avenues in San Mateo. The project is over 93% complete.

The new Hillside Station was opened for rail service on April 26<sup>th</sup> along with the majority of the parking lots between 28<sup>th</sup> Avenue and 31<sup>st</sup> Avenue and

between 28<sup>th</sup> Avenue and 25<sup>th</sup> Avenue. The small portions of the parking lots at the southern end by 31<sup>st</sup> Avenue and at the northern end near 25<sup>th</sup> Avenue, which were excluded at the April 26<sup>th</sup> station opening, are currently in progress for completion.

In July, at 25<sup>th</sup> Avenue, work was being completed on installation of underground utilities for storm drains and sanitary sewer systems, concrete flat work for median islands, curbs, gutters and sidewalks, roadway grading, and asphalt pavement and striping. The reopening of 25<sup>th</sup> Avenue to traffic is forecast by the end of July to early August.

At 31<sup>st</sup> Avenue, curbs and gutters, roadway grading, installation of underground utilities for storm drains and traffic signals, and asphalt paving for the future roadway underpass was completed. Work continues for the painting of the 31<sup>st</sup> Avenue Steel Bridge, concrete flatwork for sidewalks, electrical & mechanical works for the storm drain pump station, and street modifications at the intersection of 31<sup>st</sup> Avenue and El Camino Real.

- **South San Francisco Station Improvements:** This project replaces the existing side platforms with a new centerboard platform and constructs a new connecting pedestrian underpass to the two new plazas in downtown South San Francisco to the west and the shuttle area to east. Upon completion, the hold-out rule at this station will be removed that currently impacts overall system operational efficiency.

In July, the contractor (PMI) is installing architectural and electrical finishes for Ramp 3 (Pedestrian Underpass leading to West Plaza/Airport Boulevard entrance), and Ramp 2 (Pedestrian Underpass to Center Platform). Concrete work and embedded electrical for Ramp1/Stair 1 (East Side entrance on Poletti Ave. to Pedestrian Underpass) is also in progress. The ceiling of the Pedestrian Underpass is in progress. The project completion date is forecasted to extend from December 2020 until November 2021.

The funding agreements with the San Mateo County Transit Authority (TA) and City of South San Francisco addressing project budget and schedule impacts due to utility and contractor-caused delays were finalized. At the July 1 meeting, the board authorized the receipt of additional funding and increased contract authority.

- **Marin and Napoleon Bridge Rehabilitation Project:** This state of good repair project will perform repairs at the Marin St. Bridge and replace the Napoleon St. Bridge. Both bridges are located south of the 22nd Street Station in the City of San Francisco. The repairs at Marin Street are primarily for concrete spalling and cracks and deficient walkways and handrails. The

Napoleon St. bridge concrete spans will be removed and replaced with elevated soil berm structures and the main steel span will be replaced with a new steel span. The span replacement at Napoleon Street will require several partial weekend service outages between Bayshore and 4th & King Stations during the outages. The project will install security fencing to deter encampments and include track improvements in the vicinity of the bridges.

During July, work continued to address structural deficiencies of the Marin and Napoleon bridges and track improvements in the adjacent areas such as spot tie replacement, and new bridge walkways and railings. The contract is planned to be completed in the summer of 2021.

- **Burlingame Broadway Grade Separation Project:** This project will grade separate the railroad alignment at Broadway between Carolan and California Avenues in the City of Burlingame and remove the current at-grade crossing. As a part of this project, the Broadway Station will become elevated, and the hold out rule that impacts operational efficiency at this station will be eliminated. Currently, the design phase for this project is funded through local funds (San Mateo County Transportation Agency Measure A and City of Burlingame). The City of Burlingame is the sponsor of the project, with Caltrain acting as the lead agency for implementation.

The project will improve both traffic safety and traffic flow on Broadway. The project will also provide improved and more efficient traffic movement along adjacent streets and intersections surrounding the crossing. Pedestrian and vehicle safety will be greatly improved by creating clear separation between pedestrians/vehicles and trains and by eliminating the potentially dangerous conflicts presented by the current at-grade crossing. Lastly, railroad operational efficiency will be improved, as there have been numerous accidents at the Broadway at-grade crossing, many involving vehicles stopped on the tracks. The Broadway at-grade crossing is currently ranked on the California Public Utilities Commission's Grade Separation Priority List as the top-ranked crossing for grade separation in northern California and the second highest ranked crossing in the state. The project can: 1) help reduce emergency response times, as the Caltrain corridor bisects the east and west sides of the city, 2) help to alleviate traffic queuing on Broadway, which extends east to the U.S. Highway 101 ramps, 3) reduce traffic delays at nearby intersections with California Drive, Carolan Avenue and Rollins Road, and 4) significantly improve access to the Broadway commercial district from U.S. Highway 101, which would further support economic development.

Currently, the project continues to address the City of Burlingame's comments to their review of the value engineering of the preliminary design to optimize cost, schedule, and construction efficiency. Concurrent with the value

engineering efforts, detailed design efforts are underway, including geotechnical engineering and utilities coordination. A board action is arranged for a upcoming board action related to additional funding from the San Mateo County Transportation Authority (SMCTA) and FY22 Capital Budget amendment for the additional design and construction costs associated with the relocation of Paralleling Station #3 (PS3) to the east side of the alignment, as requested by the City. The current schedule is to complete the final design for construction contract advertisement by mid-2023. Construction is scheduled to occur between early 2024 and early 2026. Advance utility relocations are expected to begin in mid-2023. The team is evaluating the potential use of alternative contract delivery methods to address project risk and site constraints.

- **Ticket Vending Machine (TVM) Rehabilitation:** This project will upgrade existing TVM Server and retrofit and refurbish two existing TVM machines to become prototypes for new TVM's so that the machines can perform the functions planned for the Clipper program. The new machines will be able to dispense new Clipper cards (excluding discount Clipper cards that require verification of eligibility) and have the ability of increasing the cash values of existing Clipper cards. The scope of the original contract was increased to include upgrades to the credit card reader and database.

In early October, the first phase of the project to develop a prototype Clipper TVM successfully completed final acceptance, testing those results in completion of Phase 1. Phase 2 retrofitting of 12 additional TVM's was completed in March. The award of Phase 3 for upgrading of another 21 TVM's is pending. Additional funds for Phase 4 for another 25 TVM's was included in the FY21 Capital Budget amendment approved in October 2020. Phase 4 will be added to the project when funding becomes available. Funding for Phase 5 to upgrade all remaining stations (30 TVM's) was included in the FY22 Capital Budget that was approved in June 2021.

- **Mary and Evelyn Avenue Traffic Signal Preemption Project:** This project will perform upgrades to train approach warning systems at Mary Avenue and Evelyn Avenue crossings in Sunnyvale. The project will improve vehicle safety at the at-grade crossings by increasing traffic signal advance warning times for approaching trains in order to clear vehicles at the crossings. The project will mimic the traffic signal preemption project in Redwood City, Palo Alto, and Mountain View completed in 2014. This project is being funded through the State of California Public Utilities Commission Section 130 program to eliminate hazards at grade crossings.

The 100% crossing design by the Electrification project is not available for design coordination, and a timeframe for its receipt is pending. The project

proceeded to complete its design without this information from the Electrification project. The 100% design is complete and Notice to Proceed for construction was issued to the Caltrain contract operator, TASI. TASI has completed the installation of new traffic signal preemption equipment. The new equipment for the advance signal preemption was successfully cutover and tested in July 2021. Integrated testing with the City of Sunnyvale's traffic controller will be done when the City is ready in the fall 2021.

- **FY19/FY20 Grade Crossing Improvements:** This project is a continuation of the ongoing grade crossing program to improve safety at grade crossings in accordance with Grade Crossing Hazards Analysis for the entire corridor. This analysis prioritized crossings, and we have proceeded with the work in phases based on funding availability. Ten crossings were improved in 2018 under the FY16 budget authorization. Due to budget constraints, the FY19/FY20 scope is limited to five (5) crossings to be improved. The five crossings selected in this phase are 1st, 2nd, and 3rd Avenues in San Mateo and Glenwood and Oak Grove Avenues in Menlo Park. Work items include installation of signals, gates, curbs, and signs.

Construction began in April 2021, and all construction contract was substantially completed in July. The previously remaining work for the median on the east side of 3<sup>rd</sup> Ave has now been installed, and the pavement striping has also been completed. The only remaining work for the project is the installation of red solar pavement markers on the edge of the roadway across the tracks, which will be done by the Caltrain contract operator, TASI.

- **Churchill Avenue Grade Crossing Improvements:** This project will make safety, pedestrian and bicycle access improvements to the Churchill Avenue crossing in the City of Palo Alto. The project scope includes widening sidewalks, associated relocation of pedestrian gates, and installing new vehicle pavement markings and markers.

The project began in December 2019. The 65% design, with design assumptions, was received at the end of April 2021 and is under review. The City of Palo Alto is rethinking the scope of work for the project and is in discussion with CPUC and Caltrans to modify the scope. The City of Palo Alto's design consultant has developed a conceptual design, which is being reviewed by the City. Coordination meetings continued between staff and the City's design consultant. The City of Palo Alto's design consultant is working on their 50% design for the Churchill Ave improvements. After we review their 50% design, we will proceed forward from our 65% design.

- **Bayshore Station Bridge Painting:** This project will perform rehabilitation of the coatings of the existing steel pedestrian overpass bridge at Bayshore

Station in the City of Brisbane. The bridge connects the southbound platform to the northbound platform and the parking lots on the east side. The bridge was originally constructed as part of the Caltrain Express project (CTX) in 2002 and has not been repainted since. The bridge's paint coatings are in need of rehabilitation with surface rust that needs to be addressed, along with a complete repainting of the bridge, to bring the structure to a state of good repair.

The project is finalizing the Issue for Bid construction bid documents. Coordination and outreach with the Electrification project and stakeholders, such as the Cities of Brisbane and San Francisco, have been conducted and continue. Subject to the availability of funding for construction, the advertisement for bids is now forecast to occur in Fall 2022. PCEP has completed its grounding and bonding activities in July of 2022 as forecasted in its current construction schedule. Other construction activity is expected to commence in the spring of 2023.

- **Broadband Wireless Communications:** The project will provide wireless communication systems to enhance capabilities for monitoring of railroad operations and maintenance and provide Wi-Fi capability for passengers. The project is funded through a grant from the Transit and Intercity Rail Capital Program (TIRCP).

The project has completed the planning/conceptual design phase to develop project requirements. A stakeholder's review of planning/conceptual design was also completed. A recommendation has been made to proceed with the project as a Design/Build procurement. The Request for Proposal (RFP) contract documents are currently undergoing review by Caltrans. Advertisement is forecast for the late summer of 2021, with contract award by early 2022. Design and Construction is planned from early 2022 until mid-2023.

- **MP-36 Locomotive Mid-Life Overhaul Project:** This project will perform a mid-life overhaul of six MP-36-3C Locomotives. The mid-life overhaul includes complete disassembly of the main diesel engine, reconditioning reusable main frame components, re-assembling with new engine components, and replacing the Separate Head-End Power (SEP-HEP) unit and all electrical components of the SEP-HEP compartment. All areas of the locomotive car body, trucks, wheels and electrical components shall be reconditioned to like-new condition or replaced with new material. The project work is occurring off-site at the contractor's facility location. The 6 locomotives to be overhauled are Locomotive #'s 923, 924, 925, 926, 927 & 928. In order to maintain daily service, only 1 or 2 of these locomotives are released at a time for overhaul work that is expected to take approximately



8 months per locomotive. Due to this restriction, the overall completion of this work is expected to take approximately 4 years.

The first vehicle (#927) was shipped to the vendor's facility at Mare Island in the City of Vallejo in July for overhauling. Its return to Caltrain has been delayed from early-2021 until mid-2021 due to COVID-19-related impacts to the vendor's supply chain, availability of testing staff due to travel restrictions, and increase in the scope of needed repairs. This delay is expected to be limited to vehicle #927, which is currently 61% complete. A second vehicle (#924) was shipped to the vendor's facility in November and is currently being overhauled.

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: John Funghi  
Chief Officer, Caltrain Modernization Program

SUBJECT: **PENINSULA CORRIDOR ELECTRIFICATION PROJECT MONTHLY PROGRESS  
REPORT – JULY**

**ACTION**

Staff Coordinating Council recommends the Board receive the Peninsula Corridor Electrification Project (PCEP) Monthly Progress Report (MPR).

The MPR is available online under "Reports and Presentations" at this webpage:  
[http://www.caltrain.com/projectsplans/CaltrainModernization/CalMod\\_Document\\_Library.html](http://www.caltrain.com/projectsplans/CaltrainModernization/CalMod_Document_Library.html).

No action required.

**SIGNIFICANCE**

Staff prepares and submits a report covering the PCEP on a monthly basis.

**BUDGET IMPACT**

There is no impact on the budget.

**BACKGROUND**

The MPR is intended to provide funding partners, stakeholders, and the public a PCEP overview and an overall update on project progress. This document provides information on the scope, cost, funding, schedule, and project implementation.

Prepared by: John Funghi, Chief Officer, Caltrain Modernization Program 650.295.6882



## Caltrain Modernization Program Peninsula Corridor Electrification Project (PCEP)



# June 2021 Monthly Progress Report

June 30, 2021

## Funding Partners



Federal Transit Administration (FTA) Core Capacity  
FTA Section 5307 (Environmental / Pre Development only)  
FTA Section 5307 (Electric Multiple Unit (EMU) only)



Prop 1B (Public Transportation Modernization & Improvement Account)  
Caltrain Low Carbon Transit Operations Cap and Trade



Proposition 1A  
California High Speed Rail Authority (CHSRA) Cap and Trade



Carl Moyer Fund



Bridge Tolls (Funds Regional Measure (RM) 1/RM2)



San Francisco County Transportation Authority (SFCTA)/San Francisco Municipal Transportation Agency (SFMTA)



San Mateo County Transportation Authority (SMCTA) Contribution  
SMCTA Measure A



Santa Clara Valley Transportation Authority (VTA) Measure A  
VTA Contribution



City and County of San Francisco (CCSF) Contribution

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## 1.0 BACKGROUND

Over the last decade, Caltrain has experienced a substantial increase in ridership and anticipates further increases in ridership demand as the San Francisco Bay Area's population grows. The Caltrain Modernization (CalMod) Program, scheduled to be implemented by 2022, will electrify and upgrade the performance, operating efficiency, capacity, safety, and reliability of Caltrain's commuter rail service.

The PCEP is a key component of the CalMod Program and consists of converting Caltrain from diesel-hauled to Electric Multiple Unit (EMU) trains for service between the San Francisco Station (at the intersection of Fourth and King Streets in San Francisco) and the Tamien Station in San Jose. Caltrain will continue Gilroy service and support existing tenants.

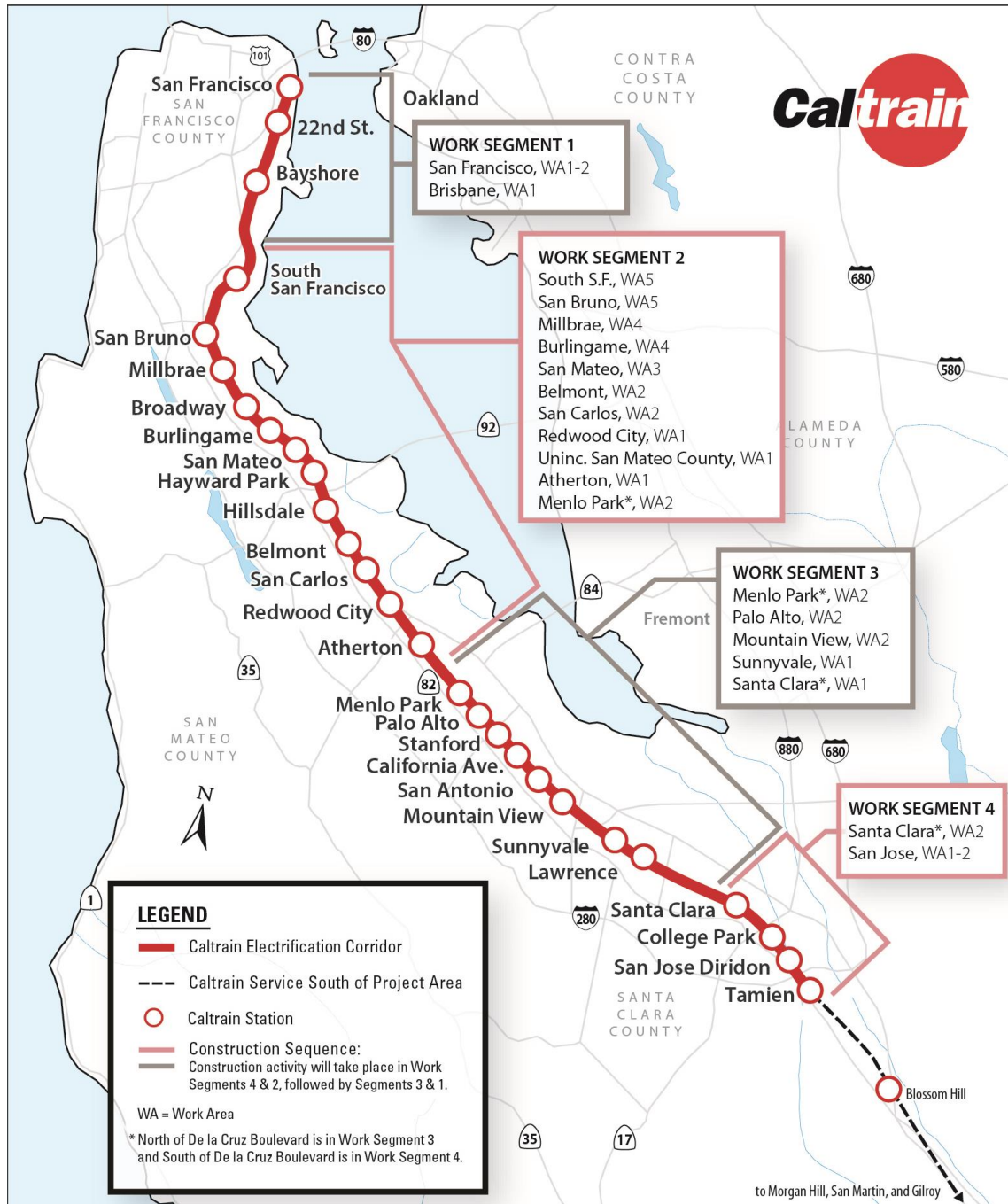
An electrified Caltrain will better address Peninsula commuters' vision of environmentally friendly, fast and reliable service. Electrification will modernize Caltrain and make it possible to increase service while offering several advantages in comparison with existing diesel power use, including:

- **Improved Train Performance, Increased Ridership Capacity and Increased Service:** Electrified trains can accelerate and decelerate more quickly than diesel-powered trains, allowing Caltrain to run more efficiently. In addition, because of their performance advantages, electrified trains will enable more frequent and/or faster train service to more riders.
- **Increased Revenue and Reduced Fuel Cost:** An electrified Caltrain will increase ridership and fare revenues while decreasing fuel costs.
- **Reduced Engine Noise Emanating from Trains:** Noise from electrified train engines is measurably less than noise from diesel train engines. Train horns will continue to be required at grade crossings, adhering to current safety regulations.
- **Improved Regional Air Quality and Reduced Greenhouse Gas Emissions:** Electrified trains will produce substantially less corridor air pollution compared with diesel trains even when the indirect emissions from electrical power generation are included. Increased ridership will reduce automobile usage, resulting in additional air quality benefits. In addition, the reduction of greenhouse gas emissions will improve our regional air quality, and will also help meet the state's emission reduction goals.

**2.0 EXECUTIVE SUMMARY**

The Monthly Progress Report is intended to provide an overview of the PCEP and provide funding partners, stakeholders, and the public an overall update on the progress of the project. This document provides information on the scope, cost, funding, schedule, and project implementation. Work along the Caltrain Electrification Corridor has been divided into four work segments and respective work areas (WA) as shown in Figure 2-1. PCEP activities are described and summarized by segments and work areas.

**Figure 2-1 PCEP Work Segments**





**Peninsula Corridor Electrification Project**  
**Monthly Progress Report**

Crews continued foundation installation in Segment 2 between Belmont and Atherton, as well as off-track foundations in Segment 1. The switchgear was delivered and installed at Traction Power Substation 2. Work at the paralleling stations included ductbank, ground grid, low voltage wire, fence, drainage, access ramp, and light pole and gantry installations.

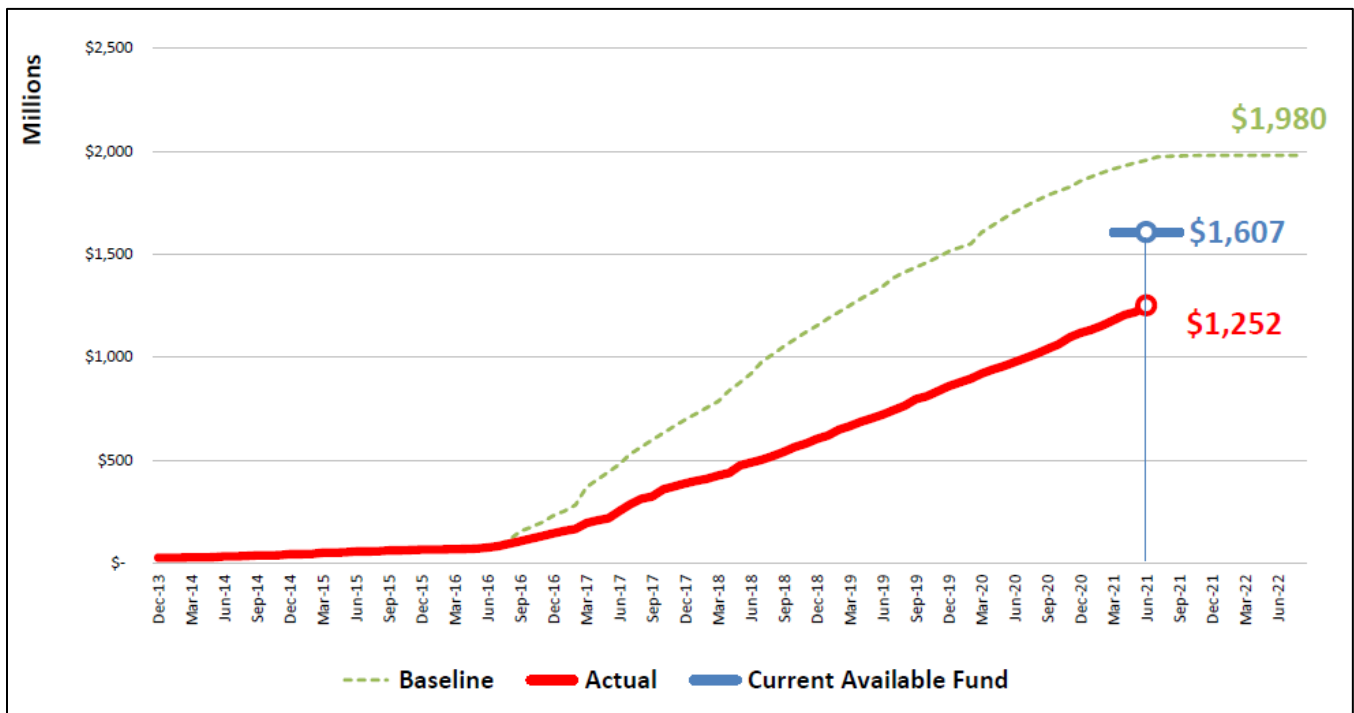
Punch list work continued at the Centralized Equipment Maintenance and Operations Facility (CEMOF) and electrical work for the Component Test Room was completed. The CEMOF Modifications Contract is expected to be complete by August 2021.

Trainset 1 is still undergoing dynamic type testing in Pueblo, CO, including 8-car brake, propulsion, and battery testing. Routine static and dynamic testing continues on Trainset 3 and has started on Trainset 4.

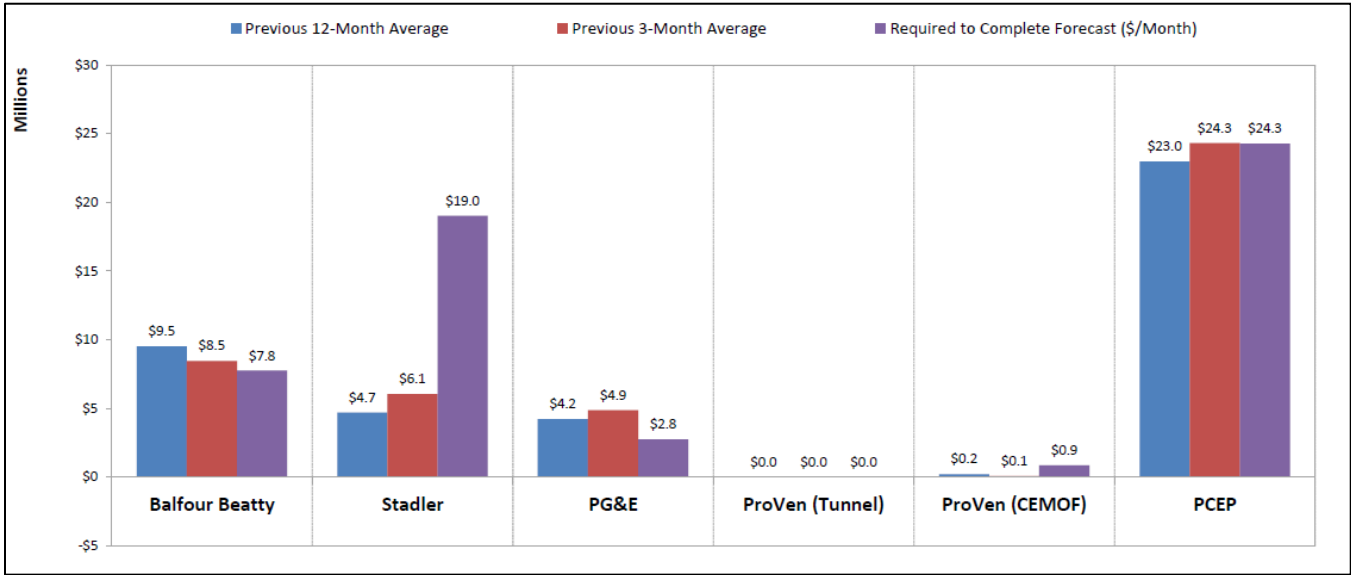
**2.1. Monthly Dashboards**

Dashboard progress charts are included below to summarize construction progress.

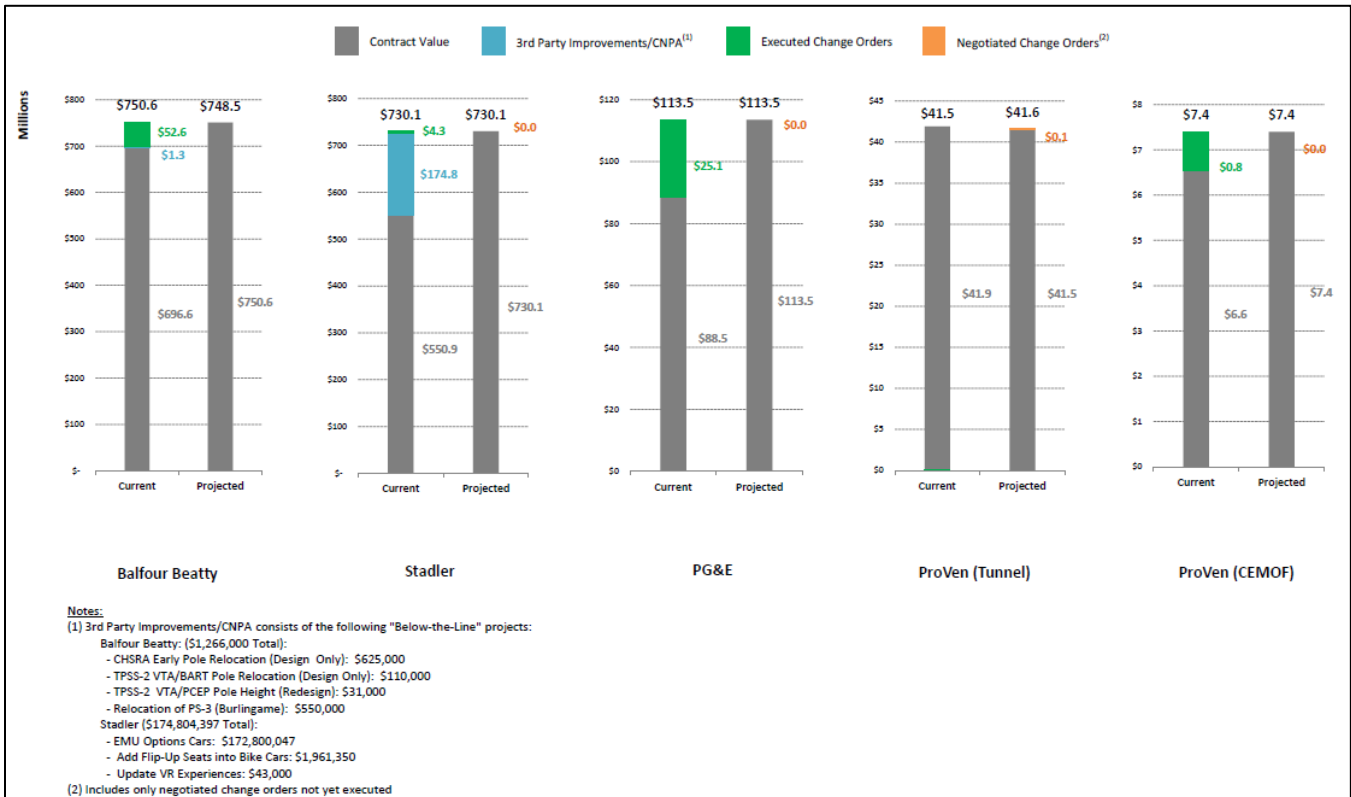
**Figure 2-2 Expenditure – Planned vs. Actual**



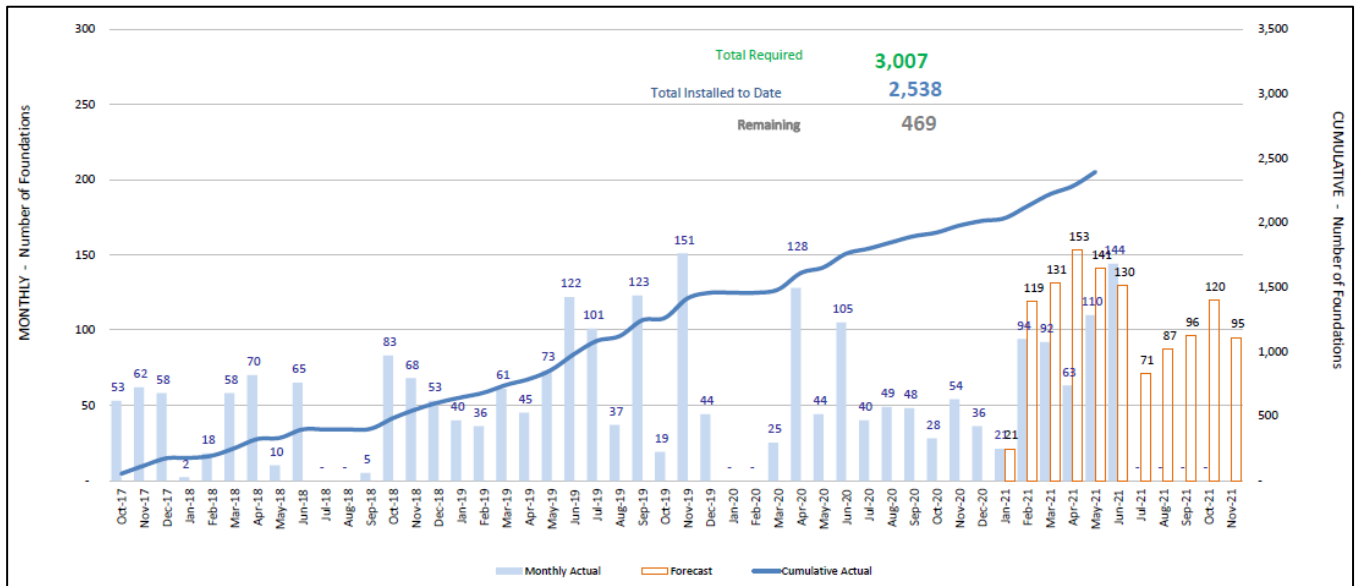
**Figure 2-3 Spending Rate vs. Required**



**Figure 2-4 Construction Contract Budgets**



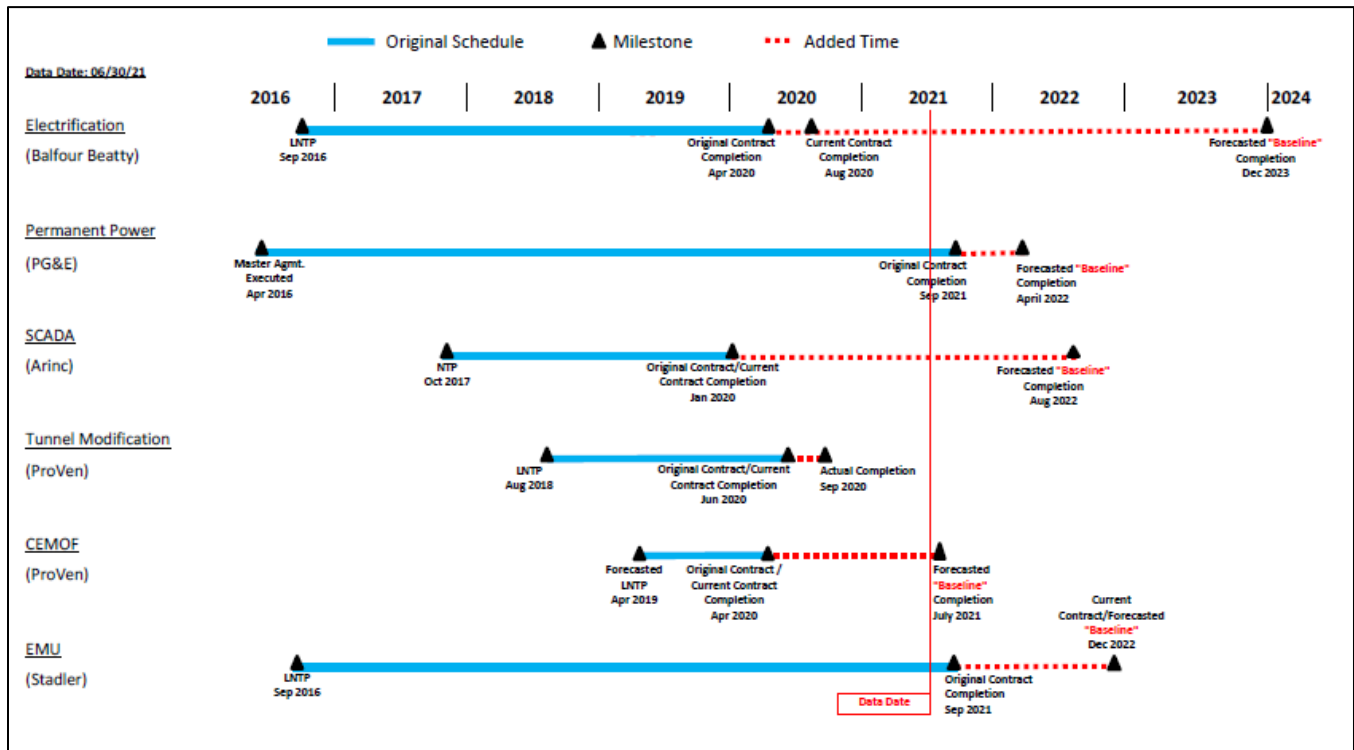
**Figure 2-5 OCS Foundation Production**



Notes regarding tables above:

- BBII is reporting a delay in the completion date for the OCS foundations. PCEP's own projection of BBII's productivity estimates the completion date to be in November, reflected in Figure 2-5. The monthly forecast is revised at the end of ongoing OCS foundation workshops, which are held to determine the level of effort necessary for each of the activities prior to foundation installation. The delay to the OCS foundation completion date does not change the substantial completion date of the BBII contract.

**Figure 2-6 Contractor Completion Schedule**



## **2.2. Funding Partners Participation in PCEP**

The PCEP has a series of weekly, biweekly, monthly and quarterly meetings to coordinate all aspects of the program. The meetings are attended by project staff with participation by our funding partners in accordance with the Funding Partners Oversight Protocol. A summary of funding partner meetings and invitees can be found in Appendix B.

This section of the report provides a summary of the discussions and decisions made at the meetings and a list of funding partners who attended the meetings.

### **Electrification – Weekly Discipline-Specific Meetings**

Purpose: To replace the previous weekly Engineering Meeting with three discipline-specific meetings for the three major categories of work under the Electrification Design Build (DB) contract: Overhead Contact System (OCS) Foundation, Traction Power Facilities (TPF), and Signals. Each meeting will focus on the status, resolution and tracking of Balfour Beatty Infrastructure, Inc. (BBII) and Electrification design- and construction-related issues.

#### Activity this Month

#### **OCS Foundation Meeting**

Funding Partners: None

- Review of upcoming foundation design and installation schedule
- Discussion of open issues impacting foundations design and installation
- Discussion of outstanding Requests for Information (RFI)
- Review of foundation designs that potentially impact Right of Way (ROW)
- Review of outstanding Field Orders or Change Notices required for work to continue

#### **TPF Meeting**

Funding Partners: None

- Review of outstanding items as they relate to the design and construction of the PG&E Interconnection
- Review of PG&E Interconnection schedule
- Discuss progress and next steps for the Single-Phase Study
- Discuss outstanding comments on the interconnection agreement
- Review and resolve open issues on the construction and design of the TPFs (paralleling stations, traction power substations, switching station)

### **PCEP Delivery Coordination Meeting – Bi-Weekly**

Purpose: To facilitate high-level coordination and information sharing between cross-functional groups regarding the status of the work for which they are responsible.

#### Activity this Month

Funding Partners: SFCTA: Luis Zurinaga; MTC: Trish Stoops; CHSRA: Sharath Murthy; VTA: James Costantini

The Project Management Oversight Consultant (PMOC) monitoring visit occurred virtually on June 21 – 23. The next FTA Quarterly Update is scheduled for July 27. In signals and communications, the next scheduled cutover has been pushed to July 23 due to findings in the pretest that require rework. In testing and commissioning, the TPS-2 control building is scheduled to be delivered onsite June 24 and offload from the truck will occur on June 25. For EMU design, testing and manufacturing, two final design reviews (FDRs) remain and the monitoring and diagnostic system FDR is expected to be closed out in the next month. Train 1 will be undergoing auxiliaries/battery testing and propulsion/braking tests in June. Car B is still en route to Elmira, NY and climate room testing will be deferred due to the delay in arrival. Routine static and dynamic tests on Train 3 and 4 are ongoing. Carshells production continues on Trainsets 3 – 13 and work on Trainset 14 carshells has recently commenced in June. At CEMOF, the parts and storage warehouse has been completed. The lighting and sprinkler system have been installed and TASI is now utilizing the warehouse. Work on the restoration of the rail at the pits continues, and the component room interior panels have been installed. Punch list items are anticipated to remain until July. In design build activities, off-track foundation installation continues in Segment 1 for OCS foundations. Foundation installation is continuing in S2WA1 and S2WA2, and the issue with the availability of the concrete admixture has been resolved with work resuming on June 1. Training for the Traction Power Supervisory Control and Data Acquisition (SCADA) System is tentatively scheduled for July 12 and ARINC has completed hardware installation on July 22.

### **Systems Integration Meeting – Bi-Weekly**

Purpose: To discuss and resolve issues with inter-system interfaces and to identify and assign Action Item Owners for interface points that have yet to be addressed.

#### Activity this Month

Funding Partners: CHSRA: Sharath Murthy

Bi-weekly PCEP System Integration meetings are held to monitor and determine appropriate resolution for systems integration issues. The Systems Integration Lead also maintains contact with the EMU procurement team. The Traction Power SCADA team also holds bi-weekly status meetings. Coordination with the EMU procurement, Positive Train Control (PTC) and Caltrain Capital Project managers responsible for other capital projects on the corridor is ongoing. There is coordination with PG&E construction of the Interconnection to TPS-2, and the CEMOF upgrades as well. The Systems Integration meeting has been arranged to have a technical discussion of the interface issues to existing Caltrain legacy systems followed by a shorter session with CalMod management for elevation of issues identified. A smaller “breakout” group is meeting to

determine and track what testing and with which resources will need to be coordinated among the various contracts and suppliers. This “Testing and Commissioning Meeting” is the primary interface to the PCEP Design-Build Team at this time. Work to define dependencies for completion of Segment 4 (Intermediate Milestone #1) is ongoing with the Testing & Commissioning discussion. The schedule fragnet for the achievement of Intermediate Milestone #1 has been largely developed and the group continues to refine this and monitor progress toward achievement of the milestone. This group will report back to the System Integration meeting group with their findings.

### **Master Program Schedule (MPS) Meeting – Monthly**

Purpose: To review the status of the MPS and discuss the status of major milestones, critical and near-critical paths, upcoming Board review items, and progress with the contracts, among others.

#### Activity this Month

Funding Partners: MTC: Trish Stoops; SFCTA: Luis Zurinaga; CHSRA: Sharath Murthy; SMCTA: Joe Hurley

JPB has proposed a new revised Revenue Service Date (RSD) as a result of the risk refresh exercise performed by FTA-PMOC in December 2020. RSD is forecasted to occur between January 1, 2024 and March 31, 2024. When six to eight months of risk contingency is included, the new proposed revised RSD is September 26, 2024.

Milestone #1 - Segment 4 Construction Completion forecast date is October 15, 2021.

Stadler’s forecasted conditional acceptance of the 14th trainset in the MPS June update remains December 9, 2022. The 1st trainset arrival at JPB also remains November 24, 2022. The impact of both the replacement of the internal parts supplier and COVID-19 remains unknown in Stadler’s schedule during the upcoming months.

The JPB’s forecasted electrification substantial completion date for the BBII contract in the MPS June update remains December 31, 2023. JPB is working with BBII to improve progress on both the signals system, which lags behind baseline productivity level, and traction power facilities, which continue to progress at a slow rate.

### **Risk Assessment Meeting – Monthly**

Purpose: To identify risks and corresponding mitigation measures. For each risk on the risk register, mitigation measures have been identified and are being implemented. Progress in mitigating these risks is confirmed at the ongoing risk monitoring and monthly risk assessment meetings.

#### Activity this Month

Funding Partners: SFCTA: Luis Zurinaga; CHSRA: Sharath Murthy; VTA: James Costantini

One risk was retired.

### **Change Management Board (CMB) – Monthly**

Purpose: To review, evaluate and authorize proposed changes to PCEP over \$200,000. The CMB discusses major topics including potential changes to PCEP contracts, contingency usage, track access delays and Differing Site Conditions (DSC) field order updates. Potential contract changes will follow the PCEP Change Order Procedure. Once approved changes are executed, they will be reported in the Change Management section (Section 9) of this report.

#### Activity this Month

Funding Partners: CHSRA: Simon Whitehorn and Sharath Murthy; SFCTA: Luis Zurinaga; SMCTA: Joe Hurley; MTC: Trish Stoops and Kenneth Folan; VTA: Franklin Wong and James Costantini; FTA: Mike Eidlin

#### BBII Contract

One change was approved.

#### CEMOF Contract

No changes were identified for consideration.

#### Stadler Contract

No changes were identified for consideration.

#### SCADA Contract

No changes were identified for consideration.

#### Tunnel Modification Contract

No changes were identified for consideration.

#### Amtrak Contract

No changes were identified for consideration.

#### Other

One change was approved.

### **2.3. Schedule**

PCEP proposed a new revised Revenue Service Date (RSD) as a result of the risk refresh exercise performed by FTA-PMOC in December 2020. RSD is forecasted to occur between January 1, 2024 and March 31, 2024. When six to nine months of risk contingency is included, the new proposed revised RSD is September 26, 2024.

Milestone #1 - Segment 4 Construction Completion forecast date is October 15, 2021.

Stadler’s forecasted conditional acceptance of the 14th trainset in the MPS June update remains December 9, 2022. The 1st trainset arrival at JPB also remains November 24, 2022. The impact of both the replacement of the internal parts supplier and COVID-19 remains unknown in Stadler’s schedule during the upcoming months.

PCEP’s forecasted electrification substantial completion date for the BBII contract in the MPS June update remains December 31, 2023. JPB is working with BBII to improve progress on both the signals system, which lags behind baseline productivity level, and traction power facilities, which continue to progress at a slow rate.

Table 2-1 indicates major milestone dates for the MPS.

**Table 2-1 Schedule Status**

Milestones	Program Plan	Progress Schedule (June 2021) <sup>1</sup>
Milestone #1 Segment 4 Construction Completion	11/21/2019	10/15/2021 <sup>1</sup>
Arrival of First Vehicle at JPB	N/A	11/24/2021 <sup>2</sup>
PG&E Provides Permanent Power	09/09/2021	05/15/2022
FFGA RSD	08/22/2022	08/22/2022
Acceptance of 14 <sup>th</sup> Trainset	08/20/2021	12/09/2022 <sup>2</sup>
Electrification Substantial Completion	08/10/2020	12/31/2023 <sup>*</sup>
Revenue Service Date (RSD) – Period Range	12/09/2021	01/01/2024 – 03/31/2024
Proposed Revised RSD with Contingency	N/A	09/26/2024

Note:

- <sup>1</sup>. Dates may shift slightly in the next month’s Progress Schedule update due to additional signal cutovers in Segment 4.
- <sup>2</sup>. These dates are expected to be delayed due to the replacement of internal parts supplier.
- <sup>A</sup> Completed Milestone.
- <sup>\*</sup> Pending mediation process resolution with BBII.

## **2.4. Budget**

In December 2020, the FTA conducted a risk refresh that reviewed the existing delays, updated contractor schedules, and independent schedules prepared by the JPB. On June 17, 2021, a draft FTA-led Risk Refresh Report was issued forecasting an additional budget need of \$333M. At the June 3, 2021 JPB Board meeting, in alignment with the FTA report, PCEP proposed a \$333M budget increase consisting of \$161M in known and allocated costs and \$173M in reserve. Until a budget increase is approved, the PCEP budget as reported in Tables 2-2, 8-1 to 8-3, and in Appendix D remains at the PCEP baseline budget amounts.



**Peninsula Corridor Electrification Project**  
**Monthly Progress Report**

A summary of the overall budget and expenditure status for the PCEP is provided in Table 2-2 below.

**Table 2-2 Budget and Expenditure Status**

Description of Work	Budget (A)	Current Budget (B) <sup>1</sup>	Cost This Month (C) <sup>2</sup>	Cost To Date (D) <sup>3</sup>	Estimate To Complete (E)	Estimate At Completion (F) = (D) + (E)
Electrification Subtotal	\$1,316,125,208	\$1,316,125,208	\$20,430,494	\$957,178,468	\$358,946,740	\$1,316,125,208
EMU Subtotal	\$664,127,325	\$664,127,325	\$12,123,770	\$295,057,103	\$369,070,222	\$664,127,325
<b>PCEP TOTAL</b>	<b>\$1,980,252,533</b>	<b>\$1,980,252,533</b>	<b>\$32,554,264</b>	<b>\$1,252,235,571</b>	<b>\$728,016,961</b>	<b>\$1,980,252,533</b>

Notes regarding tables above:

- <sup>2</sup>. Column B "Current Budget" includes executed change orders and awarded contracts.
- <sup>3</sup>. Column C "Cost This Month" represents the cost of work performed this month.
- <sup>4</sup>. Column D "Cost To Date" includes actuals (amount paid) and accruals (amount of work performed) to date.

**2.5. Board Actions**

- Authorize Execution of a Change Order with ARINC for SCADA Database Changes

**Future anticipated board actions include:**

- Change orders as needed

**2.6. Government and Community Affairs**

There were two outreach events this month.

### **3.0 ELECTRIFICATION – INFRASTRUCTURE**

This section reports on the progress of the Electrification, SCADA, and Tunnel Modification components. A brief description on each of the components is provided below.

#### **3.1. Electrification**

The Electrification component of the PCEP includes installation of 138 miles of wire and overhead catenary system (OCS) for the distribution of electrical power to the EMUs. The OCS will be powered from a 25 kilovolt (kV), 60-Hertz, single phase, alternating current supply system consisting of two traction power substations (TPS), one switching station (SWS), and seven paralleling stations (PS). Electrification infrastructure will be constructed using a DB delivery method.

##### **Activity This Month**

- Continued installation of on-track foundations in S2 WA1 and 2.
- Continued installation of off-track foundations in Segment 1.
- Continued installation of OCS poles, cantilevers, and wires in Segments 3 and 4.
- Continued regulation of OCS wires (sagging the wires) in Segment 3.
- Continued installation of shunt wires in Segment 3 and Segment 4.
- Continued to pothole at proposed OCS locations and utility locations in Segment 2 and Segment 1 in preparation of upcoming foundation installations.
- Continued to resolve conflicts found during the potholing process, such as loose concrete, asphalt, and other debris, and continued designing solutions for those conflicts that cannot be avoided. The conflicts must be resolved before installation of foundations at those locations.
- Relocated signal cables and remove abandoned facilities found in conflict with planned OCS foundations as conflicts were identified.
- PS-1:
  - Completed excavation and backfill of lighting conduit ductbank.
  - Continued installation of ductbanks for PG&E service.
  - Began installation of ground grid and low voltage steel.
  - Poured concrete for PG&E 400 amp service panel ductbank.
- PS-2:
  - Completed ground grid installation.
  - Continued pulling low voltage wire.
  - Began fence installation.
- PS-3:
  - Reviewed city comment responses for draft IFC design with PGH Wong, BBII, and City of Burlingame.

## **Peninsula Corridor Electrification Project**

---

### **Monthly Progress Report**

- Updated low voltage drop easement survey drawings and provided to the City of Burlingame.
- Progressed on conduit installation for high voltage and low voltage ductbank.
- Began gantry installation.
- Off-hauled contaminated soil.
- PS-4:
  - Poured 25kV foundation, pads, and concrete curb.
  - Finished grade and placed drain rock.
  - Progressed on low voltage termination and continued pulling low voltage wires.
  - Potholed for strain gantry foundations.
  - Installed ductbank to 400AMP Panel.
  - Installed buss bar in ATS 25kV transformer.
- PS-5: Continued low voltage termination.
- PS-6:
  - Poured access ramp.
  - Continued low voltage termination.
- PS-7:
  - Set 25 kV enclosure and installed communication panel and equipment.
  - Set PG&E vault.
  - Installed gantry interface.
  - Completed PG&E low voltage civil construction.
- TPS-1: Set gantry structures.
- TPS-2:
  - Set 25 kV enclosures.
  - Delivered and installed switchgear.
  - Continued installation of light poles.
- SWS-1:
  - Installed ductbank to 400AMP service pad.
  - Progressed on low voltage termination.
  - Progressed on ground grid installation.
- Continued to install signal kits, AFTAC boxes, and signal cases in Segment 2.
- Performed cable terminations in Segment 2.
- Continued to install signal ductbank, conduits, and cables in Segments 1, 2, and 4.

- Performed track circuit setup and local testing at Control Point (CP) Coast and De la Cruz.
- Performed track bonding and impedance bond installation in Segment 4.
- Continued fiber optic cable installation and splicing in Segment 4.
- Installed overhead bridge attachments at various locations in Segment 3 and 4.
- Progressed the OCS design with BBII in all segments, which included submittal and review of Design Change Notices for revised foundation locations.
- Continued Right of Way acquisition process for off-track foundation installation in Segment 1.
- Continued Right of Way acquisition for TPS-1 interconnection.
- Coordinated design review with local jurisdictions for the OCS, traction power facilities, and bridge attachments design, including responses to comments from jurisdictions.
- Continued to review and coordinate signal and communication design submittals with BBII.
- Continued internal discussions about design, installation and testing of signal and communications modifications to the Caltrain system and schedule for cutover plans.
- Continued discussions with VTA on Right of Way acquisition for TPS-2 interconnection.
- Worked with BBII through Site Specific Work Plans (SSWP) for upcoming field work.
- Continued model validation for the single phase study.
- PG&E continued work at East Grand and FMC substations.
- PG&E continued TPS-2 and TPS-1 Interconnection work.

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A summary of the work progress by segment is provided in Table 3-1 below.

**Table 3-1 Work Progress by Segment**

Segment	Work Area	Foundations			Poles		
		Required <sup>abc</sup>	Completed this Month	Completed to Date	Required <sup>ab</sup>	Completed this Month	Completed to Date
1	Tunnels	32	0	32	32	0	32
	A	303	16	37	259	0	0
	B	232	0	92	177	0	0
2	5	246	0	246	208	0	160
	4	317	0	316	253	0	190
	3	177	0	177	140	0	43
	2	238	79	212	205	0	60
	1	201	49	164	154	0	33
3	2	509	0	509	445	0	445
	1	392	0	392	310	0	306
4	A	242	0	242	180	5	179
	B	128	0	128	124	4	109
	CEMOF	85	0	85	81	31	80
<b>Total</b>		<b>3,102</b>	<b>144</b>	<b>2,632</b>	<b>2,568</b>	<b>40</b>	<b>1,637</b>

Note:

- a. Foundations required do not match poles required as guy foundations are needed in some locations for extra support.
- b. Reported number of required poles and foundations fluctuate due to Design changes.
- c. Update: To-date, 30 foundations have been installed by the South San Francisco in S2WA5 and 65 have been installed by the 25<sup>th</sup> Ave projects in S2WA3.

**Activity Next Month**

- Continue OCS foundation installations, in S2WA2 and 1.
- Continue off-track OCS foundation installations in S1.
- Continue resolution of foundation conflicts.
- Continue to install protective steel plates for protection of utilities during foundation installation.
- Continue to install OCS poles and assemblies in all Segments where available.
- Continue wire installation and regulation in Segments 3 and 4. Target completion of poles and wire installation by end of July in these two segments.
- Continue shunt wire installation.
- Continue work with BBII on field investigation activities and designs, which will include the progression of the OCS, traction power, bonding and grounding, signal systems, and other civil infrastructure such as overhead bridge protections.
- Pothole and clear obstructions at proposed OCS locations.
- Continue construction at TPS-1 and TPS-2.
- PS-1
  - Continue to install ductbank and conduit stubups for PG&E service.
  - Install low voltage steel for Riser C and fuse cut out.
  - Continue to install grounding grid.

- Set ATS transformer.
- PS-2
  - Continue to install PG&E service ductbank.
  - Continue to install ground grid.
  - Install gantry foundations.
  - Install permanent fence.
  - Install grounding pads and control house stairs.
- PS-3
  - Complete city comment responses for draft IFC design with PGH Wong, BBII, and City of Burlingame.
  - Finalize low voltage drop easement drawings with City of Burlingame.
  - Complete high voltage/low voltage ductbank installation.
  - Backfill 25 kV enclosure foundation.
- PS-4
  - Install remaining fine grade and drain rock onsite.
  - Continue installing strain gantry foundations.
  - Continue installation of bioretention.
  - Continue work on PG&E transformer pad.
  - Install PG&E low voltage ductbank.
- PS-6:
  - Continue work on access ramp.
  - Complete low voltage termination.
- PS-7:
  - Complete low voltage termination.
- SWS-1:
  - Install 400AMP foundation.
  - Complete low voltage termination.
- Continue to install conduit and foundations for signal and wayside power cubicle (WPC) units in all Segments.
- Continue cable termination at signal locations in Segment 4.
- Continue fiber installation and splicing in Segment 4.
- Continue preparation for next signal cutover in Segment 4.
- Continue conduit installations in Segments 2 and 1.
- Continue to install impedance bond connections.
- Continue to install bridge attachments.

- Continue to progress location-specific design for grade crossing system.
- Continue planning process for signal cutovers.
- Review BBII work plans for upcoming construction activities.
- Coordinate with PG&E on construction for PG&E infrastructure.
- Coordinate with local jurisdictions to review designs.
- Continue tree pruning and removals.
- Continue progress on Single Phase Study.

### **3.2. Supervisory Control and Data Acquisition**

SCADA is a system that monitors and controls field devices for electrification, including traction power substations (TPS), wayside power cubicles (WPC), and the OCS. SCADA will be integrated with the base operating system for Caltrain Operations and Control, which is the Rail Operations Center System (ROCS). A separate control console will be established for the Power Director.

#### **Activity This Month**

- Submitted Monthly Progress Report.
- Submitted June Schedule Update.
- Continued progress on change requests related to cutover.
- Began installation of hardware at BCCF & CCF.
- Progressed Protocol Manager Development to support the required Secure Authentication Version 5 for TP SCADA.

#### **Activity Next Month**

- Prepare and deliver the Monthly Report and the Monthly Schedule Update.
- Attend project status meetings (virtually).
- Review and address punch list items from FAT.
- Perform TP SCADA System training to TASI trainer(s).

### **3.3. Tunnel Modification**

Tunnel modifications will be required on the four tunnels located in San Francisco. This effort is needed to accommodate the required clearance for the OCS to support electrification of the corridor. Outside of the PCEP scope, Caltrain Engineering has requested the PCEP team to manage completion of design and construction for the Tunnel 1 and Tunnel 4 Drainage and Track Rehabilitation Project. The Tunnel Drainage and Track Rehabilitation Project is funded separately from PCEP.

#### **Activity This Month**

- Reconciled Change Orders.
- Progressed As-Built Drawings.

### **Activity Next Month**

- Reconcile Change Orders.
- Receive As-Built Drawings from ProVen.
- Closeout Contract documents – Requests for Information (RFIs), submittals, and letters.

### **3.4. Interconnection Construction**

The PCEP will require a 115-kV interconnection to supply power from the PG&E substations to the Caltrain substations in San Jose and South San Francisco. Construction of the interconnections will be performed by PG&E under an amendment to Supplemental Agreement No. 2.

#### **Activity This Month**

- EGS – TPS-1:
  - Received 90% redesign for final location from TRC/PG&E.
  - Calibrated PG&E disconnect switches.
  - Underground Construction (UEC Co) completed Circuit #2 outside the substation and demobilized.
- FMC – TPS-2:
  - Circuit #2 and redundant fiber highway crossing rescheduled to May 2022.
  - Set control building and switchgear.
  - Mounted transfer switch in the substation, hooked up generator, and grounded control house on the outside of the building.

#### **Activity Next Month**

- EGS – TPS-1:
  - TRC to submit IFC redesign for final location.
  - Begin EGS underground Phase 2 – Health Peak parking lot construction.
  - Install strain gantry structures.
- FMC – TPS-2:
  - Install light poles.
  - Install 25kV enclosure.



## **4.0 ELECTRIC MULTIPLE UNITS**

This section reports on the progress of the Electric Multiple Units (EMU) procurement and the Centralized Equipment Maintenance and Operations Facility (CEMOF) modifications.

### **4.1. Electric Multiple Units**

The procurement of EMUs, or trainsets, from Stadler consists of a Base Order of 96 railcars, plus an Option Order of an additional 37 railcars, for a total of 133 railcars. The cars from these two orders will be combined and delivered as 19 seven-car Trainsets. The Base Order is funded from PCEP, and Option Order funded by a Transit and Intercity Rail Capital Program (TIRCP) grant. One more Option for additional cars is available.

#### **Activity This Month**

- Dynamic type testing continued on Train 1 at TTCL in Pueblo, CO, including 8-car brake, propulsion, and battery testing.
- Routine static and dynamic testing continued on Trainset 3 and has started on Trainset 4.
- Production continued on Trainsets 3 through 14.
- COVID-19 related actions continued for the 16th month causing mixed disruptions to Stadler's activities:
  - Stadler's manufacturing facilities in Switzerland supporting the Caltrain Project have returned to normal levels of activity.
  - The Switzerland-based manufacturing of car shells and trucks frames is on schedule.
  - Salt Lake City-based manufacturing is delayed due to previously incurred and ongoing person-power limitations and sub-supplier parts shortages.
  - Stadler has submitted multiple requests for 'excusable delays' due to COVID-19. The extent of the continuing delay is being evaluated. Currently, delivery of the first trainset to Caltrain has been delayed 8.5 months to November 2021.
  - Stadler's supply chain has been disrupted by two supplier bankruptcies. Replacement suppliers were found, but the delivery schedule was impacted. In addition, one of the replacement suppliers is now having financial issues. Due to this, Stadler submitted another request for excusable delay in February 2021. The extent of the delay is being evaluated. The key point is Stadler's ability to assemble the luggage racks and ceiling panels themselves. Assembly of those parts began in June.
- Final Design Reviews (FDR) remain to be completed for two systems. These software-based systems include Monitoring and Diagnostics (MDS) and Positive Train Control (PTC). The train control FDR was completed in May, and MDS completion is near. For PTC, completion is anticipated in mid-2021.
- First Article Inspections (FAI) continue to have their paperwork formalized and closed out.

- 82 carshells have been shipped from Stadler Switzerland, with 70 arriving at Stadler's Salt Lake City facility (12 shells are in transit).
- Quality Assurance audits of USA-based sub-suppliers were halted in mid-March due to COVID-19 travel restriction. Audits will commence when sub-suppliers reopen and travel restrictions are lifted.

**Activity Next Month**

- Continue to close out system level FDRs and FAIs.
- Continue to support Caltrain/PCEP system integration and rail startup activation activities.
- Support type testing in SLC and at TTCl.

**4.2. Centralized Equipment Maintenance and Operations Facility Modifications**

The CEMOF Modifications Project will provide work areas to perform maintenance on new EMUs.

**Activity This Month**

- North Pit and South Pit:
  - Started ballast installation for south pit.
  - Installed conduits and pull box.
  - Continued shop drawings/submittals for north pit repair.
- Component Test Room:
  - Installed additional siding trim and exterior siding.
  - Inspected T-Bar ceiling and wall panels.
  - Completed electrical work.
- Part Storage Building:
  - Continued electrical work.
  - Installed warehouse lighting.

**Activity Next Month**

- North Pit and South Pit:
  - Install track rubber and paving for south pit.
  - Implement north pit repairs.
  - Install WSP unit.
  - Continue shop drawings/submittals for north pit repair.
  - Pothole for Industrial Waste under CMU wall
- Component Test Room:
  - Continue pulling wires and trim out boxes.

- Install 2' wide floor leveling.
- Install T-Bar ceiling, PTAC unit, and wall panels.
- Part Storage Building:
  - Continue electrical work.
  - Continue installation of warehouse lighting.
  - Install aerial cable conduit and site lighting.

## **5.0 SAFETY**

Safety and Security requirements and plans are necessary to comply with applicable laws and regulations related to safety, security, and emergency response activities. Safety staff coordinates with contractors to review and plan the implementation of contract program safety requirements. Safety project coordination meetings continue to be conducted on a monthly basis to promote a clear understanding of project safety requirements as defined in contract provisions and program safety documents.

### **Activity This Month**

- Project staff provided input and continued its participation in the BBII contractor workforce safety meetings. Project incidents continue to be reviewed with project staff to reinforce the application of recommended safety mitigation measures.
- Conducted the monthly employee injury review for BBII and its subcontractors.
- Continued to provide input and oversight of the contractor SSWP safety provisions and ongoing safety construction oversight and inspections.
- Conducted the monthly project Safety and Security Certification and Fire/Life Safety Meetings.
- Continued to perform reviews and provide comments on the BBII Safety and Security Certification Design Criteria Conformance Checklists (DCCC) and Construction Specification Conformance Checklist (CSCC) submittals.
- Participated with internal stakeholders in Rail Activation Committee meetings.
- Investigated project incident occurrences and worked with the contractor representatives to identify incident root causes and develop and implement safety and security mitigation measures.
- Coordinated with the PMOC in support of the FTA Oversight Procedure 54 readiness review of Segment 4 Milestone 1 activation.
- Conducted ongoing safety inspections of contractor field activities.
- Participated in weekly project coordination meetings with the contractor to review open issues and recommended action items.

### **Activity Next Month**

- Provide project safety informational update at the FTA Quarterly Meeting.
- Conduct monthly virtual safety communication meetings for the Project Safety and Security Certification Committee, Fire/Life Safety Committee, Rail Activation Committee, and other project-related contractor and JPB safety meetings to discuss safety priorities.
- Update project emergency responder presentations and schedule Segment 4 onsite systems familiarization visits for Fire Department staff.
- Continue to finalize safety and security certification documentation requirements in coordination with project testing and commissioning activities.

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- Continue focus on performing site safety inspections on the OCS foundations, pole installations, potholing, and CEMOF work activities to assess safety work practices and identify additional opportunities for improvement. Conduct contractor equipment inspections as needed.
- Reinforce the ongoing application of recommended mitigation measures in response to the COVID-19 virus.
- Investigate project incident occurrences as needed and work with the contractor representatives to identify incident root cause, contributing factors and safety mitigation measures.

## **6.0 QUALITY ASSURANCE**

The Quality Assurance (QA) staff performs technical reviews for planning, implementing, evaluating, and maintaining an effective program to verify that all equipment, structures, components, systems, and facilities are designed, procured, constructed, installed, and maintained in accordance with established criteria and applicable codes and standards throughout the design, construction, startup and commissioning of the PCEP.

### **Activity This Month**

- Reviewed BBII submittals of Inspector Daily Reports (IDR) and Contractor Quality Control Report (CQCR).
- Provided QA review of BBII submittals of Material Review Reports (MRR) to ensure that purchase order quality and test document requirements are met and included in the receiving inspection document package.
- Provided QA review of BBII submittals of Certificates of Conformance (C of C) and Certificates of Analysis (C of A).
- Provided QA review of BBII Non-Conformance Reports (NCR) and Construction Discrepancy Reports (CDR) to assure that in-process discrepancies are processed as required.
- Provided review of BBII QA Audit Surveillance Reports.
- Provided QA review of Supplier Certified Test Reports (CTR), and Certified Material Tests Reports (CMTR).
- Prepared for upcoming audits for design, quality audits, quality records and training.
- Continued review of BBII record set of As-Built Drawings related to open NCRs.
- Updated Buy America report submitted by BBII and is under review.
- Submitted revised JPB QMP R3 for review and approval
- NCR #14 issued to BBII for Impedance Bond work performed to unapproved drawing.
- NCR #15 issued to BBII for condensation build-up in TPS-2 unit.

### **Activity Next Month**

- Review BBII quality records and prepare for upcoming audits for design, quality audits, quality records and training.

Table 6-1 below provides details on the status of audits performed through the reporting period.

**Table 6-1 Quality Assurance Audit Summary**

<b>Quality Assurance Activity</b>	<b>This Reporting Period</b>	<b>Total to Date</b>
Audits Conducted	0	131
<b>Audit Findings</b>		
Audit Findings Issued	0	81
Audit Findings Open	0	0
Audit Findings Closed	0	81
<b>Non-Conformances</b>		
Non-Conformances Issued	0	15
Non-Conformances Open	46	6
Non-Conformances Closed	0	9

**7.0 SCHEDULE**

PCEP proposed a new revised Revenue Service Date (RSD) as a result of the risk refresh exercise performed by FTA-PMOC in December 2020. RSD is forecasted to occur between January 1, 2024 and March 31, 2024. When six to nine months of risk contingency is included, the new proposed revised RSD is September 26, 2024.

Milestone #1 - Segment 4 Construction Completion forecast date is October 15, 2021.

Stadler’s forecasted conditional acceptance of the 14th trainset in the MPS June update remains December 9, 2022. The 1st trainset arrival at JPB also remains November 24, 2022. The impact of both the replacement of the internal parts supplier and COVID-19 remains unknown in Stadler’s schedule during the upcoming months.

PCEP’s forecasted electrification substantial completion date for the BBII contract in the MPS June update remains December 31, 2023. JPB is working with BBII to improve progress on both the signals system, which lags behind baseline productivity level, and traction power facilities, which continue to progress at a slow rate.

Shown below, Table 7-1 indicates major milestone dates for the MPS.

**Table 7-1 Schedule Status**

Milestones	Program Plan	Progress Schedule (June 2021) <sup>1</sup>
Milestone #1 Segment 4 Construction Completion	11/21/2019	10/15/2021 <sup>1</sup>
Arrival of First Vehicle at JPB	N/A	11/24/2021 <sup>2</sup>
PG&E Provides Permanent Power	09/09/2021	05/15/2022
FFGA RSD	08/22/2022	08/22/2022
Acceptance of 14 <sup>th</sup> Trainset	08/20/2021	12/09/2022 <sup>2</sup>
Electrification Substantial Completion	08/10/2020	12/31/2023 <sup>*</sup>
Revenue Service Date (RSD) – Period Range	12/09/2021	01/01/2024 – 03/31/2024
Proposed Revised RSD with Contingency	N/A	09/26/2024

Note:

- <sup>1</sup>: Dates may shift slightly in the next month’s Progress Schedule update due to additional signal cutovers in Segment 4.
- <sup>2</sup>: These dates are expected to be delayed due to COVID-19 impacts on Stadler’s Assembly & Testing facility in Salt Lake City.
- <sup>A</sup>: Completed Milestone.
- <sup>\*</sup>: Pending mediation process resolution with BBII.

**Notable Variances**

None



**Table 7-2 Critical Path Summary**

Activity	Start	Finish
Signals System Design, Installation & Cutover, and Integration Testing	05/01/2020	12/31/2023
Forecast Revenue Service Date - RSD / Period Range	01/01/2024	03/31/2024

**Schedule Hold Points**

Schedule Hold Points (SHP) represent key milestones on or near a schedule’s critical path that are used as measurement points with respect to contingency drawdown. Delays to these key milestones will result in consuming program schedule contingency.

Table 7-3 below reflects the SHPs for the PCEP master program schedule. The dates indicated the planned completion dates for each SHP.

**Table 7-3 Schedule Hold Points**

Schedule Hold Point (SHP)	Date
Segment 4 Construction Completion	10/15/2021 <sup>1</sup>
Arrival of 1 <sup>st</sup> Trainset at JPB	11/24/2021
Conditional Acceptance of 1 <sup>st</sup> Trainset	02/25/2022 <sup>2</sup>
Conditional Acceptance of 14th Trainset	12/09/2022 <sup>2</sup>
System Electrified	12/31/2023 <sup>*</sup>
Forecasted Revenue Service Date (RSD) – Period Range	01/01/ 2024-03/31/2024 <sup>2*</sup>

Note:

- <sup>1</sup>. Dates may shift slightly in the next month’s Progress Schedule update due to additional signal cutover in segment 4.
- <sup>2</sup>. Dates may change due to COVID-19 Impact.
- <sup>A</sup>. Completed Schedule Hold Point (SHP).
- <sup>\*</sup>. Pending mediation process resolution with BBII.

## **8.0 BUDGET AND EXPENDITURES**

The summary of overall budget and expenditure status for the PCEP and Third-Party Improvements is shown in the following tables. Table 8-1 reflects the Electrification budget, Table 8-2 the EMU budget, Table 8-3 the overall PCEP budget, and Table 8-4 Third Party Improvements budget. Table 8-5 summarizes the budget transfers of contingency completed this month.

In December 2020, the FTA conducted a risk refresh that reviewed the existing delays, updated contractor schedules, and independent schedules prepared by the JPB. On June 17, 2021, a draft FTA-led Risk Refresh Report was issued forecasting an additional budget need of \$333M. At the June 3, 2021 JPB Board meeting, in alignment with the FTA report, PCEP proposed a \$333M budget increase consisting of \$161M in known and allocated costs and \$173M in reserve. Until a budget increase is approved, the PCEP budget as reported in Tables 2-2, 8-1 to 8-3, and in Appendix D remains at the PCEP baseline budget amounts.

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**Table 8-1 Electrification Budget & Expenditure Status**

Description of Work	Budget (A)	Current Budget (B) <sup>1</sup>	Cost This Month (C) <sup>2</sup>	Cost To Date (D) <sup>3</sup>	Estimate To Complete (E)	Estimate At Completion (F) = (D) + (E)
<b>ELECTRIFICATION</b>						
Electrification <sup>(4)</sup>	\$696,610,558	\$749,236,557	\$10,975,330	\$516,482,488	\$232,754,069	\$749,236,557
SCADA	\$0	\$3,842,455	(\$116,786)	\$2,863,940	\$978,515	\$3,842,455
Tunnel Modifications	\$11,029,649	\$41,469,522	\$0	\$41,314,390	\$155,132	\$41,469,522
Real Estate	\$28,503,369	\$28,503,369	\$133,554	\$23,517,112	\$4,986,257	\$28,503,369
Private Utilities <sup>(5)</sup>	\$63,515,298	\$117,906,334	\$5,835,667	\$139,462,775	(\$21,556,441)	\$117,906,334
Management Oversight	\$141,506,257	\$176,097,986	\$1,711,315	\$161,403,481	\$14,694,505	\$176,097,986
Executive Management	\$7,452,866	\$10,155,509	\$54,518	\$9,420,545	\$734,964	\$10,155,509
Planning	\$7,281,997	\$6,281,997	\$17,011	\$6,002,641	\$279,356	\$6,281,997
Community Relations	\$2,789,663	\$1,789,663	\$2,949	\$1,484,401	\$305,262	\$1,789,663
Safety & Security	\$2,421,783	\$5,823,965	\$83,553	\$4,597,153	\$1,226,812	\$5,823,965
Project Management Services	\$19,807,994	\$17,526,725	\$179,451	\$14,273,237	\$3,253,488	\$17,526,725
Engineering & Construction	\$11,805,793	\$15,419,095	\$106,124	\$13,279,165	\$2,139,930	\$15,419,095
Electrification Eng & Mgmt	\$50,461,707	\$54,259,867	\$304,804	\$53,265,248	\$994,619	\$54,259,867
Construction Management	\$0	\$15,570,183	\$757,024	\$11,760,842	\$3,809,340	\$15,570,183
IT Support	\$312,080	\$507,170	\$0	\$400,132	\$107,038	\$507,170
Operations Support	\$1,445,867	\$3,337,383	\$26,134	\$3,096,829	\$240,555	\$3,337,383
General Support	\$4,166,577	\$7,451,503	\$33,422	\$6,859,747	\$591,756	\$7,451,503
Budget / Grants / Finance	\$1,229,345	\$1,638,553	\$4,452	\$1,627,287	\$11,265	\$1,638,553
Legal	\$2,445,646	\$5,542,712	\$50,800	\$5,001,101	\$541,611	\$5,542,712
Other Direct Costs	\$5,177,060	\$6,085,783	\$91,073	\$5,627,276	\$458,507	\$6,085,783
Prior Costs 2002 - 2013	\$24,707,878	\$24,707,878	\$0	\$24,707,878	\$0	\$24,707,878
TASI Support	\$55,275,084	\$81,409,403	\$1,407,757	\$60,601,266	\$20,808,137	\$81,409,403
Insurance	\$3,500,000	\$4,543,588	\$0	\$4,543,588	\$0	\$4,543,588
Environmental Mitigations	\$15,798,320	\$14,438,866	\$0	\$899,851	\$13,539,015	\$14,438,866
Required Projects	\$17,337,378	\$10,504,422	\$357,594	\$1,365,441	\$9,138,980	\$10,504,422
Maintenance Training	\$1,021,808	\$1,021,808	\$0	\$0	\$1,021,808	\$1,021,808
Finance Charges	\$5,056,838	\$6,137,156	\$126,062	\$4,724,136	\$1,413,020	\$6,137,156
Contingency	\$276,970,649	\$81,013,741	N/A	N/A	\$8,176,669	\$8,176,669
Forecasted Costs and Changes	\$0	\$0	N/A	N/A	\$72,837,072	\$72,837,072
<b>ELECTRIFICATION SUBTOTAL</b>	<b>\$1,316,125,208</b>	<b>\$1,316,125,208</b>	<b>\$20,430,494</b>	<b>\$957,178,468</b>	<b>\$358,946,740</b>	<b>\$1,316,125,208</b>

Notes regarding tables above:

1. Column B "Current Budget" includes executed change orders and awarded contracts.
2. Column C "Cost This Month" represents the cost of work performed this month.
3. Column D "Cost To Date" includes actuals (amount paid) and accruals (amount of work performed) to date.
4. Cost To Date for "Electrification" includes 5% for Contractor's retention until authorization of retention release.
5. Private utilities cost to date includes the unbudgeted upfront cost for PG&E's share of substation improvements prior to PG&E reimbursement.

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**Table 8-2 EMU Budget & Expenditure Status**

Description of Work	Budget (A)	Current Budget (B) <sup>1</sup>	Cost This Month (C) <sup>2</sup>	Cost To Date (D) <sup>3</sup>	Estimate To Complete (E)	Estimate At Completion (F) = (D) + (E)
<b>EMU</b>						
EMU	\$550,899,459	\$555,247,601	\$11,200,000	\$231,886,565	\$323,361,036	\$555,247,601
CEMOF Modifications	\$1,344,000	\$7,392,755	\$57,212	\$6,517,808	\$874,948	\$7,392,755
Management Oversight	\$64,139,103	\$62,783,401	\$637,747	\$52,599,151	\$10,184,250	\$62,783,401
Executive Management	\$5,022,302	\$6,615,622	\$34,379	\$6,004,761	\$610,861	\$6,615,622
Community Relations	\$1,685,614	\$975,782	\$1,807	\$693,260	\$282,521	\$975,782
Safety & Security	\$556,067	\$1,117,978	\$18,008	\$763,482	\$354,495	\$1,117,978
Project Mgmt Services	\$13,275,280	\$11,275,280	\$109,986	\$8,923,959	\$2,351,322	\$11,275,280
Eng & Construction	\$89,113	\$89,113	\$0	\$23,411	\$65,702	\$89,113
EMU Eng & Mgmt	\$32,082,556	\$29,981,014	\$310,658	\$24,858,272	\$5,122,742	\$29,981,014
Construction Management	\$0	\$1,841,395	\$67,682	\$1,547,782	\$293,613	\$1,841,395
IT Support	\$1,027,272	\$852,089	\$13,504	\$782,206	\$69,884	\$852,089
Operations Support	\$1,878,589	\$781,858	\$5,194	\$424,588	\$357,270	\$781,858
General Support	\$2,599,547	\$3,138,784	\$19,020	\$2,865,666	\$273,118	\$3,138,784
Budget / Grants / Finance	\$712,123	\$1,050,507	\$2,166	\$1,040,348	\$10,159	\$1,050,507
Legal	\$1,207,500	\$1,369,563	\$198	\$1,258,691	\$110,872	\$1,369,563
Other Direct Costs	\$4,003,139	\$3,694,416	\$55,146	\$3,412,723	\$281,693	\$3,694,416
TASI Support	\$2,740,000	\$2,789,493	\$15,547	\$445,600	\$2,343,893	\$2,789,493
Insurance	\$0	\$38,263	\$0	\$38,263	\$0	\$38,263
Required Projects	\$4,500,000	\$1,063,821	\$136,000	\$674,280	\$389,541	\$1,063,821
Finance Charges	\$1,941,800	\$3,761,482	\$77,264	\$2,895,438	\$866,044	\$3,761,482
Contingency	\$38,562,962	\$31,050,509	N/A	N/A	\$25,613,779	\$25,613,779
Forecasted Costs and Changes	\$0	\$0	N/A	N/A	\$5,436,729	\$5,436,729
<b>EMU SUBTOTAL</b>	<b>\$664,127,325</b>	<b>\$664,127,325</b>	<b>\$12,123,770</b>	<b>\$295,057,103</b>	<b>\$369,070,222</b>	<b>\$664,127,325</b>

Notes regarding tables above:

1. Column B "Current Budget" includes executed change orders and awarded contracts.
2. Column C "Cost This Month" represents the cost of work performed this month.
3. Column D "Cost To Date" includes actuals (amount paid) and accruals (amount of work performed) to date.

**Table 8-3 PCEP Budget & Expenditure Status**

Description of Work	Budget (A)	Current Budget (B) <sup>1</sup>	Cost This Month (C) <sup>2</sup>	Cost To Date (D) <sup>3</sup>	Estimate To Complete (E)	Estimate At Completion (F) = (D) + (E)
Electrification Subtotal	\$1,316,125,208	\$1,316,125,208	\$20,430,494	\$957,178,468	\$358,946,740	\$1,316,125,208
EMU Subtotal	\$664,127,325	\$664,127,325	\$12,123,770	\$295,057,103	\$369,070,222	\$664,127,325
<b>PCEP TOTAL</b>	<b>\$1,980,252,533</b>	<b>\$1,980,252,533</b>	<b>\$32,554,264</b>	<b>\$1,252,235,571</b>	<b>\$728,016,961</b>	<b>\$1,980,252,533</b>

Notes regarding tables above:

1. Column B "Current Budget" includes executed change orders and awarded contracts.
2. Column C "Cost This Month" represents the cost of work performed this month.
3. Column D "Cost To Date" includes actuals (amount paid) and accruals (amount of work performed) to date.

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**Table 8-4 Third Party Improvements/CNPA Budget & Expenditure Status**

Description of Work	Budget (A)	Current Budget (B) <sup>1</sup>	Cost This Month (C) <sup>2</sup>	Cost To Date (D) <sup>3</sup>	Estimate To Complete (E)	Estimate At Completion (F) = (D) + (E)
CHSRA Early Pole Relocation	\$1,000,000	\$941,706	\$0	\$941,706	\$0	\$941,706
PS-3 Relocation (Design)	\$500,000	\$500,000	\$0	\$150,000	\$350,000	\$500,000
PS-3 Relocation (FEMA, BGSP Design Coord.)	\$50,000	\$50,000	\$0	\$0	\$50,000	\$50,000
TPSS-2 VTA/PCEP Pole Relocation (Design)	\$110,000	\$110,000	\$0	\$110,000	\$0	\$110,000
TPSS-2 VTA/PCEP Pole Height (Redesign)	\$31,000	\$31,000	\$0	\$27,900	\$3,100	\$31,000
EMU Option Cars	\$172,800,047	\$172,800,047	\$933,120	\$60,532,812	\$112,267,235	\$172,800,047
Add Flip-Up Seats into Bike Cars	\$1,961,350	\$1,961,350	\$0	\$980,675	\$980,675	\$1,961,350
Update Virtual Reality Experience	\$43,000	\$43,000	\$0	\$43,000	\$0	\$43,000
<b>CNPA TOTAL</b>	<b>\$176,495,397</b>	<b>\$176,437,103</b>	<b>\$933,120</b>	<b>\$62,786,094</b>	<b>\$113,651,010</b>	<b>\$176,437,103</b>

Notes regarding tables above:

1. Column B "Current Budget" includes executed change orders and awarded contracts.
2. Column C "Cost This Month" represents the cost of work paid this month.
3. Column D "Cost To Date" includes actuals (amount paid) to date.

Table 8-4 shows improvements outside of the scope of PCEP that are funded with non-PCEP funds. These improvements are implemented through the PCEP contracts. In FTA terminology, these efforts are categorized as Concurrent Non-Project Activities (CNPA).

**CHSRA Early Pole Relocation:** Relocation of 196 OCS poles as part of PCEP. Implementing these pole relocations minimizes future cost and construction impacts. This scope is funded by the CHSRA.

**PS-3 Relocation (Design):** Relocate PS-3 (Burlingame) as part of PCEP to avoid a future conflict with the Broadway Grade Separation Project (BGSP). This scope is funded by the BGSP.

**PS-3 Relocation (FEMA, BGSP Design Coord.):** PS-3 Relocation FEMA Update and Design Coordination: Perform incremental design effort related to the 2019 FEMA requirement update to the flood plain map and design coordination with the BGSP. This scope is funded by the BGSP.

**TPSS-2 VTA/PCEP Pole Relocation and Height (Design):** Design changes due to the relocation of VTA/BART Pole at TPSS-2 location and pole height redesign for live line clearances. This scope is funded by the VTA.

**EMU Option Cars:** Exercise Stadler Contract Option for 37 additional EMUs. This scope is funded with a combination of TIRCP and matching local funds.

**Add Flip-Up Seats into Bike Cars:** Stadler contract change order to add four additional flip-up seats in each of the two unpowered (bike) cars per trainset (eight total per trainset). This scope is funded by Caltrain outside of the PCEP.

**Update Virtual Reality Experience:** Stadler contract change order to update the virtual reality experience to reflect the latest configuration of the trainsets. This scope is funded by Caltrain outside of the PCEP.

**Table 8-5 Budget Transfers of Contingency**

Transfer	Description	Contingency <sup>1</sup>
<b>ELECTRIFICATION</b>		
BBI-053-CCO-135A	Protection of On-track Eqpt Traveling thru Gated Crossings	\$133,645
BBI-053-CCO-157	Track Access Delays - July 2017 to October 2020	\$4,350,000
BBI-053-CCO-039	NorCal Utility Potholing CBOSS (FO#35&37)	\$140,691
BBI-053-CCO-079	Norcal Utility Potholing (FO#52)	\$82,108
BBI-053-CCO-204A	Increase in PG&E Service Allowance (Bid Allowance Item #8)	\$3,000,000
BBI-053-CCO-049C	Long-reach Fdn Installation (U/P) - 6/1/2019 thru 12/23/2019	\$139,680
BT-005F	Budget Allocation for Jacobs CM Services for FY22 H1	\$3,493,748
BT-028D	RSE Utility Locating Support for FY21 H2 (2)	\$244,688
BT-028E	RSE Utility Locating Support for FY22	\$550,032
BT-027C	Legal Support FY22	\$549,040
BT-033F	PG&E Tariff Schedule Work (APRIL 2021)	\$56,000
BT-017D	B&G Safety & Security Support FY22	\$1,076,104
BT-035A	TASI Support – Electrification	\$22,000,000
BT-031B	Agency Labor FY22 Budget Transfer	\$1,746,613
BT-041	IJ Installation on UPRR Owned Track on MT1	\$190,000
BT-043A	PTC Track Data and WIU V&V Testing Seg 4 Phase 1 & 2	\$116,321
BT-021B	Budget Re-Allocation for IT Support (Compucom)	\$100,000
BT-026B	Budget Re-Allocation for Other Direct Costs	\$308,723
	<b>ELECTRIFICATION SUBTOTAL</b>	<b>\$38,277,393</b>
<b>EMU</b>		
STA-056-CCO-033	Multiple Changes Group 8	\$0
BT-005F	Budget Allocation for Jacobs CM Services for FY22 H1	\$237,638
BT-027C	Legal Support FY22	\$76,811
BT-038B	Scissor Lift Work Platforms and Training	\$4,600
BT-017D	B&G Safety & Security Support FY22	\$351,181
BT-031B	Agency Labor FY22 Budget Transfer	\$564,801
BT-021B	Budget Re-Allocation for IT Support (Compucom)	(\$100,000)
BT-026B	Budget Re-Allocation for Other Direct Costs	(\$308,723)
	<b>EMU SUBTOTAL</b>	<b>\$826,308</b>
	<b>PCEP TOTAL</b>	<b>\$39,103,700</b>

Notes regarding tables above:

1. Budget amount transferred from project contingency. A negative amount represents a credit to contingency.

Table 8-5 shows budget transfers of project contingency implemented during the current monthly reporting period. This table includes contingency transfers for both executed contract change orders as covered under Section 9.0 and uses of contingency for Program budget line items outside the five PCEP contracts.

Appendix D includes costs broken down by Standard Cost Code (SCC) format. This format is required for reporting of costs to the FTA. The overall project total in the SCC format is lower than the project costs in table 8-3. This is due to the exclusion of costs incurred prior to the project entering the Project Development phase.

## 9.0 CHANGE MANAGEMENT

The change management process establishes a formal administrative work process associated with the initiation, documentation, coordination, review, approval and implementation of changes that occur during the design, construction or manufacturing of the PCEP. The change management process accounts for impacts of the changes and ensures prudent use of contingency.

Currently the PCEP contracts are BBII, CEMOF, Stadler, SCADA, Tunnel Modifications, and Amtrak.

A log of all executed change orders can be found in Appendix E.

### Executed Contract Change Orders (CCO) This Month

#### Electrification Contract

**Change Order Authority (5% of BBII Contract)**

**5% x \$696,610,558 = \$34,830,528**

Date	Change Number	Description	CCO Amount
6/11/2021	BBI-053-CCO-135A	Protection of On-track Eqpt Traveling thru Gated Crossings	\$133,645
6/18/2021	BBI-053-CCO-157	Track Access Delays - July 2017 to October 2020	\$4,350,000
6/22/2021	BBI-053-CCO-039	NorCal Utility Potholing CBOSS (FO#35&037)	\$140,691
6/22/2021	BBI-053-CCO-079	NorCal Utility Potholing (FO#52)	\$82,108
6/27/2021	BBI-053-CCO-204A	Increase in PG&E Service Allowance (Bid Allowance Item #8)	\$3,000,000
6/25/2021	BBI-053-CCO-049C	Long-reach Foundations Installation - Unit Price	\$139,680
<b>Total</b>			<b>\$7,846,124</b>

<sup>1</sup> (When indicated) Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

#### EMU Contract

**Change Order Authority (5% of Stadler Contract)**

**5% x \$550,899,459 = \$27,544,973**

Date	Change Number	Description	CCO Amount
6/23/2021	STA-056-CCO-033	Multiple Changes Group 8	\$0
<b>Total</b>			<b>\$0</b>

<sup>1</sup> (When indicated) Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

#### SCADA Contract

**Change Order Authority (15% of ARINC Contract)**

**15% x \$3,446,917 = \$517,038**

Date	Change Number	Description	CCO Amount
	None		\$0
<b>Total</b>			<b>\$0</b>

<sup>1</sup> (When indicated) Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

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Tunnel Modification Contract

Change Order Authority (10% of ProVen Contract)<sup>2</sup>

10% x \$38,477,777 = \$3,847,778

Date	Change Number	Description	CCO Amount
	None		\$0
<b>Total</b>			<b>\$0</b>

<sup>1</sup> (When indicated) Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

<sup>2</sup> Tunnel modification contract (\$38,477,777) includes: Notching (\$25,281,170) and Drainage (\$13,196,607).

<sup>3</sup> Third Party Improvements/CNPA Projects that are funded with non-PCEP funds.

CEMOF Contract

Change Order Authority (10% of ProVen Contract)

10% x \$6,550,777 = \$655,078

Date	Change Number	Description	CCO Amount
	None		\$0
<b>Total</b>			<b>\$0</b>

<sup>1</sup> (When indicated) Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

Amtrak AEM-7 Contract

Change Order Authority (Lump Sum)

Up to \$150,000

Date	Change Number	Description	CCO Amount
	None		\$0
<b>Total</b>			<b>\$0</b>

Notes:

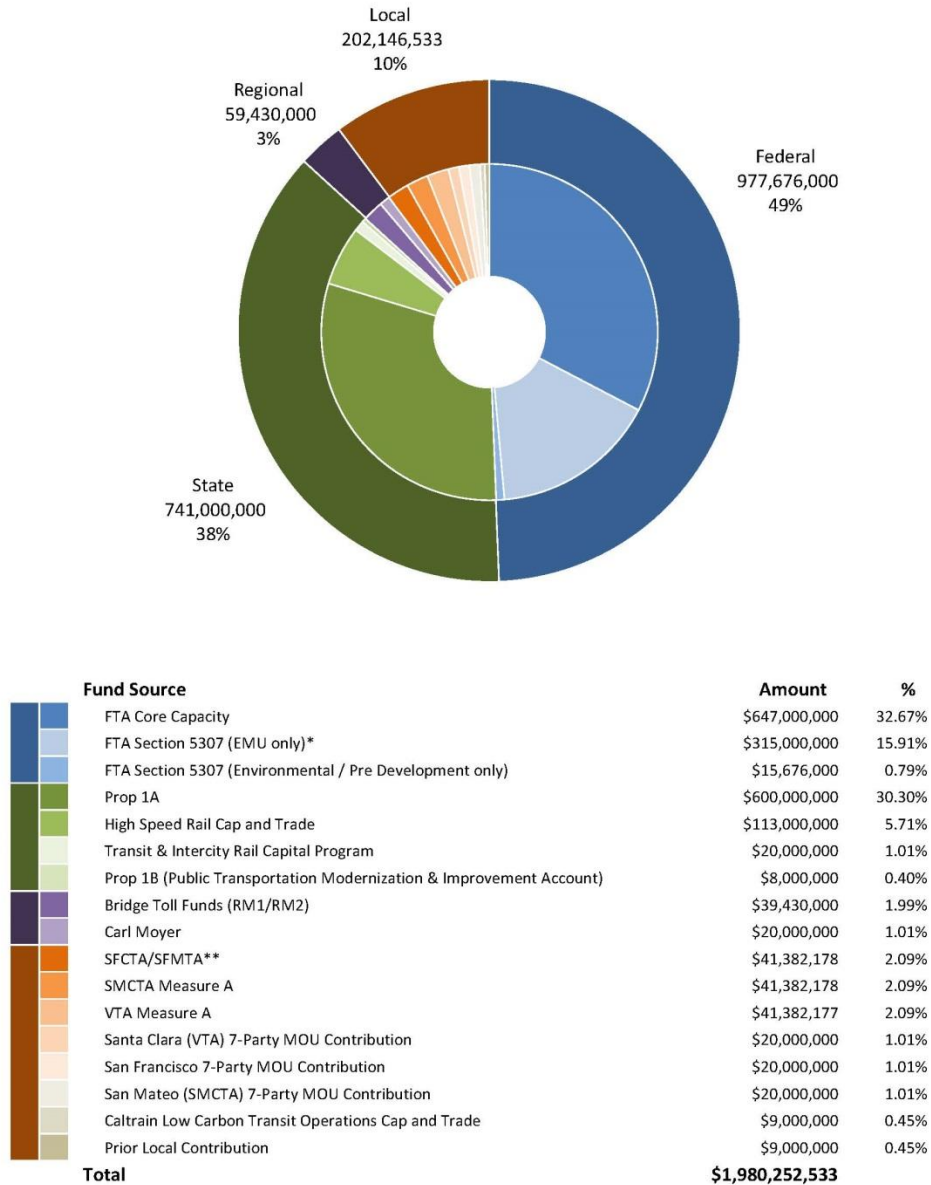
<sup>1</sup> When the threshold of 75% is reached, staff may return to the Board to request additional authority.



**10.0 FUNDING**

Figure 10-1 depicts a summary of the funding plan for the PCEP. It provides a breakdown of the funding partners as well as the allocated funds. On March 11, 2021, President Biden signed into law the American Rescue Plan, which will provide PCEP with an additional \$52.4 million in Core Capacity funding, above and beyond the \$647 million awarded to the project in 2017. PCEP staff will work with FTA Region IX staff to ensure these funds are added to the project in the coming weeks.

**Figure 10-1 Funding Plan**



Notes:

\*Includes necessary fund transfer with SMCTA

\*\*Includes \$4M CMAQ Transfer considered part of SF local contribution

## **11.0 RISK MANAGEMENT**

The risk management process is conducted in an iterative fashion throughout the life of the project. During this process, new risks are identified, other risks are resolved or managed, and potential impacts and severity modified based on the current situation. The Risk Management team's progress report includes a summary on the effectiveness of the Risk Management Plan, any unanticipated effects, and any correction needed to handle the risk appropriately.

The Risk Management team meets monthly to identify risks and corresponding mitigation measures. Each risk is graded based on the potential cost and schedule impacts they could have on the project. This collection of risks has the greatest potential to affect the outcome of the project and consequently is monitored most closely. For each of the noted risks, as well as for all risks on the risk register, mitigation measures have been identified and are being implemented. Progress in mitigating these risks is confirmed at monthly risk assessment meetings attended by project team management and through continuous monitoring of the Risk Management Lead.

The team has identified the following items as top risks for the project (see Appendix F for the complete Risk Table):

1. The contractor may not complete signal and communication design, installation and testing for the Two-speed check (2SC) modifications within budget and schedule to the completion of the electrification contract and increases program costs.
2. Extent of differing site conditions and associated redesign efforts results in delays to the completion of the electrification contract and increases program costs.
3. Sub-optimal contractor sequencing when progressing design and clearing foundation locations may result in construction inefficiencies.
4. Property not acquired in time for contractor to do work.
5. Additional property acquisition is necessitated by change in design.
6. Contractor generates hazardous materials that necessitate proper removal and disposal in excess of contract allowances and expectations.
7. Change of vehicle sub-suppliers results in additional first article inspections at cost to JPB.
8. Solution to FRA concerns over bike storage impeding path to emergency exit windows results in increased costs and potential rework.
9. PG&E interconnection work may not be completed on time resulting in delays to the reimbursement of PG&E Exhibit B Cost Allocation from PG&E.

### **Activity This Month**

- Updated risk descriptions, effects, and mitigations based upon weekly input from risk owners. Monthly cycle of risk updating was completed based on schedules established in the Risk Identification and Mitigation Plan.
- Updated risk retirement dates based upon revisions to the project schedule and input from risk owners.

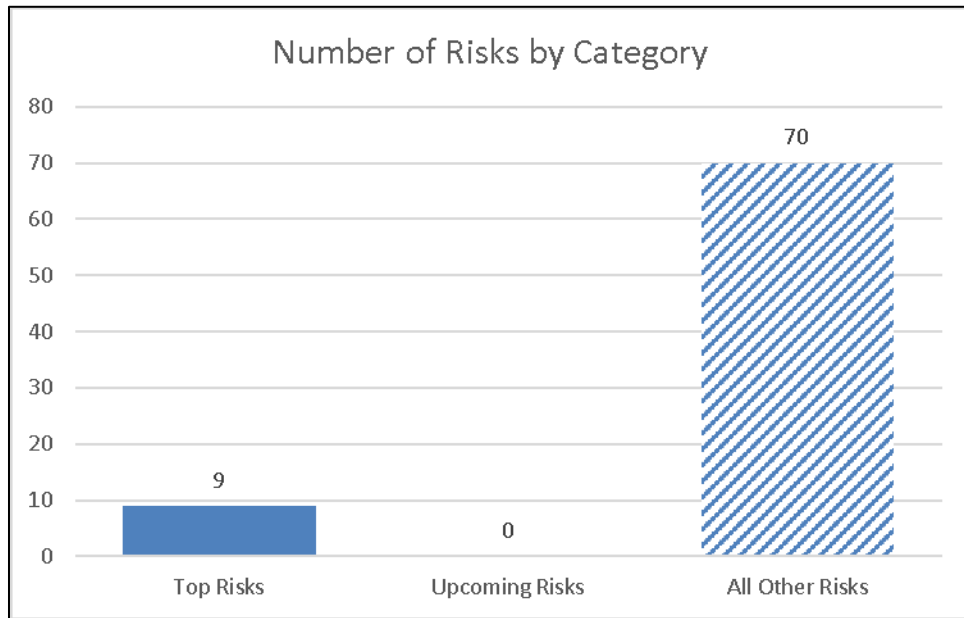
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- Continued weekly monitoring of risk mitigation actions and publishing of the risk register.
- Continued monitoring of issues on issues log for determination of new risks.
- The Risk Management team attended Project Delivery, Vehicle Design, Systems Integration, and Weekly Contractor Progress meetings to monitor developments associated with risks and to identify new risks.
- Updated contractor-owned risks through JPB and consultant personnel.
- Convened Risk Assessment Committee meeting and processed decisions.

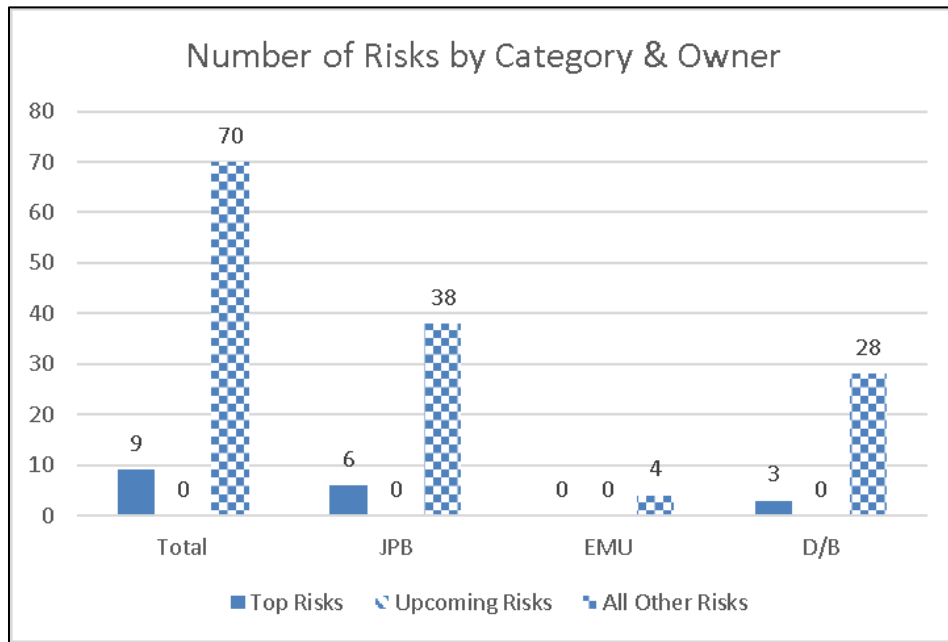
Figures 11-1 and 11-2 show the risks identified for the program. Risks are categorized as top risk, upcoming risk, and all other risks. The categories are based on a rating scale composed of schedule and cost factors. Top risks are considered to have a significantly higher than average risk grade. Upcoming risks are risks for which mitigating action must be taken within 60 days. All other risks are risks not falling into other categories.

**Figure 11-1 Monthly Status of Risks**



**Total Number of Active Risks = 79**

Figure 11-2 Risk Classification



Total Number of Active Risks = 79

#### Activity Next Month

- Conduct weekly monitoring of risk mitigation actions and continue publishing risk register.
- Update risk descriptions, effects, mitigations and retirement dates based on weekly monitoring and attendance at key project meetings.
- Monitor issues on issues log for determination of potential new risks.
- Convene Risk Assessment Committee meeting.

## **12.0 ENVIRONMENTAL**

### **12.1. Permits**

The PCEP has obtained the required environmental permits from the following agencies/federal regulations: Section 106 of the National Historic Preservation Act of 1966 (NHPA), Section 7 of the Endangered Species Act (ESA), United States Army Corps of Engineers, San Francisco Bay Regional Water Quality Control Board (SFWQCB), the California Department of Fish and Wildlife, and the San Francisco Bay Conservation Development Commission.

#### **Activity This Month**

- None

#### **Activity Next Month**

- None

### **12.2. Mitigation Monitoring and Reporting Program (MMRP)**

The California Environmental Quality Act (CEQA) requires that a Lead Agency establish a program to monitor and report on mitigation measures that it has adopted as part of the environmental review process. The PCEP team has prepared a MMRP to ensure that mitigation measures identified in the PCEP Environmental Impact Report are fully implemented during project implementation. PCEP will implement the mitigation measures through its own actions, those of the DB contractor and actions taken in cooperation with other agencies and entities. The status of each mitigation measure in the MMRP is included in Appendix G.

#### **Activity This Month**

- Environmental compliance monitors were present during project activities (OCS pole foundation installation, potholing for utility location, tree trimming/removal, conduit installation, etc.) occurring in areas that required environmental compliance monitoring. The monitoring was conducted in accordance with measures in the MMRP in an effort to minimize potential impacts on sensitive environmental resources.
- Biological surveyors continued to conduct pre-construction surveys for sensitive wildlife species including nesting bird surveys ahead of project activities. Pre-construction nesting bird surveys during the nesting bird season continued (Nesting bird season is defined as February 1 through September 15)
- Noise and vibration monitoring also occurred during project activities, and non-hazardous soil was removed from the right of way (ROW).
- Environmentally Sensitive Area (ESA) delineation (staking and/or fencing) to delineate jurisdictional waterways and other potentially sensitive areas that should be avoided during upcoming construction activities was maintained. Round three and four of protocol-level burrowing owl surveys were conducted. Protocol level burrowing owl surveys are now complete for the 2021 season. Pre-construction surveys for sensitive wildlife species continued at previously identified potential

habitat locations. Wildlife exclusion fencing installation and monitoring occurred adjacent to portions of the alignment designated for wildlife exclusion fencing.

- Best management practices (BMPs) installation and maintenance (e.g., silt fencing, straw wattles with no monofilament netting per wildlife agency permit requirements, soil covers, etc.) occurred at equipment staging areas and other work areas throughout the alignment in accordance with the project-specific Storm Water Pollution Prevention Plan (SWPPP).

**Activity Next Month**

- Environmental compliance monitors will continue to monitor project activities (OCS pole foundation installation, sawcutting on station platforms, potholing for utility location, tree trimming/removal, conduit installation, abandoned signal cable removal, etc.) occurring in areas that require environmental compliance monitoring in an effort to minimize potential impacts on sensitive environmental resources in accordance with the MMRP.
- Biological surveyors will continue to conduct pre-construction surveys for sensitive wildlife species including nesting bird surveys ahead of project activities. Pre-construction nesting bird surveys during the nesting bird season will continue (nesting bird season is defined as February 1 through September 15).
- Noise and vibration monitoring of project activities will continue to occur and non-hazardous soil will continue to be removed.
- BMPs installation will continue in accordance with the project-specific SWPPP, and ESA staking and fencing will continue to be maintained, to delineate jurisdictional waterways, and other potentially sensitive areas, that should be avoided during upcoming project activities.
- Wildlife exclusion fencing will continue to be maintained prior to upcoming construction activities adjacent to potentially suitable habitat for sensitive wildlife species.

### **13.0 UTILITY RELOCATION**

Implementation of the PCEP requires relocation or rerouting of both public and private utility lines and/or facilities. Utility relocation will require coordination with many entities, including regulatory agencies, public safety agencies, federal, state, and local government agencies, private and public utilities, and other transportation agencies and companies. This section describes the progress specific to the utility relocation process.

#### **Activity This Month**

- Conducted utility coordination meeting to discuss overall status and areas of potential concern from the utilities.
- Continued relocation of Comcast and AT&T Utilities in all Segments, with a focus on Segment 3 and 4 ahead of OCS wiring.

#### **Activity Next Month**

- Coordinate with individual utility owners on the next steps of relocations, including support of any required design information.
- Update the relocation schedule as information becomes available from the utility owners.
- Continue to review relocation design from communications companies and coordinate relocation field work.
- Continue communication relocations in all Segments.

## **14.0 REAL ESTATE**

The PCEP requires the acquisition of a limited amount of real estate. In general, Caltrain uses existing Right of Way (ROW) for the PCEP, but in certain locations, will need to acquire small portions of additional real estate to expand the ROW to accommodate installation of OCS supports (fee acquisitions or railroad easements) and associated Electrical Safety Zones (ESZ) (easements). There are two larger full acquisition areas required for wayside facilities. The PCEP Real Estate team manages the acquisition of all property rights. Caltrain does not need to acquire real estate to complete the EMU procurement portion of the PCEP.

The Project has obtained possessory rights for all but one of the parcels identified at the beginning of the project.

The Real Estate team's current focus is working to identify new parcels and acquire them in conjunction with the project schedule.

- Staff has defined a process to ensure that BBII conveys new property needs (for poles, overhead wires and signals facilities) as soon as possible.
  - BBII must justify and JPB must approve all new parcels.
- Design needs to progress to enable BBII to identify exact acquisition areas.
- Staff is conducting pre-acquisition activities as appropriate.
- JPB has approved eight new parcels to date.

### **Activity This Month**

- Staff continues to review potential new pole locations and is engaging in a system-wide review of potential ESZ and signal needs.
- Staff continues to negotiate with Universal Paragon Corporation (UPC) to allow the potential for early access onto their property, a vital site for catenary pole installation.

### **Activity Next Month**

- Continue review of ESZ needs submitted by BBII compared to direction from contract.
- Continue to meet with internal signal team and BBII signal team to determine potential Real Estate needs.
- Make offers on the parcel for which appraisals have been completed,
- Continue to work with project team to identify and analyze new potential parcels.
- Continue to work with UPC to finalize early access.



**15.0 THIRD PARTY AGREEMENTS**

Third-party coordination is necessary for work impacting public infrastructure, utilities, ROW acquisitions, and others. Table 15-1 below outlines the status of necessary agreements for the PCEP.

**Table 15-1 Third-Party Agreement Status**

Type	Agreement	Third-Party	Status
Governmental Jurisdictions	Construction & Maintenance <sup>1</sup>	City & County of San Francisco	Executed
		City of Brisbane	Executed
		City of South San Francisco	Executed
		City of San Bruno	Executed
		City of Millbrae	Executed
		City of Burlingame	Executed
		City of San Mateo	Executed
		City of Belmont	Executed
		City of San Carlos	Executed
		City of Redwood City	Executed
		Town of Atherton	Not Needed
		County of San Mateo	Executed
		City of Menlo Park	Executed
		City of Palo Alto	Executed
		City of Mountain View	Executed
		City of Sunnyvale	Executed
		City of Santa Clara	Executed
	County of Santa Clara	Executed	
	City of San Jose	Executed	
	Condemnation Authority	San Francisco	In Process
San Mateo		Executed	
Santa Clara		Executed	
Utilities	Infrastructure	PG&E	Executed
	Operating Rules	CPUC	Executed
Transportation & Railroad	Construction & Maintenance	Bay Area Rapid Transit	Executed <sup>2</sup>
	Construction & Maintenance	California Dept. of Transportation (Caltrans)	In Process
	Trackage Rights	UPRR	Executed <sup>2</sup>

Notes regarding table above:

- <sup>1</sup>. Agreements memorialize the parties' consultation and cooperation, designate respective rights and obligations and ensure cooperation between the JPB and the 17 cities and three counties along the Caltrain ROW and within the PCEP limits in connection with the design and construction of the PCEP.
- <sup>2</sup>. Utilizing existing agreements.

## **16.0 GOVERNMENT AND COMMUNITY AFFAIRS**

The Community Relations and Outreach team coordinates all issues with all jurisdictions, partner agencies, government organizations, businesses, labor organizations, local agencies, residents, community members, other interested parties, and the media. In addition, the team oversees the BBII's effectiveness in implementing its Public Involvement Program.

### **Presentations/Meetings**

- City/County Staff Coordinating Group
- Local Policy Makers Group

### **Third Party/Stakeholder Actions**

- City of Burlingame – Traction Power Facilities Plans - Issued for Construction

**17.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION AND LABOR STATISTICS**

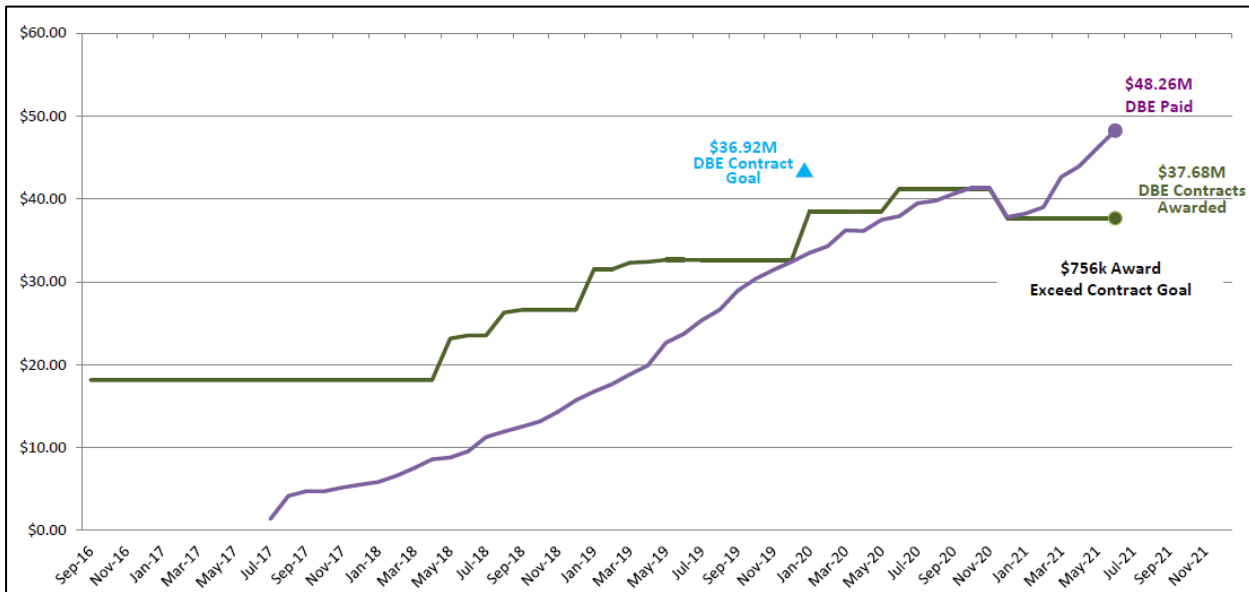
BBII proposed that 5.2% (\$36,919,642) of the DB base contract value including DBE contract change orders (\$709,993,121) would be subcontracted to DBEs.

**Activity This Month**

As expressed in Figure 17-1 below, to date BBII reports:

- **\$ 48,255,464** has been paid to DBE subcontractors.
- **\$ 37,675,908** of DBE contracts have been awarded.
- **6.80%** has been achieved.
- All reported figures are subject to verification by DBE Administrator.
- As a result of JPB’s DBE Office’s review of BBII’s DBE reports, one subcontractor was disqualified in December 2020. After removing amounts paid to the disqualified subcontractor, BBII’s reported awarded and achieved amounts show a decline from previous months. These amounts and are to be verified by JPB’s DBE Administrator.

**Figure 17-1 DBE Participation**



**Activity Next Month**

BBII has proposed the following key actions:

“We continue to anticipate increasing our DBE commitments to firms who we are currently negotiating pricing on proposed work or Professional Services Agreements. We are optimistic about the prospect of making future awards to DBE firms. We also anticipate that the existing project work will increase resulting in expanded work for current DBE subcontractors.”

## 18.0 PROCUREMENT

### **Invitation for Bids (IFB)/Request for Quotes (RFQ)/Request for Proposals (RFP) Issued this Month:**

- None

### **Bids, Quotes, Proposals in Response to IFB/RFQ/RFP Received this Month:**

- None

### **In Process IFB/RFQ/RFP/Contract Amendments for Award:**

- None

### **Contract Awards this Month:**

- None

### **Work Directive (WD)/Purchase Order (PO) Awards & Amendments this Month:**

- Multiple WDs & POs issued to support the program needs

### **Upcoming Contract Awards/Contract Amendments:**

- Contract 18-J-P-115 On-Call Construction Management Services for PCEP

### **Upcoming IFB/RFQ/RFP to be Issued:**

- None

### **Existing Contracts Amendments Issued:**

- None

**19.0 TIMELINE OF MAJOR PROJECT ACCOMPLISHMENTS**

Below is a timeline showing major project accomplishments from 2001 to 2021:

<b>Date</b>	<b>Milestone</b>
2001	Began federal National Environmental Policy Act (NEPA) Environmental Assessment (EA) / state EIR clearance process
2002	Conceptual Design completed
2004	Draft NEPA EA/EIR
2008	35% design complete
2009	Final NEPA EA/EIR and Finding of No Significant Impact (FONSI)
2014	RFQ for electrification RFI for EMU
2015	JPB approves final CEQA EIR JPB approves issuance of RFP for electrification JPB approves issuance of RFP for EMU Receipt of proposal for electrification FTA approval of Core Capacity Project Development
2016	JPB approves EIR Addendum #1: PS-7 FTA re-evaluation of 2009 FONSI Receipt of electrification best and final offers Receipt of EMU proposal Application for entry to engineering to FTA Completed the EMU Buy America Pre-Award Audit and Certification Negotiations completed with Stadler for EMU vehicles Negotiations completed with BBII, the apparent best-value electrification firm JPB approves contract award (LNTP) to BBII JPB approves contract award (LNTP) to Stadler FTA approval of entry into engineering for the Core Capacity Program Application for FFGA
2017	FTA finalized the FFGA for \$647 million in Core Capacity funding, met all regulatory requirements including end of Congressional Review Period (February) FTA FFGA executed, committing \$647 million to the project (May) JPB approves \$1.98 billion budget for PCEP (June) Issued NTP for EMUs to Stadler (June 1) Issued NTP for electrification contract to BBII (June 19) Construction began (August) EMU manufacturing began (October) Issued NTP for SCADA to Rockwell Collins (ARINC) (October) Issued NTP for CEMOF Facility Upgrades to HNTB (November)

**Peninsula Corridor Electrification Project**  
**Monthly Progress Report**

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<b>Date</b>	<b>Milestone</b>
2018	Completed all PG&E agreements JPB approves contract award to Mitsui for the purchase of electric locomotives and Amtrak for overhaul services, storage, acceptance testing, training, and shipment of locomotive to CEMOF JPB approves authorization for the Executive Director to negotiate final contract award to ProVen for tunnel modifications and track rehabilitation project JPB approves contract award (LNTP) to ProVen for tunnel modifications Issued NTP to ProVen for tunnel modifications (October) Amended contract with ProVen to include OCS in the tunnels (November)
2019	JPB approves contract award to ProVen for CEMOF modifications (February) JPB approves LNTP to ProVen for CEMOF modifications (April) JPB approves NTP to ProVen for CEMOF modifications (September)
2020	JPB approves agreement amendment to PG&E for interconnection construction JPB executes agreement with PG&E for interconnection construction (May) FRA approved the waiver for Alternative Vehicle Technology regarding crashworthiness of EMU cars
2021	The intertie between TPS-2 and FMC was completed (January 18) First EMU vehicle shipped to Pueblo, CO for testing (February 10)

**APPENDICES**

Appendix A – Acronyms



**Peninsula Corridor Electrification Project  
Monthly Progress Report**

<b>AIM</b>	<b>Advanced Information Management</b>	<b>EA</b>	<b>Environmental Assessment</b>
<b>ARINC</b>	<b>Aeronautical Radio, Inc.</b>	<b>EAC</b>	<b>Estimate at Completion</b>
<b>BAAQMD</b>	<b>Bay Area Air Quality Management District</b>	<b>EIR</b>	<b>Environmental Impact Report</b>
<b>BBII</b>	<b>Balfour Beatty Infrastructure, Inc.</b>	<b>EOR</b>	<b>Engineer of Record</b>
<b>CAISO</b>	<b>California Independent System Operator</b>	<b>EMU</b>	<b>Electric Multiple Unit</b>
<b>CalMod</b>	<b>Caltrain Modernization Program</b>	<b>ESA</b>	<b>Endangered Species Act</b>
<b>Caltrans</b>	<b>California Department of Transportation</b>	<b>ESA</b>	<b>Environmental Site Assessments</b>
<b>CDFW</b>	<b>California Department of Fish and Wildlife</b>	<b>FAI</b>	<b>First Article Inspection</b>
<b>CEMOF</b>	<b>Centralized Equipment Maintenance and Operations Facility</b>	<b>FEIR</b>	<b>Final Environmental Impact Report</b>
<b>CEQA</b>	<b>California Environmental Quality Act (State)</b>	<b>FNTF</b>	<b>Full Notice to Proceed</b>
<b>CHSRA</b>	<b>California High-Speed Rail Authority</b>	<b>FFGA</b>	<b>Full Funding Grant Agreement</b>
<b>CIP</b>	<b>Capital Improvement Plan</b>	<b>FONSI</b>	<b>Finding of No Significant Impact</b>
<b>CNPA</b>	<b>Concurrent Non-Project Activity</b>	<b>FRA</b>	<b>Federal Railroad Administration</b>
<b>CPUC</b>	<b>California Public Utilities Commission</b>	<b>FTA</b>	<b>Federal Transit Administration</b>
<b>CTC</b>	<b>Centralized Traffic Control</b>	<b>GO</b>	<b>General Order</b>
<b>DB</b>	<b>Design-Build</b>	<b>HSR</b>	<b>High Speed Rail</b>
<b>DBB</b>	<b>Design-Bid-Build</b>	<b>ICD</b>	<b>Interface Control Document</b>
<b>DBE</b>	<b>Disadvantaged Business Enterprise</b>	<b>IFC</b>	<b>Issued for Construction</b>
<b>DEMP</b>	<b>Design, Engineering, and Management Planning</b>	<b>ITS</b>	<b>Intelligent Transportation System</b>
		<b>JPB</b>	<b>Peninsula Corridor Joint Powers Board</b>
		<b>LNTP</b>	<b>Limited Notice to Proceed</b>

**Peninsula Corridor Electrification Project**  
**Monthly Progress Report**

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<b>MMRP</b>	<b>Mitigation, Monitoring, and Reporting Program</b>	<b>RFI</b>	<b>Request for Information</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>	<b>RFP</b>	<b>Request for Proposals</b>
<b>MPS</b>	<b>Master Program Schedule</b>	<b>RFQ</b>	<b>Request for Qualifications</b>
<b>NCR</b>	<b>Non Conformance Report</b>	<b>ROCS</b>	<b>Rail Operations Center System</b>
<b>NEPA</b>	<b>National Environmental Policy Act (Federal)</b>	<b>ROW</b>	<b>Right of Way</b>
<b>NHPA</b>	<b>National Historic Preservation Act</b>	<b>RRP</b>	<b>Railroad Protective Liability</b>
<b>NMFS</b>	<b>National Marine Fisheries Service</b>	<b>RSD</b>	<b>Revenue Service Date</b>
<b>NTP</b>	<b>Notice to Proceed</b>	<b>RWP</b>	<b>Roadway Worker Protection</b>
<b>OCS</b>	<b>Overhead Contact System</b>	<b>SamTrans</b>	<b>San Mateo County Transit District</b>
<b>PCEP</b>	<b>Peninsula Corridor Electrification Project</b>	<b>SCADA</b>	<b>Supervisory Control and Data Acquisition</b>
<b>PCJPB</b>	<b>Peninsula Corridor Joint Powers Board</b>	<b>SCC</b>	<b>Standard Cost Code</b>
<b>PG&amp;E</b>	<b>Pacific Gas and Electric</b>	<b>SPUR</b>	<b>San Francisco Bay Area Planning and Urban Research Association</b>
<b>PHA</b>	<b>Preliminary Hazard Analysis</b>	<b>SFBCDC</b>	<b>San Francisco Bay Conservation Development Commission</b>
<b>PMOC</b>	<b>Project Management Oversight Contractor</b>	<b>SFCTA</b>	<b>San Francisco County Transportation Authority</b>
<b>PS</b>	<b>Paralleling Station</b>	<b>SFMTA</b>	<b>San Francisco Municipal Transportation Authority</b>
<b>PTC</b>	<b>Positive Train Control</b>	<b>SFRWQCB</b>	<b>San Francisco Regional Water Quality Control Board</b>
<b>QA</b>	<b>Quality Assurance</b>	<b>SOGR</b>	<b>State of Good Repair</b>
<b>QC</b>	<b>Quality Control</b>	<b>SSCP</b>	<b>Safety and Security Certification Plan</b>
<b>QMP</b>	<b>Quality Management Plan</b>	<b>SSMP</b>	<b>Safety and Security Management Plan</b>
<b>QMS</b>	<b>Quality Management System</b>	<b>SSWP</b>	<b>Site Specific Work Plan</b>
<b>RAMP</b>	<b>Real Estate Acquisition Management Plan</b>		
<b>RE</b>	<b>Real Estate</b>		

<b>SWS</b>	<b>Switching Station</b>
<b>TASI</b>	<b>TransitAmerica Services Inc.</b>
<b>TBD</b>	<b>To Be Determined</b>
<b>TPS</b>	<b>Traction Power Substation</b>
<b>TSP</b>	<b>Transmission Structure Pole</b>
<b>TVA</b>	<b>Threat and Vulnerability Assessment</b>
<b>UPRR</b>	<b>Union Pacific Railroad</b>
<b>USACE</b>	<b>United States Army Corp of Engineers</b>
<b>USFWS</b>	<b>U.S. Fish and Wildlife Service</b>
<b>VTA</b>	<b>Santa Clara Valley Transportation Authority</b>

Appendix B – Funding Partner Meetings

**Funding Partner Meeting Representatives**  
Updated May 21, 2021

Agency	CHSRA	MTC	SFCTA/SFMTA/CCSF	SMCTA	VTA
<b>FTA Quarterly Meeting</b>	<ul style="list-style-type: none"> <li>• Boris Lipkin</li> <li>• Simon Whitehorn</li> <li>• Wai Siu (info only)</li> <li>• Sharath Murthy (info only)</li> </ul>	<ul style="list-style-type: none"> <li>• Anne Richman</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> </ul>	<ul style="list-style-type: none"> <li>• April Chan</li> <li>• Peter Skinner</li> </ul>	<ul style="list-style-type: none"> <li>• Jim Lawson</li> </ul>
<b>Funding Partners Quarterly Meeting</b>	<ul style="list-style-type: none"> <li>• Boris Lipkin</li> <li>• Simon Whitehorn</li> <li>• John Popoff</li> <li>• Sharath Murthy (info only)</li> </ul>	<ul style="list-style-type: none"> <li>• Trish Stoops</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> </ul>	<ul style="list-style-type: none"> <li>• April Chan</li> <li>• Peter Skinner</li> </ul>	<ul style="list-style-type: none"> <li>• Krishna Davey</li> <li>• Edwin Castillo</li> <li>• Franklin Wong</li> </ul>
<b>Funding Oversight (monthly)</b>	<ul style="list-style-type: none"> <li>• Kelly Doyle</li> </ul>	<ul style="list-style-type: none"> <li>• Anne Richman</li> <li>• Kenneth Folan</li> </ul>	<ul style="list-style-type: none"> <li>• Anna LaForte</li> <li>• Maria Lombardo</li> <li>• Luis Zurinaga</li> <li>• Monique Webster</li> <li>• Ariel Espiritu Santo</li> </ul>	<ul style="list-style-type: none"> <li>• April Chan</li> <li>• Peter Skinner</li> </ul>	<ul style="list-style-type: none"> <li>• Jim Lawson</li> <li>• Marcella Rensi</li> <li>• Michael Smith</li> </ul>
<b>Change Management Board (monthly)</b>	<ul style="list-style-type: none"> <li>• Boris Lipkin</li> <li>• Simon Whitehorn</li> </ul>	<ul style="list-style-type: none"> <li>• Trish Stoops</li> <li>• Kenneth Folan</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> <li>• Tilly Chang (info only)</li> </ul>	<ul style="list-style-type: none"> <li>• Joe Hurley</li> </ul>	<ul style="list-style-type: none"> <li>• Krishna Davey</li> <li>• Edwin Castillo</li> <li>• Franklin Wong</li> <li>• James Costantini</li> <li>• Jim Lawson</li> </ul>
<b>Master Program Schedule Update (monthly)</b>	<ul style="list-style-type: none"> <li>• Wai Siu</li> <li>• Sharath Murthy</li> </ul>	<ul style="list-style-type: none"> <li>• Trish Stoops</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> </ul>	<ul style="list-style-type: none"> <li>• Joe Hurley</li> </ul>	<ul style="list-style-type: none"> <li>• Jim Lawson</li> </ul>
<b>Risk Assessment Committee (monthly)</b>	<ul style="list-style-type: none"> <li>• Wai Siu</li> <li>• Sharath Murthy</li> </ul>	<ul style="list-style-type: none"> <li>• Trish Stoops</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> </ul>	<ul style="list-style-type: none"> <li>• Joe Hurley</li> </ul>	<ul style="list-style-type: none"> <li>• Krishna Davey</li> <li>• Edwin Castillo</li> <li>• Franklin Wong</li> </ul>
<b>PCEP Delivery Coordination Meeting (bi-weekly)</b>	<ul style="list-style-type: none"> <li>• Wai Siu</li> <li>• Sharath Murthy</li> </ul>	<ul style="list-style-type: none"> <li>• Trish Stoops</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> </ul>	<ul style="list-style-type: none"> <li>• Joe Hurley</li> </ul>	<ul style="list-style-type: none"> <li>• Krishna Davey</li> <li>• Edwin Castillo</li> <li>• Franklin Wong</li> <li>• James Costantini</li> </ul>
<b>Systems Integration Meeting (bi-weekly)</b>	<ul style="list-style-type: none"> <li>• Wai Siu</li> <li>• Sharath Murthy</li> </ul>	<ul style="list-style-type: none"> <li>• Trish Stoops</li> </ul>	<ul style="list-style-type: none"> <li>• Luis Zurinaga</li> </ul>	<ul style="list-style-type: none"> <li>• Joe Hurley</li> </ul>	<ul style="list-style-type: none"> <li>• Krishna Davey</li> <li>• Edwin Castillo</li> <li>• Franklin Wong</li> </ul>

Appendix C – Schedule







Appendix D – Standard Cost Codes

**Peninsula Corridor Electrification Project  
Monthly Progress Report**

Description of Work	FFGA Baseline Budget (A)	Approved Budget (B)	Cost This Month (C)	Cost To Date (D)	Estimate To Complete (E)	Estimate At Completion (F) = (D) + (E)
<b>10 - GUIDEWAY &amp; TRACK ELEMENTS</b>	<b>\$14,256,739</b>	<b>\$27,369,522</b>	<b>\$49,968</b>	<b>\$25,066,652</b>	<b>\$3,196,575</b>	<b>\$28,263,227</b>
10.02 Guideway: At-grade semi-exclusive (allows cross-traffic)	\$2,500,000	\$2,500,000	\$49,968	\$197,848	\$2,302,152	\$2,500,000
10.07 Guideway: Underground tunnel	\$8,110,649	\$24,869,522	\$0	\$24,868,804	\$894,423	\$25,763,227
10.07 Allocated Contingency	\$3,646,090	\$0	\$0	\$0	\$0	\$0
<b>30 - SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS</b>	<b>\$2,265,200</b>	<b>\$8,182,966</b>	<b>\$57,212</b>	<b>\$6,912,913</b>	<b>\$1,463,683</b>	<b>\$8,376,596</b>
30.03 Heavy Maintenance Facility	\$1,344,000	\$8,182,966	\$57,212	\$6,912,913	\$1,463,683	\$8,376,596
30.03 Allocated Contingency	\$421,200	\$0	\$0	\$0	\$0	\$0
30.05 Yard and Yard Track	\$500,000	\$0	\$0	\$0	\$0	\$0
<b>40 - SITEWORK &amp; SPECIAL CONDITIONS</b>	<b>\$255,072,402</b>	<b>\$265,797,476</b>	<b>\$3,517,108</b>	<b>\$242,460,910</b>	<b>\$33,783,295</b>	<b>\$276,244,205</b>
40.01 Demolition, Clearing, Earthwork	\$3,077,685	\$10,136,067	\$489,410	\$7,711,620	\$2,435,986	\$10,147,606
40.02 Site Utilities, Utility Relocation	\$62,192,517	\$101,238,387	\$1,374,878	\$126,664,339	(\$21,347,544)	\$105,316,794
40.02 Allocated Contingency	\$25,862,000	(\$0)	\$0	\$0	(\$0)	(\$0)
40.03 Haz. mat'l, contam'd soil removal/mitigation, ground water treatments	\$2,200,000	\$8,744,961	(\$10,593)	\$6,544,961	\$5,676,973	\$12,221,934
40.04 Environmental mitigation, e.g. wetlands, historic/archeologic, parks	\$32,579,208	\$19,504,208	\$162,893	\$2,724,612	\$16,779,596	\$19,504,208
40.05 Site structures including retaining walls, sound walls	\$568,188	\$0	\$0	\$0	\$0	\$0
40.06 Pedestrian / bike access and accommodation, landscaping	\$804,933	\$2,735,000	\$69,614	\$520,614	\$2,214,386	\$2,735,000
40.07 Automobile, bus, van accessways including roads, parking lots	\$284,094	\$0	\$0	\$0	\$0	\$0
40.08 Temporary Facilities and other indirect costs during construction	\$107,343,777	\$121,828,853	\$1,430,906	\$98,294,764	\$27,584,947	\$125,879,710
40.08 Allocated Contingency	\$20,160,000	\$1,610,000	\$0	\$0	\$438,953	\$438,953
<b>50 - SYSTEMS</b>	<b>\$504,445,419</b>	<b>\$508,500,374</b>	<b>\$14,559,216</b>	<b>\$292,472,699</b>	<b>\$243,582,735</b>	<b>\$536,055,434</b>
50.01 Train control and signals	\$97,589,149	\$120,343,517	(\$1,002,546)	\$52,103,128	\$69,346,795	\$121,449,923
50.01 Allocated Contingency	\$1,651,000	\$0	\$0	\$0	\$0	\$0
50.02 Traffic signals and crossing protection	\$23,879,905	(\$0)	\$0	\$0	(\$0)	(\$0)
50.02 Allocated Contingency	\$1,140,000	\$1,140,000	\$0	\$0	\$1,140,000	\$1,140,000
50.03 Traction power supply: substations	\$69,120,009	\$101,632,202	\$4,922,104	\$62,452,767	\$41,858,849	\$104,311,616
50.03 Allocated Contingency	\$31,755,013	\$2,990,895	\$0	\$0	\$2,178,337	\$2,178,337
50.04 Traction power distribution: catenary and third rail	\$253,683,045	\$272,866,271	\$10,719,482	\$177,439,638	\$123,919,461	\$301,359,099
50.04 Allocated Contingency	\$18,064,000	\$3,962,488	\$0	\$0	\$51,458	\$51,458
50.05 Communications	\$5,455,000	\$5,547,000	(\$79,824)	\$477,166	\$5,069,834	\$5,547,000
50.07 Central Control	\$2,090,298	\$0	\$0	\$0	\$0	\$0
50.07 Allocated Contingency	\$18,000	\$18,000	\$0	\$0	\$18,000	\$18,000
<b>60 - ROW, LAND, EXISTING IMPROVEMENTS</b>	<b>\$35,675,084</b>	<b>\$35,675,084</b>	<b>\$133,554</b>	<b>\$21,916,923</b>	<b>\$14,566,298</b>	<b>\$36,483,220</b>
60.01 Purchase or lease of real estate	\$25,927,074	\$25,927,074	\$133,554	\$21,782,931	\$13,700,289	\$35,483,220
60.01 Allocated Contingency	\$8,748,010	\$8,748,010	\$0	\$0	(\$0)	(\$0)
60.02 Relocation of existing households and businesses	\$1,000,000	\$1,000,000	\$0	\$133,992	\$866,008	\$1,000,000
<b>70 - VEHICLES (96)</b>	<b>\$625,544,147</b>	<b>\$619,286,318</b>	<b>\$11,868,459</b>	<b>\$276,748,897</b>	<b>\$343,565,725</b>	<b>\$620,314,622</b>
70.03 Commuter Rail	\$589,167,291	\$591,215,161	\$11,868,459	\$273,986,725	\$322,471,536	\$596,458,261
70.03 Allocated Contingency	\$9,472,924	\$4,239,405	\$0	\$0	\$24,610	\$24,610
70.06 Non-revenue vehicles	\$8,140,000	\$5,067,821	\$0	\$538,280	\$4,529,541	\$5,067,821
70.07 Spare parts	\$18,763,931	\$18,763,931	\$0	\$2,223,893	\$16,540,038	\$18,763,931
<b>80 - PROFESSIONAL SERVICES (applies to Cats. 10-50)</b>	<b>\$323,793,010</b>	<b>\$376,050,717</b>	<b>\$2,165,421</b>	<b>\$329,455,405</b>	<b>\$61,360,878</b>	<b>\$390,816,282</b>
80.01 Project Development	\$130,350	\$130,350	\$0	\$289,233	(\$158,883)	\$130,350
80.02 Engineering (not applicable to Small Starts)	\$180,227,311	\$219,556,489	\$365,665	\$204,699,659	\$16,593,655	\$221,293,314
80.02 Allocated Contingency	\$1,866,000	\$4,678	\$0	\$0	\$4,678	\$4,678
80.03 Project Management for Design and Construction	\$72,029,265	\$89,873,652	\$862,160	\$87,775,789	\$18,624,323	\$106,400,112
80.03 Allocated Contingency	\$9,388,080	\$3,725,231	\$0	\$0	(\$0)	(\$0)
80.04 Construction Administration & Management	\$23,677,949	\$38,768,045	\$886,796	\$26,693,991	\$11,662,476	\$38,356,467
80.04 Allocated Contingency	\$19,537,000	\$5,087,703	\$0	\$0	\$5,087,703	\$5,087,703
80.05 Professional Liability and other Non-Construction Insurance	\$3,500,000	\$4,581,851	\$0	\$4,581,851	\$0	\$4,581,851
80.06 Legal; Permits; Review Fees by other agencies, cities, etc.	\$7,167,275	\$9,254,887	\$50,800	\$5,361,008	\$4,452,210	\$9,813,218
80.06 Allocated Contingency	\$556,000	\$0	\$0	\$0	\$0	\$0
80.07 Surveys, Testing, Investigation, Inspection	\$3,287,824	\$3,418,022	\$0	\$53,873	\$3,444,907	\$3,498,781
80.08 Start up	\$1,797,957	\$1,021,808	\$0	\$0	\$1,021,808	\$1,021,808
80.08 Allocated Contingency	\$628,000	\$628,000	\$0	\$0	\$628,000	\$628,000
<b>Subtotal (10 - 80)</b>	<b>\$1,761,052,001</b>	<b>\$1,840,862,457</b>	<b>\$32,350,939</b>	<b>\$1,195,034,399</b>	<b>\$701,519,188</b>	<b>\$1,896,553,586</b>
<b>90 - UNALLOCATED CONTINGENCY</b>	<b>\$162,620,295</b>	<b>\$79,909,839</b>	<b>\$0</b>	<b>\$0</b>	<b>\$24,218,710</b>	<b>\$24,218,710</b>
<b>Subtotal (10 - 90)</b>	<b>\$1,923,672,296</b>	<b>\$1,920,772,296</b>	<b>\$32,350,939</b>	<b>\$1,195,034,399</b>	<b>\$725,737,897</b>	<b>\$1,920,772,296</b>
<b>100 - FINANCE CHARGES</b>	<b>\$6,998,638</b>	<b>\$9,898,638</b>	<b>\$203,325</b>	<b>\$7,619,574</b>	<b>\$2,279,064</b>	<b>\$9,898,638</b>
<b>Total Project Cost (10 - 100)</b>	<b>\$1,930,670,934</b>	<b>\$1,930,670,934</b>	<b>\$32,554,264</b>	<b>\$1,202,653,972</b>	<b>\$728,016,962</b>	<b>\$1,930,670,934</b>

Appendix E – Change Order Logs

**Peninsula Corridor Electrification Project  
Monthly Progress Report**

Change Order Logs

Electrification Contract

Change Order Authority (5% of BBII Contract)

5% x \$696,610,558 = \$34,830,528

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
08/31/17	BBI-053-CCO-001	Track Access Delays Q4 2016	\$85,472	0.25%	\$34,745,056
02/28/18	BBI-053-CCO-003	Deletion of Signal Cable Meggering (Testing)	(\$800,000)	(2.30%)	\$35,545,056
02/21/18	BBI-053-CCO-004	Field Order for Differing Site Condition Work Performed on 6/19/17	\$59,965	0.17%	\$35,485,091
03/12/18	BBI-053-CCO-006	Track Access Delays for Calendar Quarter 1 2017	\$288,741	0.83%	\$35,196,350
04/24/18	BBI-053-CCO-002	Time Impact 01 Associated with Delayed NTP	\$9,702,667	0.00% <sup>2</sup>	-
04/24/18	BBI-053-CCO-008	2016 Incentives (Safety, Quality, and Public Outreach)	\$750,000	0.00% <sup>2</sup>	-
05/31/18	BBI-053-CCO-009	16th St. Grade Crossing Work Removal from BBII Contract	(\$685,198)	(1.97%)	\$35,881,548
05/31/18	BBI-053-CCO-012	2017 Incentives (Safety, Quality, and Public Outreach)	\$1,025,000	0.00% <sup>2</sup>	-
06/25/18	BBI-053-CCO-010	Pothole Change Of Shift	\$300,000	0.86%	\$35,581,548
06/25/18	BBI-053-CCO-013	Field Order for Signal Cable Relocation (FO# 31)	\$95,892	0.28%	\$35,485,656
06/25/18	BBI-053-CCO-015	TASI Pilot Transportation 2017	\$67,345	0.19%	\$35,418,311
06/26/18	BBI-053-CCO-005	Field Orders for Signal Cable Relocation (FO#s 26, 30)	\$191,836	0.55%	\$35,226,475
06/28/18	BBI-053-CCO-014	Field Orders for Signal Cable Relocation (FO-36 & FO-38)	\$145,694	0.42%	\$35,080,781
06/29/18	BBI-053-CCO-007	Track Access Delays for Calendar Quarter 2 2017	\$297,512	0.85%	\$34,783,269
06/29/18	BBI-053-CCO-011	Field Orders for Differing Site Condition (FO#s Partial 07A , 08-14)	\$181,013	0.52%	\$34,602,256
06/29/18	BBI-053-CCO-017	Field Order for NorCal Utility Potholing (FO# 27)	\$93,073	0.27%	\$34,509,183
06/29/18	BBI-053-CCO-018	Field Order for NorCal Utility Potholing (FO# 29)	\$76,197	0.22%	\$34,432,986
06/29/18	BBI-053-CCO-020	Field Orders for Differing Site Condition (FO#s 15-19)	\$118,364	0.34%	\$34,314,622
7/19/2018	BBI-053-CCO-019	Field Order for NorCal Utility Potholing (FO-032)	\$88,956	0.26 %	\$34,225,666
7/19/2018	BBI-053-CCO-021	As In-Service (AIS) Drawings for Segment 2 and 4 Signal Design (CN-009)	\$105,000	0.30 %	\$34,120,666
7/25/2018	BBI-053-CCO-022	CEMOF Yard Traction Power Feed (CN-008)	\$332,700	0.96 %	\$33,787,966
7/31/2018	BBI-053-CCO-028	Sonic Echo Impulse Testing	\$4,541	0.01 %	\$33,783,425
7/31/2018	BBI-053-CCO-026	TASI Pilot Transportation 2018 (CNC-0022)	\$50,409	0.14%	\$33,733,016
7/31/2018	BBI-053-CCO-027	Signal Cable Relocation (FOs-040 & 051)	\$196,114	0.56%	\$33,536,902
9/27/2018	BBI-053-CCO-030	Delete Spare 115k Disconnect Switches	(\$19,000)	(0.05)%	\$33,555,902
9/28/2018	BBI-053-CCO-031	Bldg A HVAC and FOB Card Reader Systems	\$76,500	0.22 %	\$33,479,402
9/28/2018	BBI-053-CCO-025A	Addition of Shunt Wire at Transverse Utility Crossing Locations – Design	\$925,000	2.66 %	\$32,554,402
9/28/2018	BBI-053-CCO-016A	UPRR MT-1 Pole Relocation - Design Changes	\$903,000	0.00% <sup>2</sup>	-
9/28/2018	BBI-053-CCO-024A	PG&E Utility Feed Connection to TPS#1 and TPS#2 (Design Only)	\$727,000	0.00% <sup>2</sup>	-
12/17/2018	BBI-053-CCO-032	PS-2 Site Relocation (Design Only)	\$291,446	0.84%	\$32,262,956
1/17/2019	BBI-053-CCO-023	Insulated Rail Joints	\$2,694,519	0.00% <sup>2</sup>	-
1/17/2019	BBI-053-CCO-029	CHSRA Early Pole Relocation (Design Only)	\$625,000	0.00% <sup>2,3</sup>	-
2/5/2019	BBI-053-CCO-040A	Increase in Potholing Quantity (unit price contract bid item by 25%)	\$1,662,500	4.77 %	\$30,600,456

**Peninsula Corridor Electrification Project**  
**Monthly Progress Report**

Change Order Authority (5% of BBII Contract)

5% x \$696,610,558 = \$34,830,528

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
3/5/2019	BBI-053-CCO-042A	TPSS-2 VTA/BART Pole Relocation (Design Only) (CNPA funded by VTA)	\$110,000	0.32% <sup>3</sup>	\$30,490,456
3/11/2019	BBI-053-CCO-036	Field Order for Signal Cable Relocation (FO-064)	\$86,538	0.25%	\$30,403,918
3/20/2019	BBI-053-CCO-035	Millbrae Avenue Existing Overhead Barrier	(\$40,000)	(0.11)%	\$30,443,918
3/19/2019	BBI-053-CCO-046	Training in Design Software and Potholing	\$136,611	0.39%	\$30,307,307
4/8/2019	BBI-053-CCO-041	Grade Crossing Warning System (CN59) – 5 mph Speed Check	\$446,982	1.28%	\$29,860,325
5/30/2019	BBI-053-CCO-044	Additional Daytime Potholing (Increase Quantity by 500 in Segment 4)	\$150,000	0.43 %	\$29,710,325
6/6/2019	BBI-053-CCO-048	Power Metering Devices	\$101,908	0.29 %	\$29,608,417
6/13/2019	BBI-053-CCO-045	Incentive Payment for 2018	\$1,025,000	0.00% <sup>2</sup>	-
6/13/2019	BBI-053-CCO-024B	PG&E Utility Feed Connection to TPS #1 and TPS#2 (Material On Hand)	\$1,600,000	4.59 %	\$28,008,417
6/24/2019	BBI-053-CCO-043	PS-5 Site Relocation (Design Only)	\$348,000	1.00 %	\$27,660,417
6/24/2019	BBI-053-CCO-054	Change Design Sequence for OCS Foundations	\$37,500	0.11%	\$27,622,917
7/1/2019	BBI-053-CCO-040B	Increase Quantity for Utilities Potholing (Bid Item #9)	\$1,867,700	5.36 %	\$25,755,217
7/10/2019	BBI-053-CCO-033A	Relocation of PS3 (Design) (CNPA funded by BGSP)	\$500,000	1.44 % <sup>3</sup>	\$25,255,217
8/15/2019	BBI-053-CCO-047	CEMOF Slot Drains (Design Only)	\$69,000	0.20%	\$25,186,217
8/16/2019	BBI-053-CCO-055	Sheriff's Deputy in Segment 4B	\$4,644	0.01%	\$25,181,573
9/3/2019	BBI-053-CCO-037	Field Orders for Signal Cable Relocation (FO-053 & FO-059)	\$184,576	0.53%	\$24,996,997
9/7/2019	BBI-053-CCO-057	Mediator with Technical Expertise	\$0	0.00%	\$24,996,997
9/27/2019	BBI-053-CCO-061	Interconnect Renaming of Circuit Numbers	\$58,058	0.17%	\$24,938,939
9/27/2019	BBI-053-CCO-063A	Track Access Delays - Quarter 1 2018 (Partial)	\$343,496	0.99%	\$24,595,443
10/21/2019	BBI-053-CCO-064	TPS-2 VTA Pole Height Redesign (CNPA funded by VTA)	\$31,000	0.09% <sup>3</sup>	\$24,564,443
11/15/2019	BBI-053-CCO-038	Field Order for Signal Cable Relocation (FO-079 & FO-085)	\$187,764	0.54 %	\$24,376,680
11/26/2019	BBI-053-CCO-025B	Addition of OCS Shunt Wires in Segments 2 & 4 - Wire Assembly Materials Only - voided below on 7/31/20	\$144,370	0.41 %	\$24,232,310
12/11/2019	BBI-053-CCO-065A	Foundation Inefficiencies S2WA5	\$401,501	1.15%	\$23,830,809
12/17/2019	BBI-053-CCO-025C	Addition of OCS Shunt Wires in Segments 2 & 4 – Pole Assembly Materials Only - voided below on 7/31/20	\$884,500	2.54 %	\$22,946,309
1/7/2020	BBI-053-CCO-066A	Increase Quantity for Contaminated Soils (Bid Unit Price Item #1)	\$950,000	2.73 %	\$21,996,309
2/5/2020	BBI-053-CCO-023B	Insulated Rail Joints De-stressing	\$890,600	2.56 %	\$21,105,709
3/18/2020	BBI-053-CCO-072A	SVP Requirements for Joint SIS & SPS (Task 1) - voided below on 7/9/20	\$80,000	0.23 %	\$21,025,709
3/19/2020	BBI-053-CCO-023C	Portec Insulated Rail Joints	\$375,000	1.08 %	\$20,650,709
3/26/2020	BBI-053-CCO-076	Asbestos Pipe Abatement at CP Shark	\$145,872	0.42 %	\$20,504,837
3/31/2020	BBI-053-CCO-075	Norcal Utility Potholing (FO#39)	\$98,105	0.28 %	\$20,406,733
4/21/2020	BBI-053-CCO-077A	Contaminated Soil (Class 1) at TPS-1	\$701,780	2.01 %	\$19,704,953
4/27/2020	BBI-053-CCO-066B	Increase Quantity for Contaminated Soils (Bid Item #1)	\$926,273	2.66 %	\$18,778,680
4/27/2020	BBI-053-CCO-090A	Signal Cable Relocation (Field Order No. 340)	\$47,258	0.14 %	\$18,731,423
4/27/2020	BBI-053-CCO-091A	Signal Cable Relocation (Field Order No. 340)	\$131,663	0.38 %	\$18,599,759
4/29/2020	BBI-053-CCO-080A	Steel Plates to Protect Utilities (DTDS)	\$135,128	0.39 %	\$18,464,631

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4/29/2020	BBI-053-CCO-081A	Steel Plates to Protect Utilities (DTDS)	\$95,474	0.27 %	\$18,369,157
4/29/2020	BBI-053-CCO-071	Increase Quantity for Tree Pruning (Bid Unit Price Item #4d)	\$375,000	1.08 %	\$17,994,157
5/1/2020	BBI-053-CCO-050	Switch Machine Isolation – Credit	(\$277,430)	(0.80)%	\$18,271,586
5/19/2020	BBI-053-CCO-092A	Signal Cable Relocation (Field Order No. 340)	\$106,773	0.31 %	\$18,164,814
5/19/2020	BBI-053-CCO-093A	Signal Cable Relocation (Field Order No. 340)	\$90,765	0.26 %	\$18,074,049
5/27/2020	BBI-053-CCO-101	Asbestos Pipe Abatement at 46.3-07/08	\$21,037	0.06 %	\$18,053,012
6/15/2020	BBI-053-CCO-049A	Long-reach Foundations Installation - Unit Price	\$46,560	0.13 %	\$18,006,452
6/15/2020	BBI-053-CCO-049B	Long-reach Foundations Installation - Unit Price	\$46,560	0.13 %	\$17,959,892
6/18/2020	BBI-053-CCO-033B	PS-3 Site Relocation FEMA 2019 Update and BGSP Design Coordination – CNPA	\$50,000	0.14 % <sup>3</sup>	\$17,909,892
6/30/2020	BBI-053-CCO-082A	Steel Plates to Protect Utilities (DTDS)	\$90,658	0.26 %	\$17,819,235
6/30/2020	BBI-053-CCO-083A	Steel Plates to Protect Utilities (DTDS)	\$181,900	0.52 %	\$17,637,335
6/30/2020	BBI-053-CCO-094A	Signal Cable Relocation (Field Order No. 340)	\$124,633	0.36 %	\$17,512,702
7/9/2020	BBI-053-CCO-072A	SVP Requirements for Joint SIS & SPS (Task 1) – Voided	(\$80,000)	(0.23)%	\$17,592,702
7/9/2020	BBI-053-CCO-072A REV2	SVP Requirements for Joint SIS & SPS (Tasks 0-5) - voided below on 2/23/2021	\$300,000	0.86 %	\$17,292,702
7/16/2020	BBI-053-CCO-100	Remove Tree Stump at 46.4-02	\$1,459	0.00 %	\$17,291,243
7/30/2020	BBI-053-CCO-078	Re-design CEMOF OCS Poles due to Stair 71 Conflict	\$11,796	0.03 %	\$17,279,447
7/30/2020	BBI-053-CCO-084A	Steel Plates to Protect Utilities (DTDS)	\$101,334	0.29 %	\$17,178,113
7/30/2020	BBI-053-CCO-085A	Steel Plates to Protect Utilities (DTDS)	\$94,062	0.27 %	\$17,084,051
7/30/2020	BBI-053-CCO-104	Utility Conflict During PVC Conduit Installation	\$2,657	0.01 %	\$17,081,394
7/31/2020	BBI-053-CCO-103	Track Access Delays – 2017 Quarter 3 - voided below on 2/16/2021	\$145,892	0.42 %	\$16,935,503
7/31/2020	BBI-053-CCO-025B	Addition of OCS Shunt Wires in Segments 2 & 4 - Wire Assembly Materials Only – Voided	(\$144,370)	(0.41)%	\$17,079,873
7/31/2020	BBI-053-CCO-025C	Addition of OCS Shunt Wires in Segments 2 & 4 – Pole Assembly Materials Only – Voided	(\$884,500)	(2.54)%	\$17,964,373
8/3/2020	BBI-053-CCO-063B	Track Access Delays – Quarter 1 2018 (Part 2)	\$92,906	0.27 %	\$17,871,466
8/14/2020	BBI-053-CCO-106	Track Access Delays – 2017 Quarter 4	\$903,794	2.59 %	\$16,967,672
9/10/2020	BBI-053-CCO-025F	OCS Shunt Wire (Construction)	\$9,500,000	0.00% <sup>2</sup>	-
9/11/2020	BBI-053-CCO-126	Track Access Delays - 2019 Quarter 3 – OCS Foundations	\$81,223	0.23 %	\$16,886,450
9/24/2020	BBI-053-CCO-127	Track Access Delays – 2019 Quarter 4 – OCS Foundations	\$147,223	0.42 %	\$16,739,227
9/21/2020	BBI-053-CCO-051	CEMOF Yard OCS Changes (Design Only)	\$210,300	0.60 %	\$16,528,927
9/21/2020	BBI-053-CCO-074	Underground Utilities Clearance	\$0	0.00 %	\$16,528,927
10/19/2020	BBI-053-CCO-072C	PCEP SIS & SPS Additional Validation Work	\$27,696	0.08 %	\$16,501,231
10/27/2020	BBI-053-CCO-105	Pole Removal at Location 30.7-01	\$2,297	0.01 %	\$16,498,935
11/30/2020	BBI-053-CCO-056	Delivery of Signal Cable	\$3,391	0.01 %	\$16,495,544
12/22/2020	BBI-053-CCO-111	Incentives Payment for 2019	\$825,000	0.00% <sup>2</sup>	-
2/9/2021	BBI-053-CCO-025G	OCS Shunt Wire (Design)	\$0	0.00 %	\$16,495,544
2/11/2021	BBI-053-CCO-047B	CEMOF Yard Slot Drains Relocation (Construction)	\$360,000	1.03 %	\$16,135,544
2/16/2021	BBI-053-CCO-103	Track Access Delays – 2017 Quarter 3 – voided	(\$145,892)	(0.42)%	\$16,281,435
2/16/2021	BBI-053-CCO-103 REV1	Track Access Delays – 2017 Quarter 3	\$164,518	0.47 %	\$16,116,918

## Peninsula Corridor Electrification Project

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2/23/2021	BBI-053-CCO-072A REV2	SVP Requirements for Joint SIS & SPS (Tasks 0-5) – <b>voided</b>	(\$300,000)	(0.86)%	\$16,416,918
2/23/2021	BBI-053-CCO-072B	Requirements for PCEP Joint System Impact Study & Single Phase Study	\$520,000	1.49 %	\$15,896,918
3/17/2021	BBI-053-CCO-203	Increase in Permit Allowance (Bid Allowance Item #5)	\$300,000	0.86 %	\$15,596,918
3/17/2021	BBI-053-CCO-205	Increase in Partnering Allowance (Bid Allowance Item #2)	\$186,000	0.53 %	\$15,410,918
3/26/2021	BBI-053-CCO-192	Abandoned Utility Pole Removal at MP24.72	\$2,766	0.01 %	\$15,408,151
4/23/2021	BBI-053-CCO-108A	Deletion of 5 & 5A Switch Crossover at CP Shark (Part 1)	\$163,996	0.47 %	\$15,244,156
4/23/2021	BBI-053-CCO-024C	TPSS 1&2 PG&E Interconnection-Procurement of Long Lead Materials (Credit)	(\$1,345,033)	(3.86)%	\$16,589,188
4/30/2021	BBI-053-CCO-113A	Walk-in Enclosure at Luther Junction (BBI, PGH Wong and QEI)	\$51,281	0.15 %	\$16,537,907
5/27/2021	BBI-053-CCO-073	South San Francisco Bioswale Redesign	\$26,067	0.07 %	\$16,511,840
6/11/2021	BBI-053-CCO-135A	Protection of On-track Eqpt Traveling thru Gated Crossings	\$133,645	0.38 %	\$16,378,195
6/18/2021	BBI-053-CCO-157	Track Access Delays - July 2017 to October 2020	\$4,350,000	12.49 %	\$12,028,195
6/22/2021	BBI-053-CCO-039	NorCal Utility Potholing CBOSS (FO#35&037)	\$140,691	0.40 %	\$11,887,505
6/22/2021	BBI-053-CCO-079	NorCal Utility Potholing (FO#52)	\$82,108	0.24 %	\$11,805,396
6/27/2021	BBI-053-CCO-204A	Increase in PG&E Service Allowance (Bid Allowance Item #8)	\$3,000,000	8.61 %	\$8,805,396
6/25/2021	BBI-053-CCO-049C	Long-reach Foundations Installation - Unit Price	\$139,680	0.40 %	\$8,665,716
<b>Total</b>			<b>\$53,941,998</b>	<b>75.12 %</b>	<b>\$8,665,716</b>

Notes:

1. When the threshold of 75% is reached, staff may return to the Board to request additional authority.
2. Change approved by the Board of Directors – not counted against the Executive Director’s Change Order Authority.
3. Third party improvements/CNPA projects that are funded with non-PCEP funds.

### EMU Contract

**Change Order Authority (5% of Stadler Contract)**

**5% x \$550,899,459 = \$27,544,973**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
09/22/2017	STA-056-CCO-001	Contract General Specification and Special Provision Clean-up	\$0	0.00%	-
10/27/2017	STA-056-CCO-002	Prototype Seats and Special Colors	\$55,000	0.20%	\$27,489,973
11/02/2017	STA-056-CCO-003	Car Level Water Tightness Test	\$0	0.00%	-
12/05/2017	STA-056-CCO-004	Onboard Wheelchair Lift 800 Pound Capacity Provisions	\$848,000	3.08%	\$26,641,973
11/03/2017	STA-056-CCO-005	Design Progression (multiple)	\$0	0.00%	-
12/12/2017	STA-056-CCO-006	Prototype Seats and Special Colors	(\$27,500)	(0.10%)	\$26,669,473
01/17/2018	STA-056-CCO-007	Multi-Color Destination Signs	\$130,760	0.47%	\$26,538,713
02/09/2018	STA-056-CCO-008	Adjustment to Delivery and LDs due to delayed FNTF	\$490,000	0.00% <sup>2</sup>	-
02/12/2018	STA-056-CCO-009	Ship Cab Mock-up to Caltrain	\$53,400	0.19%	\$26,485,313
04/17/2018	STA-056-CCO-010	Onboard Wheelchair Lift Locations	(\$1,885,050)	(6.84%)	\$28,370,363
04/17/2018	STA-056-CCO-011	Multiple Change Group 3 and Scale Models	\$0	0.00%	-
10/29/2018	STA-056-CCO-012	Multiple Change Group 4	\$0	0.00%	-
10/29/2018	STA-056-CCO-013	Wheelchair Lift Installation Redesign	\$228,400	0.83%	\$28,141,963
12/14/2018	STA-056-CCO-014	PTC System Change	\$0	0.00%	-
12/22/2018	STA-056-CCO-015	EMU Option Cars	\$172,800,047	0.00% <sup>2,3</sup>	-

**Peninsula Corridor Electrification Project  
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**Change Order Authority (5% of Stadler Contract)**

**5% x \$550,899,459 = \$27,544,973**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
6/26/2019	STA-056-CCO-016	Testing at TTCI (Pueblo Facility) - First Trainset	\$3,106,428	11.28 %	\$25,035,535
8/27/2019	STA-056-CCO-017	Virtual Reality Experience	\$400,000	1.45 %	\$24,635,535
8/21/2019	STA-056-CCO-018	EMI Conducted Emissions Limits	\$0	0.00%	\$24,635,535
8/8/2019	STA-056-CCO-019	Option Car Payment Milestones	\$0	0.00%	\$24,635,535
8/21/2019	STA-056-CCO-020	Multiple No Cost No Schedule Impact Changes Group 5	\$0	0.00%	\$24,635,535
10/28/2019	STA-056-CCO-021	Plugging of High-Level Doorways	\$736,013	2.67%	\$23,899,523
11/13/2019	STA-056-CCO-022	Add Flip-Up Seats into Bike Cars (CNPA: \$1.96M funded by Non-PCEP)	\$1,961,350	7.12% <sup>3</sup>	\$21,938,173
4/21/2020	STA-056-CCO-025	Removal of Vandal Film from Windows	(\$374,994)	(1.36)%	\$22,313,167
5/6/2020	STA-056-CCO-023	Deferral of Wheelchair Lifts	\$632,703	2.30 %	\$21,680,464
7/13/2020	STA-056-CCO-026	Update VR Experiences (CNPA: \$43K funded by Non-PCEP)	\$43,000	0.16 % <sup>3</sup>	\$21,637,464
9/14/2020	STA-056-CCO-027	EMU Liquidated Damages, and Delivery and Testing Schedule Modifications	\$0	0.00 %	\$21,637,464
10/12/2020	STA-056-CCO-029	Multiple No Cost / No Schedule Impact Changes Group 7	\$0	0.00 %	\$21,637,464
1/28/2021	STA-056-CCO-028	Procure Pantograph Automated Inspection System	\$790,211	2.87 %	\$20,847,253
2/26/2021	STA-056-CCO-031	Bike Car Dividers	\$194,940	0.71 %	\$20,652,313
3/8/2021	STA-056-CCO-030	Video of trainset while at TTC	\$9,833	0.04 %	\$20,642,481
3/25/2021	STA-056-CCO-032	Credit for Waived Testing	(\$1,040,000)	(3.78)%	\$21,682,481
6/23/2021	STA-056-CCO-033	Multiple Changes Group 8	\$0	0.00 %	\$21,682,481
<b>Total</b>			<b>\$179,152,539</b>	<b>21.28 %</b>	<b>\$21,682,481</b>

Notes:

- <sup>1</sup> When the threshold of 75% is reached, staff may return to the Board to request additional authority.
- <sup>2</sup> Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.
- <sup>3</sup> Third party improvements/CNPA projects that are funded with non-PCEP funds.

**SCADA Contract**

**Change Order Authority (15% of ARINC Contract)**

**15% x \$3,446,917 = \$517,038**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
2/11/2021	ARINC-061-CCO-001	Traction Power Facility SCADA Database Changes	\$395,538	76.50 %	\$121,500
<b>Total</b>			<b>\$395,538</b>	<b>76.50 %</b>	<b>\$121,500</b>

Notes:

- <sup>1</sup> When the threshold of 75% is reached, staff may return to the Board to request additional authority.
- <sup>2</sup> Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

**Tunnel Modifications Contract**

**Change Order Authority (10% of ProVen Contract<sup>1</sup>)**

**10% x \$55,077,777 = \$5,507,778**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>2</sup>	Remaining Authority
3/27/2019	PROV-070-CCO-003	Track Access Delay	\$25,350	0.46 %	\$5,482,428
3/27/2019	PROV-070-CCO-004	Additional OCS Potholing Due to Conflict with Existing Utilities	\$70,935	1.29 %	\$5,411,493



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**Change Order Authority (10% of ProVen Contract<sup>1</sup>)**

**10% x \$55,077,777 = \$5,507,778**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>2</sup>	Remaining Authority
3/27/2019	PROV-070-CCO-005	Install Tie Backs and Piles in Boulders at Tunnel 4	\$29,478	0.54 %	\$5,382,015
3/28/2019	PROV-070-CCO-001	Partnering Meetings (50% PCEP)	\$14,443	0.26 % <sup>4</sup>	\$5,367,572
4/25/2019	PROV-070-CCO-002	Furnish Galvanized E-clips	\$37,239	0.68 %	\$5,330,333
4/30/2019	PROV-070-CCO-006	Additional Rock Bolts and Testing	\$22,549	0.41 %	\$5,307,784
5/23/2019	PROV-070-CCO-013	Late Removal of Leaky Feeder Tunnel 4 (T-4 )	\$21,225	0.39 %	\$5,286,559
5/28/2019	PROV-070-CCO-014	OCS Piles Utility Conflict at Tunnel-1 South (T-1S)	\$16,275	0.30 %	\$5,270,284
5/29/2019	PROV-070-CCO-012	OCS Piles Utility Conflict at T-4S	\$6,871	0.12 %	\$5,263,413
5/31/2019	PROV-070-CCO-016A	Portal Structure Detailing Changes	\$84,331	1.53 %	\$5,179,082
6/18/2019	PROV-070-CCO-009	Creosote Ties Covering (CNPA - Drainage \$3,116.00)	\$3,116	0.06 % <sup>4</sup>	\$5,175,966
6/28/2019	PROV-070-CCO-008	Micropiles at South Tunnel-2 South (T-2S)	\$41,322	0.75 %	\$5,134,644
6/28/2019	PROV-070-CCO-010	Salvage Transition Panels (CNPA - Drainage \$6,144.00)	\$6,144	0.11 % <sup>4</sup>	\$5,128,500
6/28/2019	PROV-070-CCO-011	Demo PVC and Plug Tunnel-1 South (T-1S) (CNPA - Drainage \$4,035.00)	\$4,035	0.07 % <sup>4</sup>	\$5,124,465
6/28/2019	PROV-070-CCO-020	Unidentified SD Conflict with Junction Inlet (CNPA - Drainage \$1,976.00)	\$1,976	0.04 % <sup>4</sup>	\$5,122,489
9/26/2019	PROV-070-CCO-007	Canopy Tube Drilling	\$89,787	1.63%	\$5,032,702
9/26/2019	PROV-070-CCO-023	Over-excavate Trapezoidal Ditch at T-1N (CNPA - Drainage \$46,914.00)	\$46,914	0.85% <sup>4</sup>	\$4,985,788
10/4/2019	PROV-070-CCO-029	Additional DryFix Pins	\$105,000	1.91%	\$4,880,788
10/4/2019	PROV-070-CCO-021	Out of Sequence Piles	\$185,857	3.37 %	\$4,694,931
10/30/2019	PROV-070-CCO-017	Hard Piping in T-4 (CNPA - Drainage \$2,200.00)	\$2,200	0.04 % <sup>4</sup>	\$4,692,731
1/25/2020	PROV-070-CCO-027	Grout Quantity Underrun	(\$1,216,000)	(22.08)%	\$5,908,731
1/29/2020	PROV-070-CCO-026	HMAC Quantity Overrun (CNPA - Drainage \$160,000.00)	\$160,000	2.9 % <sup>4</sup>	\$5,748,731
5/11/2020	PROV-070-CCO-025	NOPC #1 CWR (CNPA - Drainage \$660,000.00)	\$660,000	11.98 % <sup>4</sup>	\$5,088,731
7/31/2020	PROV-070-CCO-032	Stone Masonry Fabrication at T-4S	\$26,367	0.48 %	\$5,062,364
7/31/2020	PROV-070-CCO-035	Low Overhead Obstruction at T-1N	\$18,894	0.34 %	\$5,043,470
8/20/2020	PROV-070-CCO-034	Milestone No. 2 - Overall Substantial Completion	\$0	0.00 %	\$5,027,819
1/27/2021	PROV-070-CCO-037	Additional Fence	\$15,651	0.28 %	\$5,027,819
<b>Total</b>			<b>\$479,959</b>	<b>8.71 %</b>	<b>\$5,027,819</b>

Notes:

- <sup>1</sup>. Tunnel modifications contract (\$55,077,777) includes: Notching (\$25,281,170), Drainage (\$13,196,607) and OCS Installation (\$16,600,000).
- <sup>2</sup>. When the threshold of 75% is reached, staff may return to the Board to request additional authority.
- <sup>3</sup>. Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.
- <sup>4</sup>. Third Party Improvements/CNPA Projects that are funded with non-PCEP funds.

**CEMOF Modifications Contract**

**Change Order Authority (10% of ProVen Contract)**

**10% x \$6,550,777 = \$655,078**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
1/16/2020	PROV-071-CCO-001	Change Casing Size of Siphon Line to Schedule 80 PVC Pipe	\$3,849	0.59 %	\$651,229

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**Change Order Authority (10% of ProVen Contract)**

**10% x \$6,550,777 = \$655,078**

<b>Date</b>	<b>Change Number</b>	<b>Description</b>	<b>CCO Amount</b>	<b>Change Order Authority Usage<sup>1</sup></b>	<b>Remaining Authority</b>
1/13/2020	PROV-071-CCO-002	Leakage test for IW line	\$1,339	0.20 %	\$649,890
1/15/2020	PROV-071-CCO-003	Roughen surface of existing concrete	\$3,159	0.48 %	\$646,731
1/9/2020	PROV-071-CCO-004	Change Catch Basin Size from 24"X24" to 36" Round	\$14,415	2.20 %	\$632,316
1/15/2020	PROV-071-CCO-005	Hand Dig around Communication Lines	\$906	0.14 %	\$631,410
1/17/2020	PROV-071-CCO-008	Change Storm Drain Line A Material from 12-inch RCP Pipe to 12-inch PVC Pipe	\$3,583	0.55 %	\$627,827
1/16/2020	PROV-071-CCO-009	Demolition of Existing Exterior Light	\$1,558	0.24 %	\$626,269
2/13/2020	PROV-071-CCO-010	Deletion of Plastic Bollards Around New Inspection Pit	(\$3,324)	(0.51)%	\$629,593
2/13/2020	PROV-071-CCO-011	Fixing Broken Conduit in Concrete Slab North of Maintenance Building	\$4,286	0.65 %	\$625,307
2/13/2020	PROV-071-CCO-012	Epoxy Dowels at New Stairwells	\$3,526	0.54 %	\$621,781
2/13/2020	PROV-071-CCO-013	Deletion of the Removal and Replacement of Pump Disconnect Switches	(\$7,007)	(1.07)%	\$628,788
2/13/2020	PROV-071-CCO-014	Recycled Base Rock for Backfill at Pressurized Water Line at Parts Storage Warehouse	\$1,411	0.22 %	\$627,377
2/20/2020	PROV-071-CCO-015	Cut and Cap Oil Line	\$1,002	0.15 %	\$626,375
2/25/2020	PROV-071-CCO-016	Installation of Homerun Conduit	\$27,404	4.18 %	\$598,971
2/25/2020	PROV-071-CCO-017	Potholing for Boosted Water Line	\$18,476	2.82 %	\$580,495
2/28/2020	PROV-071-CCO-018	Cap Compressed Air Line	\$9,519	1.45 %	\$570,976
2/28/2020	PROV-071-CCO-019	Acoustic Ceiling Removal at Component Test Room	\$4,253	0.65 %	\$566,723
3/5/2020	PROV-071-CCO-020	Ground Wire Relocation	\$14,117	2.16 %	\$552,606
3/13/2020	PROV-071-CCO-021	Zurn Drain Assembly in Lieu of Fibrelyte	\$1,104	0.17 %	\$551,502
4/8/2020	PROV-071-CCO-022	Deletion of Concrete Pad and Double Plywood Floor at PSW	(\$1,409)	(0.22)%	\$552,911
4/8/2020	PROV-071-CCO-023	Flashing at Overflow Drain at Component Test Room	\$2,981	0.46 %	\$549,930
4/9/2020	PROV-071-CCO-024	Parts Storage Warehouse Power Feed	\$16,412	2.51 %	\$533,518
4/22/2020	PROV-071-CCO-025	Removal of Hazardous Soil from PSW Subgrade Excavation	\$43,444	6.63 %	\$490,073
4/22/2020	PROV-071-CCO-026A	Removal of Hazardous Soil from PSW Footing Excavation	\$35,808	5.47 %	\$454,266
4/27/2020	PROV-071-CCO-027	480 Volt Duct Bank and Wire Removal	\$5,015	0.77 %	\$449,251
5/28/2020	PROV-071-CCO-031A	Temporary Facilities - Eye Wash Stations	\$656	0.10 %	\$448,595
6/3/2020	PROV-071-CCO-032A	Water Diversion Pump for Catch Basin Work	\$2,745	0.42 %	\$445,850
6/3/2020	PROV-071-CCO-033A	Light Towers for Maintenance Building Yard	\$3,897	0.59 %	\$441,953
6/3/2020	PROV-071-CCO-034	Investigation of Concrete Underneath Ties at Track 5	\$5,060	0.77 %	\$436,893
6/16/2020	PROV-071-CCO-029A	Shoring Design for Boosted Water Line Work	\$14,307	2.18 %	\$422,586
6/16/2020	PROV-071-CCO-030A	Investigation and Re-wiring of Electrical Receptacles at CTR	\$7,783	1.19 %	\$414,803
6/10/2020	PROV-071-CCO-028	Credit for Electrical Feed to Parts Storage Warehouse	(\$18,682)	(2.85)%	\$433,485
7/24/2020	PROV-071-CCO-029B	Shoring Design for Boosted Water Line Work	\$2,175	0.33 %	\$431,310
7/24/2020	PROV-071-CCO-032B	Water Diversion Pump for Catch Basin Work	\$3,621	0.55 %	\$427,689
7/24/2020	PROV-071-CCO-035	Settlement Slab Demolition	\$479	0.07 %	\$427,210
7/24/2020	PROV-071-CCO-036	Storm Drain Line A	\$2,066	0.32 %	\$425,144
7/30/2020	PROV-071-CCO-037	Owner Supplied WSP Cabinet - Added Mechanical Pad and Conduit Pull	\$5,922	0.90 %	\$419,222

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**Change Order Authority (10% of ProVen Contract)**

**10% x \$6,550,777 = \$655,078**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
7/30/2020	PROV-071-CCO-038	Interior and Exterior Metal Wall Panels at CTR	\$10,317	1.57 %	\$408,905
7/30/2020	PROV-071-CCO-039	Exterior CMU Wall at CTR	\$16,152	2.47 %	\$392,753
7/30/2020	PROV-071-CCO-040	Membrane Waterproofing Specification Modifications	\$36,233	5.53 %	\$356,520
12/17/2019	PROV-071-CCO-007	Demolition of Existing Transition Slab at North and South Pits	\$8,101	1.24 %	\$348,419
8/13/2020	PROV-071-CCO-041	Abandonment of Drainage Structure in Conflict with Shoring at Stair No. 71	\$11,015	1.68 %	\$337,404
8/14/2020	PROV-071-CCO-043	Lighting Circuit Restoration	\$2,980	0.45 %	\$334,424
8/18/2020	PROV-071-CCO-026B	Removal of Hazardous Soil from PSW Ductbank Excavation	\$6,838	1.04 %	\$327,586
8/24/2020	PROV-071-CCO-044	Aerial Cable and Waterproofing Cable Penetrations at the CCF and PSW Buildings	\$14,589	2.23 %	\$312,997
8/24/2020	PROV-071-CCO-045	Conduit Outside Component Test Room	\$6,865	1.05 %	\$306,132
9/15/2020	PROV-071-CCO-030B	Component Test Room Data and Electrical Outlets and Masonry Work	\$12,530	1.91 %	\$293,602
9/17/2020	PROV-071-CCO-042	Shallow Fire Sprinkler Line	\$162,000	0.00% <sup>2</sup>	-
10/19/2020	PROV-071-CCO-046A	Electrical Duct Bank Extension from Parts Storage Warehouse to CCF Building	\$20,307	3.10 %	\$273,295
10/19/2020	PROV-071-CCO-047	Removal of Oil Line at the Exterior of the Maintenance Building in the Way of Storm Drain Line A	\$262	0.04 %	\$273,033
10/20/2020	PROV-071-CCO-048	Electrical Conduit and Wires at Track 5	\$6,770	1.03 %	\$266,263
11/30/2020	PROV-071-CCO-033B	Light Towers for Maintenance Building Yard	\$10,393	1.59 %	\$255,870
11/17/2020	PROV-071-CCO-049	Lighting at Parts Storage Warehouse	\$6,358	0.97 %	\$249,512
11/25/2020	PROV-071-CCO-050	NTP Delay – Non-Compensable Time Extension	\$0	0.00 %	\$249,512
11/19/2020	PROV-071-CCO-051	Relocation of an Existing Boosted Water Line in Conflict with South Pit Extension	\$250,000	0.00% <sup>2</sup>	-
2/26/2021	PROV-071-CCO-052	Acoustic Ceiling Framing at the Component Test Room	\$3,998	0.61 %	\$245,514
2/26/2021	PROV-071-CCO-053	Temporary Sanitary Facilities During Boosted Water/Copper Line Work	\$963	0.15 %	\$244,551
3/3/2021	PROV-071-CCO-054	Relocation of Material Onsite for OCS Foundation Project	\$1,772	0.27 %	\$242,779
5/7/2021	PROV-071-CCO-055	Windows and Glazing at Component Test Room	\$17,679	2.70 %	\$225,100
<b>Total</b>			<b>\$841,978</b>	<b>65.64 %</b>	<b>\$225,100</b>

Notes:

- <sup>1</sup>. When the threshold of 75% is reached, staff may return to the Board to request additional authority.
- <sup>2</sup>. Change approved by the Board of Directors – not counted against the Executive Director's Change Order Authority.

**AMTRAK AEM-7 Contract**

**Change Order Authority (Lump Sum)**

**Up to \$150,000**

Date	Change Number	Description	CCO Amount	Change Order Authority Usage <sup>1</sup>	Remaining Authority
10/25/2019	AMTK-066-CCO-001	Change to Amtrak Contract for Test Locomotives	(72,179)	(48.12%)	222,179
<b>Total</b>			<b>(72,179)</b>	<b>(48.12%)</b>	<b>\$222,179</b>

Notes:

When the threshold of 75% is reached, staff may return to the Board to request additional authority.

Appendix F – Risk Table

**Listing of PCEP Risks and Effects in Order of Severity**

<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
314	The contractor may not complete signal and communication design, installation, and testing for the Two-speed check (2SC) modifications within budget and schedule.	Delay to integrated testing and operations/revenue service
303	Extent of differing site conditions and associated redesign efforts results in delays to the completion of the electrification contract and increases program costs.	<p>Extends construction of design-build contract with associated increase in project costs</p> <ul style="list-style-type: none"> <li>• DSC design cost</li> <li>• Inefficiencies</li> <li>• Construction costs related to DSCs (i.e., larger foundations)</li> <li>• Additional potholing</li> </ul>
010	Potential for Stadler's sub-suppliers to fall behind schedule or delays in parts supply chain result in late completion of vehicles.	<ul style="list-style-type: none"> <li>• Delay in obtaining parts / components.</li> <li>• Cost increases. (See Owner for allocation of costs)</li> <li>• Schedule increase - 3 months (See Owner for allocation of damages associated with this Risk)</li> </ul>
313	Sub-optimal contractor sequencing, when progressing design and clearing foundation locations may result in construction inefficiencies	Contractor claims for increase in construction and design costs, and reduced production rates extending construction duration
240	<p>Property not acquired in time for contractor to do work.</p> <p>Property Acquisition not completed per contractor availability date &lt;&gt;Fee &lt;&gt;Easement &lt;&gt;Contract stipulates that if parcels are not available by contract date, there is only a delay if parcels are not available by the time contractor completes the Segment</p>	<ul style="list-style-type: none"> <li>• Potential delays in construction schedule</li> </ul>
267	Additional property acquisition is necessitated by change in design.	New project costs and delays to schedule.
273	Contractor generates hazardous materials that necessitate proper removal and disposal in excess of contract allowances and expectations.	Delay to construction while removing and disposing of hazardous materials resulting in schedule delay, increased construction costs, and schedule delay costs.
308	Rejection of DVR for ATF and static wires results in cost and schedule impacts to PCEP.	Delay and delay claims

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<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
318	Change of vehicle sub-suppliers results in additional first article inspections at cost to JPB (i.e., COVID, bankruptcy)	PCEP incurs additional cost to validate supplier and product, including repeat FAIs as needed
304	Solution to FRA concerns over bike storage impeding path to emergency exit windows path results in increased costs and potential rework.	Protracted negotiations with FRA to achieve original design
330	PG&E interconnection work may not be completed on time resulting in delays to the reimbursement of PG&E Exhibit B Cost Allocation from PG&E.	<ul style="list-style-type: none"> <li>• Potential cash flow issue requiring use of line-of-credit</li> <li>• Failure to receive reimbursement during course of project</li> <li>• Delay or otherwise affect close-out of FFGA</li> </ul>
209	TASI may not have sufficient number of signal maintainers for testing.	<ul style="list-style-type: none"> <li>• Delays to construction/testing.</li> <li>• Delays to completion of infrastructure may delay acceptance of vehicles</li> </ul>
011	<p>Risks in achieving acceptable vehicle operations performance:</p> <ul style="list-style-type: none"> <li>&lt;&gt; software problems</li> <li>&lt;&gt; electrical system problems</li> <li>&lt;&gt; mechanical problems</li> <li>&lt;&gt; systems integration problems</li> <li>&lt;&gt; interoperability with diesel equipment</li> </ul> <p>Increased issues lately with vehicles regarding system integration and compatibility.</p>	<p>Cost increase.</p> <p>Delays vehicle acceptance</p> <p>Potential spill-over to other program elements</p>
244	Delays to completion of Segment 4 and then the entire alignment would create storage issues and impede the ability to exercise (power up and move) EMUs and delay testing of the delivered EMUs.	Delay claims from the EMU contractor (Stadler) and expiration of the EMU 2-year warranty before putting significant mileage on the EMUs. Inability to exercise EMUs
319	Failure of BBI to order cages in advance results in delays to foundation installation	Delays in installation of catenary system and additional cost for track protection and oversight.
325	EMU production delay. Possible that there are quality issues, failed factory tests, poor integration / control of suppliers.	Schedule Increase
327	EMU production delay. Possible that there is poor integration / control of suppliers.	Schedule Increase
329	Work for PCEP that is being constructed by other projects may not be completed in accordance with the BBII project schedule. Critical work includes: <ul style="list-style-type: none"> <li>• Installation of signal house as part of SSF Station Project</li> </ul>	Delay to BBII construction progress and associated delay claims

<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
013	Vehicle manufacturer could default.	Prolonged delay to resolve issues (up to 12 months) Increase in legal expenses Potential price increase to resolve contract issue
067	Relocation of overhead utilities must precede installation of catenary wire and connections to TPSs. Relocation work will be performed by others and may not be completed to meet BBII's construction schedule.	Delay in progress of catenary installation resulting in claims and schedule delay
223	Major program elements may not be successfully integrated with existing operations and infrastructure in advance of revenue service.	Proposed changes resulting from electrification may not be fully and properly integrated into existing system. Rework resulting in cost increases and schedule delays
242	Track access does not comply with contract-stipulated work windows.	Contractor claims for delays, schedule delays and associated costs to owner's representative staff.
253	Permits for bridges may not be issued in a timely manner.	Delays to issuance of permit for construction while negotiating and executing an operation and maintenance agreement for equipment installed on bridges; existing bridge deficiencies could result in additional costs to PCEP.
261	Although EMUs meets their electromagnetic emissions limits and wayside signal system track circuits meet their susceptibility requirements there are still compatibility issues leading to improper signal system operation	Changes on the EMU and/or signal system require additional design and installation time and expense.
286	Potential for wage escalation, (except for Maintenance Option) to increase contractor costs.	Higher cost
285	Potential for inflation, (except with respect to Maintenance Option) to increase contractor costs.	Higher cost
056	Lack of operations personnel for testing.	<ul style="list-style-type: none"> <li>• Testing delayed.</li> <li>• Change order for extended vehicle acceptance.</li> </ul>
115	Other capital improvement program projects compete with PCEP for track access allocation and requires design coordination (design, coordination, integration).	Schedule delay as resources are allocated elsewhere, won't get track time, sequencing requirements may delay PCEP construction, track access requirements must be coordinated.

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<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
289	Coordination and delivery of permanent power for power drops for everything except traction power substations along alignment	Can't test resulting in delays to schedule and associated additional project costs.
296	PG&E needs to complete interconnection to be sufficiently complete to accept interim power	SCC
321	Single Phase Study and interconnection agreement may be delayed preventing energization of Segment 4 for milestone 1	
082	Unexpected restrictions could affect construction progress: <> night work <> noise <> local roads <> local ordinances	<ul style="list-style-type: none"> <li>• Reduced production rates.</li> <li>• Delay</li> </ul>
012	Potential for electromagnetic interference (EMI) to private facilities with sensitive electronic equipment caused by vehicles.	<ul style="list-style-type: none"> <li>• Increased cost due to mitigation</li> <li>• Potential delay due to public protests or environmental challenge.</li> </ul>
014	Contractor's proposal on stakeholder requested changes to the vehicles may significantly exceed JPB authorized amount.	<p>Schedule delay.</p> <p>Cost increase.</p>
088	Construction safety program fails to sufficiently maintain safe performance.	Work stoppages due to safety incidents resulting in schedule delay and additional labor costs.
078	Need for unanticipated, additional ROW for new signal enclosures.	Delay while procuring ROW and additional ROW costs.
087	Unanticipated HazMat or contaminated hot spots encountered during foundation excavations for poles, TPSS, work at the yards.	Increased cost for clean-up and handling of materials and delay to schedule due to HazMat procedures.
247	Timely resolution of 3rd party design review comments to achieve timely approvals	Delay to completion of design and associated additional labor costs.
251	Subcontractor and supplier performance to meet aggressive schedule <>Potential issue meeting Buy America requirements	Delay to production schedule resulting in increased soft costs and overall project schedule delay.
263	Collaboration across multiple disciplines to develop a customized rail activation program may fail to comprehensively address the full scope of issues required to operate and maintain an electrified railroad and decommission the current diesel fleet.	Delay in testing of EMUs. Delay in Revenue Service Date. Additional costs for Stadler and BBII due to overall schedule delays.
272	Final design based upon actual Geotech conditions	Could require changes



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<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
171	Electrification facilities could be damaged during testing.	Delay in commencing electrified operations.
287	Design changes may necessitate additional implementation of environmental mitigations not previously budgeted.	Increased cost for environmental measures and delays to construct and overall delay in construction schedule
291	Order/manufacture of long lead items prior to 100% IFC design document that proves to be incorrect	Design change and/or delays
317	JPB may not make timely acquisition of resources to staff rail activation plan with key personnel.	Delay in operating electrified railroad - delay of RSD.
326	EMU production delay. Possible that there are failed factory tests	Schedule Increase
027	Vehicle power consumption may not meet requirements.  <>System impact study and load flow show no issues	Issue with PG&E. Can't run full acceleration.
031	New cars possibly not reliable enough to be put into service as scheduled	Operating plan negatively impacted
101	PG&E may not be able to deliver permanent power for the project within the existing budget and in accordance with the project schedule	Additional project costs; potential delay to revenue service date
150	Number of OCS pole installation is significant. Any breakdown in sequencing of operations or coordination of multiple crews will have a substantial effect on the project.	Delay.
245	Failure of BBI to submit quality design and technical submittals in accordance with contract requirements • \$3-\$5M/month burn rate for Owner's team during peak	Delays to project schedule and additional costs for preparation and review of submittals.
252	Failure of BBI to order/manufacture long lead items prior to 100% IFC design document approval by JPB	Delays to project schedule and additional cost for contractor and JPB staff time.
271	Need for additional construction easements beyond that which has been provided for Contractor proposed access and staging	Additional cost and time
306	Possible legal challenge and injunction to any changes in PCEP requiring subsequent CEQA or NEPA environmental clearance documentation/actions.	Worst case: a judge issues an injunction, which would prohibit any work ONLY on the project scope of the environmental document. Impact to the project from cost and schedule impact depends on if work is on the critical or becomes on the critical path.

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<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
322	BBII needs to complete traction power substations to be sufficiently complete to accept interim power	Delay in testing and increased costs
008	Requests for change orders after vehicles are in production	Delays to manufacturing of vehicles and additional design and manufacturing costs.
025	Potential that vehicles cannot meet requirements for "Mean Time to Repair" (MTTR).	Increased maintenance cost.
032	Failure to come up to speed on stakeholder safety requirements: <> FTA <> FRA <> CPUC	Takes longer than expected to gain FRA/FTA concurrence on waiver and/or level boarding requirements.
053	Failure to meet Buy America requirements.  (Contractor definition of component v. sub-component may not be accepted by Caltrain / FTA.)	Potential need for negotiations that might lead to delay of project award.  (BA is not negotiable)
069	Potential need for additional construction easements. Especially for access and laydown areas.  Contractor could claim project is not constructible and needs more easements after award.	Increased cost  Delay
106	Potential that DB contractor will have insufficient field resources (personnel or equipment) to maintain aggressive schedule.  Multiple segments will need to be under design simultaneously.  Labor pool issue. 32 qualified linemen will be needed. Potential there is not enough available. Big storm damage anywhere in US will draw from the pool to make line repairs.  Possible shortages with other specialty crafts as well.	Delay.
151	Public could raise negative concerns regarding wheel/rail noise.	Increased cost to mitigate: <> grind rails <> reprofile wheels <> sound walls
161	Unanticipated costs to provide alternate service (bus bridges, etc.) during rail service disruptions.	Cost increase.

<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
192	Environmental compliance during construction. <ul style="list-style-type: none"> <li>- Potential impact to advancing construction within the vicinity of any cultural finds that are excavated.</li> <li>- Failure to meet the commitments contained within the PCEP EA, FEIR and permit conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Delay</li> <li>• Cost increase</li> </ul>
195	Introduction of electrified train service will require training of first responders in working in and around the rail corridor. The new vehicles will be considerably quieter than the existing fleet and the presence of high voltage power lines will require new procedures for emergency response. A new training program will need to be developed and disseminated for: <ul style="list-style-type: none"> <li>• Fire, police, and first responders</li> <li>• Local communities</li> <li>• Schools</li> </ul>	Safety hazards resulting in incidents that delay construction and increase labor cost. Delays in RSD until training is completed as requirement of safety certification process.
237	JPB needs an agreement with each city in which catenary will be strung over an existing grade crossing (17 in all) under GO 88 (grade crossings). These agreements must be executed subsequent to installing overhead catenary. JPB is preparing a response to CPUC while working with the cities. Delays in reaching agreement could have impacts on schedule and budget.	Not completing the grade crossing diagnostics and getting agreement from the cities on the results can result in delays to necessary approvals for the project and revenue service.
248	3rd party coordination <>Jurisdictions, Utilities, UP, Contractors <>D/B needs to provide timely information to facilitate 3rd party coordination <>Risk is for construction	Delays in approvals resulting in project schedule delays and associated costs.
250	Potential for municipalities and other agencies to request betterments as part of the electrification project	Delay to project schedule in negotiating betterments as part of the construction within municipalities and associated increased cost to the project as no betterments were included in the project budget.
254	Potential that bridge clearance data are inaccurate and that clearances are not sufficient for installation of catenary.	Results in additional design and construction to create sufficient clearance.
266	Verizon poles in conflict with OCS may not be removed in advance of OCS installation.	Delay in progress of catenary installation resulting in claims and schedule delay

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<b>ID</b>	<b>RISK DESCRIPTION</b>	<b>EFFECT(S)</b>
270	OCS poles or structures as designed by Contractor fall outside of JPB row	Additional ROW Take, additional cost and time
274	JPB as-built drawings and existing infrastructure to be used as basis of final design and construction is not correct	Additional cleanup of as-builts after PCEP construction
275	DB fails to verify as-built drawings and existing infrastructure	Additional cleanup of as-builts after PCEP construction
278	Failure of D/B contractor and subcontractors and suppliers to meet Buy America requirements	Delays while acceptable materials are procured and additional costs for delays and purchase of duplicative equipment.
282	Failure to maintain dynamic envelope and existing track clearances consistent with requirements.	Redesign entailing cost and schedule impacts.
284	Compliance with project labor agreement could result in inefficiencies in staffing of construction.	Increase in labor costs and less efficient construction resulting in schedule delays.
292	Communications equipment, including the UPS, will not fit in the spaces allotted to communications work within the buildings.	Requisite equipment under design criteria could result in the need for larger unit than originally planned resulting in design and fabrication changes and associated schedule delays and costs.
311	Although project recordable injuries remain below the industry average, there have been numerous small impact incidents occurring that could potentially lead to a more serious event occurring.	The occurrence of a high impact safety event could result in project rework, construction delays, and increased project costs.
290	Delays in agreement and acceptance of initial VVSC requirements database.	Delay to design acceptance

Appendix G – MMRP Status Log

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>AES-2a: Minimize OCS construction activity on residential and park areas outside the Caltrain ROW.</b>	X	X			Ongoing	The OCS proposed construction schedule has been provided to the JPB. OCS construction began the week of October 2, 2017. The D-B has utilized the potholing process to assist in locating conflicts in the 35% design and attempting to relocate OCS pole locations within the ROW.
<b>AES-2b: Aesthetic treatments for OCS poles, TPFs in sensitive visual locations, and Overbridge Protection Barriers.</b>	X				Ongoing	The design requirements indicated in the measure have been implemented as described, and coordination with the specific jurisdictions regarding pole colors and design is ongoing. Coordination with the JPB & local jurisdiction regarding Overbridge Protection Barriers and TPFs is ongoing.
<b>AES-4a: Minimize spillover light during nighttime construction.</b>		X			Ongoing	OCS construction began the week of October 2, 2017; and the BBI community relations lead has notified nearby residents of upcoming construction. During construction, lighting is faced inward, towards the railroad tracks, and any complaints will be documented and addressed by the BBI community relations lead.
<b>AES-4b: Minimize light spillover at TPFs.</b>	X				Upcoming	The design requirements indicated in the measure are being utilized in the design and construction process.
<b>AQ-2a: Implement BAAQMD basic and additional construction mitigation measures to reduce construction-related dust.</b>	X	X			Ongoing	The Dust Mitigation Plan was submitted to the JPB and approved. The requirements in the Dust Mitigation Plan will be implemented throughout the construction period and documented in daily reports.

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>AQ-2b: Implement BAAQMD basic and additional construction mitigation measures to control construction-related ROG and NOX emissions.</b>	X	X			Ongoing	The Equipment Emissions Control Plan was submitted to the JPB and approved. The requirements in the Equipment Emissions Control Plan will be implemented throughout the construction period and documented in daily reports.
<b>AQ-2c: Utilize clean diesel-powered equipment during construction to control construction-related ROG and NOX emissions.</b>	X	X			Ongoing	The Equipment Emissions Control Plan was submitted to the JPB and approved. The requirements in the Equipment Emissions Control Plan will be implemented throughout the construction period and documented in daily reports.
<b>BIO-1a: Implement general biological impact avoidance measures.</b>	X	X			Ongoing	Worker Environmental Awareness Training is provided to all project-related personnel before they work on the project. All measures as described will be implemented throughout the construction period and documented in daily reports.
<b>BIO-1b: Implement special-status plant species avoidance and revegetation measures.</b>	X	X	X		Complete	Not applicable. Subsequent habitat assessment and avoidance of Communication Hill eliminated any potential to affect special-status plant species. The measure is not needed.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>BIO-1c: Implement California red-legged frog and San Francisco garter snake avoidance measures.</b>	X	X			Ongoing	Pre-construction surveys are occurring no more than 7 days prior to the initiation of construction activities nearby/adjacent to potential habitat for CRLF and SFGS. The Wildlife Exclusion Fencing Plans for Segments 1 and 4 were submitted and approved by the wildlife agencies, and installation and monitoring of wildlife exclusion fencing is ongoing. No CRLF / SFGS or sign of each species has been observed to date on the Project.
<b>BIO-1d: Implement western pond turtle avoidance measures.</b>	X	X			Ongoing	Pre-construction surveys are occurring no more than 7 days prior to the initiation of construction activities nearby/adjacent to potential habitat for WPT. No WPT or WPT sign have been observed to date on the Project.
<b>BIO-1e: Implement Townsend’s big-eared bat, pallid bat, hoary bat, and fringed myotis avoidance measures.</b>	X	X			Ongoing	Pre-construction surveys are occurring no more than 7 days prior to the initiation of construction activities with the potential to disturb bats or their habitat. No special-status bats or sign have been observed to date on the Project.
<b>BIO-1f: Implement western burrowing owl avoidance measures.</b>	X	X			Ongoing	Protocol surveys for Western Burrowing Owl have been conducted from April–July, in 2017, 2018, 2019, 2020, and 2021 at previously identified potentially suitable habitat locations. Note that all of these locations are in Construction Segment 4 (southern Santa Clara and San Jose). No Burrowing Owls have been observed during the 2017-2019 or 2021 surveys. Survey reports for the 2017, 2018, 2019, and



**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
						<p>2020 surveys have been submitted to the JPB for the project record. In addition, pre-construction surveys of the potential BUOW habitat areas in Segment 4 are ongoing, as needed, and if required, they occur no more than 7 days prior to the onset of new ground-disturbing construction activities.</p> <p>During a 2020 pre-construction survey (March 24, 2020), two burrowing owls were observed adjacent to the Caltrain ROW, near MP 44.6. The owls were located approximately 150 feet away from the Caltrain ROW. A 200-meter no-disturbance buffer and a combination of full-time monitoring and weekly spot-checks, as approved by the CDFW, were implemented during the breeding season (March through August). No impacts to the BUOW were observed, and the BUOW was consistently observed at the northern most potential BUOW burrow location during the monitoring effort. On September 1, since there was some potential for indirect impacts during the non-breeding season (September 1 through January 31), the disturbance buffer was reduced from 200 meters to 75 meters, as approved by the CDFW. On February 2, 2021, while conducting nesting bird surveys in the area, a biologist checked the burrow and there were no sign of use and cobwebs were present. Subsequent check-ins of the area revealed the same results, and it was determined</p>

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
						<p>the burrow was no longer active, and the buffer was removed. The second round of protocol BUOW surveys were conducted in May and no BUOWs or signs were detected. The final two rounds of surveys were conducted this month and no BUOW or associated signs were observed.</p> <p>The Biologist will continue to conduct preconstruction surveys for nesting burrowing owls no more than 7 days prior to ground disturbance as needed throughout the 2021 nesting season.</p>
<p><b>BIO-1g: Implement northern harrier, white-tailed kite, American peregrine falcon, saltmarsh common yellowthroat, purple martin, and other nesting bird avoidance measures.</b></p>	X	X			Ongoing	<p>Nesting Bird and raptor surveys were conducted from February 1 through September 15, in 2017, 2018, 2019, and 2020, prior to project-related activities with the potential to impact nesting birds. Nesting bird surveys continued during this reporting period for the 2021 nesting season. Active cliff swallow nests previously observed are still present on the underside of the Tunnel Ave bridge. Biological monitors were present as work occurred within the 50-foot monitoring buffer. No signs of distress were observed. No additional active nests were observed on the Project.</p>

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>BIO-1h: Conduct biological resource survey of future contractor-determined staging areas.</b>	X	X			Ongoing	The agency-approved Qualified Biologist has conducted surveys of the staging areas currently being used for construction activities. No special-status species or other potentially sensitive biological resources were observed. The agency-approved Qualified Biologist will continue to survey ahead of the initiation of activities at planned staging areas as the Project moves into new construction areas.
<b>BIO-1i: Minimize impacts on Monarch butterfly overwintering sites.</b>	X	X			Ongoing	The agency-approved Qualified Biologist has periodically monitored the project limits to evaluate the presence of Monarch butterfly overwintering sites. No Monarch butterfly overwintering sites have been observed on the Project to date.
<b>BIO-1j: Avoid nesting birds and bats during vegetation maintenance.</b>				X	Upcoming	To be completed during Project operation.
<b>BIO-2: Implement serpentine bunchgrass avoidance and revegetation measures.</b>	X	X	X		Complete	Not applicable. Subsequent habitat assessment and avoidance of Communication Hill eliminated any potential to affect serpentine bunchgrass. This measure is no longer needed.
<b>BIO-3: Avoid or compensate for impacts on wetlands and waters.</b>	X	X	X		Complete	The JPB has compensated for unavoidable wetland impacts by purchasing adequate credits from a wetlands mitigation bank approved by USACE and SFRWQCB.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>BIO-5: Implement Tree Avoidance, Minimization, and Replacement Plan.</b>	X	X	X		Ongoing	Tree removal and pruning activities were initiated in August 2017, and are ongoing, under the guidance of the BBI Arborist, and in accordance with the Tree Avoidance, Minimization, and Replacement Plan. Tree Removal and Pruning status is provided to the JPB on a regular basis.
<b>BIO-6: Pay <i>Santa Clara Valley Habitat Plan</i> land cover fee (if necessary).</b>	X				Complete	Not applicable. The SCVHP does not apply to the Project because TPS2, Option 1 was not selected and OCS does not extend to Communication Hill. This measure is not needed.
<b>CUL-1a: Evaluate and minimize impacts on structural integrity of historic tunnels.</b>	X				Upcoming	To be implemented prior to construction in tunnels.
<b>CUL-1b: Minimize impacts on historic decorative tunnel material.</b>	X				Upcoming	To be implemented prior to construction in tunnels. Historic American Engineering Record (HAER) documentation was completed in October 2018, pursuant to this measure.
<b>CUL-1c: Install project facilities in a way that minimizes impacts on historic tunnel interiors.</b>	X				Upcoming	To be implemented prior to construction in tunnels.

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>CUL-1d: Implement design commitments at historic railroad stations</b>	X				Complete	The Qualified Architectural Historian completed and submitted the HABS Level III documents to the JPB for all seven of the historic stations. Pole placement has been designed to minimize the visual impact to historic stations and all design changes are reviewed by the Environmental Compliance Lead to ensure the mitigation measure is being implemented as the design of the project progresses.
<b>CUL-1e: Implement specific tree mitigation considerations at two potentially historic properties and landscape recordation, as necessary.</b>	X	X			Complete	It was determined that the project is not acquiring any ROW at either of the subject properties so all tree effects would be within the JPB ROW. Therefore, the APE does not include these two historic properties. This measure is no longer needed.
<b>CUL-1f: Implement historic bridge and underpass design requirements.</b>	X				Ongoing	This measure is being implemented as described during the design process and will be incorporated into the final design. The four bridges that are included in the MMRP are rail bridges crossing over another feature. Design of the OCS system is taking into account that there are requirements that restrict the design. Thus far, the designs for Construction Segments 2 & 4 are in process and designs are not yet complete. The D-B will forward to the Architectural Historian once complete.
<b>CUL-2a: Conduct an archaeological resource survey and/or monitoring of the removal of pavement or other obstructions to determine if historical resources under CEQA or</b>	X				Ongoing	Periodic inspections of ground surface areas along the alignment, in conjunction with cultural monitoring as-needed of project activities in culturally sensitive areas are ongoing. The Archaeological Final Report will be provided at the

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
unique archaeological resources under PRC 21083.2 are present.						conclusion of construction activities.
<b>CUL-2b: Conduct exploratory trenching or coring of areas where subsurface project disturbance is planned in those areas with “high” or “very high” potential for buried site.</b>	X				Ongoing	Exploratory trenching and subsurface testing of all potentially culturally sensitive areas occurred prior to the initiation of construction activities in those areas. The results will be included in the Archaeological Final Report. No cultural resources requiring the development of a treatment plan were observed. A Native American monitor has been present for all exploratory trenching and subsurface testing work.
<b>CUL-2c: Conduct limited subsurface testing before performing ground-disturbing work within 50 meters of a known archaeological site.</b>	X				Ongoing	Exploratory trenching and subsurface testing of all potentially culturally sensitive areas occurred prior to the initiation of construction activities in those areas. The results will be included in the Archaeological Final Report. No cultural resources requiring the development of a treatment plan were observed. A Native American monitor has been present for all exploratory trenching and subsurface testing work.
<b>CUL-2d: Conduct exploratory trenching or coring of areas within the three zones of special sensitivity where subsurface project disturbance is planned.</b>	X				Ongoing	Exploratory trenching and subsurface testing of all potentially culturally sensitive areas occurred prior to the initiation of construction activities in those areas. The results will be included in the Archaeological Final Report. No cultural resources requiring the development of a treatment plan were observed. A Native American monitor has been

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
						present for all exploratory trenching and subsurface testing work.
<b>CUL-2e: Stop work if cultural resources are encountered during ground-disturbing activities.</b>	X	X			Ongoing	No prehistoric or historic-period cultural materials have been observed during cultural monitoring.
<b>CUL-2f: Conduct archaeological monitoring of ground-disturbing activities in areas as determined by JPB and SHPO.</b>		X			Ongoing	Cultural monitoring as-needed of project activities in culturally sensitive areas is ongoing. The Archaeological Final Report will be provided at the conclusion of construction activities.
<b>CUL-3: Comply with state and county procedures for the treatment of human remains discoveries.</b>		X			Ongoing	No human remains have been observed to date on the Project. On June 18, 2021, construction crews observed a series of bones at the PS-3 work area. Upon inspection by a qualified archaeologist, the bones were determined to be from two medium-sized terrestrial mammals (not human). In addition, due to the lack of cultural resources found in proximity to the bones, the archaeologist concluded that the find was not archaeological in nature, and released the crew to continue work in the area.

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>EMF-2: Minimize EMI effects during final design, Monitor EMI effects during testing, commission and operations, and Remediate Substantial Disruption of Sensitive Electrical Equipment.</b>	X	X	X		Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Designs are submitted and reviewed/commented on by JPB. Monitoring EMI effects will occur post construction.
<b>GEO-1: Perform a site-specific geotechnical study for traction power facilities.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Geotechnical studies are being conducted by Parikh under subcontract with PGH Wong. Studies and results are submitted to JPB as completed.
<b>GEO-4a: Identification of expansive soils.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design by the D-B as described. Geotechnical studies are being conducted by Parikh under subcontract with PGH Wong. Studies and results are submitted to JPB as completed.
<b>GEO-4b: Mitigation of expansive soils.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design by the D-B as described. Geotechnical studies are being conducted by Parikh under subcontract with PGH Wong. Studies and results are submitted to JPB as completed.



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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>HAZ-2a: Conduct a Phase II Environmental Site Assessment prior to construction.</b>	X				Complete	A Phase II Environmental Assessment was completed prior to construction by the JPB consultant, and the results were provided to BBI, and the required mitigation is being implemented prior to the initiation of construction activities.
<b>HAZ-2b: Implement engineering controls and best management practices during construction.</b>	X	X			Ongoing	D-B field activities are being monitored daily for significant color changes or odors which may indicate contamination. In addition, assessments of existing subsurface pipes by a certified Asbestos Consultant are occurring as needed throughout the project as they are observed. Following the assessments, a specification describing the methods for removal and disposal are provided to the certified asbestos contractor. The removal and disposal work performed by the certified asbestos contractor is monitored by the certified asbestos consultant. During the reporting period, a certified asbestos consultant conducted exposure monitoring at PS-1 where naturally occurring asbestos was detected. Also, during the reporting period, samples of wrapped conduit at MP 46.7-12A were collected for asbestos analysis.
<b>HYD-1: Implement construction dewatering treatment, if necessary.</b>	X	X			Ongoing	Facilities & BMPs are in place to deal with this requirement should it arise in the OCS foundations.

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>HYD-4: Minimize floodplain impacts by minimizing new impervious areas for TPFs or relocating these facilities.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. The TPFs in Construction Segments 2 & 4 are currently in final design and design for TPFs in Construction Segments 1 & 3 has begun. The design minimizes hardscape only to required structure foundations; yard areas are to receive a pervious material.
<b>HYD-5: Provide for electrical safety at TPFs subject to periodic or potential flooding.</b>	X			X	Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. The TPFs in Construction Segments 2 & 4 are currently in final design and design for TPFs in Construction Segments 1 & 3 has begun. The design plan currently raises the TPFs above the floodplain.
<b>HYD-7: Implement sea level rise vulnerability assessment and adaptation plan.</b>				X	Ongoing	The JPB has initiated this measure and preparation of the sea level rise vulnerability assessment and adaptation plan is underway.
<b>NOI-1a: Implement Construction Noise Control Plan.</b>	X	X			Ongoing	The Noise and Vibration Control Plan has been submitted and is being implemented. Field activity is monitored per the Plan. If allowable noise levels are near or exceed allowable noise levels, mitigation such as blankets are used from that point forward.

Mitigation Monitoring and Reporting

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>NOI-1b: Conduct site-specific acoustical analysis of ancillary facilities based on the final mechanical equipment and site design and implement noise control treatments where required.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. PGH Wong has completed analysis and design and issued for JPB review.
<b>NOI-2a: Implement Construction Vibration Control Plan.</b>	X	X			Ongoing	The Noise and Vibration Control Plan has been submitted and is being implemented. Field activity is monitored per the Plan.
<b>PSU-8a: Provide continuous coordination with all utility providers.</b>	X	X			Ongoing	The design requirements indicated in the measure will be implemented through the final design as described. Coordination with utility providers is ongoing and there have not been any service interruptions thus far.
<b>PSU-8b: Adjust OCS pole foundation locations.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described.
<b>PSU-8c: Schedule and notify users about potential service interruptions.</b>	X	X			Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. There have not been any service interruptions thus far.
<b>PSU-9: Require application of relevant construction mitigation measures to utility relocation and transmission line construction by others.</b>	X	X			Ongoing	JPB has initiated coordination with PG&E regarding transmission line construction. PG&E is currently raising overcrossing lines in Segment 2.

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>TRA-1a: Implement Construction Road Traffic Control Plan.</b>	X	X			Ongoing	The D-B has begun traffic control design and permit applications with the City of Millbrae, Burlingame and San Mateo. Other communities will follow. Designs have been completed for all cross-over bridges in Segments 2 & 4 and submitted.
<b>TRA-1c: Implement signal optimization and roadway geometry improvements at impacted intersections for the 2020 Project Condition.</b>	X	X			Upcoming	This measure has not started
<b>TRA-2a: Implement construction railway disruption control plan.</b>	X	X			Ongoing	Minimization of railway disruption is being coordinated by the Site Specific Work Plan. A Construction Railway Disruption Control Plan was prepared to document the measures that are being implemented.
<b>TRA-3b: In cooperation with the City and County of San Francisco, implement surface pedestrian facility improvements to address the Proposed Project's additional pedestrian movements at and immediately adjacent to the San Francisco 4th and King Station.</b>	X	X	X		Upcoming	This measure has not started.
<b>TRA-4b: Continue to improve bicycle facilities at Caltrain stations and partner with bike share programs where available</b>				X	Ongoing	The JPB adopted the Caltrain Bicycle Parking Management Plan in November 2017, and staff have been working to implement the Plan's recommendations to improve

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Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
following guidance in Caltrain's Bicycle Access and Parking Plan.						wayside bike parking facilities along the corridor. Staff have also been coordinating with local jurisdictions that have launched bikeshare pilot programs to safely site bicycles near Caltrain stations.
NOI-CUMUL-1: Implement a phased program to reduce cumulative train noise along the Caltrain corridor as necessary to address future cumulative noise increases over FTA thresholds				X	Upcoming	This measure will be implemented during project operation.
NOI-CUMUL-2: Conduct project-level vibration analysis for Blended System operations and implement vibration reduction measures as necessary and appropriate for the Caltrain corridor				X	In Progress	CHSRA is conducting this analysis as part of the EIR/EIS for the San Francisco to San Jose section.
TRA-CUMUL-1: Implement a phased program to provide traffic improvements to reduce traffic delays near at-grade crossings and Caltrain stations				X	Upcoming	This measure will be implemented during project operation.
TRA-CUMUL-2: Implement technical solution to allow electric trolley bus transit across 16 <sup>th</sup> Street without OCS conflicts in cooperation with SFMTA.	X				Complete	Not applicable. SFMTA has elected to not electrify the 16 <sup>th</sup> Street crossing. This measure no longer applies.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>Mitigation Measure TRA-CUMUL-3: As warranted, Caltrain and freight operators will partner to provide Plate H clearance as feasible between San Jose and Bayshore.</b>				X	Upcoming	This measure will be implemented during project operation.
<b>AES-2a: Minimize OCS construction activity on residential and park areas outside the Caltrain ROW.</b>	X	X			Ongoing	The OCS proposed construction schedule has been provided to the JPB. OCS construction began the week of October 2, 2017. The D-B has used the potholing process to assist in locating conflicts in the 35% design and attempting to relocate OCS pole locations within the ROW, thereby avoiding parks and residential areas.
<b>AES-2b: Aesthetic treatments for OCS poles, TPFs in sensitive visual locations, and Overbridge Protection Barriers.</b>	X				Ongoing	The design requirements indicated in the measure have been implemented as described, and coordination with the specific jurisdictions regarding pole colors and design, TPFs, and Overbridge Protection Barriers, is ongoing.
<b>AES-4a: Minimize spillover light during nighttime construction.</b>		X			Ongoing	OCS construction began the week of October 2, 2017. The BBI community relations lead has notified nearby residents of upcoming construction. During construction, lighting is faced inward, towards the railroad tracks, and any complaints will be documented and addressed by the BBI community relations lead.
<b>AES-4b: Minimize light spillover at TPFs.</b>	X				Upcoming	The design requirements indicated in the measure are being used in the design process of the TPFs.

Mitigation Monitoring and Reporting

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>AQ-2a: Implement BAAQMD basic and additional construction mitigation measures to reduce construction-related dust.</b>	X	X			Ongoing	The Dust Mitigation Plan was submitted to the JPB. The requirements in the Dust Mitigation Plan will be implemented throughout the construction period and documented in daily reports.
<b>AQ-2b: Implement BAAQMD basic and additional construction mitigation measures to control construction-related ROG and NOX emissions.</b>	X	X			Ongoing	The Equipment Emissions Control Plan was submitted to the JPB. The requirements in the Equipment Emissions Control Plan will be implemented throughout the construction period and documented in daily reports.
<b>AQ-2c: Utilize clean diesel-powered equipment during construction to control construction-related ROG and NOX emissions.</b>	X	X			Ongoing	The Equipment Emissions Control Plan was submitted to the JPB. The requirements in the Equipment Emissions Control Plan will be implemented throughout the construction period and documented in daily reports.
<b>BIO-1a: Implement general biological impact avoidance measures.</b>	X	X			Ongoing	Worker Environmental Awareness Training is provided to all project-related personnel before they work on the project. All measures as described will be implemented throughout the construction period and documented in daily reports.
<b>BIO-1b: Implement special-status plant species avoidance and revegetation measures.</b>	X	X	X		Complete	Not applicable. Subsequent habitat assessment and avoidance of Communication Hill eliminated any potential to affect special-status plant species. The measure is not needed.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>BIO-1c: Implement California red-legged frog and San Francisco garter snake avoidance measures.</b>	X	X			Ongoing	Pre-construction surveys are occurring no more than 7 days prior to the initiation of construction activities nearby/adjacent to potential habitat for CRLF and SFGS. The Wildlife Exclusion Fencing Plan for Segments 2 and 4 was submitted and approved by the wildlife agencies, and installation and monitoring of wildlife exclusion fencing is ongoing. No CRLF / SFGS or sign of each species has been observed to date on the Project. A separate Wildlife Exclusion Fencing Plan will be submitted for Segments 1 and 3, prior to initiation of construction activities in those segments.
<b>BIO-1d: Implement western pond turtle avoidance measures.</b>	X	X			Ongoing	Pre-construction surveys are occurring no more than 7 days prior to the initiation of construction activities nearby/adjacent to potential habitat for WPT. No WPT or WPT sign have been observed to date on the Project.
<b>BIO-1e: Implement Townsend's big-eared bat, pallid bat, hoary bat, and fringed myotis avoidance measures.</b>	X	X			Ongoing	Pre-construction surveys are occurring no more than 7 days prior to the initiation of construction activities with the potential to disturb bats or their habitat. No special-status bats or sign have been observed to date on the Project.



Mitigation Monitoring and Reporting

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>BIO-1f: Implement western burrowing owl avoidance measures.</b>	X	X			Ongoing	Protocol surveys for Western Burrowing Owl were conducted from April 2017 through July 2017 at previously identified potentially suitable habitat locations. Note that all of these locations are in Construction Segment 4 (southern Santa Clara and San Jose). No Burrowing Owls were observed during the surveys. Construction in Segment 4 is anticipated to occur in 2018. Prior to construction activities in Segment 4, pre-construction surveys of the potential habitat areas will occur no more than 7 days prior to the onset of construction activities. In addition, protocol surveys were initiated in March 2018, and were completed in June 2018, at the previously identified potentially suitable habitat locations, which will allow work to occur during the 2019 breeding season, if necessary. No Burrowing Owls were observed during the 2018 surveys.
<b>BIO-1g: Implement northern harrier, white-tailed kite, American peregrine falcon, saltmarsh common yellowthroat, purple martin, and other nesting bird avoidance measures.</b>	X	X			Ongoing	Nesting Bird surveys were conducted from February 1 through September 15, 2017 prior to project-related activities with the potential to impact nesting birds. No active nests were observed during this reporting period. Nesting Bird surveys were initiated on February 1, 2018 and continued throughout the reporting period. Active nests were observed during this reporting period, and no-disturbance buffers were implemented to avoid any impacts to active nests, and all project activities which occurred nearby active nests were monitored by agency-approved

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
						biological monitors.
<b>BIO-1h: Conduct biological resource survey of future contractor-determined staging areas.</b>	X	X			Ongoing	The agency-approved Qualified Biologist has conducted surveys of the staging areas currently being used for construction activities. No special-status species or other potentially sensitive biological resources were observed. The agency-approved Qualified Biologist will continue to survey ahead of the initiation of activities at planned staging areas as the Project moves into new construction areas.
<b>BIO-1i: Minimize impacts on Monarch butterfly overwintering sites.</b>	X	X			Ongoing	The agency-approved Qualified Biologist has periodically monitored the project limits to evaluate the presence of Monarch butterfly overwintering sites. No Monarch butterfly overwintering sites have been observed on the Project to date.
<b>BIO-1j: Avoid nesting birds and bats during vegetation maintenance.</b>				X	Upcoming	To be completed during Project operation.
<b>BIO-2: Implement serpentine bunchgrass avoidance and revegetation measures.</b>	X	X	X		Complete	Not applicable. Subsequent habitat assessment and avoidance of Communication Hill eliminated any potential to affect serpentine bunchgrass. This measure is no longer needed.

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**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>BIO-3: Avoid or compensate for impacts on wetlands and waters.</b>	X	X	X		Complete	The JPB has compensated for unavoidable wetland impacts by purchasing adequate credits from a wetlands mitigation bank approved by USACE and SFRWQCB.
<b>BIO-5: Implement Tree Avoidance, Minimization, and Replacement Plan.</b>	X	X	X		Ongoing	Tree removal and pruning activities were initiated in August 2017, and are ongoing, under the guidance of the BBI Arborist, and in accordance with the Tree Avoidance, Minimization, and Replacement Plan. Tree Removal and Pruning status is provided to the JPB on a weekly basis.
<b>BIO-6: Pay <i>Santa Clara Valley Habitat Plan</i> land cover fee (if necessary).</b>	X				Complete	Not applicable. The SCVHP does not apply to the Project because TPS2, Option 1 was not selected and OCS does not extend to Communication Hill. This measure is not needed.
<b>CUL-1a: Evaluate and minimize impacts on structural integrity of historic tunnels.</b>	X				Upcoming	To be implemented prior to construction in tunnels.
<b>CUL-1b: Minimize impacts on historic decorative tunnel material.</b>	X				Upcoming	To be implemented prior to construction in tunnels.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>CUL-1c: Install project facilities in a way that minimizes impacts on historic tunnel interiors.</b>	X				Upcoming	To be implemented prior to construction in tunnels.
<b>CUL-1d: Implement design commitments at historic railroad stations</b>	X				Complete	The Qualified Architectural Historian completed and submitted the HABS Level III documents to the JPB for all seven of the historic stations. Pole placement has been designed to minimize the visual impact to historic stations and all design changes are reviewed by the Environmental Compliance Lead to ensure the mitigation measure is being implemented as the design of the project progresses.
<b>CUL-1e: Implement specific tree mitigation considerations at two potentially historic properties and landscape recordation, as necessary.</b>	X	X			Complete	It was determined that the project is not acquiring any ROW at either of the subject properties so all tree effects would be within the JPB ROW. Therefore, the APE does not include these two historic properties. This measure is no longer needed.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>CUL-1f: Implement historic bridge and underpass design requirements.</b>	X				Ongoing	This measure is being implemented as described during the design process and will be incorporated into the final design. The four bridges that are included in the MMRP are rail bridges crossing over another feature. Design of the OCS system is taking into account that there are requirements that restrict the design. Thus far, the designs for Construction Segments 2 & 4 are in process and designs are not yet complete. The D-B will forward to the Architectural Historian once complete.
<b>CUL-2a: Conduct an archaeological resource survey and/or monitoring of the removal of pavement or other obstructions to determine if historical resources under CEQA or unique archaeological resources under PRC 21083.2 are present.</b>	X				Ongoing	Periodic inspections of ground surface areas along the alignment, in conjunction with cultural monitoring as-needed of project activities in culturally sensitive areas are ongoing. The Archaeological Final Report will be provided at the conclusion of construction activities.
<b>CUL-2b: Conduct exploratory trenching or coring of areas where subsurface project disturbance is planned in those areas with “high” or “very high” potential for buried site.</b>	X				Ongoing	Exploratory trenching and subsurface testing of all potentially culturally sensitive areas occurred prior to the initiation of construction activities in those areas. The results will be included in the Archaeological Final Report. No cultural resources requiring the development of a treatment plan were observed. A Native American monitor has been present for all exploratory trenching and subsurface testing work.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>CUL-2c: Conduct limited subsurface testing before performing ground-disturbing work within 50 meters of a known archaeological site.</b>	X				Ongoing	Exploratory trenching and subsurface testing of all potentially culturally sensitive areas occurred prior to the initiation of construction activities in those areas. The results will be included in the Archaeological Final Report. No cultural resources requiring the development of a treatment plan were observed. A Native American monitor has been present for all exploratory trenching and subsurface testing work.
<b>CUL-2d: Conduct exploratory trenching or coring of areas within the three zones of special sensitivity where subsurface project disturbance is planned.</b>	X				Ongoing	Exploratory trenching and subsurface testing of all potentially culturally sensitive areas occurred prior to the initiation of construction activities in those areas. The results will be included in the Archaeological Final Report. No cultural resources requiring the development of a treatment plan were observed. A Native American monitor has been present for all exploratory trenching and subsurface testing work.
<b>CUL-2e: Stop work if cultural resources are encountered during ground-disturbing activities.</b>	X	X			Ongoing	No prehistoric or historic-period cultural materials have been observed during cultural monitoring.
<b>CUL-2f: Conduct archaeological monitoring of ground-disturbing activities in areas as determined by JPB and SHPO.</b>		X			Ongoing	Cultural monitoring as-needed of project activities in culturally sensitive areas is ongoing. The Archaeological Final Report will be provided at the conclusion of construction activities.

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**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>CUL-3: Comply with state and county procedures for the treatment of human remains discoveries.</b>		X			Ongoing	No human remains have been observed to date on the Project.
<b>EMF-2: Minimize EMI effects during final design, Monitor EMI effects during testing, commission and operations, and Remediate Substantial Disruption of Sensitive Electrical Equipment.</b>	X	X	X		Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Designs are submitted and reviewed/commented on by JPB. Monitoring EMI effects will occur post construction.
<b>GEO-1: Perform a site-specific geotechnical study for traction power facilities.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Geotechnical studies and results are submitted to JPB as completed.
<b>GEO-4a: Identification of expansive soils.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Geotechnical studies and results are submitted to JPB as completed.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>GEO-4b: Mitigation of expansive soils.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Geotechnical studies and results are submitted to JPB as completed.
<b>HAZ-2a: Conduct a Phase II Environmental Site Assessment prior to construction.</b>	X				Complete	A Phase II Environmental Assessment was completed prior to construction by the JPB consultant, and the results were provided to BBI, and the required mitigation is being implemented prior to the initiation of construction activities.
<b>HAZ-2b: Implement engineering controls and best management practices during construction.</b>	X	X			Ongoing	Field activities are being monitored daily for significant color changes or odors which may indicate contamination. In addition, an assessment of two existing subsurface pipes by a certified Asbestos Consultant occurred during this reporting period, and a specification describing the methods for removal and disposal is currently in progress.
<b>HYD-1: Implement construction dewatering treatment, if necessary.</b>	X	X			Ongoing	Facilities & BMPs are in place to deal with this requirement should it arise in the OCS foundations.
<b>HYD-4: Minimize floodplain impacts by minimizing new impervious areas for TPFs or relocating these facilities.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. The TPFs in Construction Segments 2 & 4 are currently in final design and design for TPFs in Construction Segments 1 & 3 has begun. The design minimizes



**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
						hardscape only to required structure foundations; yard areas are to receive a pervious material.
<b>HYD-5: Provide for electrical safety at TPFs subject to periodic or potential flooding.</b>	X			X	Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. The TPFs in Construction Segments 2 & 4 are currently in final design and design for TPFs in Construction Segments 1 & 3 has begun. The design plan currently raises the TPFs above the floodplain.
<b>HYD-7: Implement sea level rise vulnerability assessment and adaptation plan.</b>				X	Ongoing	The JPB has initiated this measure and preparation of the sea level rise vulnerability assessment and adaptation plan is underway.
<b>NOI-1a: Implement Construction Noise Control Plan.</b>	X	X			Ongoing	The Noise and Vibration Control Plan has been submitted and is being implemented. Field activity is monitored per the Plan. If allowable noise levels are near or exceed allowable noise levels, mitigation such as blankets are used from that point forward.
<b>NOI-1b: Conduct site-specific acoustical analysis of ancillary facilities based on the final mechanical equipment and site design and implement noise control treatments where required.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. Design is still in process and a noise study is currently being performed.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>NOI-2a: Implement Construction Vibration Control Plan.</b>	X	X			Ongoing	The Noise and Vibration Control Plan has been submitted and is being implemented. Field activity is monitored per the Plan.
<b>PSU-8a: Provide continuous coordination with all utility providers.</b>	X	X			Ongoing	The design requirements indicated in the measure will be implemented through the final design as described. Coordination with utility providers is ongoing and there have not been any service interruptions thus far.
<b>PSU-8b: Adjust OCS pole foundation locations.</b>	X				Ongoing	The design requirements indicated in the measure are being implemented through the final design as described.
<b>PSU-8c: Schedule and notify users about potential service interruptions.</b>	X	X			Ongoing	The design requirements indicated in the measure are being implemented through the final design as described. There have not been any service interruptions thus far.
<b>PSU-9: Require application of relevant construction mitigation measures to utility relocation and transmission line construction by others.</b>	X	X			Ongoing	JPB has initiated coordination with PG&E regarding transmission line construction. PG&E is currently raising overcrossing lines in Segment 2.

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
<b>TRA-1a: Implement Construction Road Traffic Control Plan.</b>	X	X			Ongoing	The D-B has begun traffic control design and permit applications with cities in Segments 2 and 4. Designs have been completed and approved for all cross-over bridges in Segments 2 and 4.
<b>TRA-1c: Implement signal optimization and roadway geometry improvements at impacted intersections for the 2020 Project Condition.</b>	X	X			Upcoming	This measure has not started
<b>TRA-2a: Implement construction railway disruption control plan.</b>	X	X			Ongoing	Minimization of railway disruption is being coordinated by the Site Specific Work Plan. A Construction Railway Disruption Control Plan was prepared to document the measures that are being implemented.
<b>TRA-3b: In cooperation with the City and County of San Francisco, implement surface pedestrian facility improvements to address the Proposed Project's additional pedestrian movements at and immediately adjacent to the San Francisco 4th and King Station.</b>	X	X	X		Upcoming	This measure has not started.
<b>TRA-4b: Continue to improve bicycle facilities at Caltrain stations and partner with bike share programs where available</b>				X	Ongoing	The JPB adopted the Caltrain Bicycle Parking Management Plan in November 2017, and staff have been working to implement the Plan's recommendations to improve

**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
following guidance in Caltrain's Bicycle Access and Parking Plan.						wayside bike parking facilities along the corridor. Staff have also been coordinating with local jurisdictions that have launched bikeshare pilot programs to safely site bicycles near Caltrain stations.
NOI-CUMUL-1: Implement a phased program to reduce cumulative train noise along the Caltrain corridor as necessary to address future cumulative noise increases over FTA thresholds				X	Upcoming	This measure will be implemented during project operation.
NOI-CUMUL-2: Conduct project-level vibration analysis for Blended System operations and implement vibration reduction measures as necessary and appropriate for the Caltrain corridor				X	In Progress	CHSRA is conducting this analysis as part of the EIR/EIS for the San Francisco to San Jose section.
TRA-CUMUL-1: Implement a phased program to provide traffic improvements to reduce traffic delays near at-grade crossings and Caltrain stations				X	Upcoming	This measure will be implemented during project operation.
TRA-CUMUL-2: Implement technical solution to allow electric trolley bus transit across 16 <sup>th</sup> Street without OCS conflicts in cooperation with SFMTA.	X				Complete	Not applicable. SFMTA has elected to not electrify the 16 <sup>th</sup> Street crossing. This measure no longer applies.

**Peninsula Corridor Electrification Project**  
**Monthly Progress Report**

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**Mitigation Monitoring and Reporting**

Mitigation Measure	Mitigation Timing				Status	Status Notes
	Pre-Construction	Construction	Post-Construction	Operation		
Mitigation Measure TRA-CUMUL-3: As warranted, Caltrain and freight operators will partner to provide Plate H clearance as feasible between San Jose and Bayshore.				X	Upcoming	This measure will be implemented during project operation.

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Derek Hansel  
Chief Financial Officer

SUBJECT: **APPROVAL OF MEASURE RR INTERIM FINANCING TRANSACTIONS AND RELATED TRANSACTION DOCUMENTS**



Finance Committee  
Recommendation



Work Program-  
Legislative-Planning



Staff Coordinating  
Council Reviewed



Staff Coordinating Council  
Recommendation

**ACTION**

Staff recommends the Board:

1. Authorize and approve execution and delivery of a new credit agreement (PCEP Agreement) between the JPB and Wells Fargo Bank, National Association in an amount to be drawn down not to exceed \$100,000,000 outstanding at any one time.
2. Authorize and approve execution and delivery of a new credit agreement (Working Capital Agreement) between the JPB and Wells Fargo Bank, National Association in an amount to be drawn down not to exceed \$100,000,000 outstanding at any one time.
3. Authorize and approve execution and delivery of separate Fee and Pricing Agreements relating to the PCEP Agreement and the Working Capital Agreement.
4. Authorize and approve the execution of an Indenture of Trust between the JPB and U.S. Bank National Association, as Trustee (US Bank), a First Supplemental Indenture of Trust between the JPB and US Bank and a Second Supplemental Indenture of Trust between the JPB and US Bank.
5. Authorize and approve all the documents required for the transactions described above including those documents identified in the attached resolution.
6. Authorize the Acting Executive Director and/or Chief Financial Officer to take the necessary steps to effectuate these transactions.

## **SIGNIFICANCE**

The proposed action would enable the JPB to replace two existing revolving lines of credit, secured by certain State and Federal grants and a subordinate pledge of farebox revenues generated from the JPB's Caltrain service in an aggregate amount of \$200,000,000, with two new revolving lines of credit, secured by the same State and Federal grants and a subordinate pledge of Measure RR sales tax revenues in the same aggregate amount.

Board authorization is required to (i) approve proceeding with the implementation of the PCEP Agreement and Working Capital Agreement and (ii) authorize staff to take such actions as are necessary to implement such Agreements.

## **BUDGET IMPACT**

Execution of the PCEP Agreement and the Working Capital Agreement will lead to reduced interest and credit commitment fee charges currently paid by the JPB for the existing credit agreement. Based on an assumption that an average of 50% of the PCEP Agreement and Working Capital Agreement will be outstanding at all times, JPB staff estimates savings of approximately \$2,500,000 per year compared with maintaining the existing credit facilities.

## **BACKGROUND**

Staff has been working with the JPB's Municipal Advisors to implement a comprehensive financing plan that relies entirely on Measure RR sales tax revenues and will not have any adverse financial impact on the JPB's member agencies. The financing plan (the "Financing Plan") has three components:

- Replace the JPB's existing credit facilities in the aggregate amount of \$200,000,000 with DNT Asset Trust (on behalf of JP Morgan), secured by certain Federal and State grants and a subordinate pledge of farebox revenues with new credit facilities with Wells Fargo Bank, in the same aggregate amount, secured by the same grants and a subordinate pledge of Measure RR revenues;
- Issue new money Measure RR sales tax revenue bonds in an amount up to \$140,000,000 to finance certain non-granted funded additional costs associated with the PCEP project – such bonds to be repaid, to the extent possible, from the proceeds of low carbon fuel credits to be received by the JPB after the commencement of electrification revenue service; and
- Issue refunding Measure RR sales tax revenue bonds to refinance, in whole or in part, the JPB's \$47,635,000 farebox revenue bonds issued in 2019.

Pursuant to Section 6586.5 of the California Government Code, each Member Agency has conducted a public hearing and, subsequent to conducting the public hearing, adopted a resolution approving the replacement of the JPB's existing credit facilities and making a finding of significant public benefit in accordance with the criteria specified in Section 6586.5 of the California Government Code.

Staff had originally intended to recommend the approval of all three components of the Financing Plan at this meeting. However, because of the timing of certain Member Agency meeting dates, it was necessary to separate into different meetings the

approval of the two Measure RR sales tax bonding components of the financing plan with the replacement of the JPB's existing credit facilities. Staff expects final Member Agency approval of the remaining components of the Financing Plan in August and JPB approval of the additional components at a meeting later this fall. In the meantime, approval of the recommended transactions now is important in order to facilitate the borrowing of funds necessary to bridge cash flow to the receipt of Measure RR funding, and to achieve the financial savings described above.

Prepared By:           Derek Hansel, Chief Financial Officer           650.508.6466  
                                  Jayden Sangha, Acting Director, Treasury       650.508.6405



**RESOLUTION NO. 2021-**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STATE OF CALIFORNIA**

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**AUTHORIZING THE REPLACEMENT OF ITS EXISTING REVOLVING CREDIT FACILITIES WITH TWO NEW REVOLVING CREDIT FACILITIES IN A COLLECTIVE AMOUNT NOT TO EXCEED \$200,000,000, APPROVING THE FORMS OF AN INDENTURE OF TRUST, A FIRST SUPPLEMENTAL INDENTURE OF TRUST, A SECOND SUPPLEMENTAL INDENTURE OF TRUST, REPLACEMENT CREDIT FACILITIES, AND REPLACEMENT NOTES TO BE EXECUTED IN CONNECTION THEREWITH, AUTHORIZING THE EXECUTION AND DELIVERY THEREOF AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY IN CONNECTION WITH THE ESTABLISHMENT OF THE REPLACEMENT REVOLVING CREDIT FACILITIES.**

**WHEREAS**, the Peninsula Corridor Joint Powers Board (the "JPB"), a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California, created pursuant to the Joint Exercise of Powers Agreement-Peninsula Corridor Project, made and entered into as of October 3, 1996 (the "JPA Agreement"), among the Santa Clara Valley Transportation Authority, formerly known as the Santa Clara County Transit District, the City and County of San Francisco and the San Mateo County Transit District (each, a "Member Agency," and, hereinafter collectively referred to as the "Member Agencies"), oversees and operates the Caltrain commuter rail service ("Caltrain"); and

**WHEREAS**, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act") and the JPA Agreement, the JPB is authorized to issue debt, including revenue debt, from time to time to finance the costs of public capital improvements, including mass transit facilities and vehicles, whenever there are significant public benefits (as such term is defined in the Act) from doing so; and

**WHEREAS**, on November 3, 2020, the voters in the City and County of San Francisco, San Mateo County and Santa Clara Valley County approved Measure RR, which will provide the JPB with a dedicated revenue source consisting of a 1/8th cent sales and use tax on taxable transactions in those counties (the "Measure RR Sales Tax"), the collection of which commenced on July 1, 2021 and expire in thirty (30) years; and

**WHEREAS**, the JPB previously secured a credit facility in an amount not to exceed \$170,000,000 at any one time to pay costs of converting the Caltrain rail corridor running between San Francisco and the Tamien Station in San José from diesel-hauled trains to electric multiple unit trains, all as part of the Peninsula Corridor Electrification Project ("PCEP") due and payable in advance of receipt of funds identified to pay such costs (the "Existing PCEP Credit Facility"); and

**WHEREAS**, JPB previously secured a credit facility in an amount not to exceed \$30,000,000 at any one time to pay working capital expenses (the "Existing Working

Capital Credit Facility”, and together with the Existing PCEP Credit Facility, the “Existing Credit Facilities”); and

**WHEREAS**, due to timing and other considerations and in order to maintain adequate operating revenues, JPB needs to replace the Existing PCEP Credit Facility with a new credit facility for the same purposes as the Existing PCEP Credit Facility in an amount not to exceed \$100,000,000 at any one time (the “Replacement PCEP Credit Facility”) and replace the Existing Working Capital Credit Facility with a new credit facility to pay working capital expenses and make up potential revenue shortfalls in an amount not to exceed \$100,000,000 at any one time (the “Replacement Working Capital Credit Facility”, and together with the Replacement PCEP Credit Facility, the “Replacement Credit Facilities”); and

**WHEREAS**, the outstanding amounts under the Existing Credit Facilities are expected to be repaid from the Replacement Credit Facilities; and

**WHEREAS**, the indebtedness to be incurred by JPB under the Replacement Credit Facilities will be secured by a subordinate lien on the Measure RR Sales Tax revenues, and the Replacement PCEP Credit Facility will also payable from grant proceeds tied to the PCEP as currently provided under the Existing PCEP Credit Facility, each as to be further described in the documents relating thereto; and

**WHEREAS**, advances made under the Replacement Credit Facilities will be secured pursuant to an Indenture of Trust, dated as of August 1, 2021 (the “Master Indenture”), as supplemented and amended by a First Supplemental Indenture of Trust, with respect to the Replacement PCEP Credit Facility (the “First Supplemental Indenture”) and a Second Supplemental Indenture of Trust, with respect to the Replacement Working Capital Credit Facility (the “Second Supplemental Indenture”, and together with the Master Indenture and the First Supplemental Indenture, the “Indenture”), all proposed to be entered into between the JPB and U.S. Bank National Association (“US Bank”), as trustee (hereinafter referred to as the “Trustee”); and

**WHEREAS**, the Replacement PCEP Credit Facility in the form of a Credit Agreement (including the related fee and pricing agreement thereto), each by and between the JPB and Wells Fargo Bank, National Association (the “Lender”), will be issued and secured under the First Supplemental Indenture and the Master Indenture; and

**WHEREAS**, in order to evidence the indebtedness incurred by the advances made under the Replacement PCEP Credit Facility, the JPB will execute PCEP Facility Notes (the “PCEP Credit Notes”) pursuant to the Replacement PCEP Credit Facility, the First Supplemental Indenture and the Master Indenture; and

**WHEREAS**, the Replacement Working Capital Credit Facility in the form of a Credit Agreement (including the related fee and pricing agreement thereto), each by and between the JPB and the Lender, will be issued and secured under the Second Supplemental Indenture and the Master Indenture; and

**WHEREAS**, in order to evidence the indebtedness incurred by the advances made under the Replacement Working Capital Credit Facility , the JPB will execute Working Capital Facility Notes(the "Working Capital Credit Notes," and, together with PCEP Credit Notes, the "Replacement Notes") pursuant to the Replacement Working Capital Credit Facility, the Second Supplemental Indenture and the Master Indenture; and

**WHEREAS**, there has been prepared and placed on file with the Secretary of the governing body of the JPB (hereinafter referred to as the "JPB Secretary") proposed forms of the Replacement Credit Facilities and the Replacement Notes; and

**WHEREAS**, there has been prepared and placed on file with the JPB Secretary a proposed form of the Master Indenture, the First Supplemental Indenture, and the Second Supplemental Indenture; and

**WHEREAS**, in order to accomplish the foregoing, it will be necessary for the JPB to enter into or approve and deliver the following agreements and instruments, forms of which have been prepared and placed on file with the JPB Secretary prior to this meeting:

- (1) Master Indenture
- (2) First Supplemental Indenture;
- (3) Second Supplemental Indenture;
- (4) Replacement Credit Facilities; and
- (5) Replacement Notes;

**WHEREAS**, the JPB desires to authorize the replacement of the Existing Credit Facilities with the Replacement Credit Facilities, and to authorize the taking of such other actions as shall be necessary to consummate the establishment of the Replacement Credit Facilities as described in the Master Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the Replacement Credit Facilities, and the Replacement Notes (hereinafter collectively referred to as the "Financing Documents") and herein, and to authorize the taking of various actions in connection therewith; and

**WHEREAS**, the Financing is being undertaken to enable the JPB to (i) meet current and future transportation demand between San José and San Francisco, (ii) offset existing and future worsening roadway congestion, (iii) address continuing regional air quality issues, (iv) reduce greenhouse gas emissions, (v) provide electrical infrastructure compatible with contemplated future high-speed rail service, and (vi) enhance safety throughout the Caltrain system; and

**WHEREAS**, each of the Member Agencies within whose geographic boundaries the Caltrain commuter rail service operates, has scheduled and conducted a public hearing, each of which public hearing was duly noticed, concerning the Financing for purposes of Section 6586.5 of the Government Code of the State of California (the "Government Code"); and

**WHEREAS**, subsequent to the applicable public hearing, the governing body of each of the Member Agencies adopted a resolution approving the Financing for purposes of Section 6586.5 of the Government Code, each of which resolutions also made a finding of significant public benefit in accordance with the criteria specified in Section 6586.5 of the Government Code; and

**WHEREAS**, in accordance with Government Code Section 5852.1, the JPB has obtained and disclosed the information required thereby in the staff report accompanying this Resolution; and

**NOW THEREFORE, BE IT RESOLVED** by the governing body of the PENINSULA CORRIDOR JOINT POWERS BOARD as follows:

Section 1. **Findings.** The JPB hereby finds and determines that the foregoing recitals are true and correct.

Section 2. **Authorization of Replacement Credit Facilities.** The establishment of the Replacement PCEP Credit Facility in an amount not to exceed \$100,000,000 at any one time and the Replacement Working Capital Credit Facility in an amount not to exceed \$100,000,000 at any one time, and evidenced by the Replacement Notes, is hereby authorized and approved. The Executive Director of the JPB (the "Executive Director") and the Chief Financial Officer of the JPB (the "Chief Financial Officer"), who also functions as the treasurer of the JPB, each acting alone (each, an "Authorized Representative"), is hereby authorized and directed, for and in the name and on behalf of the JPB, to execute and deliver, and the JPB Secretary is hereby authorized and directed, for and in the name and on behalf of the JPB, to acknowledge and deliver the Replacement Credit Facilities and the Replacement Notes in substantially said forms, with such changes therein as the Authorized Representative executing the same, with the advice of the general counsel to the JPB (the "General Counsel"), may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. **Approval of Indenture.** The proposed forms of Master Indenture, First Supplemental Indenture, and Second Supplemental Indenture placed on file with the JPB Secretary prior to this meeting is hereby approved. Each Authorized Representative is hereby authorized and directed, for and in the name and on behalf of the JPB, to execute and deliver, and the JPB Secretary is hereby authorized and directed, for and in the name and on behalf of the JPB, to acknowledge and deliver, a Master Indenture, a First Supplemental Indenture, and a Second Supplemental Indenture, in substantially said forms, with such changes therein as the Authorized Representative executing the same, with the advice of General Counsel, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof. Interest payment dates, denominations, forms, series designation, registration and exchange privileges, place or places of payment, tender provisions, terms of redemption and other terms of the Replacement Notes shall be as provided in the applicable Replacement Credit Facilities, the Indenture, the First Supplemental Indenture and the Second Supplemental Indenture, as finally executed and delivered, the approval by the JPB of said final forms of the Replacement Notes to be conclusively evidenced by the execution and delivery thereof.

Section 4. **Completion of Financing.** Each Authorized Representative, the JPB Secretary and other appropriate staff of the JPB are each hereby authorized and directed, for and in the name and on behalf of the JPB, to do any and all things and to take any and all actions and to execute and deliver any and all agreements, certificates, documents, instruments and instructions, including, without limitation, certificates concerning the representations in any of the Financing Documents, disclosure certificates, no-litigation certificates, signature certificates, tax certificates, investment instructions and contracts for rebate compliance services or other post-issuance compliance services, including, but not limited to, post-issuance tax-compliance services, and to do any and all things and take any and all actions which may be necessary or advisable to effectuate the actions which the JPB has approved in this Resolution, and to carry out, consummate and perform the duties of the JPB set forth in the Financing Documents and in all other documents executed in connection with the Financing.

Section 5. **Authorized Representative; Subsequent Actions.** All approvals, consents, directions, notices, orders, requests and other actions permitted or required by any of the Financing Documents or by any of the other documents authorized by this Resolution, including, without limitation, any of the foregoing which may be necessary or desirable in connection with any investment of the amounts advanced under the Replacement Credit Facilities, any investment or reinvestment of the amounts held on deposit in any of the funds and accounts established by any of the Financing Documents, any amendment of any of the Financing Documents, any amendment of any other agreements, documents or certificates authorized by this Resolution, may be given or taken or made, as applicable, by either Authorized Representative without further authorization or direction by the governing body of the JPB, and each Authorized Representative is hereby authorized and directed to give any such approval, consent, direction, notice, order, request or other action and to take any such action which such Authorized Representative may deem necessary or desirable to further the purposes of this Resolution.

Section 6. **Severability of Invalid Provisions.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution which shall continue in full force and effect.

Section 7. **Effective Date.** This Resolution shall take effect immediately upon its passage.

Regularly passed and adopted this 5<sup>th</sup> day of August, 2021 by the following vote:

AYES:

NOES:

ABSENT:

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Chair, Peninsula Corridor Joint Powers Board

ATTEST:

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JPB Secretary

INDENTURE OF TRUST

between

PENINSULA CORRIDOR JOINT POWERS BOARD

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

Dated as of August 1, 2021

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**INDENTURE OF TRUST**

This **INDENTURE OF TRUST**, dated as of August 1, 2021 (this “**Indenture**”), is between the **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “**Issuer**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the “**Trustee**”).

**WITNESSETH:**

**WHEREAS**, the Issuer is duly organized and existing pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and was created pursuant to a Joint Powers Agreement, made and entered into on October 3, 1996 (as more fully defined in Section 1.01 hereof, the “**JPA Agreement**”), by and between the Santa Clara Valley Authority (“**VTA**”), formerly known as the Santa Clara County Transit District, the City and County of San Francisco (“**CCSF**”), and the San Mateo County Transit District (“**SamTrans**”) (each a “**Member Agency**,” and hereinafter collectively referred to as the “**Member Agencies**”);

**WHEREAS**, the Issuer operates passenger rail service between San Francisco, California and Gilroy, California currently serving 32 stations along the 77-mile corridor, operating approximately 90 weekday trains, which include express, limited, and local trains (“**Caltrain rail service**”); and

**WHEREAS**, effective January 1, 2018, Part 1.7 (commencing with Section 7286.65) of Division 2 of the Revenue and Taxation Code of the State of California was amended by California Senate Bill No. 797 to authorize the Issuer to submit to the voters of the City and County of San Francisco, and the Counties of San Mateo and Santa Clara (together, the “**Counties**”), a regional measure proposing to impose a retail transactions and use tax of not more than 0.125 percent (the “**Sales Tax**”) to be used for the operating and capital purposes of the Caltrain rail service; and

**WHEREAS**, the Board of Directors of the Issuer adopted Resolution Number 2020-40 on August 6, 2020, which called and provided for an election for the purpose of submitting to the voters in the Counties a measure known as Measure RR (“**Measure RR**”) to approve the Sales Tax; and

**WHEREAS**, on November 3, 2020, the voters in the Counties approved Measure RR;

**WHEREAS**, the collection of the Sales Tax, which commenced on July 1, 2021, will continue for thirty years thereafter, subject to future updates thereto;

**WHEREAS**, the Issuer is authorized to issue from time to time indebtedness payable in whole or in part from revenues of the Sales Tax;

**WHEREAS**, the Issuer has determined to provide for the issuance of the Initial Notes (as defined herein) to evidence the Initial Loans (as defined herein) under the Initial Credit Agreements (as defined herein) and to secure the payment of the Loan Debt Service (as defined herein) and Lender Fees and Expenses (as defined herein) under such Initial Credit Agreements;

**WHEREAS**, Loan Debt Service and Lender Fees and Expenses are secured by and payable from the Sales Tax Revenues (defined herein) on a parity basis with any other Subordinate Obligations issued from time to time, and on a subordinate basis to any Senior Lien Debt issued from time to time, and certain Loan Debt Service is further secured by other revenues as further described in the First Supplemental Indenture (as defined herein);

**WHEREAS**, the Issuer is expected to provide for the issuance of Senior Sales Tax Revenue Bonds (Limited Tax Bonds) (the “**Senior Lien Bonds**”), which shall be secured by and payable from Sales Tax Revenues on a parity with any Senior Lien Obligations and on a basis senior to the Loan Debt Service, other Subordinate Obligations and any Junior Obligations (as defined herein) issued from time to time;

**WHEREAS**, the execution and delivery of this Indenture has in all respects been duly and validly authorized by resolutions duly passed and approved by the Issuer; and

**WHEREAS**, the Issuer has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Indenture do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Indenture;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that in order to secure the payment of the principal of, premium, if any, and interest on all Senior Lien Bonds at any time issued, authenticated and delivered hereunder; the payment of other Senior Lien Obligations at any time incurred hereunder; the payment of Loan Debt Service, Lender Fees and Expenses, and any other Subordinate Obligations at any time incurred hereunder, and the payment any Junior Obligations at any time incurred hereunder; and to provide the terms and conditions under which all property, rights and interests hereby assigned and pledged are to be dealt with and disposed of, and to secure performance and observance of the terms, covenants and conditions herein and in the Senior Lien Bonds and the Note, and in consideration of the premises and material covenants herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of Senior Lien Debt, Subordinate Obligations and Junior Obligations, as follows:

**ARTICLE I**  
**DEFINITIONS; EQUALITY OF SECURITY;**  
**CONTENT OF CERTIFICATES AND OPINIONS**

SECTION 1.01      Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Indenture and of any Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

**“Accreted Value”** means, with respect to any Capital Appreciation Bond, the principal amount thereof plus the interest accrued thereon, compounded at the approximate interest rate thereon on each date specified therein. The Accreted Value at any date shall be the amounts set forth in the Accreted Value Table as of such date, if such date is a compounding date, and if not, as of the immediately preceding compounding date plus the amount of daily interest accrued from such preceding compounding date to the date of determination.

**“Accreted Value Table”** means the table denominated as such which appears as an exhibit to, and to which reference is made in, a Supplemental Indenture providing for a Series of Capital Appreciation Bonds issued pursuant to such Supplemental Indenture.

**“Accrued Senior Lien Interest”** means, for any current or future calendar month, the amount of interest which has accrued or will accrue on a Series of Senior Lien Bonds and Senior Lien Obligations during that month, less any interest which accrues during such period but for which a separate fund or account has been established and into which have been deposited moneys, Defeasance Securities or Investment Securities which, with the earnings thereon, will be sufficient to pay such interest and which fund has been established for the purpose of paying such interest. With respect to Senior Lien Bonds or Senior Lien Obligations (i) bearing an interest rate which will or may fluctuate from the date of calculation to the end of such calendar month or (ii) coupled with an Interest Rate Swap Agreement in effect on the date of calculation, interest after the calculation date, for purposes of calculating Accrued Senior Lien Interest for such month, will be assumed to accrue at a rate equal to the Maximum Rate identified in the Supplemental Indenture pursuant to which such Senior Lien Bonds or Senior Lien Obligations were issued. For any prior calendar month, “Accrued Senior Lien Interest” shall mean the actual amount of interest which has accrued on Series of Senior Lien Bonds or Senior Lien Obligations during that month. With respect to Senior Lien Bonds issued as Capital Appreciation Bonds, the interest accruing thereon shall be treated as an accretion of principal not includable as Accrued Senior Lien Interest.

**“Accrued Senior Lien Premium”** means, with respect to any Senior Lien Bonds or Senior Lien Obligations which are or is to be redeemed or otherwise prepaid, the full amount of the premium or prepayment penalty imposed as a condition of such redemption or prepayment. The full amount of such premium or penalty will be deemed to accrue in the calendar month in which notice of the redemption or prepayment is given by the Issuer to the Trustee.

**“Accrued Senior Lien Principal”** means, with respect to any current or future calendar month, the amount of principal and Accreted Value which has matured or will mature on Senior Lien Debt during that month less any principal and Accreted Value which matures during such period but for which a separate fund or account has been established and into which have been deposited moneys, Defeasance Securities or Investment Securities which, with the earnings thereon, will be sufficient to pay such principal and Accreted Value and which fund is irrevocably pledged to the payment of such principal and Accreted Value. For purposes of this definition, it shall be assumed that for any payment of principal or Accreted Value, principal and Accreted Value commences to mature on the later of (i) the date of issue of the Senior Lien Debt or (ii) one year prior to the payment date (unless principal and Accreted Value is payable more frequently than annually, in which case, principal and Accreted Value will, for the first payment, be assumed to mature from the later of the date of issuance or one year prior to the first payment date and

thereafter principal and Accreted Value will mature from the date of each principal payment of principal or Accreted Value) and principal and Accreted Value shall be assumed to accrue in equal monthly installments during each calendar month or portion of any calendar month occurring from the time of commencement of such maturity to the payment date.

**“Accrued Subordinate Interest”** means, for any current or future calendar month, the amount of interest which has accrued or will accrue on Subordinate Obligations during that month, less any interest which accrues during such period but for which a separate fund or account has been established and into which have been deposited moneys, Defeasance Securities or Investment Securities which, with the earnings thereon, will be sufficient to pay such interest and which fund has been established for the purpose of paying such interest. With respect to Subordinate Obligations (i) bearing an interest rate which will or may fluctuate from the date of calculation to the end of such calendar month or (ii) coupled with an interest rate swap agreement in effect on the date of calculation, interest after the calculation date, for purposes of calculating Accrued Subordinate Interest for such month, will be assumed to accrue at a rate equal to the Maximum Rate identified in the Supplemental Indenture pursuant to which such Subordinate Obligations was issued. For any prior calendar month, “Accrued Subordinate Interest” shall mean the actual amount of interest which has accrued on Subordinate Obligations during that month. With respect to any Subordinate Obligations comprised of Capital Appreciation Bonds, the interest accruing thereon shall be treated as an accretion of principal not includable as Accrued Subordinate Interest.

**“Accrued Subordinate Premium”** means, with respect to any Subordinate Obligations which is to be redeemed or otherwise prepaid, the full amount of the premium or prepayment penalty imposed as a condition of such redemption or prepayment. The full amount of such premium or penalty will be deemed to accrue in the calendar month in which notice of the redemption or prepayment is given by the Issuer to the Trustee.

**“Accrued Subordinate Principal”** means, with respect to any current or future calendar month, the amount of principal and Accreted Value which has matured or will mature on Subordinate Obligations during that month less any principal and Accreted Value which matures during such period but for which a separate fund or account has been established and into which have been deposited moneys, Defeasance Securities or Investment Securities which, with the earnings thereon, will be sufficient to pay such principal and Accreted Value and which fund is irrevocably pledged to the payment of such principal and Accreted Value. For purposes of this definition, it shall be assumed that for any payment of principal or Accreted Value, principal and Accreted Value commences to mature on the later of (i) the date of issue of the Subordinate Obligations or (ii) one year prior to the payment date (unless principal and Accreted Value is payable more frequently than annually, in which case, principal and Accreted Value will, for the first payment, be assumed to mature from the later of the date of issuance or one year prior to the first payment date and thereafter principal and Accreted Value will mature from the date of each principal payment of principal or Accreted Value) and principal and Accreted Value shall be assumed to accrue in equal monthly installments during each calendar month or portion of any calendar month occurring from the time of commencement of such maturity to the payment date.

**“Act”** means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq.

**“Additional Note Tax Certificate”** means a tax certificate or supplemental tax certificate delivered in connection with a Tax-Exempt Note.

**“Aggregate Accrued Subordinate Interest”** means, for any calendar month, the sum of the Accrued Subordinate Interest for all Subordinate Obligations.

**“Aggregate Accrued Subordinate Principal”** means, for any calendar month, the sum of the Accrued Subordinate Principal for all Subordinate Obligations.

**“Aggregate Accrued Senior Lien Interest”** means, for any calendar month, the sum of the Accrued Senior Lien Interest for all Senior Lien Debt.

**“Aggregate Accrued Senior Lien Principal”** means, for any calendar month, the sum of the Accrued Senior Lien Principal for all Senior Lien Debt.

**“Annual Debt Service”** means, for any Fiscal Year, the aggregate amount (without duplication) of principal and interest on all Senior Lien Debt and/or Subordinate Obligations, as applicable to the calculations required hereunder, becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service. [For the avoidance of doubt, Lender Fees and Expenses shall not be included as “Annual Debt Services” for purposes of the calculations required hereunder.]

**“Assumed Debt Service”** means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Senior Lien Debt and/or Subordinate Obligations, as applicable, if each Excluded Principal Payment were amortized on a substantially level debt service basis or other amortization schedule provided by the Issuer for a period commencing on the date of calculation of such Assumed Debt Service and ending on the earlier of (i) the date specified by the Issuer or (ii) the Tax Expiration Date, such Assumed Debt Service to be calculated on a level debt service basis or other amortization schedule provided by the Issuer, based on a fixed interest rate equal to the rate at which the Issuer could borrow for such period, as set forth in a certificate of the Issuer, delivered to the Trustee, who may rely conclusively on such certificate, such certificate to be delivered within thirty (30) days of the date of calculation.

**“Authorized Representative”** means the chief executive officer of the Issuer, the chief financial officer of the Issuer, or any other person designated to act on behalf of the Issuer and who has been identified in a Certificate of the Issuer delivered to the Trustee, and whose signature has likewise been certified to the Trustee. If a designation of the Issuer applies with respect to a Credit Agreement, a copy of such Certificate of the Issuer shall be delivered to the applicable Lender.

**“Beneficial Owner”** means any Person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of any Bond, including, without limitation, any Person holding Senior Lien Bonds through nominees or depositories, including the Securities Depository.

**“Board”** means the Board of Directors of the Issuer.



**“Bond Counsel”** means such firm or firms of national standing in the field of public finance as is selected by the Issuer.

**“Bond Obligation”** means, as of any given date of calculation, (i) with respect to any Outstanding Current Interest Bond, the principal amount of such Senior Lien Bond, Subordinate Obligations, or Junior Obligations, as applicable and (ii) with respect to any Outstanding Capital Appreciation Bond, the Accreted Value thereof.

**“Bond Register”** has the meaning given to such term in Section 3.07 hereof.

**“Business Day”** means any day other than: (i) a Saturday or Sunday; or (ii) day upon which banking institutions in San Francisco, California or New York, New York are required or authorized by law to be closed; or (iii) with respect to a Note, a day upon which the office of the Lender where requests for Loans are to be presented under the applicable Credit Agreement is required or authorized by law to be closed; or (iv) for purposes of payments and other actions relating to Senior Lien Bonds, Subordinate Obligations or Junior Lien Obligations secured by a Credit Enhancement or supported by a Liquidity Facility, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the Credit Enhancement or Liquidity Facility, as applicable, are to be presented are authorized or obligated by law or executive order to be closed; or (v) a day on which the New York Stock Exchange is closed.

**“Capital Appreciation Bonds”** means the Senior Lien Bonds of any Series, Subordinate Obligations of any Series, or Junior Obligations of any Series designated as Capital Appreciation Bonds in the Supplemental Indenture providing for the issuance of such Series of Senior Lien Bonds, Series of Subordinate Obligations or Series of Junior Obligations and on which interest is compounded and paid at maturity or on prior redemption.

**“CCSF”** means the City and County of San Francisco and any successor thereto.

**“CDTFA”** means the California Department of Tax and Fee Administration or any State agency or that succeeds to, and is vested with, its duties, powers and responsibilities with respect to the collection of sales taxes on behalf of the Issuer and deposit of the Sales Tax Revenues with the Trustee pursuant to the CDTFA Contract.

**“CDTFA Contract”** means the Agreement for State Administration of District Transactions and Use Taxes accepted by the Trustee on March 19, 2021, and between the Issuer and the CDTFA.

**“Certificate, Statement, Request, Requisition and/or Order of the Issuer”** mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Issuer by an Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.03 hereof, each such instrument shall include the statements provided for in Section 1.03 hereof.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations applicable thereto or issued thereunder, or any successor thereto. Reference to any particular Code section shall, in the event of a successor code, be deemed to be reference to the successor to such Code section.

**“Consultant”** means any accountant, attorney, consultant, financial advisor or investment banker, or firm thereof, retained by the Issuer to perform acts and carry out the duties provided for such Consultant in this Indenture. Such accountant, attorney, consultant, financial advisor or investment banker, or firm thereof, shall be nationally recognized within its profession for work of the character required.

**“Corporate Trust Office”** or **“corporate trust office”** means, with respect to the Trustee, the corporate trust office of the Trustee at One California Street, Suite 1000, San Francisco, California 94111, Attention: Global Corporate Trust Services, or such other or additional offices as may be designated in writing by the Trustee to the Issuer.

**“Costs”** when used with respect to a Project or Projects (or portion of a Project or Projects) shall mean all costs of construction, acquisition or improvement of such Project or Projects or portion thereof, including all costs and estimated costs incidental to, or connected with, the accomplishment of those purposes, as permitted by the Act and the Resolution.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the Issuer and related to the authorization, execution and delivery of the applicable Senior Lien Bonds, Senior Lien Obligations, Subordinate Obligations or Junior Obligations and related documents, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning the applicable bonds or obligations and such documents, the initial fees, expenses and charges of the Trustee with respect to such bonds or obligations, Bond Counsel, counsel to the Lender, purchaser and/or underwriter, and other legal fees and charges, fees and disbursements of Consultants and professionals, including municipal advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of any bond or note, surety, insurance, liquidity and credit enhancements costs, including fees and expenses payable to a lender, purchaser and/or underwriter (including fees and expenses payable to the Lender under the Credit Agreement), and any other cost, charge or fee in connection with the issuance or incurrence of such bonds or obligations.

**“Counterparty”** means an entity which has entered into an Interest Rate Swap Agreement with the Issuer.

**“Counties”** means, collectively, the City and County of San Francisco, California, the County of San Mateo, California, and the County of Santa Clara, California.

**“Credit Agreements”** means, initially, the Initial Credit Agreements, and thereafter, shall mean all credit agreements between the Issuer and Lenders pursuant to which the Lender borrows Loans thereunder that are repaid in whole or in part by Sales Tax Revenues and the Loan Debt

Service and (unless the related Supplemental Indenture provides that they shall constitute Junior Obligations) fees and expenses under which shall constitute Subordinate Obligations.

**“Credit Agreement Obligations”** means “Obligations,” as such term is defined in the applicable Credit Agreements.

**“Credit Enhancement”** means, with respect to a Series of Senior Lien Bonds, a Series of Subordinate Obligations, or a Series of Junior Obligations, any Insurance, letter of credit, line of credit, surety bond or other instrument, if any, which secures or guarantees the payment of principal of and interest on a Series of Senior Lien Bonds, a Series of Subordinate Obligations or a Series of Junior Obligations issued by an insurance company, commercial bank or other financial institution, and delivered or made available to the Trustee, as from time to time supplemented or amended pursuant to its terms.

**“Credit Provider”** means, with respect to a Series of Senior Lien Bonds, a Series of Subordinate Obligations, or a Series of Junior Obligations, the Insurer, commercial bank or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions obligated, under) a Credit Enhancement then in effect with respect to such Series of Senior Lien Bonds, Series of Subordinate Obligations or Series of Junior Obligations.

**“Current Interest Bonds”** means the Senior Lien Bonds of any Series, Subordinate Obligations of any Series, or Junior Obligations of any Series, not designated as Capital Appreciation Bonds and that pay interest to the Holders thereof on a periodic basis prior to maturity.

**“Debt Service,”** when used with respect to any Senior Lien Debt and/or Subordinate Obligations, as applicable to the calculations required hereunder means, as of any date of calculation and with respect to any Fiscal Year, the sum of (1) the interest becoming due and payable on such Indenture Obligations during such Fiscal Year and (2) the principal or Mandatory Sinking Account Payments required with respect to such Indenture Obligations during such Fiscal Year; computed on the assumption that no portion of such Indenture Obligations shall cease to be Outstanding during such Fiscal Year except by reason of the application of such scheduled payments; provided, however, that for purposes of such computation:

(A) Excluded Principal Payments (and the interest related thereto provided such interest is being paid from the same source as the Excluded Principal Payments) shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(B) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such Indenture Obligations, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Indenture Obligations on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond;

(C) (i) if any Tax-Exempt Indenture Obligations bear, or if any Tax-Exempt Indenture Obligations proposed to be issued will bear, interest at a variable interest rate for which an Interest Rate Swap Agreement is not in place, the interest rate on such Tax-Exempt Indenture Obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Swap Index for the five (5) years preceding such date of calculation or such other rate as shall be specified in a related Supplemental Indenture or in an Officer's Certificate in connection with the issuance of any additional Series of Tax-Exempt Indenture Obligations, and (ii) if any Taxable Indenture Obligations bear, or if any Taxable Indenture Obligations proposed to be issued will bear, interest at a variable interest rate for which an Interest Rate Swap Agreement is not in place, the interest rate on such Taxable Indenture Obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to a rate as shall be specified in a related Supplemental Indenture or in an Officer's Certificate in connection with the issuance of any additional Series of Taxable Indenture Obligations;

(D) with respect to any Indenture Obligations bearing interest, or expected to bear interest, at a variable interest rate for which an Interest Rate Swap Agreement is in place providing for a fixed rate of interest to maturity or for a specific term with respect to such Indenture Obligations, the interest rate on such Indenture Obligations shall be assumed to be the synthetic fixed interest rate specified in such Interest Rate Swap Agreement for such term; provided that if, pursuant to a Certificate of the Authority filed with the Trustee, the sum of (i) interest payable on such Indenture Obligations, plus (ii) amounts payable by the Authority under such Interest Rate Swap Agreement, less (iii) amounts receivable by the Authority under such Interest Rate Swap Agreement, is expected to be greater than the interest payable on the Indenture Obligations to which such Interest Rate Swap Agreement relates (i.e., if such Interest Rate Swap Agreement is an "off-market" Interest Rate Swap Agreement), then, in such instance, such excess amounts payable by the Authority under such Interest Rate Swap Agreement shall be included in the calculation of Debt Service;

(E) with respect to any Indenture Obligations bearing interest, or expected to bear interest, at a fixed interest rate for which an Interest Rate Swap Agreement is in place providing for a net variable interest rate with respect to such Indenture Obligations for a specific term, the interest rate on such Indenture Obligations shall be assumed to be equal for such term to the sum of (i) the fixed interest rate or rates to be paid on the Indenture Obligations, minus (ii) the fixed interest rate receivable by the Issuer under such Interest Rate Swap Agreement, plus (iii) the average interest rate of the index on which the Interest Rate Swap Agreement is based, as identified in a Certificate of the Issuer, or, if not based on an identifiable index, then the SIFMA Swap Index, and, if such Obligation is a Taxable Indenture Obligation, then such higher rate as shall be specified in a Certificate of the Issuer in connection with the issuance of such Indenture Obligations;

(F) if any Indenture Obligations feature an option on the part of the owners or an obligation under the terms of such Indenture Obligations to tender all or a portion of such Indenture Obligations to the Issuer, the Trustee or other fiduciary or agent, and requires that such Indenture Obligations or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year on such Indenture Obligations, the options or obligations of the owners of such Indenture Obligations to tender the same for purchase

or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity;

(G) principal and interest payments on Indenture Obligations shall be excluded to the extent such payments are to be paid from Revenues then held on deposit by the Trustee or from other amounts on deposit with the Trustee or other fiduciary in escrow specifically therefor and interest payments shall be excluded to the extent that such interest payments are to be paid from the proceeds of Indenture Obligations held by the Trustee or other fiduciary as capitalized interest specifically to pay such interest;

(H) with respect to Indenture Obligations bearing interest that is subject to a federal subsidy and such subsidy is not included as Revenues but instead is applied directly to offset the interest due on such Indenture Obligations, the interest rate on such Indenture Obligations shall be assumed to be the rate net of such subsidy, all as set forth in the applicable Supplemental Indenture relating to such Indenture Obligations; and

(I) if the Indenture Obligations are Paired Obligations, the interest rate on such Indenture Obligations shall be the resulting linked rate or effective fixed interest rate to be paid by the Issuer with respect to such Paired Obligations.

**“Defeasance Securities”** means: (i) direct, non-callable obligations of the United States Treasury, (ii) direct non-callable and non-prepayable obligations which are unconditionally guaranteed by the United States of America as to full and timely payment of principal and interest, (iii) non-callable, non-prepayable coupons from the above securities which are stripped pursuant to United States Treasury programs, (iv) non-callable and non-prepayable refunded bonds that are obligations of the United States of America; (v) Resolution Funding Corporation (REFCORP) bonds and strips; (vi) non-callable, and non-prepayable fixed rate Israel Notes guaranteed as to principal and interest by the United States of America through the United Agency for International Development (provided that, such notes are “Aaa”-rated and mature at least four business days before funds are needed for refunded bond debt service payments); (vii) United States Treasury Securities — State and Local Government Series (SLGS); (viii) the following non-callable, non-prepayable obligations of federal government-sponsored agencies that are not backed by the full faith and credit of the U.S. Government: Federal Home Loan Bank, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Tennessee Valley Authority, Farm Credit System, Washington Metropolitan Area Transit Authority, United States Import-Export Bank, United States Department of Housing and Urban Development, Farmers Home Administration, General Services Administration and United States Maritime Administration (provided such entities maintain a rating of “Aaa”); and (ix) any pre-refunded municipal security that is non-callable or has been irrevocably called for redemption and is rated “Aaa” at the time of deposit, which carries a fixed interest rate and matures or is to be redeemed on a date certain and is secured by an escrow containing securities listed in (i) through (viii) above.

**“Event of Default”** means a Senior Lien Event of Default or a Subordinate Obligations Event of Default.

**“Excluded Principal Payment”** means each payment of principal of Senior Lien Debt or Subordinate Obligations in whatever form issued, including, without limitation, commercial paper, balloon indebtedness or bond anticipation notes, which the Issuer determines (in a Certificate of the Issuer) that the Issuer intends to pay with moneys (a) that are not Revenues (such as (i) the proceeds of future debt obligations of the Issuer, (ii) grants or loans from the State or federal government, or any agency or instrumentality thereof, or (iii) any other source of funds of the Issuer) or (b) have been or will be transferred to the Issuer in accordance with the last paragraph of Section 7.02, upon which determination of the Issuer the Trustee may conclusively rely. No such determination shall affect the security for such Senior Lien Debt or Subordinate Obligations or the obligation of the Issuer to pay such payments from Revenues or amounts on deposit in any debt service reserve fund established under a Supplemental Indenture with respect to any such Senior Lien Debt or Subordinate Obligations. No payment of principal of Senior Lien Debt or Subordinate Obligations may be determined to be an Excluded Principal Payment unless it is due on or prior to the Tax Expiration Date.

**“First Supplemental Indenture”** means the First Supplemental Indenture of Trust, dated August 1, 2021, between the Issuer and the Trustee, relating to the PCEP Facility.

**“Fiscal Year”** means the period of time beginning on July 1 of each given year and ending on June 30 of the immediately subsequent year, or such other period as the Issuer designates as its fiscal year.

**“Fitch”** means Fitch Ratings, and its successors and assigns, except that if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Issuer (other than Moody’s or S&P or Kroll).

**“Holder”** or **“Owner”** means, whenever used herein with respect to any Indenture Obligation, the person in whose name such Indenture Obligation is registered, or if such Indenture Obligation is identified in the Supplemental Indenture pursuant to which it is issued or incurred as not being in registered form, the term shall have the meaning given to it in such Supplemental Indenture. With respect to the Initial Notes, the initial Holder shall be the Initial Lender.

**“Indebtedness”** means at any date and without duplication, (i) all obligations of the Issuer for borrowed money, and all obligations of the Issuer evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all direct or contingent obligations of the Issuer arising under letters of credit, bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (iii) Capital Lease Obligations, (iv) all obligations of the Issuer to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (including, without limitation, accounts payable to construction contractors and other professionals for services rendered), (v) all indebtedness of others secured by a lien on any asset of the Issuer, whether or not such indebtedness is assumed by the Issuer, (vi) all indebtedness of others guaranteed by, or secured by any of the revenues or assets of, the Issuer, and (vii) all payment obligations of the Issuer under any Swap Contract. For purposes of this definition, “Capital Lease Obligations” of the Issuer means the obligations of the Issuer to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal

property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the Issuer under generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Issuer applied by the Issuer on a basis consistent with the Issuer's most recent audited financial statements, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with such generally accepted accounting principles. For purposes of this definition, "Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

**"Indenture"** means this Indenture of Trust, between the Issuer and the Trustee, as originally executed and as it may from time to time be amended or supplemented by any Supplemental Indenture delivered pursuant to the provisions of Section 12.01 hereof.

**"Indenture Obligations"** means any Senior Lien Debt, Subordinate Obligations or Junior Obligations Outstanding or with respect to which any amounts are owed, and, for the avoidance of doubt, includes Credit Agreement Obligations.

**"Initial Credit Agreements"** means, collectively, the PCEP Facility and the Working Capital Facility.

**"Initial Lender"** means Wells Fargo Bank, National Association, and its successors and permitted assigns, as the holder of the Initial Notes.

**"Initial Loans"** means the advances and other amounts that the Issuer borrows from the Initial Lender pursuant to the Initial Credit Agreements.

**"Initial Notes"** means, collectively, the PCEP Facility Notes and the Working Capital Facility Notes.

**"Insurance"** means any financial guaranty insurance policy or municipal bond insurance policy issued by an Insurer insuring the payment when due of principal of and interest on a Series of Senior Lien Bonds as provided in such financial guaranty insurance policy or municipal bond insurance policy.

**“Insurer”** means any provider of Insurance with respect to a Series of Senior Lien Bonds or Subordinate Obligations.

**“Interest Rate Swap Agreement”** means an interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement or security, however denominated, entered into between the Issuer and a Counterparty, in connection with or incidental to, the issuance or carrying of Senior Lien Bonds, Subordinate Obligations or Junior Lien Obligations, including, without limitation, an interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement or security entered into in advance of the issuance of Senior Lien Bonds, Subordinate Obligations or Junior Lien Obligations and designated by the Issuer in a Certificate or Supplemental Indenture as a Senior Lien Obligation, Subordinate Obligations or Junior Lien Obligation; provided, however, that no such Interest Rate Swap Agreement shall have a notional amount greater than the Outstanding principal amount of the Senior Lien Bonds, Subordinate Obligations or Junior Lien Obligations to which such Interest Rate Swap Agreement relates.

**“Investment Securities”** means the following, so long as permitted by applicable law and by the Issuer’s investment policy: [UNDER REVIEW]

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies and federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America and including interest strips of bonds issued by the Resolution Funding Corporation and held in book-entry form by the Federal Reserve Bank of New York;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations issued by Banks for Cooperatives, Federal Land Banks, Federal Intermediate Credit Banks, Federal Farm Credit Banks, Federal Home Loan Banks, the Federal Home Loan Bank Board, the Federal Home Loan Mortgage Corporation, the Resolution Funding Corporation, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, or in guaranteed portions of Small Business administration notes or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise;

(iv) housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or project bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;



(v) obligations of any state of the United States of America or any political subdivision thereof or any agency or department of the foregoing, including obligations payable solely out of revenues from a revenue-producing property owned, controlled, or operated by the state or political subdivision; provided that such obligations are rated in either of the two highest Rating Categories by any Rating Agency;

(vi) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds or other obligations for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i) or (ii), which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i) or (ii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (vi) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (vi), as appropriate, and (d) which are rated in one of the two highest long-term Rating Categories by any Rating Agency;

(vii) Bankers' Acceptances issued by domestic or domestic branches of foreign banks, which are eligible for purchase by the Federal Reserve System, the short-term paper of which is rated in the highest category by any Rating Agency and which do not exceed 180 days maturity;

(viii) time deposits or certificates of deposit with a maturity not in excess of one year, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates) or by a state licensed branch of any foreign bank, provided that such bank, trust company, national banking association or branch shall be located in California that has received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code; provided that such certificates of deposit shall be purchased directly from such bank, trust company, national banking association or branch and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (v), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee or third-party agent, as custodian, by the bank, trust company, national banking association or branch issuing such certificates of deposit, and the bank, trust company, national banking association or branch issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of

all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(ix) negotiable certificates of deposit or deposit notes issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union or by a state-licensed branch of a foreign bank.

(x) commercial paper of “prime” quality not exceeding 270 days maturity and rated the highest ranking or of the highest letter or number rating as provided by any Rating Agency, provided that the entity that issues the commercial paper will meet all of the criteria in either (1) or (2) as follows: (1) the corporation will be organized and operating within the United States as a general corporation, will have assets in excess of five hundred million dollars (\$500,000,000), and will issue debt, other than commercial paper, if any, that is rated “A” or higher by any Rating Agency; or (2) the corporation will be organized within the United States as a special purpose corporation, trust, or limited liability company, has program wide credit enhancements including, but not limited to, over collateralizations, letters of credit, or surety bond; has commercial paper that is rated “A-1” or higher, or equivalent by any Rating Agency;

(xi) medium-term corporate notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. and rated in a Rating Category of “A” or better by any Rating Agency;

(xii) any repurchase agreement not to exceed one year duration with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee or any of its affiliates) having a minimum permanent capital of seventy-five million dollars (\$75,000,000) or with a government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii), (iii) or (iv) above, which shall have a market value (exclusive of accrued interest and valued at least quarterly) at least equal to one hundred and two percent (102%) of the amount of such investment and which shall be lodged with the Trustee or other fiduciary, as custodian, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to one hundred two percent (102%) of the principal and interest amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking (since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements will be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day);

(xiii) any savings account or money market account with any bank or trust company organized under the laws of any state of the United States of America or any national banking

association (including the Trustee or any of its affiliates) or by a state licensed branch of any foreign bank that has received an overall rating of not less than “satisfactory” in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California’s communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code; provided that such account shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation or (2) continuously and fully collateralized as specified under State Government Code Section 53630, *et. seq.*;

(xiv) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv), (v) and (xii) of this definition of Investment Securities and any money market fund including money market funds from which the Trustee or its affiliates derive a fee for investment advisory or other services to the fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv), (v) and (xii) of this definition of Investment Securities; provided that as used in this clause (xiv) investments will be deemed to satisfy the requirements of clause (xii) if they meet the requirements set forth in clause (xii) ending with the words “clauses (i), (ii), (iii) or (iv) above” and without regard to the remainder of such clause (xii);

(xv) any certificate of deposit placed with a private sector entity that assists in the placement of certificates of deposit with eligible financial institutions located in the United States as permitted by State Government Code Section 53801.8, provided that the full amount of the principal and the interest that may be accrued during the maximum term of each certificate of deposit shall at all times be insured by the Federal Deposit Insurance Corporation and the maximum investment maturity will be no more than five years;

(xvi) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xiii) of this definition of Investment Securities and which companies have either the highest rating by at least two Rating Agencies or have an investment advisor registered with the Securities and Exchange Commission with not less than five (5) years’ experience investing in such securities and obligations and with assets under management in excess of \$500,000,000;

(xvii) shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California which invests exclusively in investments permitted by Section 53601 of the Government Code of the State of California, as it may be amended from time to time, including the California Asset Management Program;

(xviii) the State’s Local Agency Investment Fund;

(xix) the San Mateo County Treasurer’s Investment Pool;

(xx) any other investments permitted by the Issuer’s then-current investment policy and applicable law.

**“Issuer”** means the Peninsula Corridor Joint Powers Board, a public entity of the State, duly organized and existing under the Act, and its successors and assigns.

**“JPA Agreement”** means the Joint Powers Agreement, made and entered into on October 3, 1996, by VTA, CCSF and SamTrans, as originally executed or as it may from time to time be supplemented, modified or amended or any replacement or substitute agreement therefor, as originally executed or as it may from time to time be supplemented, modified or amended.

**“Junior Obligations”** means any obligations of the Issuer secured by and payable from Revenues on a basis which is subordinate to Senior Lien Debt, the Loan Debt Service, the Lender Fees and Expenses and other Subordinate Obligations, including, without limitation, any other fees and expenses and Swap Termination Payments, the terms of which are issued pursuant to this Indenture and a Supplemental Indenture.

**“Junior Obligations Fund”** means the fund by that name to be established and held by the Trustee pursuant to Section 7.06 hereof.

**“Junior Obligation Reserve Fund”** means any such fund established as provided in Section 8.07 hereof.

**“Kroll”** means Kroll Bond Rating Agency, Inc. and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Kroll” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Issuer.

**“Lender”** means the Initial Lender, and thereafter, it shall mean any provider of a line of credit, or other instrument, if any, that owns a Note or Notes issued pursuant to a Supplemental Indenture and the applicable Credit Agreement, from time to time.

**“Lender Fees and Expenses”** means all Credit Agreement Obligations other than the Loan Debt Service.

**“Liquidity Facility”** means, with respect to a Series of Senior Lien Bonds, a Series of Subordinate Obligations, or a Series of Junior Obligations, a line of credit, letter of credit, standby purchase agreement or similar liquidity facility securing or guaranteeing the payment of purchase price of such Series of Senior Lien Bonds, Series of Subordinate Obligations or Series of Junior Obligations and issued by a commercial bank, insurance company, pension fund or other financial institution, and delivered or made available to the Trustee, as from time to time supplemented or amended pursuant to its terms.

**“Liquidity Facility Bonds”** means any Senior Lien Bonds, Subordinate Obligations or Junior Obligations purchased with moneys drawn under (or otherwise obtained pursuant to the terms of) a Liquidity Facility, but excluding any Senior Lien Bonds, Subordinate Obligations or Junior Obligations no longer considered to be Liquidity Facility Bonds in accordance with the terms of the applicable Liquidity Facility.

**“Liquidity Provider”** means, with respect to a Series of Senior Lien Bonds, a Series of Subordinate Obligations, or a Series of Junior Obligations, the commercial bank, insurance company, pension fund or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions obligated, under) a Liquidity Facility then in effect with respect to such Series of Senior Lien Bonds, Series of Subordinate Obligations, or Series of Junior Obligations.

**“Loan Debt Service”** means payment of principal of, and interest on, the Loans.

**“Loan”** or **“Loans”** initially, means the Initial Loans, and, thereafter, shall mean advances and other amounts that the Issuer borrows from a Lender pursuant to a Credit Agreement that are repaid in part or in whole by Sales Tax Revenues as Subordinate Obligations.

**“Mandatory Sinking Account Payment”** means (i) with respect to Senior Lien Bonds of any Series and maturity, the amount required by the Supplemental Indenture establishing the terms and provisions of such Series of Senior Lien Bonds to be deposited by the Issuer in the Senior Lien Principal Account for the payment of principal of Term Bonds of such Series and maturity, and (ii) with respect to Subordinate Obligations of any Series and maturity, the amount required by the Supplemental Indenture establishing the terms and provisions of such Series of Subordinate Obligations to be deposited by the Issuer in the Subordinate Obligations Principal Fund for the payment of principal of Term Bonds of such Series and maturity, if any.

**“Maximum Annual Debt Service”** means, (i) with respect to Senior Lien Debt, including for purposes of Sections 4.02(c) and 4.04(a) hereof, and the maximum amount of Annual Debt Service becoming due and payable on all Senior Lien Bonds Outstanding and all Senior Lien Obligations outstanding during the period from the date of such calculation through the final maturity date of the Senior Lien Bonds and Senior Lien Obligations, calculated utilizing the assumptions set forth under the definition of Debt Service, (ii) with respect to Subordinate Obligations, including for purposes of Sections 6.02(b)(iii) and 6.03 hereof, the maximum amount of Annual Debt Service becoming due and payable on all Senior Lien Debt and Subordinate Obligations outstanding during the period from the date of such calculation through the final maturity date of the Senior Lien Debt and Subordinate Obligations, calculated utilizing the assumptions set forth under the definition of Debt Service, and, calculated utilizing the assumptions set forth under the definition of Debt Service.

**“Maximum Rate”** has the meaning set forth in the applicable Supplemental Indenture with respect to the applicable Indenture Obligation.

**“Measure RR”** means the measure adopted by the voters in the Counties on November 3, 2020 approving 1/8th cent sales and use tax on taxable transactions in the Counties, as may be modified or extended in the future.

**“Member Agency”** means each entity which is a party to the JPA Agreement.

**“Member Agencies”** means VTA, CCSF and SamTrans, each of which is a party to the JPA Agreement, in each case for so long as such entity shall remain a party to the JPA Agreement, and each other entity who shall become a Member Agency pursuant to the JPA Agreement.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Issuer (other than Fitch or S&P).

**“Note”** or **“Notes”** means, collectively, the Initial Notes and any other notes or other instruments that evidence Loans from a Lender or Lenders to the Issuer pursuant to a Credit Agreement.

**“Note Construction Fund”** means a fund by that name maintained and held by the Trustee pursuant to Section 8.01 hereof.

**“Note Interest Fund”** means the fund by that name maintained and held by the Trustee pursuant to Section 7.03 hereof.

**“Note Principal Fund”** means the fund by that name maintained and held by the Trustee pursuant to Section 7.04 hereof.

**“Note Rebate Fund”** means the fund by that name established pursuant to Section 9.06 hereof.

**“Note Rebate Requirement”** means the Note Rebate Requirement defined in the applicable Note Tax Certificate delivered in connection with the applicable Tax-Exempt Note.

**“Note Tax Certificate”** means the applicable Tax Certificate delivered by the Issuer in connection with the issuance of Tax-Exempt Notes, as originally executed and as it may from time to time be amended or supplemented pursuant to its terms, and includes any Additional Note Tax Certificate.

**“Noteholder or Noteowner”** means the Holder or Owner of a Note or Notes. The initial Noteholder is the Initial Lender.

**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel.

**“Order”** – see “Certificate, Statement, Request, Requisition and Order of the Issuer” above.

**“Other Note Proceeds Fund”** means an account by that name maintained and held by the [Trustee][Issuer] pursuant to Section 8.02 hereof.

**“Owner”** – see “Holder” above.

**“Outstanding”** when used as of any particular time with reference to Senior Lien Bonds, means (subject to the provisions of Section 16.10) all Senior Lien Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (1) Senior Lien Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (2) Senior Lien Bonds with respect to which all liability of the Issuer shall have been discharged in accordance with Section 13.02 hereof, including Senior Lien Bonds (or portions of Senior Lien Bonds) referred to in Section 16.11; and (3) Senior Lien Bonds for the transfer or exchange of or in lieu of or in substitution for which other Senior Lien Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture; provided, however, that in the event the principal of or interest due on any Senior Lien Bonds shall be paid by a Credit Provider pursuant to the Credit Enhancement issued in connection with such Senior Lien Bonds, such Senior Lien Bonds shall remain Outstanding for all purposes and shall not be considered defeased or otherwise satisfied or paid by the Issuer and the pledge of Sales Tax Revenues and all covenants, agreements and other obligations of the Issuer to the Holders shall continue to exist and shall run to the benefit of such Credit Provider and such Credit Provider shall be subrogated to the rights of such Holders. With respect to other Indenture Obligations, “Outstanding” means when used as of any particular time with reference to other Indenture Obligations, all Indenture Obligations deemed outstanding or not satisfied within the meaning of the documents authorizing such Indenture Obligations, including, but not limited to, whether such other Indenture Obligations are also supported and/or paid by a Credit Provider pursuant to the Credit Enhancement issued in connection with such other Indenture Obligations.

**“Paired Obligations”** means any Series (or portion thereof) of Senior Lien Bonds or Senior Lien Obligations designated as Paired Obligations in the Supplemental Indenture or other document authorizing the issuance or incurrence thereof, which are simultaneously issued or incurred (i) the principal of which is of equal amount maturing and to be redeemed (or cancelled after acquisition thereof) on the same dates and in the same amounts; and (ii) the interest rates which, taken together, result in an irrevocably fixed interest rate obligation of the Issuer for the term of such Senior Lien Bonds or Senior Lien Obligations.

**“PCEP”** means the Peninsula Corridor Electrification Project as further described in the PCEP Facility.

**“PCEP Facility”** means that certain Credit Agreement, dated as of August 1, 2021, between the Issuer and the Initial Lender, as originally executed and as it may from time to time be amended, restated, supplemented or otherwise modified pursuant to its terms, the proceeds of which will be used to fund the PCEP.

**“PCEP Facility Notes”** means, collectively, the “Tax-Exempt Note” and the “Taxable Note” as defined in the PCEP Facility issued by the Issuer pursuant to the PCEP Facility and the First Supplemental Indenture to evidence amounts borrowed by the Issuer under the PCEP Facility, and which are expected to be repaid in part by PCEP Project Funds.

**“PCEP Project Funds”** has the meaning set forth in the PCEP Facility.

**“Person”** means a corporation, firm, association, partnership, trust, limited liability company or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Project”** means the improvement, construction, maintenance, operation, development or planning of any transportation or other projects, facilities or programs for the Caltrain rail service permitted by the Resolution, including, but not limited to, the PCEP.

**“Rating Agency”** means Fitch, Kroll, Moody’s or S&P, and any other nationally recognized credit rating agency if and for so long as such rating agency, at the request of the Issuer, maintains a rating on such Indenture Obligations.

**“Rating Category”** means: (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier; and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means (i) with respect to any Senior Lien Bond (or portion thereof) the Bond Obligation of such Senior Lien Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Senior Lien Bond and this Indenture, (ii) with respect to any Subordinate Obligation (or portion thereof) the Bond Obligation of such Subordinate Obligation (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Subordinate Obligation and this Indenture, and (iii) with respect to any Junior Obligation (or portion thereof) the Bond Obligation of such Junior Obligation (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Junior Obligation and this Indenture.

**“Refunding Senior Lien Bonds”** means a Series of Senior Lien Bonds or a portion of a Series of Senior Lien Bonds issued pursuant to the provisions set forth in Section 4.04.

**“Refunding Subordinate Obligations”** means a Series of Subordinate Obligations or a portion of a Series of Subordinate Obligations issued pursuant to the provisions set forth in Section 6.03.

**“Request”** – see “Certificate, Statement, Request, Requisition and/or Order of the Issuer” above.

**“Requisition”** – see “Certificate, Statement, Request, Requisition and/or Order of the Issuer” above.

**“Resolution”** means Resolution Number 2020-40 adopted by the Issuer on \_\_\_\_\_, 2020, which called and provided for an election for the purpose of submitting to the voters a measure known as Measure RR.



**“Revenues”** means during any fiscal period the sum of the following amounts for such fiscal period:

- (1) all Sales Tax Revenues; and
- (2) all investment earnings on amounts held by the Trustee in the funds and accounts hereunder other than amounts deposited to the Senior Lien Bond Rebate Fund and the Note Rebate Fund; and
- (3) all Swap Revenues; and
- (4) any additional revenues added to the definition of “Revenues” pursuant to a Supplemental Indenture.

**“S&P”** means S&P Global Ratings, and its successors and assigns, except that if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Issuer (other than Fitch and Moody’s).

**“Sales Tax”** means the retail transactions and use tax levied pursuant to the Resolution and applicable in the Counties in accordance with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code at the rate of one-eighth of one percent (1/8<sup>th</sup>%) or such greater amount as may be authorized pursuant to a modification of the Resolution.

**“Sales Tax Revenue Fund”** means the fund of that name maintained and held by the Trustee pursuant to Section 7.01(c) hereof.

**“Sales Tax Revenues”** means 100% of the amounts collected by the CDTFA on behalf of the Issuer pursuant to the Resolution relating to the Sales Tax and distributed to the Trustee pursuant to the CDTFA Contract, less the administrative fee deducted by the CDTFA.

**“SamTrans”** means the San Mateo County Transit District and any successor thereto.

**“Second Supplemental Indenture”** means the Second Supplemental Indenture of Trust, dated August 1, 2021, between the Issuer and the Trustee, relating to the Working Capital Facility.

**“Securities Depository”** means The Depository Trust Company, New York, New York, or any successor thereto, or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depository, or no such depositories, as the Issuer may designate in a Request of the Issuer delivered to the Trustee.

**“Senior Lien Bond Rebate Fund”** shall mean any and all rebate funds established as described in Section 9.08 hereof.

**“Senior Lien Bonds”** means Senior Lien Bonds issued pursuant to Section 4.02, Section 4.03 or Section 4.04 hereof.

**“Senior Lien Bonds Costs of Issuance Fund”** means any and all funds established as described in Section 8.04 hereof.

**“Senior Lien Bonds Project Fund”** means any and all funds established as described in Section 8.03 hereof.

**“Senior Lien Bonds Tax Certificate”** means the Tax Certificate delivered by the Issuer concurrently with this Indenture, as originally executed and as it may from time to time be amended or supplemented pursuant to its terms, and any additional or supplemental tax certificates delivered in connection with any additional borrowings under the Indenture, or any other tax certificate entered into by the Issuer in the future with respect to any other Tax-Exempt Senior Lien Bonds.

**“Senior Lien Debt”** means all Senior Lien Bonds and Senior Lien Obligations.

**“Senior Lien Debt Service Fund”** means the fund of that name established pursuant to Section 7.05 hereof.

**“Senior Lien Deficiency”** means, at any time, the amount by which the Revenues on deposit in the Senior Lien Interest Account or the Senior Lien Principal Account, as the case may be, fall short of the corresponding amount of accumulated Aggregate Accrued Senior Lien Interest or accumulated Aggregate Accrued Senior Lien Principal that should be on deposit therein for the current month and any prior months.

**“Senior Lien Event of Default”** means any of the events specified in Section 10.01 hereof.

**“Senior Lien Excess Deposit”** means, at any time, the amount by which the Revenues on deposit in the Senior Lien Interest Account or the Senior Lien Principal Account, as the case may be, exceed the corresponding amount of accumulated Aggregate Accrued Senior Lien Interest or accumulated Aggregate Accrued Senior Lien Principal that should be on deposit therein for the current month and any prior months.

**“Senior Lien Interest Account”** means the account of that name established within the Senior Lien Debt Service Fund pursuant to Section 7.05 hereof.

**“Senior Lien Obligations”** means all indebtedness, obligations for borrowed money or other obligations of the Issuer other than Senior Lien Bonds that has a lien upon the Revenues that is on a parity with that of the Senior Lien Bonds and that is senior to that of the Loan Debt Service, any other Subordinate Obligations, and any Junior Obligations, including any Interest Rate Swap Agreement (excluding fees and expenses thereon and Swap Termination Payments, which shall be secured as Junior Obligations) entered into in connection with a Series of Senior Lien Bonds, in each case incurred in accordance with Section 4.05, and in each case having a lien and charge upon the Revenues and therefore being payable on a parity with the Senior Lien Bonds.

**“Senior Lien Principal Account”** means the account of that name established within the Senior Lien Debt Service Fund pursuant to Section 7.05 hereof.

**“Senior Lien Reserve Fund”** means any such fund established as provided in Section 8.05 hereof.

**“Series”** means (i) whenever used herein with respect to Senior Lien Bonds, all of the Senior Lien Bonds designated as being of the same series and issued at the same time or sharing some other common term or characteristic, (ii) whenever used herein with respect to Subordinate Obligations, all of the Subordinate Obligations, designated as being of the same series and issued at the same time or sharing some other common term or characteristic, if any, and (iii) whenever used herein with respect to Junior Obligations, all of the Junior Obligations, designated as being of the same series and issued at the same time or sharing some other common term or characteristic, if any.

**“SIFMA Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry and Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Trustee and effective from such date. If on any date, this rate is not reported or otherwise is unavailable, the SIFMA Swap Index shall mean the one-month U.S. Treasury yield reported as of such date.

**“State”** means the State of California.

**“Statement”** – see “Certificate, Statement, Request, Requisition and Order of the Issuer” above.

**“Subordinate Obligations”** means all indebtedness or other obligations of the Issuer for borrowed money, any Interest Rate Swap Agreement and any other obligation of the Issuer having a subordinate lien to the Senior Lien Bonds and Senior Lien Obligations, an equal lien upon the Sales Tax Revenues and therefore payable on a parity with the Loan Debt Service (whether or not any principal amount of the Loans is outstanding) and the Lender Fees and Expenses, and a senior lien to the Junior Obligations. The Loan Debt Service and Lender Fees and Expenses shall be treated as Subordinate Obligations hereunder.

**“Subordinate Obligations Deficiency”** means, at any time, the amount by which the Revenues on deposit in the Note Interest Fund, the Note Principal Fund, any Subordinate Obligations Interest Fund or any Subordinate Obligations Principal Fund, as the case may be, fall short of the corresponding amount of accumulated Aggregate Accrued Subordinate Interest or accumulated Aggregate Accrued Subordinate Principal that should be on deposit therein for the current month and any prior months.

**“Subordinate Obligations Event of Default”** means any of the events specified in Section 10.02 hereof.

**“Subordinate Obligations Excess Deposit”** means, at any time, the amount by which the Revenues on deposit in the Note Interest Fund, the Note Principal Fund, any Subordinate Obligations Interest Fund or any Subordinate Obligations Principal Fund, as the case may be,

exceed the corresponding amount of accumulated Aggregate Accrued Subordinate Interest or accumulated Aggregate Accrued Subordinate Principal that should be on deposit therein for the current month and any prior months.

**“Subordinate Obligations Interest Fund”** means any fund or account created for the purpose of paying interest on Subordinate Obligations other than that evidenced by a Note. There may be more than one Subordinate Obligations Interest Fund created.

**“Subordinate Obligations Principal Fund”** means any fund or account created for the purpose of paying principal on Subordinate Obligations other than that evidenced by a Note. There may be more than one Subordinate Obligations Principal Fund created.

**“Subordinate Obligation Reserve Fund”** means any such fund established as provided in Section 8.06 hereof.

**“Supplemental Indenture”** means the First Supplemental Indenture, the Second Supplemental Indenture, and any other supplement to this Indenture hereafter duly authorized, executed and delivered by the Issuer and the Trustee, supplementing, modifying or amending this Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

**“Swap Revenues”** means all regularly-scheduled amounts (but not Swap Termination Payments) owed or paid to the Issuer by any Counterparty under any Interest Rate Swap Agreement after offset for the regularly-scheduled amounts (but not Swap Termination Payments) owed or paid by the Issuer to such Counterparty under such Interest Rate Swap Agreement.

**“Swap Termination Payments”** means the aggregate amount payable to the Counterparty by the Issuer upon termination prior to stated maturity of all or a portion of the Interest Rate Swap Agreement, net of all amounts payable to the Issuer by such Counterparty upon early unwind of all or a portion of such Interest Rate Swap Agreement. For the avoidance of doubt, all calculations of such amounts payable under the Interest Rate Swap Agreements shall be made in accordance with the terms of the applicable Interest Rate Swap Agreement.

**“Tax-Exempt Indenture Obligations”** means any Indenture Obligations the interest on which is excluded from the gross income of the holder of such Indenture Obligations for federal income tax purposes.

**“Tax-Exempt Notes”** means any Notes issued pursuant to this Indenture the interest on which is excluded from the gross income of the holder of such Notes for federal income tax purposes.

**“Tax-Exempt Senior Lien Bonds”** means any Senior Lien Bonds issued pursuant to this Indenture the interest on which is excluded from the gross income of the holder of such Senior Lien Debt for federal income tax purposes.

**“Tax Expiration Date”** means June 30, 2051, or any later date to which the Sales Tax is extended in accordance with applicable law.

**“Taxable Indenture Obligations”** means any Indenture Obligations the interest on which is not excluded from the gross income of the holder of such Indenture Obligations for federal income tax purposes.

**“Taxable Notes”** means any Notes issued pursuant to this Indenture the interest on which is not excluded from the gross income of the holder of such Notes for federal income tax purposes.

**“Term Bonds”** means any Indenture Obligations payable at or before their specified maturity date or dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Indenture Obligations on or before their specified maturity date or dates as set forth in the applicable Supplemental Indenture.

**“Trustee”** means U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, or its successor, as Trustee, as provided in Section 11.01 hereof.

**“Variable Rate Indebtedness”** means any indebtedness, including Senior Lien Debt, Subordinate Obligations and Junior Obligations, the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a numerical rate or rates for the entire term of such indebtedness. In addition, a program pursuant to which commercial paper notes may be issued shall be considered Variable Rate Indebtedness.

**“Working Capital Facility”** means that certain Credit Agreement, dated as of August 1, 2021, between the Issuer and the Initial Lender, as originally executed and as it may from time to time be amended, restated, supplemented or otherwise modified pursuant to its terms, the proceeds of which will be used to fund working capital of the Issuer.

**“Working Capital Facility Notes”** means, collectively, the “Tax-Exempt Note” and the “Taxable Note” as defined in the Working Capital Facility issued by the Issuer pursuant to the Working Capital Facility and the Second Supplemental Indenture to evidence amounts borrowed by the Issuer under the Working Capital Facility.

SECTION 1.02 Equality of Security. In consideration of the acceptance of the Senior Lien Bonds, the Senior Lien Obligations, the Notes, the Subordinate Obligations and the Junior Obligations by the Owners thereof from time to time, this Indenture shall be deemed to be and shall constitute a contract among the Issuer, the Trustee and the Owners from time to time of the Senior Lien Bonds, the Senior Lien Obligations, the Subordinate Obligations (including the Notes) and the Junior Obligations, and the covenants and agreements herein set forth to be performed by or on behalf of the Issuer and the Trustee shall be for the equal and proportionate benefit, security and protection of (a) all Owners of Senior Lien Bonds and Senior Lien Obligations, without preference, priority or distinction as to security or otherwise of any of the Senior Lien Bonds or Senior Lien Obligations over any of the others, except as expressly provided herein or therein, (b) the Owner of the applicable Note with respect to Loan Debt Service and Lender Fees and Expenses and the Owners of any other Subordinate Obligations without preference, priority or distinction as to security or otherwise of any of the Subordinate Obligations over any of the others, except as expressly provided herein or therein, and (c) the Owners of Junior

Obligations as provided in the applicable Supplemental Indenture(s) or other instruments pursuant to which such Junior Obligations are or were issued or incurred. Nothing herein shall prevent additional security being provided for the benefit of a particular Series of Senior Lien Bonds or particular Senior Lien Obligations, Subordinate Obligations or Junior Obligations under any supplement to this Indenture.

SECTION 1.03 Content of Certificates and Opinions. Every Certificate of the Issuer or opinion provided for in this Indenture with respect to compliance with any provision hereof shall include: (1) a statement that the person making or giving such Certificate of the Issuer or opinion has read such provision and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the Certificate of the Issuer or opinion is based; (3) a statement that, in the opinion of such person, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the Certificate of the Issuer or opinion to which his signature is affixed; and (4) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such Certificate of the Issuer or opinion made or given by an Authorized Representative of the Issuer may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, an accountant, a financial advisor or an independent Consultant, unless such Authorized Representative of the Issuer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant, a financial advisor or an independent Consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Issuer) upon a certificate or opinion of or representation by an officer of the Issuer, unless such counsel, accountant, financial advisor or independent Consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same Authorized Representative of the Issuer, or the same counsel or accountant or financial advisor or independent Consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel, accountants, financial advisors or independent Consultants may certify to different matters, respectively.

## ARTICLE II NOTES

SECTION 2.01 Terms of Notes. A Note or Notes may be issued in registered form from time hereunder and the form of such Notes are expected to be set forth in the applicable Credit Agreement, and if not set forth in the applicable Credit Agreement, the form of such Notes shall be set forth in the applicable Supplemental Indenture. The maximum principal amount of Notes which may be issued hereunder is not limited; subject, however, to any limitations contained in the Act and the Resolution and to the right of the Issuer, which is hereby reserved, to limit the aggregate principal amount of Notes which may be issued or Outstanding hereunder. The Notes may be issued from time to time and the principal amounts, repayment terms and payment sources

that are in addition to Sales Tax Revenues, if any, and the interest rate provisions shall be established and authorized by the Issuer subject to the covenants, provisions and conditions herein contained and contained in the applicable Credit Agreement and as further set forth in the Supplemental Indenture authorizing such Notes; provided that no Notes shall have a maturity date later than the Tax Expiration Date.

SECTION 2.02        Registered Owners. Unless otherwise provided in the Supplemental Indenture delivered in connection with such Notes, Notes shall be initially registered in the name of the applicable Lender and shall be evidenced by Tax-Exempt Notes and Taxable Notes, as applicable, as further set forth in the applicable Credit Agreement and Supplemental Indenture. Registered ownership of any Notes, or any portion thereof, may only be transferred as set forth in Section 2.05 hereto.

SECTION 2.03        Execution of Notes. Each Note shall be executed in the name and on behalf of the Issuer by the facsimile or manual signature of the chief executive officer of the Issuer and shall be countersigned by the facsimile or manual signature of the chief financial officer, who may be the same as the person who signed the applicable Note. In case any of the officers who shall have signed or countersigned the applicable Note shall cease to be such officer or officers of the Issuer before the applicable Note so signed or countersigned shall have been authenticated or delivered by the Trustee or issued by the Issuer, the applicable Note may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Issuer as though those who signed and countersigned the same had continued to be such officers of the Issuer.

SECTION 2.04        Authentication of Notes.

(a) Each Note shall be authenticated by manual signature of the Trustee who shall, pursuant to the provisions hereof, authenticate and deliver such Note.

(b) Only if the applicable Note bears thereon a certificate of authentication substantially in the form set forth in the applicable Credit Agreement or Supplemental Indenture, as applicable, manually executed by the Trustee, shall it be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of authentication when manually executed by the Trustee shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of and security provided by this Indenture.

SECTION 2.05        Transfer of Notes. Each Note may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of 2.06 hereof, by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of the applicable Note for cancellation, accompanied by a written instrument of transfer, duly executed in a form approved by the Trustee. Whenever the Note shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver a new Note, of the same maturity and interest rate and for a like principal amount. The Trustee shall require the Owner of the Note requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Transfer of the Note shall also be subject to the

transferability restrictions, if any, set forth in the Credit Agreement or applicable Supplemental Indenture.

SECTION 2.06      Registration of Notes. The Trustee will keep or cause to be kept at its Corporate Trust Office sufficient books for the registration and transfer of the applicable Note, which shall at all times be open to inspection during normal business hours by the Issuer and the Lender upon reasonable prior notice, and upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, the Note, as hereinbefore provided.

SECTION 2.07      Note Mutilated, Lost, Destroyed or Stolen. If any Note shall become mutilated, the Issuer, at the expense of the Holder of the Note, shall execute and deliver a new Note of like tenor in exchange and substitution for the Note so mutilated, but only upon surrender to the Trustee of the Note so mutilated. If the Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Issuer and the Trustee and, if such evidence be satisfactory to the Issuer and the Trustee and indemnity satisfactory to the Issuer and the Trustee shall be given, the Issuer, at the expense of the Owner, shall execute and deliver a new Note of like tenor in lieu of and in substitution for the Note so lost, destroyed or stolen. Both the original Note and the replacement Note shall be treated as one and the same.

### **ARTICLE III SENIOR LIEN BONDS**

SECTION 3.01      Authorization of Senior Lien Bonds. Senior Lien Bonds may be issued hereunder as fully registered bonds without coupons, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the Issuer. The maximum principal amount of Senior Lien Bonds which may be issued hereunder is not limited; subject, however, to any limitations contained in the Act and the Resolution and to the right of the Issuer, which is hereby reserved, to limit the aggregate principal amount of Senior Lien Bonds which may be issued or Outstanding hereunder. The Senior Lien Bonds may be issued in such Series as from time to time shall be established and authorized by the Issuer, subject to the covenants, provisions and conditions herein contained.

SECTION 3.02      Terms of the Senior Lien Bonds.

(a) The Senior Lien Bonds of each Series shall be issued in the principal amount, shall bear interest, if any, at such rate or rates not exceeding the maximum rate then permitted by law, including variable or adjustable rates, shall mature and shall be subject to redemption prior to their respective maturities, and become payable on such date or dates and in such year or years, all as shall be set forth in the Supplemental Indenture creating such Series; provided that no Senior Lien Bond shall have a maturity date later than the Tax Expiration Date.

(b) Principal of and interest on such Senior Lien Bonds shall be payable in such manner as may be specified in the Supplemental Indenture creating such Series. The Senior Lien Bonds of each Series shall be issued in such denominations as may be authorized by the Supplemental Indenture creating such Series; [provided however, that with respect to principal



payments, such principal payments shall all be made on the same date of the year that such principal payment is made]

(c) Unless otherwise provided in the Supplemental Indenture delivered in connection with such Series of Senior Lien Bonds, the Senior Lien Bonds of each Series shall be initially registered in the name of “Cede & Co.,” as nominee of the Securities Depository and shall be evidenced by one bond certificate for each maturity of each Series of Senior Lien Bonds. Registered ownership of any Series of Senior Lien Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 3.05, or in the event the use of the Securities Depository is discontinued, in accordance with the provisions set forth in Section 3.10.

(d) The Senior Lien Bonds are designated generally as “Peninsula Corridor Joint Powers Board Senior Sales Tax Revenue Bonds (Limited Tax Bonds),” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Senior Lien Bonds. The specific designation of a Series shall be specified in the Supplemental Indenture creating such Series.

SECTION 3.03 Form of Senior Lien Bonds. The Senior Lien Bonds of any Series shall be in such form or forms as may be specified in the Supplemental Indenture creating such Series.

SECTION 3.04 Execution and Authentication of Senior Lien Bonds. The Senior Lien Bonds shall be executed in the name and on behalf of the Issuer as provided in the Supplemental Indenture pursuant to which such Senior Lien Bonds are issued. Unless otherwise provided in any Supplemental Indenture, the Senior Lien Bonds shall then be delivered to the Trustee for authentication by the Trustee. In case any of the officers who shall have signed or attested any of the Senior Lien Bonds shall cease to be such officer or officers of the Issuer before the Senior Lien Bonds so signed or attested shall have been authenticated or delivered by the Trustee or issued by the Issuer, such Senior Lien Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Issuer as though those who signed and attested the same had continued to be such officers of the Issuer, and also any Senior Lien Bond may be signed and attested on behalf of the Issuer by such persons as at the actual date of execution of such Senior Lien Bond shall be the proper officers of the Issuer although at the nominal date of such Senior Lien Bond any such person shall not have been such officer of the Issuer.

Except as may otherwise be provided in a Supplemental Indenture establishing the terms and provisions of a Series of Senior Lien Bonds, only such of the Senior Lien Bonds as shall bear thereon a certificate of authentication substantially in the form recited in the Supplemental Indenture creating such Series of Senior Lien Bonds, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of authentication when manually executed by the Trustee shall be conclusive evidence that the Senior Lien Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 3.05      Transfer of Senior Lien Bonds. Any Senior Lien Bond may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of Section 3.07 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Senior Lien Bond for cancellation, accompanied by a written instrument of transfer, duly executed in a form acceptable to the Trustee.

Whenever any Senior Lien Bond or Senior Lien Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver a new Senior Lien Bond or Senior Lien Bonds, of the same Series, tenor, maturity and interest rate and a like aggregate principal amount; provided that, unless otherwise provided in any Supplemental Indenture, no registration of transfer may occur during the period established by the Trustee for selection of Senior Lien Bonds for redemption, or of any Senior Lien Bond or portion of a Senior Lien Bond so selected for redemption. The Trustee shall require the Holder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

SECTION 3.06      Exchange of Senior Lien Bonds. Senior Lien Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of Senior Lien Bonds of other authorized denominations of the same Series, tenor, maturity and interest rate; provided that, unless otherwise provided in any Supplemental Indenture, no exchange may occur during the period established by the Trustee for selection of Senior Lien Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Holder requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange.

SECTION 3.07      Bond Register for Senior Lien Bonds. Unless otherwise provided in a Supplemental Indenture delivered in connection with a Series of Senior Lien Bonds, the Trustee will keep or cause to be kept, at its Corporate Trust Office sufficient books for the registration and transfer of each Series of Senior Lien Bonds (the “Bond Register”), which shall at all times be open to inspection during normal business hours by the Issuer upon reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Bonds as hereinbefore provided.

SECTION 3.08      Temporary Senior Lien Bonds. The Senior Lien Bonds may be issued in temporary form exchangeable for definitive Senior Lien Bonds when ready for delivery. Any temporary Senior Lien Bond may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the Issuer, shall be in registered form and may contain such reference to any of the provisions of this Indenture as may be appropriate. A temporary Senior Lien Bond may be in the form of a single Senior Lien Bond payable in installments, each on the date, in the amount and at the rate of interest established for the Senior Lien Bonds maturing on such date. Every temporary Senior Lien Bond shall be executed by the Issuer and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Senior Lien Bonds of the same Series. If the Issuer issues temporary Senior Lien Bonds the Issuer will execute and deliver definitive Senior Lien Bonds as promptly thereafter as practicable, and thereupon the temporary Senior Lien Bonds may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee and the Trustee shall authenticate and deliver

in exchange for such temporary Senior Lien Bonds an equal aggregate principal amount of definitive Senior Lien Bonds of authorized denominations of the same Series, tenor and maturity or maturities. Until so exchanged, the temporary Senior Lien Bonds shall be entitled to the same benefits under this Indenture as definitive Senior Lien Bonds authenticated and delivered hereunder.

SECTION 3.09 Senior Lien Bonds Mutilated; Lost; Destroyed or Stolen. If any Senior Lien Bond shall become mutilated, the Issuer, at the expense of the Holder of said Senior Lien Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Senior Lien Bond of like Series, tenor, maturity and interest rate in exchange and substitution for the Senior Lien Bond so mutilated, but only upon surrender to the Trustee of the Senior Lien Bond so mutilated. Every mutilated Senior Lien Bond so surrendered to the Trustee shall be canceled by the Trustee and delivered to, or upon the Order of, the Issuer. If any Senior Lien Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Issuer and to the Trustee and, if such evidence be satisfactory to both and indemnity satisfactory to both shall be given, the Issuer, at the expense of the Holder, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Senior Lien Bond of like Series, tenor, maturity and interest rate in lieu of and in substitution for the Senior Lien Bond so lost, destroyed or stolen (or if any such Senior Lien Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Senior Lien Bond, the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity). The Issuer may require payment of a sum not exceeding the actual cost of preparing each new Senior Lien Bond issued under this Section and of the expenses which may be incurred by the Issuer and the Trustee in the premises. Any Senior Lien Bond issued under the provisions of this Section in lieu of any Senior Lien Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Issuer whether or not the Senior Lien Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Senior Lien Bonds secured by this Indenture. Neither the Issuer nor the Trustee shall be required to treat both the original Senior Lien Bond and any replacement Senior Lien Bond as being Outstanding for the purpose of determining the principal amount of Senior Lien Bonds which may be issued hereunder or for the purpose of determining any percentage of Senior Lien Bonds Outstanding hereunder, but both the original and replacement Senior Lien Bond shall be treated as one and the same.

SECTION 3.10 Use of Securities Depository. Unless otherwise provided in a Supplemental Indenture delivered in connection with a Series of Senior Lien Bonds, notwithstanding any provision of this Indenture to the contrary:

(a) The Senior Lien Bonds shall be delivered and registered as provided in Section 3.07. Registered ownership of any Series of Senior Lien Bonds, or any portion thereof, may not thereafter be transferred except:

(1) To any successor of the Securities Depository or its nominee, or to any substitute depository designated pursuant to Section 3.10(a)(2) below (each, a “substitute depository”); provided that any successor of the Securities Depository or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(2) To any substitute depository designated by the Issuer upon (a) the resignation of the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository or (b) a determination by the Issuer that the Securities Depository or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(3) To any Person as provided below, upon (a) the resignation of the Securities Depository or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository can be obtained or (b) a determination by the Issuer that it is in the best interests of the Issuer to remove the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to Section 3.10(a)(1) or Section 3.10(a)(2) hereof, upon receipt of the Outstanding Senior Lien Bonds by the Trustee, together with a Statement of the Issuer to the Trustee, a single new Senior Lien Bond for each maturity of each Series of Senior Lien Bonds then Outstanding shall be executed and delivered in the aggregate principal amount of the Senior Lien Bonds of such Series then Outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Statement of the Issuer. In the case of any transfer pursuant to Section 3.10(a)(3) hereof, upon receipt of the Outstanding Senior Lien Bonds by the Trustee together with the Statement of the Issuer to the Trustee, new Senior Lien Bonds of each Series then Outstanding shall be authorized and prepared by the Issuer and authenticated and delivered by the Trustee in such authorized denominations and registered in the names of such Persons as are requested in such a Statement of the Issuer, numbered in such manner as the Trustee shall determine, subject to the limitations of Section 3.02.

(c) In the case of partial redemption or an advance refunding of any Series of the Senior Lien Bonds evidencing all or a portion of such amount Outstanding, the Securities Depository shall make an appropriate notation on such Senior Lien Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(d) The Issuer and the Trustee shall be entitled to treat the Person in whose name any Senior Lien Bond is registered as the Bondholder thereof for all purposes of this Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Issuer, and the Issuer and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying or otherwise dealing with any Beneficial Owners of the Senior Lien Bonds. Neither the Issuer nor the Trustee will have any responsibility or obligations, legal or otherwise, to the Beneficial Owners or to any other party including the Securities Depository or its successor (or substitute depository or its successor), except for the Holder of any Senior Lien Bond.

(e) So long as the Outstanding Senior Lien Bonds are registered in the name of Cede & Co, or its registered assign, the Issuer and the Trustee shall cooperate with Cede & Co. as sole registered Bondholder, and its registered assigns in effecting payment of the principal of, redemption premium, if any, purchase price and interest on the Senior Lien Bonds by arranging

for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

#### **ARTICLE IV ISSUANCE OF SENIOR LIEN DEBT**

**SECTION 4.01**      Issuance of Senior Lien Bonds.      Whenever the Issuer shall determine to issue a Series of Senior Lien Bonds hereunder, the Issuer (i) shall authorize the execution of a Supplemental Indenture specifying the principal amount, and prescribing the forms of Senior Lien Bonds of such Series and providing the terms, conditions, distinctive designation, denominations, date, maturity date or dates, interest rate or rates (or the manner of determining the same), redemption provisions, tender provisions, if any, and place or places of payment of principal or Redemption Price, if any, of and interest on such Senior Lien Bonds, and any other provisions respecting the Senior Lien Bonds of such Series not inconsistent with the terms of this Indenture, (ii) shall execute such Supplemental Indenture and (iii) shall deliver such Supplemental Indenture to the Trustee for execution.

**SECTION 4.02**      Issuance of Additional Senior Lien Bonds.      Subsequent to the issuance of the initial series of Senior Lien Bonds, the Issuer may by Supplemental Indenture establish one or more Series of Senior Lien Bonds, payable from Revenues and secured by the pledge made under this Indenture, and the Issuer may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Senior Lien Bonds of any Series so established, in such principal amount as shall be determined by the Issuer, but only, with respect to each additional Series of Senior Lien Bonds issued subsequent to the initial series of Senior Lien Bonds, and such subsequent issuance of Senior Lien Bonds shall occur upon compliance by the Issuer with the provisions of this Section 4.02, Section 4.03 and any additional requirements set forth in said Supplemental Indenture and subject to the specific conditions set forth below, each of which is hereby made a condition precedent to the issuance of any such additional Series of Senior Lien Bonds after the initial series of Senior Lien Bonds. For the avoidance of doubt, the initial series of Senior Lien Bonds may be issued without compliance with the provisions set forth below.

(a)      No Event of Default shall have occurred and then be continuing, as evidenced by the delivery of a Certificate of the Issuer to that effect, which Certificate of the Issuer shall be filed with the Trustee.

(b)      The aggregate principal amount of the additional Senior Lien Bonds being issued hereunder shall not cause the Issuer to exceed any limitation imposed by the Resolution or any other law or by any Supplemental Indenture and the issuance of such additional Series of Senior Lien Bonds and the expected use of proceeds thereof is in compliance with the provisions of the Act and the Resolution, as evidenced by the delivery of a Certificate of the Issuer to that effect, which Certificate of the Issuer shall be filed with the Trustee.

(c)      The Issuer shall file with the Trustee a certificate prepared by or on behalf of the Issuer showing that the amount of Sales Tax Revenues collected during any 12 consecutive calendar months specified by the Issuer within the most recent 18 calendar months immediately preceding the date on which such additional Series of Senior Lien Bonds will become Outstanding

shall have been at least equal to 2.0 times Maximum Annual Debt Service on all Senior Lien Debt then Outstanding and the additional Series of Senior Lien Bonds then proposed to be issued, which certificate shall also set forth the computations upon which such certificate is based; provided that if the Resolution is amended to increase the rate of the Sales Tax under the applicable provisions of law and such increased rate was not in effect during all or any portion of the 12-consecutive-calendar month period, then the Issuer may add to the amount of Sales Tax Revenues for such period an amount equal to the amount of Sales Tax Revenues that would have been generated if the increased rate were in effect for the full period, as calculated by the Issuer using such reasonable assumptions as it determines.

Nothing contained in this Indenture shall prevent or be construed to prevent the Supplemental Indenture providing for the issuance of an additional Series of Senior Lien Bonds from pledging or otherwise providing, in addition to the security given or intended to be given by this Indenture, additional security for the benefit of such additional Series of Senior Lien Bonds or any portion thereof.

**SECTION 4.03**      Proceedings for Issuance of Additional Senior Lien Bonds.  
Subsequent to the issuance of the initial series of Senior Lien Bonds, before any additional Series of Senior Lien Bonds shall be issued and delivered, the Issuer shall file each of the documents identified below with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Senior Lien Bonds have been satisfied).

- (a)      A Supplemental Indenture authorizing such Series executed by the Issuer.
- (b)      The Certificates of the Issuer required by Sections 4.02(a) and (b).
- (c)      The Certificate required by Section 4.02(c).
- (d)      An Opinion of Bond Counsel to the effect that the Supplemental Indenture is being entered into in accordance with this Indenture and that such Series of Senior Lien Bonds, when duly executed by the Issuer and authenticated and delivered by the Trustee, will be valid and binding obligations of the Issuer.

**SECTION 4.04**      Issuance of Refunding Senior Lien Bonds.

(a)      Refunding Senior Lien Bonds may be authorized and issued by the Issuer without compliance with the provisions of Section 4.02(a), Section 4.02(c) and Section 4.03(c) to refund any Senior Lien Debt provided that the Trustee shall have been provided with a certificate of the Issuer to the effect that Maximum Annual Debt Service on all Senior Lien Debt Outstanding following the issuance of such Refunding Senior Lien Bonds is less than or equal to Maximum Annual Debt Service on all Senior Lien Debt Outstanding prior to the issuance of such Refunding Senior Lien Bonds. Such Refunding Senior Lien Bonds may be issued in an aggregate principal amount sufficient (together with any additional funds available or to become available) to provide funds for the payment of all or a portion of the following:

(1) the principal or Redemption Price of the Outstanding Senior Lien Bonds to be refunded;

(2) all expenses incident to the calling, retiring or paying of such Outstanding Senior Lien Debt and the Costs of Issuance of such Refunding Senior Lien Bonds;

(3) any Swap Termination Payment under any Interest Rate Swap Agreement that was entered into in connection with the Senior Lien Bonds or Senior Lien Obligations to be refunded;

(4) interest on all Outstanding Senior Lien Debt to be refunded to the date such Senior Lien Debt will be called for redemption or paid at maturity;

(5) interest on the Refunding Senior Lien Bonds from the date thereof to the date of payment or redemption of the Senior Lien Bonds or Senior Lien Obligations to be refunded; and

(6) funding a reserve fund for the Refunding Senior Lien Bonds, if applicable.

(b) Before such Series of Refunding Senior Lien Bonds shall be issued and delivered pursuant to this Section 4.04, the Issuer shall file each of the documents identified below with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Refunding Senior Lien Bonds have been satisfied):

(1) A Supplemental Indenture authorizing such Series of Refunding Senior Lien Bonds executed by the Issuer.

(2) The Certificate of the Issuer required by Section 4.02(b).

(3) If any of the Senior Lien Debt to be refunded is to be redeemed prior to its stated maturity dates, irrevocable instructions to the Trustee to give the applicable notice of redemption or a waiver of the notice of redemption signed by the Holders of all or a portion of the Senior Lien Debt to be redeemed, or proof that such notice has been given by the Issuer; provided, however, that in lieu of such instructions or waiver or proof of notice of redemption, the Issuer may cause to be deposited with the Trustee all of the Senior Lien Debt proposed to be redeemed (whether canceled or uncanceled) with irrevocable instructions to the Trustee to cancel or cause to be cancelled said Senior Lien Debt so to be redeemed upon the exchange and delivery of said Refunding Senior Lien Debt; and provided further that no provision of this Indenture shall be construed to require the redemption of Senior Lien Debt prior to their respective maturity dates in connection with the refunding thereof.

(4) The Senior Lien Debt to be refunded, if any, is no longer Outstanding after giving effect to the issuance of the Refunding Senior Lien Bonds and the application of the proceeds thereof on their date of issuance.

(5) An Opinion of Bond Counsel to the effect that the Supplemental Indenture is being entered into in accordance with this Indenture and that such Series of Refunding Senior Lien Bonds, when duly executed by the Issuer and authenticated and delivered by the Trustee, will be valid and binding obligations of the Issuer.

(6) The proceeds of the sale of the Refunding Senior Lien Bonds shall be applied by the Trustee according to the Order of the Issuer to the retirement of the Outstanding Senior Lien Bonds or Senior Lien Obligations for the refunding of which said Refunding Senior Lien Bonds are to be issued, and the other expenses described in Section 4.04(a) hereof. All Senior Lien Bonds or Senior Lien Obligations purchased, redeemed or retired by use of funds received from the sale of Refunding Senior Lien Bonds, and all Senior Lien Bonds surrendered to the Trustee against the issuance of Refunding Senior Lien Bonds, shall be forthwith canceled and shall not be reissued.

SECTION 4.05 Issuance of Senior Lien Obligations. Senior Lien Obligations may be authorized and issued or incurred by the Issuer, provided that the following conditions to the issuance or incurrence of such Senior Lien Obligations are satisfied:

(a) Such Senior Lien Obligations have been duly and legally authorized by the Issuer for any lawful purpose;

(b) The Certificates of the Issuer required by Sections 4.02(a) (if such Senior Lien Obligations are being issued other than for refunding purposes complying with the requirements of Section 4.04 hereof) and (b).

(c) (1) Such Senior Lien Obligations are being issued or incurred for purposes of refunding in compliance with the requirements for the issuance of Refunding Senior Lien Bonds set forth in Section 4.04 or (2) the Issuer shall have placed on file with the Trustee a certificate of the Issuer, upon which the Trustee may conclusively rely certifying (on the basis of calculations made no later than the date of sale or incurrence of such Senior Lien Obligations, as applicable) that the requirements set forth in Section 4.02(c) relating to the issuance of an additional Series of Senior Lien Bonds have been satisfied with respect to such Senior Lien Obligations, which certificate shall also set forth the computations upon which such certificate is based; and

(d) As and to the extent applicable, the Trustee shall be designated as paying agent or trustee for such Senior Lien Obligations and the Issuer shall deliver to the Trustee a transcript of the proceedings providing for the issuance of such Senior Lien Obligations (but the Trustee shall not be responsible for the validity or sufficiency of such proceedings or such Senior Lien Obligations).

SECTION 4.06 Application of Proceeds. Proceeds of each Series of Senior Lien Bonds or any Senior Lien Obligations shall be applied as specified in the Supplemental Indenture pursuant to which such Senior Lien Debt is issued or incurred.

SECTION 4.07 Credit Enhancement; Liquidity Facility. If any Series of Senior Lien Bonds is supported by a Credit Enhancement or a Liquidity Facility, the Supplemental Indenture



pursuant to which such Senior Lien Bonds are issued shall include the rights that the Credit Facility Provider or Liquidity Facility Provider has with respect to notices, consents, instructions, repayment, and other matters; provided that no Credit Facility Provider or Liquidity Provider shall be provided any rights to take action under this Indenture that are greater than the rights of the Holders of the Senior Lien Bonds supported by the relevant Credit Enhancement or Liquidity Facility.

## **ARTICLE V REDEMPTION, TENDER AND PURCHASE OF SENIOR LIEN BONDS**

SECTION 5.01        Terms of Redemption, Tender and Purchase. Each Series of Senior Lien Bonds may be made subject to redemption or mandatory or optional tender and purchase prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions and upon such notice and with such effect as may be provided in the Supplemental Indenture establishing the terms and provisions of such Series of Senior Lien Bonds.

SECTION 5.02        Notice of Redemption. Notices of redemption with respect to Senior Lien Bonds shall be given as specified in a Supplemental Indenture establishing the terms and provisions of such Senior Lien Bonds. Each notice of redemption of Senior Lien Bonds shall include the information set forth in the Supplemental Indenture pursuant to which such Senior Lien Bonds were issued.

The failure of any Holder to receive notice or any defect in any such notice shall not affect the sufficiency or validity of the proceedings for redemption.

Notices of redemption of Senior Lien Bonds may be conditional to the extent and as set forth in the Supplemental Indenture pursuant to which such Senior Lien Bonds were issued.

SECTION 5.03        Partial Redemption of Senior Lien Bonds. Upon surrender of any Senior Lien Bond redeemed in part only, the Issuer shall execute (but need not prepare) and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Issuer, a new Senior Lien Bond or Senior Lien Bonds of authorized denominations, and of the same Series, maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Senior Lien Bond surrendered.

SECTION 5.04        Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Senior Lien Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Senior Lien Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the redemption date, interest on the Senior Lien Bonds so called for redemption shall cease to accrue, said Senior Lien Bonds (or portions thereof) shall cease to be entitled to any lien, benefit or security under this Indenture and the Holders of said Senior Lien Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest to the date fixed for redemption from funds held by the Trustee for such payment and such funds are hereby pledged to such payment. All

Senior Lien Bonds redeemed pursuant to the provisions of this Article shall be canceled upon surrender thereof.

## **ARTICLE VI SUBORDINATE OBLIGATIONS AND JUNIOR OBLIGATIONS**

**SECTION 6.01**      Subordinate and Junior Obligations. The Issuer shall not issue any Indebtedness secured by the Sales Tax Revenues that ranks senior to the lien on Sales Tax Revenues securing the Subordinate Obligations or Junior Obligations, other than Senior Lien Bonds and Senior Lien Obligations issued under ARTICLE IV of this Indenture. The Issuer shall not issue any Indebtedness secured by the Sales Tax Revenues that ranks senior to the Senior Lien Debt.

**SECTION 6.02**      Issuance of Subordinate Obligations. (a) The Initial Notes are being issued pursuant to this Indenture as further described in the First Supplemental Indenture, with respect to the PCEP Facility, and the Second Supplemental Indenture, with respect to the Working Capital Facility.

(b) Subsequent to the issuance of the Initial Notes the Issuer may by Supplemental Indenture establish one or more additional Subordinate Obligations, payable from Revenues and other amounts and secured by the pledge made under this Indenture, and the Issuer may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Subordinate Obligations in such principal amount as shall be determined by the Issuer, but only, with respect to each additional Subordinate Obligations established upon the execution of the Supplemental Indenture thereto upon compliance by the Issuer with the following provisions and any additional requirements set forth in said Supplemental Indenture and subject to the specific conditions set forth below, each of which is hereby made a condition precedent to the issuance of any such additional Subordinate Obligations.

(i) No Event of Default shall have occurred and then be continuing, as evidenced by the delivery of a Certificate of the Issuer to that effect, which Certificate of the Issuer shall be filed with the Trustee.

(ii) The aggregate principal amount of the additional Subordinate Obligations being issued hereunder shall not cause the Issuer to exceed any limitation imposed by the Resolution or any other law or by any Supplemental Indenture and the issuance of such additional Subordinate Obligations and the expected use of proceeds thereof is in compliance with the provisions of the Act and the Resolution, as evidenced by the delivery of a Certificate of the Issuer to that effect, which Certificate of the Issuer shall be filed with the Trustee.

(iii) The Issuer shall file with the Trustee a certificate prepared by or on behalf of the Issuer showing that the amount of Sales Tax Revenues collected during any 12 consecutive calendar months specified by the Issuer within the most recent 18 calendar months immediately preceding the date on which the Supplemental Indenture is to be executed establishing such additional Subordinate Obligations shall have been at least

equal to 1.5 times Maximum Annual Debt Service on the Senior Lien Debt and Subordinate Obligations then Outstanding and the additional Subordinate Obligations then proposed to be issued, which certificate shall also set forth the computations upon which such certificate is based; provided that if the Resolution is amended to increase the rate of the Sales Tax under the applicable provisions of law and such increased rate was not in effect during all or any portion of the 12-consecutive-calendar month period, then the Issuer may add to the amount of Sales Tax Revenues for such period an amount equal to the amount of Sales Tax Revenues that would have been generated if the increased rate were in effect for the full period, as calculated by the Issuer using such reasonable assumptions as it determines.

Nothing contained in this Indenture shall prevent or be construed to prevent the Supplemental Indenture providing for the issuance of an additional Subordinate Obligations from pledging or otherwise providing, in addition to the security given or intended to be given by this Indenture, additional security for the benefit of such additional Subordinate Obligations or any portion thereof.

#### SECTION 6.03      Issuance of Refunding Subordinate Obligations.

(a) Refunding Subordinate Obligations may be authorized and issued by the Issuer without compliance with the provisions of Section 6.02(b)(i) and Section 6.02(b)(iii) to refund any Senior Lien Debt or Subordinate Obligations provided that the Trustee shall have been provided with a certificate of the Issuer to the effect that Maximum Annual Debt Service on all Senior Lien Debt Outstanding and Subordinate Obligations Outstanding following the issuance of such Refunding Subordinate Obligations is less than or equal to Maximum Annual Debt Service on all Senior Lien Debt Outstanding and Subordinate Obligations Outstanding prior to the issuance of such Refunding Subordinate Obligations. Such Refunding Subordinate Obligations may be issued in an aggregate principal amount sufficient (together with any additional funds available or to become available) to provide funds for the payment of all or a portion of the following:

(1) the principal or Redemption Price of the Outstanding Senior Lien Debt and Subordinate Obligations to be refunded;

(2) all expenses incident to the calling, retiring or paying of such Senior Lien Debt and Subordinate Obligations Debt and the Costs of Issuance of such Refunding Subordinate Obligations;

(3) any Swap Termination Payment under any Interest Rate Swap Agreement that was entered into in connection with the Senior Lien Bonds, Senior Lien Obligations or Subordinate Obligations to be refunded;

(4) interest on all Outstanding Senior Lien Debt or Subordinate Obligations to be refunded to the date such Senior Lien Debt or Subordinate Obligations will be called for redemption or paid at maturity;

(5) interest on the Refunding Subordinate Obligations from the date thereof to the date of payment or redemption of the Senior Lien Bonds, Senior Lien Obligations or Subordinate Obligations to be refunded; and

(6) funding a reserve fund for the Refunding Subordinate Obligations, if applicable.

(b) Before such Series of Refunding Subordinate Obligations shall be issued and delivered pursuant to this Section 6.03, the Issuer shall file each of the documents identified below with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Refunding Subordinate Obligations have been satisfied):

(1) A Supplemental Indenture authorizing such Series of Refunding Subordinate Obligations executed by the Issuer.

(2) The Certificate of the Issuer required by Section 6.02(b)(ii).

(3) If any of the Senior Lien Debt or Subordinate Obligations to be refunded is to be redeemed prior to its stated maturity dates, irrevocable instructions to the Trustee to give the applicable notice of redemption or a waiver of the notice of redemption signed by the Holders of all or a portion of the Senior Lien Debt or Subordinate Obligations to be redeemed, or proof that such notice has been given by the Issuer; provided, however, that in lieu of such instructions or waiver or proof of notice of redemption, the Issuer may cause to be deposited with the Trustee all of the Senior Lien Debt or Subordinate Obligations proposed to be redeemed (whether canceled or uncanceled) with irrevocable instructions to the Trustee to cancel or cause to be cancelled said Senior Lien Debt or Subordinate Obligations so to be redeemed upon the exchange and delivery of said Refunding Subordinate Obligations; and provided further that no provision of this Indenture shall be construed to require the redemption of Senior Lien Debt or Subordinate Obligations prior to their respective maturity dates in connection with the refunding thereof.

(4) The Senior Lien Debt or Subordinate Obligations to be refunded, if any, is no longer Outstanding after giving effect to the issuance of the Refunding Subordinate Obligations and the application of the proceeds thereof on their date of issuance.

(5) An Opinion of Bond Counsel to the effect that the Supplemental Indenture is being entered into in accordance with this Indenture and that such Series of Refunding Subordinate Obligations when duly executed by the Issuer and authenticated and delivered by the Trustee, will be valid and binding obligations of the Issuer.

(6) The proceeds of the sale of the Refunding Subordinate Obligations shall be applied by the Trustee according to the Order of the Issuer to the retirement of the Outstanding Senior Lien Bonds, Senior Lien Obligations or Subordinate Obligations for the refunding of which said Refunding Subordinate Obligations are to be issued, and the other expenses described in Section 6.03(a) hereof. All Senior Lien Bonds, Senior Lien Obligations or

Subordinate Obligations purchased, redeemed or retired by use of funds received from the sale of Refunding Subordinate Obligations, and all Senior Lien Bonds or Subordinate Obligations surrendered to the Trustee against the issuance of Refunding Subordinate Obligations, shall be forthwith canceled and shall not be reissued

SECTION 6.04 Junior Obligations. The Issuer may by Supplemental Indenture entered into pursuant to this Indenture issue or incur Junior Obligations, subject to the limitations set forth in the Act, the Resolution, the Supplemental Indenture establishing such Junior Obligations and other applicable law, payable from Revenues and other amounts and secured by the pledge made under this Indenture or such applicable Supplemental Indenture, and the Issuer may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Junior Obligations in such principal amount as shall be determined by the Issuer.

## **ARTICLE VII REVENUES**

### SECTION 7.01 Pledge of Sales Tax Revenues; Sales Tax Revenue Fund.

(a) As security for the payment of all amounts owing on the Senior Lien Bonds, Senior Lien Obligations, Subordinate Obligations and Junior Obligations, the Issuer hereby irrevocably pledges to the Trustee: (i) all Revenues; and (ii) all amounts, including proceeds of the Senior Lien Bonds when issued and the Note, held on deposit in the funds and accounts established hereunder (except for amounts held in any Senior Lien Bond Rebate Fund and the Note Rebate Fund, the respective accounts in the Note Construction Fund (each of which shall secure only the applicable Note), the respective accounts in the Other Note Proceeds Fund (which shall secure only the applicable Note), any Senior Lien Bonds Project Fund (which shall secure only the Senior Lien Bonds the proceeds of which were deposited therein) any Senior Lien Bonds Costs of Issuance Fund (which shall secure only the Senior Lien Bonds the proceeds of which were deposited therein), any Senior Lien Reserve Fund (which shall secure only the Senior Lien Debt specifically identified in a Supplemental Indenture or Supplemental Indentures as secured thereby), any Subordinate Obligations Reserve Fund (which shall secure only the Subordinate Obligations specifically identified in a Supplemental Indenture or Supplemental Indentures as secured thereby) any fund or account established under a Supplemental Indenture that secures only specifically identified Senior Lien Debt, Subordinate Obligations or Junior Obligations (which shall secure only the obligations so identified) and any rebate fund established under a Supplemental Indenture), subject to the provision of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture. The collateral identified above shall immediately be subject to this pledge, and this pledge shall constitute a lien on and security interest in such collateral which shall immediately attach to the collateral and be effective, binding and enforceable against the Issuer and all others asserting the rights therein, to the extent set forth, and in accordance with, this Indenture irrespective of whether those parties have notice of this pledge and without the need for any physical delivery, recordation, filing or further act. The pledge of the amounts in such funds shall be valid and binding with respect to the Note from and after delivery by the Issuer of the Note, without any physical delivery thereof or any further act. The pledge of the amounts in such funds shall be valid and binding with respect to the other Indenture Obligations from and after delivery by the Issuer thereof, without physical

delivery thereof or any further act. The pledge of Sales Tax Revenues and all amounts held on deposit in the funds and accounts established hereunder (except for amounts held in the Senior Lien Bond Rebate Fund, the Note Rebate Fund) shall be irrevocable until all of the Senior Lien Bonds, all Senior Lien Obligations, the Note, all other Subordinate Obligations, and all Junior Obligations, and amounts owed in connection therewith are no longer Outstanding.

(b) The pledge of collateral in the prior paragraph shall constitute a first lien on such collateral with respect to the Senior Lien Debt, a second lien on such collateral (subordinate only to the lien of the Senior Lien Debt) with respect to the Subordinate Obligations, and a third lien on such collateral (subordinate only to the lien of the Senior Lien Debt and the Subordinate Obligations) with respect to the Junior Obligations. Senior Lien Bonds and Senior Lien Obligations shall be of equal rank without preference, priority or distinction of any Senior Lien Bonds and Senior Lien Obligations over any other Senior Lien Bonds and Senior Lien Obligations. All Subordinate Obligations, including the obligations with respect to Loan Debt Service and Lender Fees and Expenses, shall be of equal rank without preference, priority or distinction of any Subordinate Obligations over any other Subordinate Obligations.

(c) The Sales Tax Revenues shall be received and held in trust by the Trustee for the benefit of the Holders of the Senior Lien Bonds, Senior Lien Obligations, the Subordinate Obligations and the Junior Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this ARTICLE VII. As long as any Senior Lien Bonds, any Senior Lien Obligations, the Notes, other Subordinate Obligations or Junior Obligations remains Outstanding, the Issuer hereby assigns and shall cause Sales Tax Revenues to be transmitted by the CDFTA directly to the Trustee. The Trustee shall forthwith deposit in a trust fund, designated as the "Sales Tax Revenue Fund," which fund the Trustee shall designate and maintain, all Sales Tax Revenues, when and as received by the Trustee. All moneys at any time held in the Sales Tax Revenue Fund shall be held in trust for the benefit of the Holders of all Indenture Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this ARTICLE VII. Any Revenues remaining after the disbursement, allocation and application of moneys set forth in this ARTICLE VII shall be transferred to the Issuer and may be used for any lawful purpose of the Issuer as provided in Section 7.02 hereof.

#### SECTION 7.02      Allocation of Revenues in Sales Tax Revenue Fund.

(a) So long as there are any Senior Lien Bonds or any Senior Lien Obligations, Subordinate Obligations or Junior Obligations Outstanding, in each month on the day following the receipt of the Sales Tax Revenues as provided in Section 7.01(c), the Trustee shall withdraw from the Sales Tax Revenue Fund an amount sufficient, with other funds, if any, provided to the Trustee and previously used in such month to make such deposits, to make deposits in the following respective funds, in the following amounts, in the following order of priority:

(1) to the credit of the Senior Lien Interest Account an amount equal to the Aggregate Accrued Senior Lien Interest for the following calendar month less any Senior Lien Excess Deposit held in the Senior Lien Interest Account plus any Senior Lien Deficiency with respect to the Senior Lien Interest Account plus any amount of interest which has become due and

has not been paid and for which there are insufficient funds in the Senior Lien Interest Account or another special account to be used to make such payment;

(2) to the credit of the Senior Lien Principal Account an amount equal to the Aggregate Accrued Senior Lien Principal for the following calendar month less any Senior Lien Excess Deposit held in the Senior Lien Principal Account plus any Accrued Senior Lien Premium for the following calendar month and any Senior Lien Deficiency with respect to the Senior Lien Principal Account plus any amount of principal and premium, if any, which has become due and has not been paid and for which there are insufficient funds in the Senior Lien Principal Account or another special account to be used to make such payment;

(3) to the credit of any Senior Lien Reserve Funds the amounts necessary to increase the amounts on deposit in such funds to the applicable reserve requirements identified in the Supplemental Indentures pursuant to which the Senior Lien Debt secured by such funds was issued or incurred; provided that in the event the Sales Tax Revenues are not sufficient to make all such deposits, they shall be allocated pro rata between the Senior Lien Reserve Funds based on the amounts required to be deposited in such funds;

(4) to the credit of the Note Interest Fund and any Subordinate Obligations Interest Fund(s), an amount equal to the Aggregate Accrued Subordinate Interest for the following calendar month less any Subordinate Obligations Excess Deposit held in the Note Interest Fund and any Subordinate Obligations Interest Fund(s) plus any Subordinate Obligations Deficiency with respect to the Note Interest Fund and any Subordinate Obligations Interest Fund(s) plus any amount of interest that has become due and has not been paid and for which there are insufficient funds in the Note Interest Fund or Subordinate Obligations Interest Fund(s), as applicable, or another special account to be used to make such payment; provided that in the event the Sales Tax Revenues are not sufficient to make all such deposits, they shall be allocated pro rata between the Note Interest Fund and any other Subordinate Obligations Interest Fund(s) based on the amount required to be deposited in such accounts;

(5) to the credit of the Note Principal Fund and any Subordinate Obligations Principal Fund(s), an amount equal to the Aggregate Accrued Subordinate Principal for the following calendar month less any Subordinate Obligations Excess Deposit held in the Note Principal Fund and any Subordinate Obligations Principal Fund(s) plus any Accrued Subordinate Premium for the following calendar month and any Subordinate Obligations Deficiency with respect to the Note Principal Fund and any Subordinate Obligations Principal Fund(s) plus any amount of principal and premium, if any, that has become due and has not been paid and for which there are insufficient funds in the Note Principal Fund or Subordinate Obligations Principal Fund(s), as applicable, or another special account to be used to make such payment; provided that in the event the Sales Tax Revenues are not sufficient to make all such deposits, they shall be allocated pro rata between the Note Principal Fund and any other Subordinate Obligations Principal Fund(s) based on the amount required to be deposited in such accounts;

(6) to the credit of any Subordinate Obligations Reserve Funds the amounts necessary to increase the amounts on deposit in such funds to the applicable reserve requirements identified in the Supplemental Indentures pursuant to which the Subordinate

Obligations secured by such funds was issued or incurred; provided that in the event the Sales Tax Revenues are not sufficient to make all such deposits, they shall be allocated pro rata between the Subordinate Obligations Reserve Funds based on the amounts required to be deposited in such funds;

(7) to the Junior Obligations Fund to the credit of accounts to be created within the Junior Obligations Fund by the Trustee pursuant to this Section 7.02(a)(7) for the deposit of funds to pay Junior Obligations. The Trustee is hereby instructed to such accounts and subaccounts within the Junior Obligations Fund for each type or Series, if any, of Junior Obligation as such obligations arise and to credit such accounts in such amounts and at such times as shall be needed to provide for payment of such Junior Obligations under the Supplemental Indenture or Supplemental Indentures relating to such obligations. The credit of Revenues to such accounts shall be made in accordance with the rank of the pledge created by such Junior Obligations. Notwithstanding the foregoing, however, if there shall be insufficient Revenues in any Fiscal Year to make all of the foregoing deposits, such Revenues shall be allocated to the accounts within the Junior Obligations Fund on a pro rata basis based on the amounts required to be deposited therein during such Fiscal Year among all such Junior Obligations issued or entered into on a parity basis in accordance with the rank of the pledge created by such Junior Obligations;

(8) to the credit of any Junior Obligations Reserve Funds the amounts necessary to increase the amounts on deposit in such funds to the applicable reserve requirements identified in the Supplemental Indentures pursuant to which the Junior Obligations secured by such funds was issued or incurred; provided that in the event the Sales Tax Revenues are not sufficient to make all such deposits, they shall be allocated pro rata between the Junior Obligations Reserve Funds based on the amounts required to be deposited in such funds.

All remaining Sales Tax Revenues, after making the foregoing allocations, shall be available to the Issuer for all lawful Issuer purposes and the Trustee shall, to the full extent practicable, transfer the remaining Sales Tax Revenues to the Issuer on the same day as the receipt thereof (or, if such day is not a Business Day, no later than the following Business Day). The pledge of Revenues herein made shall be irrevocable until the Senior Lien Bonds, the Senior Lien Obligations, any Note, all Subordinate Obligations and all Junior Obligations are no longer Outstanding. Once the Trustee has transferred the remaining Sales Tax Revenues to the Issuer, such Sales Tax Revenues shall no longer constitute "Pledged Revenues," are released from the lien of this Trust Agreement, and no longer secure the Indenture Obligations.

SECTION 7.03 Application of Note Interest Fund. The Trustee shall establish a fund to be named the "Note Interest Fund." The Trustee shall maintain and hold in trust such fund. All amounts in the Note Interest Fund shall be used and withdrawn by the Trustee solely for the purposes of paying interest on the Loans and any interest on any Lender Fees and Expenses as they shall become due and payable in accordance with the terms of the applicable Credit Agreement and as further set forth in the applicable Supplemental Indenture, and (ii) making payments on interest rate swap agreements related to the Loans, if any.

The Trustee shall deposit into the Note Interest Fund such amounts as provided in Section 7.02 hereof and as provided in any Supplemental Indenture and shall also deposit into the Note



Interest Fund such amounts as are received with instructions from the Issuer to the Trustee to deposit such amounts into such Fund.

In the event that the Trustee shall fail to receive an amount sufficient to equal the amount required to be deposited pursuant to this Section 7.03 by the close of business on the last Business Day of any month, the Trustee shall promptly notify the Issuer and the Lender in writing of the amount of such insufficiency by fax or e-mail, receipt of which fax or e-mail by the Issuer shall be confirmed by the Trustee.

In addition, in the event that the Trustee anticipates that it shall fail to have an amount sufficient to equal the amount required to be transferred by the Trustee to the Noteholder by 1:00 p.m. New York City time on each date interest is due and payable on the Loans, the Trustee shall notify the Issuer in writing of the amount of such insufficiency by fax, receipt of which fax or e-mail by the Issuer shall be confirmed by the Trustee, such notice to be provided prior to 10:30 a.m. New York City time/7:30 a.m. California time on each date interest is due and payable on the Loans.

Amounts deposited in the Note Interest Fund shall be transferred by the Trustee to the Noteholder by 2:00 p.m. New York City time on each date interest is due and payable on the Loans.

Any amounts remaining on deposit in the Note Interest Fund on the Business Day preceding the receipt of Sales Tax Revenues from the CDFTA in June of each year in excess of amounts needed to pay interest due on the next date interest payment is due on the Loans or Subordinate Obligations that is to be paid from Sales Tax Revenues or otherwise required to be on deposit in the Note Interest Fund under this Section 7.03, commencing \_\_\_\_ 20\_\_ shall be transferred to the Issuer and may be used for any lawful purpose of the Issuer.

**SECTION 7.04**      Application of Note Principal Fund. The Trustee shall establish a fund to be named the “Note Principal Fund.” The Trustee shall maintain and hold in trust such fund. All amounts in the Note Principal Fund shall be used and withdrawn by the Trustee solely for the purposes of paying principal on the Loans and the amount of any Lender Fees and Expenses as they shall become due and payable in accordance with the terms of the applicable Credit Agreement and as further set forth in the applicable Supplemental Indenture.

The Trustee shall deposit into the Note Principal Fund such amounts as provided in Section 7.02 hereof and as provided in any Supplemental Indenture and shall also deposit into the Note Principal Fund such amounts as are received with instructions from the Issuer to the Trustee to deposit such amounts into such Fund.

In the event that the Trustee shall fail to receive an amount sufficient to equal the amount required to be deposited pursuant to this Section 7.04 by the close of business on the last Business Day of any month, the Trustee shall promptly notify the Issuer and the Lender in writing of the amount of such insufficiency by fax or e-mail, receipt of which fax or e-mail by the Issuer shall be confirmed by the Trustee.

Amounts deposited in the Principal Fund shall be transferred by the Trustee to the Noteholder by 2:00 p.m. New York City time on the date principal is due and payable on the Loans.

SECTION 7.05      Establishment and Application of Senior Lien Debt Service Fund.

(a) The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Senior Lien Debt Service Fund.” Within such Fund, the Trustee shall establish, maintain and hold in trust separate accounts designated the “Senior Lien Interest Account” and the “Senior Lien Principal Account.”

(b) The Trustee shall deposit into these Funds and Accounts such amounts as provided in Section 7.02 hereof and as provided in any Supplemental Indenture and shall also deposit into such Funds and Accounts such amounts as are received with instructions from the Issuer to the Trustee to deposit such amounts into a specific Fund or Account.

(c) There shall be withdrawn from the Senior Lien Interest Account and the Senior Lien Principal Account from time to time and set aside or deposited with the applicable Paying Agent or Paying Agents sufficient money for paying the interest on the Senior Lien Bonds and Senior Lien Obligations and the principal of and premium on the Senior Lien Bonds and Senior Lien Obligations as the same shall fall due, or if such interest, principal or premium is paid by or through a form of a Liquidity Facility, Credit Enhancement or Interest Rate Swap Agreement, amounts in the Senior Lien Interest Account and Senior Lien Principal Account may, if so provided by Supplemental Indenture, be used to reimburse such amounts to the applicable Liquidity Provider, Credit Provider or Counterparty. Notwithstanding the foregoing, however, if there shall be insufficient Revenues on deposit in the Senior Lien Debt Service Fund to make the foregoing deposits, such Revenues shall be allocated first, to the Senior Lien Interest Account and second, to the Senior Lien Principal Account. Should amounts in either the Senior Lien Interest Account or the Senior Lien Principal Account be insufficient to make payments when due, such amounts shall be allocated pro rata between the Senior Lien Debt based on the amount then due and payable on such Senior Lien Debt.

SECTION 7.06      Establishment and Application of Junior Obligations Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Junior Obligations Fund” and within such fund, the accounts established pursuant to Section 7.02(a)(7) hereof. After the other transfers required pursuant to Section 7.02 hereof have been made, the Trustee shall transfer to the Junior Obligations Fund an amount necessary to be applied to the payment of Junior Obligations in accordance with, and upon the written direction of, the Issuer, such written direction to be provided by the Issuer prior to or concurrently with any transfer of Revenues to the Trustee pursuant to Section 7.01 hereof. Amounts in the Junior Obligations Fund shall be used to pay Junior Obligations when due. Should amounts in the Junior Obligations Fund be insufficient to make payments when due, such amounts shall be allocated as provided in Section 7.02(a)(7).

SECTION 7.07      Payment Provisions Applicable to Interest Rate Swap Agreements. In the event the Issuer shall enter into an Interest Rate Swap Agreement, the amounts received by the Issuer, if any, pursuant to such Interest Rate Swap Agreement shall also be transferred to the

Sales Tax Revenue Fund and applied to the deposits required under Section 7.02. If the Issuer so designates in a Supplemental Indenture establishing the terms and provisions of such Series of Senior Lien Bonds (or if such Interest Rate Swap Agreement is entered into subsequent to the issuance of such Series of Senior Lien Bonds, if the Issuer so designates in a Certificate of the Issuer delivered to the Trustee concurrently with the execution of such Interest Rate Swap Agreement), regularly-scheduled payments payable under such Interest Rate Swap Agreement (excluding Swap Termination Payments and payments of fees and expenses incurred in connection with Interest Rate Swap Agreements, which shall in all cases be payable from, and secured by, Revenues as Junior Obligations) shall constitute Senior Lien Obligations under this Indenture, and, in such event, the Issuer shall pay or cause to be paid to the Trustee for deposit in the Senior Lien Interest Fund, at the times and in the manner provided by Section 7.02, the amounts to be paid pursuant to such Interest Rate Swap Agreement, as if such amounts were additional interest due on the Series of Senior Lien Bonds to which such Interest Rate Swap Agreement relates, and the Trustee shall pay to the Counterparty to such Interest Rate Swap Agreement, to the extent required thereunder, from amounts deposited in the Senior Lien Interest Account (or subaccount therein from which interest on the Series of Senior Lien Bonds with respect to which such Interest Rate Swap Agreement was entered into is paid).

**SECTION 7.08**      Investment by the Issuer. All moneys in any of the funds or accounts established and held by the Issuer pursuant to this Indenture shall be invested by the Issuer in Investment Securities or in any other investments permitted for the investment of funds of the Issuer under the Act.

**SECTION 7.09**      Investment by the Trustee. All moneys in any of the funds or accounts established and held by the Trustee pursuant to this Indenture shall be invested, as directed in writing by the Issuer, solely in Investment Securities. All Investment Securities shall, as directed by the Issuer in writing, be acquired by the Trustee subject to the limitations set forth in Section 9.07 and Section 9.08 hereof, the limitations as to maturities hereinafter in this Section set forth and such additional limitations or requirements consistent with the foregoing as may be established by Request of the Issuer and not inconsistent with the duties of the Trustee hereunder, as determined solely by the Issuer. If and to the extent the Trustee does not receive investment instructions from the Issuer with respect to the moneys in the funds and accounts held by the Trustee pursuant to this Indenture, such moneys shall be invested in Investment Securities described in clause (xiv) of the definition thereof, and the Trustee shall thereupon promptly request written investment instructions from the Issuer for such moneys.

Moneys in the funds and accounts established under this Indenture shall be invested in Investment Securities maturing or available on demand not later than the date on which the Issuer estimates that such moneys will be required by the Trustee.

All interest, profits and other income received from the investment of moneys in any fund or account, other than the Note Rebate Fund, the Senior Lien Bond Rebate Fund, any other rebate fund established under a supplemental indenture, the Note Construction Fund, the Other Note Proceeds Fund], any Senior Lien Bonds Project Fund, any Senior Lien Bonds Costs of Issuance Fund, any Senior Lien Reserve Fund, any Subordinate Obligations Reserve Fund, and any Junior Obligations Reserve Fund shall be transferred to the Sales Tax Revenue Fund, unless amounts in

such fund or account have been allocated to or are attributable to particular Senior Lien Debt, Subordinate Obligations or a particular Junior Obligation, in which case such amounts shall be deposited in the fund, account or subaccount from which interest on such Senior Lien Debt, Subordinate Obligations or Junior Obligation is paid when received. All interest, profits and other income received from the investment of moneys in the Note Rebate Fund, the Senior Lien Bond Rebate Fund, any other rebate fund established under a supplemental indenture, the Note Construction Fund, the Other Note Proceeds Fund, any Senior Lien Bonds Project Fund, any Senior Lien Bonds Costs of Issuance Fund, any Senior Lien Reserve Fund and any Subordinate Obligations Reserve Fund shall be deposited in such respective fund, except as provided in Section 9.07 and Section 9.08. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

The Trustee may commingle any of the funds or accounts established pursuant to this Indenture (other than the Note Rebate Fund and the Senior Lien Bond Rebate Fund and any other rebate funds established under a Supplemental Indenture) into a separate fund or funds for investment purposes only, provided that all funds or accounts held by the Trustee hereunder shall be accounted for separately as required by this Indenture. The Trustee or any of its affiliates may act as principal or agent in the making or disposing of any investment and may impose its customary charge therefor. The Trustee may, upon consultation with the Issuer, sell or present for redemption, any Investment Securities so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such Investment Security is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment or redemption.

The Issuer may, and the Trustee shall, upon the Request of the Issuer, enter into a financial futures or financial option contract or swap with an entity the debt securities of which are rated not less than the second highest long-term rating categories by any Rating Agency. The Issuer shall provide twenty (20) days' written notice to the Rating Agencies then rating any Senior Lien Bonds before filing such a Request, and the Trustee shall provide notice of the closing of any such financial futures or financial option contract or swap to such Rating Agencies on the closing date thereof.

The Trustee will furnish the Issuer periodic cash transaction statements at least once per month, which will include detail for all investment transactions made by the Trustee hereunder. The Issuer acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer the right to receive brokerage confirmations for securities transactions as they occur, the Issuer will not receive such confirmations.

The Trustee shall not be responsible for any losses resulting from investments made under this Indenture.

The Trustee shall keep proper books of record and accounts containing complete and correct entries of all transactions made by it relating to the receipt, disbursement, allocation and application of the moneys related to the Note, including moneys derived from, pledged to, or to be

used to make payments on the Note. Such records shall specify the account or fund to which such moneys are to be allocated.

## **ARTICLE VIII OTHER FUNDS AND ACCOUNTS**

**SECTION 8.01**      Establishment of Note Construction Fund. The Trustee shall establish a fund to be named the “Note Construction Fund.” The Trustee shall maintain and hold in trust such fund. Within the Note Construction Fund the Trustee shall establish separate accounts and subaccounts allocable to each applicable Credit Agreement if amounts borrowed under such Credit Agreement are to be used towards Costs of the Projects as further provided in a Supplemental Indenture, including the First Supplemental Indenture. Amounts borrowed under a Credit Agreement which are to be used to pay Costs of the Projects shall be deposited into the applicable subaccount as specified in the applicable Supplemental Indenture. The moneys in the applicable accounts of the Note Construction Fund shall be disbursed, upon a Requisition of the Issuer, to pay costs incurred in connection with the portion of the Project financed with such Loan deposited in the applicable account of the Note Construction Fund (or to make reimbursements to the Issuer for such costs). Such Requisition of the Issuer shall be substantially in the form set forth in the applicable Supplemental Indenture and shall set forth the name of the person or persons to whom said amounts are to be disbursed and shall state that the amounts to be disbursed are for costs properly chargeable to such Note Construction Fund and that such amounts have not been the subject of any previous Requisition of the Issuer. When the Issuer determines that the applicable Costs of the Project to be financed with the proceeds of a specific Loan have been paid, a Certificate of the Issuer shall be delivered to the Trustee stating (i) that all of such costs have been determined and paid (or that all of such costs have been paid less specified claims which are subject to dispute and for which a retention in the Note Construction Fund is to be maintained in the full amount of such claims until such dispute is resolved) and (ii) that the Trustee is to transfer the remaining balance, if any, in the Note Construction Fund, less the amount of any such retention, for deposit in the Note Interest Fund and the Trustee shall apply such funds to pay interest on the related Loan. Furthermore, if the proceeds in the Note Construction Fund are evidenced by an applicable Tax-Exempt Note, application and release of such proceeds shall be consistent with the related Note Tax Certificate.

**SECTION 8.02**      Establishment of Other Note Proceeds Fund. The Trustee shall establish a separate fund to be named the Other Note Proceeds Fund. [The Trustee shall maintain and hold in trust such fund.][The Issuer shall maintain and hold in trust such fund.] Within the Other Note Proceeds Fund, [the Trustee][the Issuer] shall establish separate accounts and subaccounts allocable to each applicable Credit Agreement if amounts borrowed under such Credit Agreement are to be used by the Issuer for operating and other purposes of the Issuer other than to pay Costs of the Projects as further provided in a Supplemental Indenture, including the Second Supplemental Indenture. Amounts shall be deposited in such accounts as specified in the applicable Supplemental Indenture. [The moneys in the applicable accounts of the Other Note Proceeds Fund shall be disbursed upon a Requisition of the Issuer, substantially in the form set forth in the applicable Supplemental Indenture.]

SECTION 8.03 If the proceeds in the Other Note Proceeds Funds are evidenced by an applicable Tax-Exempt Note, so long as such application and release of such proceeds shall be consistent with the related Note Tax Certificate. Establishment and Application of Senior Lien Bonds Project Fund. Proceeds of Senior Lien Bonds which are to be used to pay Costs of the Projects shall be deposited into a Fund or Funds (including any accounts or subaccounts therein) which individually and collectively shall be designated the “Senior Lien Bonds Project Fund,” which shall be held by the Trustee, all as provided by this Indenture and the relevant Supplemental Indenture or Supplemental Indentures. All moneys in a Senior Lien Bonds Project Fund shall be disbursed as provided in the Supplemental Indenture or Supplemental Indentures under which such Fund or Funds were created.

SECTION 8.04 Establishment and Application of Senior Lien Bonds Costs of Issuance Fund. Proceeds of Senior Lien Bonds which are to be used to pay Costs of Issuance shall be deposited into a fund or funds (including any accounts or subaccounts therein) which individually and collectively shall be designated the “Senior Lien Bonds Costs of Issuance Fund,” which shall be held by the Trustee, all as provided by this Indenture and the relevant Supplemental Indenture or Supplemental Indentures. All moneys in a Senior Lien Bonds Costs of Issuance Fund shall be disbursed as provided in the Supplemental Indenture or Supplemental Indentures under which such fund or funds were created.

SECTION 8.05 Establishment and Application of Senior Lien Reserve Funds. Funds securing a Series of Senior Lien Bonds or a Senior Lien Obligation, or multiple Series of Senior Lien Bonds and/or Senior Lien Obligations, may be established and held by the Trustee as provided in a Supplemental Indenture or Indentures. Deposits into and application of funds in any such fund shall be governed by the Supplemental Indenture or Supplemental Indentures under which such fund or funds were created.

SECTION 8.06 Establishment and Application of Subordinate Obligations Reserve Funds. Funds securing a Series of Subordinate Obligations, or multiple Series of Subordinate Obligations, may be established and held by the Trustee as provided in a Supplemental Indenture or Indentures. Deposits into and application of funds in any such fund shall be governed by the Supplemental Indenture or Supplemental Indentures under which such fund or funds were created.

SECTION 8.07 Establishment and Application of Junior Obligations Reserve Funds. Funds securing a Series of Junior Obligations, or multiple Series of Junior Obligations, may be established and held by the Trustee as provided in a Supplemental Indenture or Supplemental Indentures. Deposits into and application of funds in any such fund shall be governed by the Supplemental Indenture or Supplemental Indentures under which such fund or funds were created.

SECTION 8.08 Additional Funds and Accounts.

(a) The Issuer may direct the Trustee to establish, maintain and hold in trust additional separate fund or funds in which the proceeds of Loans shall be deposited and from which such amounts shall be applied, so long as the Loans are used to finance or refinance costs of the Project and so long as such application is consistent with the related Note Tax Certificate.

(b) In addition, the Issuer may direct the Trustee to establish, maintain and hold in trust additional funds, accounts and subaccounts for such purposes as the Issuer deems appropriate, including separate Funds available only for specified Senior Lien Bonds, Senior Lien Obligations, Subordinate Obligations or Junior Obligations; provided that Revenues shall not be used to make deposits in any such additional funds, accounts or subaccounts before the deposits set forth in Section 7.02(a)(1)-Section 7.02(a)(8) have been made. Notwithstanding the foregoing and for the avoidance of doubt, additional funds, accounts and subaccounts may be created within the funds, accounts and subaccounts that are established by this Indenture and flow through the same flow of funds as set forth in Section 7.02(a)(1) to Section 7.02(a)(8) in compliance with the provisions of this Indenture.

## **ARTICLE IX COVENANTS OF THE ISSUER**

SECTION 9.01 Punctual Payment. The Issuer covenants and agrees that it will duly and punctually pay or cause to be paid from the Revenues hereinabove described and to the extent thereof the principal of, premium, if any, and interest on all Senior Lien Bonds, Senior Lien Obligations, the Notes, other Subordinate Obligations and Junior Obligations at the places and on the dates and in the manner specified herein and in the Supplemental Indentures or other agreements pursuant to which such obligations were incurred, according to the true intent and meaning thereof, and that it will faithfully do and perform all covenants and agreements contained herein and in such Supplemental Indentures and other agreements and the Issuer agrees that time is of the essence of this Indenture, provided that the Issuer's obligation to make payments pursuant hereto shall be limited to payment from the Revenues, the funds, accounts and subaccounts pledged therefor in this Indenture and any other source which the Issuer may specifically provide for such purpose and no Holder shall have any right to force payment from any other funds of the Issuer.

### SECTION 9.02 Collection of Sales Tax Revenues.

(a) The Issuer covenants and agrees that it has duly levied the Sales Tax in accordance with the Act and pursuant to and in accordance with the Resolution, which Sales Tax was approved by more than a two-thirds vote of the electorate of the Counties. The Issuer covenants and agrees that so long as Indenture Obligations remain Outstanding, it shall not amend, modify or alter the Resolution in any manner which would reduce the amount of or timing of receipt of Sales Tax Revenues. The Issuer further covenants that it will continue to levy and collect the Sales Tax to the full amount permitted by the Act, the Resolution and other applicable law. The Issuer further covenants that it will take such actions as required to cause the CDFTA to process and supervise collection of said transactions and use taxes and to transmit Sales Tax Revenues directly to the Trustee. Said agreement will be continued in effect so long as any Indenture Obligation is Outstanding and shall not be amended, modified or altered in any manner that would affect the remittance of the Sales Tax Revenues directly to the Trustee or would adversely affect the rights, remedies or security of the Holder of any Indenture Obligation without the written consent of the Trustee so long as any Indenture Obligation remains Outstanding. In addition, said agreement will not be amended, modified or altered in any manner that would affect the remittance of the Sales Tax Revenues directly to the Trustee or would affect the rights,

remedies or security of the Lender without the written consent of the Lender so long as the Note is Outstanding. The Issuer will receive and hold in trust for (and remit immediately to) the Trustee any Sales Tax Revenues paid to the Issuer by the CDFTA.

(b) Sales Tax Revenues received by the Trustee shall be transmitted to the Issuer under the terms and conditions set forth in ARTICLE VII; provided that, during the continuance of an Event of Default, any Sales Tax Revenues received by the Trustee shall be applied as provided in Section 10.03.

(c) The Issuer covenants and agrees to separately account for all Revenues and to provide to the Trustee access to such accounting records at reasonable hours and under reasonable circumstances, provided, however, that the Trustee shall have no obligation to inspect such accounting records and shall not be deemed to have any notice of any information contained in such accounting records or circumstances which might constitute an Event of Default which may be disclosed therein.

(d) The Issuer covenants that so long as any Indenture Obligations remain Outstanding, it will comply with the Act and the Resolution and will not, to the best of its ability, suffer or permit any change, modification or alteration to be made to the Act, which would materially and adversely affect the rights of Holders of any of the Indenture Obligations.

SECTION 9.03        Maintenance of Powers. The Issuer covenants that it will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to the Act and all other laws and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the Indenture Obligations or the performance or observance of any of the covenants herein contained.

SECTION 9.04        No Adverse Action. The Issuer covenants that it will not take any action which will have a material adverse effect upon the Revenues, as herein pledged, or have a material adverse effect upon the pledge of the Revenues made herein or the rights of the Holders of any Indenture Obligations. The Issuer shall be unconditionally and irrevocably obligated, so long as any Indenture Obligations are Outstanding, to take all lawful action necessary or required to continue to entitle the Issuer to receive the Revenues at the same rates as now provided by law to pay from the Revenues the principal of and interest on the Indenture Obligations and to make the other payment provided for herein.

SECTION 9.05        Waiver of Laws. The Issuer will not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law or right at immunity now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture, in the Note or any Senior Lien Bond, and all benefit or advantage of any such law or laws is hereby expressly waived by the Issuer to the extent permitted by law.

SECTION 9.06        Note Rebate Fund.



(a) The Trustee shall establish and maintain a fund separate from any other fund established and maintained hereunder designated as the “Note Rebate Fund.” Within the Note Rebate Fund, the Trustee shall maintain such accounts as the Issuer shall direct in writing to comply with the terms and requirements of the applicable Note Tax Certificate. Subject to the transfer provisions provided in Section 9.06(c) below, all money at any time deposited in the Note Rebate Fund shall be held by the Trustee for the account of the Issuer in trust, to the extent required to satisfy the Note Rebate Requirement (as defined in the applicable Note Tax Certificate), for payment to the federal government of the United States of America, and neither the Trustee nor any Owner of the Note shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Note Rebate Fund shall be governed by this Indenture and by the applicable Note Tax Certificate (which are incorporated herein by reference). The Issuer hereby covenants to comply with the directions contained in the applicable Note Tax Certificate and the Trustee hereby covenants to comply with all written instructions of the Issuer delivered to the Trustee pursuant to the Note Tax Certificate (which instructions shall state the actual amounts to be deposited in or withdrawn from the Note Rebate Fund and shall not require the Trustee to make any calculations with respect thereto). The Trustee shall be deemed conclusively to have complied with the provisions of this Section 9.06(a) if it follows such written instructions of the Issuer, and the Trustee shall have no liability or responsibility to enforce compliance by the Issuer with the terms of the applicable Note Tax Certificate nor to make computations in connection therewith.

(b) The Trustee shall invest all amounts held in the Note Rebate Fund, solely as directed by the Issuer in writing, solely in Investment Securities, subject to the restrictions set forth in the applicable Note Tax Certificate.

(c) Upon receipt of the written instructions of the Issuer, the Trustee shall remit part or all of the balances in the Note Rebate Fund to the federal government of the United States of America, as directed. In addition, if such instructions so direct, the Trustee will deposit moneys into or transfer moneys out of the Note Rebate Fund and from or into such accounts or funds as directed. Any funds remaining in the Note Rebate Fund after payment of the Note and payment and satisfaction of any Note Rebate Requirement, shall be withdrawn and remitted to the Issuer in accordance with a Request of the Issuer.

(d) Notwithstanding any other provision of this Indenture, including in particular ARTICLE XIII hereof, the obligation to remit the Note Rebate Requirement to the federal government of the United States of America and to comply with all other requirements of this Section and the applicable Note Tax Certificate shall survive the defeasance or payment in full of the Note.

**SECTION 9.07**      Tax Covenants Relating to Tax-Exempt Notes.      The Issuer covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Tax-Exempt Notes under Section 103 of the Code. Without limiting the generality of the foregoing, the Issuer shall comply with all requirements and covenants contained in the applicable Note Tax Certificate. In the event that at any time the Issuer is of the opinion that for purposes of this Section 9.07 it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee

under this Indenture, the Issuer shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

Notwithstanding any provision of this Section 9.07 and Section 9.06 hereof, if the Issuer shall receive an Opinion of Bond Counsel to the effect that any action required under the applicable Note Tax Certificate or this Section 9.07 or Section 9.06 hereof is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Note pursuant to Section 103 of the Code, the Issuer and the Trustee may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent.

**SECTION 9.08**      Tax Covenants Relating to Tax-Exempt Senior Lien Bonds. With respect to the issuance of any Tax-Exempt Senior Lien Bonds, the Supplemental Indenture providing for the issuance of such Tax-Exempt Senior Lien Bonds shall establish the funds and accounts, including a rebate fund, necessary to comply with the requirements under Section 103 of the Code and the Senior Lien Bonds Tax Certificate in order to maintain the exclusion from gross income of the interest on the Tax-Exempt Senior Lien Bonds. In addition, the Issuer covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Tax-Exempt Senior Lien Bonds under Section 103 of the Code. Without limiting the generality of the foregoing, the Issuer shall comply with all requirements and covenants contained in the Senior Lien Bonds Tax Certificates.

**SECTION 9.09**      Further Assurances. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures, and such further acts, instruments and transfers as the Trustee may reasonably request for the better assuring and confirming to the Trustee all the rights and obligations of the Issuer under and pursuant to this Indenture.

**SECTION 9.10**      Compliance with Resolution. The Issuer hereby covenants to comply with and to carry out the provisions of the Resolution, including, without limitation, to allocate the Sales Tax (including the proceeds of bonds secured by Sales Tax) for the uses and in accordance with the Resolution and the Act.

## **ARTICLE X EVENTS OF DEFAULT AND REMEDIES**

**SECTION 10.01**      Senior Lien Events of Default. The following events shall be Senior Lien Events of Default:

(a)      default in the due and punctual payment of the principal or Redemption Price of any Senior Lien Bonds when and as the same shall become due and payable, whether at maturity, upon acceleration or by declaration;

(b)      default in the due and punctual payment of any installment of interest on the Senior Lien Bonds when and as such interest installment shall become due and payable;

(c) if any payment default shall exist under any agreement governing any Senior Lien Obligations and shall continue beyond the grace period, if any, provided for with respect to such default;

(d) if the Issuer shall fail to observe or perform any covenant, condition, agreement or provision in this Indenture on its part to be observed or performed, other than as referred to in Section 10.01(a), (b) or (c) hereof, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Issuer by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the Issuer has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the Issuer shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(e) if the Issuer files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(f) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the Issuer insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Issuer, or approving a petition filed against the Issuer seeking reorganization of the Issuer under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or

(g) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Issuer or of the Revenues, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control.

SECTION 10.02 Subordinate Obligations Events of Default. The following events shall be Subordinate Obligations Events of Default:

(a) default in the due and punctual payment of the principal of the Loans when and as the same shall become due and payable, whether at maturity, upon acceleration or by declaration;

(b) default in the due and punctual payment of any installment of interest on the Loans when and as such interest installment shall become due and payable;

(c) the occurrence of an Event of Default (as such term is defined in the Credit Agreement) under any Credit Agreement;

(d) if any payment default shall exist under any agreement governing any Subordinate Obligations other than the Loans and shall continue beyond the grace period, if any, provided for with respect to such default.

SECTION 10.03 Application of the Revenues and Other Funds After Default. If an Event of Default shall occur and be continuing, to the fullest extent permitted by law, the Issuer shall immediately transfer all Revenues held by it to the Trustee, and the Trustee shall apply all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture (except as otherwise provided in this Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Holders of the Indenture Obligations, including the costs and expenses of the Trustee and such Holders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under this Indenture, provided, however, that if the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law;

(2) To the payment to the persons entitled thereto of all installments of interest then due on the Senior Lien Debt, with interest on overdue installments, if lawful, at the rate per annum borne by the Senior Lien Debt, as the case may be, in the order of maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment;

(3) To the payment to the persons entitled thereto of the unpaid principal of any of the Senior Lien Debt which shall have become due with interest on such Senior Lien Debt at their respective rate from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Senior Lien Debt due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege among Holders of Senior Lien Debt;

(4) To the payment to the persons entitled thereto of all installments of interest then due on the Subordinate Obligations, with interest on overdue installments, if lawful, at the rate per annum borne by the Subordinate Obligations, as the case may be, in the order of maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment;

(5) To the payment to the persons entitled thereto of the unpaid principal of any of the Subordinate Obligations which shall have become due with interest on such Subordinate Obligations at their respective rate from the respective dates upon which they became

due and, if the amount available shall not be sufficient to pay in full Subordinate Obligations due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege among Holders of Subordinate Obligations;

(6) To the payments to persons entitled thereto of amounts then due on Junior Obligations as provided in the Supplemental Indentures pursuant to which such Junior Obligations were issued.

Notwithstanding the foregoing provisions of this Section 10.03, in no event are any Indenture Obligations subject to acceleration if any Event of Default occurs and is continuing; provided, however, that (a) the accelerated payment of Liquidity Facility Bonds or reimbursement obligations relating to Liquidity Facility Bonds pursuant to the term-out provisions of any related Liquidity Facility, Credit Enhancement, letter of credit reimbursement agreement or similar agreement between the Issuer and the related Liquidity Provider shall not be considered to be an acceleration for purposes of this paragraph and (b) the Note and the Loans shall be subject to acceleration to the extent provided in the Credit Agreement, and Subordinate Obligations and Junior Obligations may be subject to acceleration as provided in the Supplemental Indenture pursuant to which any future Subordinate Obligations or Junior Obligations may be issued. For the avoidance of doubt, upon an event of default under the Credit Agreement, the Lender shall have all rights and remedies set forth therein.

**SECTION 10.04**     Trustee to Represent Holders. The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Indenture Obligations, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Holders of the Indenture Obligations for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Holders under the provisions of the Indenture Obligations, this Indenture, the Act and applicable provisions of any other law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Holders, the Trustee in its discretion may, and, upon the written request of the Holders of not less than a majority in aggregate amount of Bond Obligation of the Senior Lien Bonds then Outstanding or a majority in aggregate principal amount of the Subordinate Obligations then Outstanding (or, with respect to a Subordinate Obligations Event of Default, the written request of the Holders of not less than a majority in aggregate principal amount of the Subordinate Obligations then Outstanding), and being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Holders by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Holders under this Indenture, the Act or any other law; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Sales Tax Revenues and other assets pledged under this Indenture, pending such proceedings. All rights of action under this Indenture or the Senior Lien Bonds, the Senior Lien Obligations, the Notes, the Subordinate Obligations or the Junior Obligations or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the

Senior Lien Bonds, the Senior Lien Obligations, the Notes, the Subordinate Obligations or the Junior Obligations or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Holders of the Senior Lien Bonds, the Senior Lien Obligations, the Note, the other Subordinate Obligations and the Junior Obligations, subject to the provisions of this Indenture (including Section 10.06).

SECTION 10.05      Direction of Proceedings.

(a) Anything in this Indenture to the contrary notwithstanding, the Holders of a majority in aggregate amount of Bond Obligation of the Senior Lien Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee and upon furnishing the Trustee with indemnification satisfactory to it, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder for the benefit of the Senior Lien Bonds with respect to any Senior Lien Event of Default; provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Holders of the Senior Lien Bonds not parties to such direction.

(b) Anything in this Indenture to the contrary notwithstanding, the Holders of a majority in aggregate principal amount of Subordinate Obligations then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee and upon furnishing the Trustee with indemnification satisfactory to it, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder for the benefit of the Subordinate Obligations with respect to any Senior Lien Event of Default or any Subordinate Obligations Event of Default; provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Holders of Subordinate Obligations not parties to such direction.

SECTION 10.06      Limitation on Right to Sue. No Holder of any Indenture Obligation shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Act or any other applicable law with respect to such Indenture Obligation, unless: (1) such Holder shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) with respect to a Senior Lien Event of Default the Holders of not less than a majority in aggregate amount of Bond Obligation of the Senior Lien Bonds then Outstanding or the Holders of a majority in aggregate principal amount of the Subordinate Obligations then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (3) with respect to a Subordinate Obligations Event of Default, the Holders of not less than a majority in aggregate principal amount of such Subordinate Obligations then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to

institute such suit, action or proceeding in its own name; (4) the applicable Holder or said Holders shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (5) the Trustee shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Holder of any Indenture Obligation of any remedy hereunder or under law; it being understood and intended that (1) no one or more Holders of Senior Lien Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Holders of Senior Lien Debt, (2) no one or more Holders of Subordinate Obligations shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Holders of Subordinate Obligations, and (3) no one or more Holders of Indenture Obligations shall have the right in any manner whatever by his or their action to enforce any right under this Indenture, the Act or other applicable law with respect to the Indenture Obligations, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Holders of the Indenture Obligations then Outstanding, subject to the provisions of this Indenture.

SECTION 10.07 Absolute Obligation of the Issuer. Nothing in Section 10.06 or in any other provision of this Indenture, or in the Senior Lien Bonds or the Note, contained shall affect or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal and Redemption Price of and interest on the Senior Lien Bonds and Loan Debt Service and Lender Fees and Expenses to the respective Owners of the Notes on the dates provided in the Credit Agreements, and to pay amounts owing with respect to other Indenture Obligations when due and payable by their terms, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the applicable Indenture Obligation.

SECTION 10.08 Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Holders of Indenture Obligations on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or such Holders, then in every such case the Issuer, the Trustee and such Holders, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Issuer, the Trustee and such Holders shall continue as though no such proceedings had been taken.

SECTION 10.09 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Holders of Indenture Obligations is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 10.10 No Waiver of Default. No delay or omission of the Trustee or of any Holder of any Indenture Obligation to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Holder of any Indenture Obligation may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE XI THE TRUSTEE**

### SECTION 11.01 Appointment: Duties, Immunities and Liabilities of Trustee.

(a) U.S. Bank National Association is hereby appointed as Trustee under this Indenture and hereby accepts the duties imposed upon it as Trustee hereunder and hereby agrees to perform all the functions and duties of the Trustee hereunder, subject to the terms and conditions set forth in this Indenture. The Trustee shall perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of an Event of Default (which had not been cured), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Issuer may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing; the Issuer shall remove the Trustee if at any time it is requested to do so by an instrument or concurrent instruments in writing signed by the Owners of a majority of the Bond Obligation of the Senior Lien Bonds (or their attorneys duly authorized in writing), and consented to by the Owners of a majority in aggregate principal amount of the Notes at the time Outstanding; and the Issuer shall remove the Trustee if at any time the Trustee shall cease to be eligible in accordance with Section 11.01(e) hereof, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee. Upon any removal of the Trustee, the Issuer shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Issuer and by giving the Holders of Senior Lien Bonds and the Notes notice of such resignation by mail at the address shown on the registration books maintained by the Trustee. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor Trustee by an instrument in writing, with the prior written consent of the Owners of no less than a majority in aggregate principal amount of the Notes at the time Outstanding.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within sixty (60) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any



Senior Lien Bondholder (on behalf of himself and all other Senior Lien Bondholders) or any Noteholder (on behalf of himself and all other Noteholders) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Issuer and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Request of the Issuer or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Issuer shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Issuer shall give notice of the succession of such Trustee to the trusts hereunder by mail to the Owners.

(e) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall be a bank having the powers of a trust company or a trust company, having a combined capital and surplus of at least one hundred million dollars (\$100,000,000), subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11.01(e), the Trustee shall resign promptly in the manner and with the effect specified in this Section.

SECTION 11.02      Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under Section 11.01(e) hereof, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 11.03      Liability of Trustee.

(a) The recitals of facts herein and in the Senior Lien Bonds and Notes contained shall be taken as statements of the Issuer, and the Trustee assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this Indenture or of the Senior Lien Bonds or of the Notes as to the sufficiency of the Revenues or the

priority of the lien of this Indenture thereon, or as to the financial or technical feasibility of any portion of the Project and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressed herein or in the Senior Lien Bonds or the Notes. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Senior Lien Bonds or the Note and may join in any action which any Owner of the Senior Lien Bonds or the Note may be entitled to take, with like effect as if the Trustee was not the Trustee under this Indenture. The Trustee may in good faith hold any other form of indebtedness of the Issuer, own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the Issuer and make disbursements for the Issuer and enter into any commercial or business arrangement therewith, without limitation.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, but the Trustee shall be liable for the negligence or misconduct of any such attorney, agent, or receiver selected by it.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority of the Bond Obligation of the Senior Lien Bonds or a majority of the aggregate principal amount of the Note at the time Outstanding (or such other percentage of Bond Obligation of Senior Lien Bonds or of aggregate principal amount of the Note at the time Outstanding as shall be provided herein) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders of the Senior Lien Bonds or the Note pursuant to the provisions of this Indenture, including, without limitation, the provisions of ARTICLE X hereof, unless such Holders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

(f) The Trustee shall not be deemed to have knowledge of and shall not be required to take any action with respect to, any Event of Default (other than an Event of Default described in Section 10.01(a), Section 10.01(b), Section 10.01(c), Section 10.02(a), Section 10.02(b) or Section 10.02(d) hereof) or event which would, with the giving of notice, the passage of time or both, constitute an Event of Default, unless the Trustee shall have actual knowledge of

such event or shall have been notified of such event by the Issuer or the Owners of a majority of the Bond Obligation of the Senior Lien Bonds or a majority of the aggregate principal amount of the Note at the time Outstanding. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain, monitor or inquire as to the performance or observance by the Issuer of the terms, conditions, covenants or agreements set forth in ARTICLE IX hereof, other than the covenants of the Issuer to make payments with respect to the Indenture Obligations when due as set forth in Section 9.01 hereof and to file with the Trustee when due, such reports and certifications as the Issuer is required to file with the Trustee hereunder.

(g) No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(h) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney.

(i) The Trustee shall not be responsible for:

(1) the application or handling by the Issuer of any moneys transferred to the Issuer, pursuant to Request of the Issuer or otherwise, in accordance with the terms and conditions hereof;

(2) the application and handling by the Issuer of any fund or account designated to be held by the Issuer hereunder;

(3) any error or omission by the Issuer in making any computation or giving any instruction pursuant to Section 9.06, Section 9.07 and Section 9.08 hereof and may rely conclusively on any computations or instructions furnished to it by the Issuer in connection with the requirements of Section 9.06, Section 9.07 and Section 9.08 hereof and the Senior Lien Bonds Tax Certificate or the Note Tax Certificate; or

(4) the construction, operation or maintenance of any portion of the Project.

(j) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this ARTICLE XI.

SECTION 11.04 Right of Trustee to Rely on Documents. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, including, without limitation, counsel of or to the Issuer, with regard to legal questions, and the opinion of such counsel shall be

full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the Issuer, and such Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Trustee may also rely conclusively on any report or certification of any certified public accountant, investment banker, financial consultant, or other expert selected by the Issuer or selected by the Trustee with due care in connection with matters required to be proven or ascertained in connection with its administration of the trusts created hereby.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's reasonable understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 11.05 Compensation and Indemnification of Trustee. The Issuer covenants to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Issuer will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct. The Issuer, to the extent permitted by law, shall indemnify, defend and hold harmless the Trustee against any loss, damages, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trusts created hereby, including reasonable costs and expenses (including reasonable attorneys' fees and expenses) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the

Trustee and the obligations of the Issuer under this Section 11.05 shall survive the discharge of the Indenture Obligations and this Indenture and the resignation or removal of the Trustee.

**ARTICLE XII  
MODIFICATION OR AMENDMENT OF THIS  
INDENTURE**

SECTION 12.01      Amendments Permitted.

(a) This Indenture and the rights and obligations of the Issuer, the Holders of the Indenture Obligations and the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture, which the Issuer and the Trustee may enter into when the written consent of the Holders of a majority in aggregate amount of Bond Obligation of the Senior Lien Bonds and the Holders of a majority in aggregate principal amount of the Subordinate Obligations then Outstanding shall have been filed with the Trustee; provided that (1) if such modification affects only the Senior Lien Bonds, the consent of the Holders of Subordinate Obligations shall not be required; (2) if such modification affects only the Subordinate Obligations, the consent of the Holders of the Senior Lien Bonds shall not be required; (3) if such modification affects only a Series of Senior Lien Bonds, only the consent of the Holders of a majority in aggregate amount of Bond Obligation of such Series of Senior Lien Bonds shall be required; (4) if such modification affects only a portion of the Subordinate Obligations, only the consent of the Holders of a majority in aggregate principal amount of such portion of the Subordinate Obligations then Outstanding shall be required; and (5) if such modification or amendment will, by its terms, not take effect so long as any particular Senior Lien Bonds or any particular Subordinate Obligations remains Outstanding, the consent of the Holders of such Senior Lien Bonds or Subordinate Obligations shall not be required and such Senior Lien Bonds and such Subordinate Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Senior Lien Bonds or Subordinate Obligations Outstanding under this Section.

No such modification or amendment shall (a) extend the maturity of any Indenture Obligation, or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Indenture Obligation, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Indenture Obligation so affected, or (b) reduce the aforesaid percentage of Bond Obligation or principal amount the consent of the Holders of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture, or deprive the Holders of any Indenture Obligation of the lien created by this Indenture on such Revenues and other assets (in each case, except as expressly provided in this Indenture), without the consent of the Holders of all affected Indenture Obligations then Outstanding. It shall not be necessary for the consent of the Holders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution and delivery by the Issuer and the Trustee of any Supplemental Indenture pursuant to this Section 12.01(a), the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture to the Holders of the Indenture Obligations at the addresses shown on the registration

books of the Trustee. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

No modification to the interest rate, increase or decrease in principal amount, maturity date or payment terms of any then-Outstanding Senior Lien Bond and no modification of the conditions to issuance of Senior Lien Bonds or Senior Lien Obligations shall be deemed to affect the Holders of Subordinate Obligations, and no modification to the interest rate, increase or decrease in principal amount, maturity date or payment terms of any then-Outstanding Subordinate Obligations shall be deemed to affect the Holders of Senior Lien Bonds. Amendments to the requirements to issue Subordinate Obligations or to the rights of holders of Subordinate Obligations shall not be deemed to affect the Holders of the Senior Lien Bonds, [it being understood that with respect to any amendment that increases principal amounts as referred to in this paragraph shall comply with the applicable requirements of this Indenture with respect thereto].

(b) This Indenture and the rights and obligations of the Issuer, of the Trustee and of the Holders of any Indenture Obligations may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Issuer and the Trustee may enter into without the consent of any Holders, but only to the extent that such modification or amendment is permitted by the Act and does not materially and adversely affect the interests of the Holders of the Senior Lien Bonds or the Subordinate Obligations and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Issuer in this Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Indenture Obligations (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Issuer;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Issuer may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Holders of the Senior Lien Bonds or the Subordinate Obligations;

(3) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially and adversely affect the interests of the Holders of the Senior Lien Bonds or the Subordinate Obligations;

(4) to provide for the issuance of an additional Series of Senior Lien Bonds or Senior Lien Obligations pursuant to the provisions of ARTICLE IV hereof;

(5) to provide for the issuance of an additional Subordinate Obligations or Junior Obligations pursuant to the provisions of ARTICLE VI hereof;

(6) to make modifications or adjustments necessary, appropriate or desirable to provide for the issuance or incurrence, as applicable, of Capital Appreciation Bonds, Senior Lien Obligations, Subordinate Obligations, Junior Obligations or Variable Rate Indebtedness, with such interest rate, payment, maturity and other terms as the Issuer may deem desirable; subject to the provisions of ARTICLE III, ARTICLE IV and ARTICLE VI; provided that no such amendment shall materially and adversely affect the interests of any Holder of any Senior Lien Bonds;

(7) to make modifications or adjustments necessary, appropriate or desirable to provide for change from one interest rate mode to another in connection with any Indenture Obligation;

(8) to provide for any additional covenants or agreements necessary to maintain the tax-exempt status of, or any federal subsidy with respect to, interest on any Indenture Obligation;

(9) to provide for the issuance of Senior Lien Bonds in book-entry form or bearer form and/or to modify or eliminate the book-entry registration system for any Series of Senior Lien Bonds;

(10) to modify, alter, amend or supplement this Indenture in any other respect, including amendments that would otherwise be described in Section 12.01(a), if the effective date of such amendments is a date on which all Senior Lien Bonds and/or Subordinate Obligations affected thereby are subject to mandatory tender for purchase pursuant to the provisions of this Indenture or if notice of the proposed amendments is given to Holders of the affected Senior Lien Bonds and/or Subordinate Obligations at least 30 days before the proposed effective date of such amendments and, on or before such effective date, such Holders have the right to demand purchase of their Senior Lien Bonds and/or Subordinate Obligations pursuant to the provisions of this Indenture or if all Senior Lien Bonds and/or Subordinate Obligations affected thereby are in an auction mode and a successful auction is held following notice of such amendment; and

(11) for any other purpose that does not materially and adversely affect the interests of the Holders of the Senior Lien Bonds or the Subordinate Obligations.

For the avoidance of doubt, the issuance of any Indenture Obligation in accordance with the terms of this Indenture shall not in and of itself be deemed to materially and adversely affect the interests of the Holders of any other Indenture Obligations.

The execution and delivery of any Supplemental Indenture in accordance with this Section 12.01 shall be deemed not to materially adversely affect the interest of Holders of Senior Lien Bonds to the extent that (i) such Holders' Senior Lien Bonds are secured by Credit Enhancement and (ii) the relevant Credit Provider shall have given its written consent to such Supplemental Indenture; provided that such Credit Provider is not in default of its obligations under such Credit Enhancement.

SECTION 12.02 Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Indenture Obligations Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 12.03 Endorsement of Indenture Obligations; Preparation of New Indenture Obligations. Indenture Obligations delivered after any Supplemental Indenture becomes effective pursuant to this Article may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the Issuer and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Holder of any Indenture Obligation Outstanding at the time of such execution and presentation of his Indenture Obligation for such purpose at the Corporate Trust Office or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Indenture Obligation. If the Supplemental Indenture shall so provide, new Indenture Obligations so modified as to conform, in the opinion of the Issuer and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Issuer and authenticated by the Trustee, and upon demand of the Holders of any Indenture Obligations then Outstanding shall be exchanged at the Corporate Trust Office, without cost to any Holder, for Indenture Obligations then Outstanding, upon surrender for cancellation of such Indenture Obligations, in equal aggregate principal amounts of the same Series, tenor and maturity.

SECTION 12.04 Amendment of Particular Indenture Obligation. The provisions of this Article shall not prevent any Holder from accepting any amendment as to the particular Indenture Obligation held by him, provided that due notation thereof is made on such Indenture Obligation.

### **ARTICLE XIII DEFEASANCE OF SUBORDINATE OBLIGATIONS**

SECTION 13.01 Payment of Note. A Subordinate Obligation or a portion thereof may be paid by the Issuer in any of the following ways:

- (a) by paying or causing to be paid the Debt Service (including, but not limited to, Loan Debt Service if applicable) on the applicable Loans and Lender Fees and Expenses, as and when the same become due and payable;
- (b) by irrevocably depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 13.03 hereof) to pay the Note; or
- (c) by delivering the applicable Note to the Trustee, for cancellation by it.



If the Issuer shall pay the applicable Note and also pay or cause to be paid all other sums payable hereunder by the Issuer, and the commitment of the Lender to make Loans under the Credit Agreement shall have expired or terminated, then and in that case, at the election of the Issuer (evidenced by a Certificate of the Issuer, filed with the Trustee, signifying the intention of the Issuer to discharge all such indebtedness and this Indenture), and notwithstanding that the applicable Note shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture and, except as provided in Section 9.06 and Section 9.07 hereof, all covenants, agreements and other obligations of the Issuer under this Indenture shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon Request of the Issuer, the Trustee shall cause an accounting for such period or periods as may be requested by the Issuer to be prepared and filed with the Issuer and shall execute and deliver to the Issuer all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the Issuer all moneys (other than those held in the Rebate Fund) or securities or other property held by it pursuant to this Indenture which, as evidenced by a verification report, upon which the Trustee may conclusively rely, from a firm of independent certified public accountants, or other firm acceptable to the Trustee, are not required for the payment of the applicable Note not theretofore surrendered for such payment.

SECTION 13.02 Discharge of Liability on a Subordinate Obligation. Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 13.03 hereof) to pay the applicable Subordinate Obligation, then all liability of the Issuer in respect of the applicable Note shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and interest on the applicable Loans and the applicable Lender Fees and Expenses, as provided in the applicable Credit Agreement, and the Issuer shall remain liable for such payment, but only out of such money or securities deposited as aforesaid for their payment, subject, however, to the provisions of Section 13.04 hereof and the continuing duties of the Trustee hereunder.

If the Subordinate Obligations being discharged are Variable Rate Indebtedness, (i) the Subordinate Obligations shall be redeemed at the first possible redemption date or purchase date applicable to such Subordinate Obligations and to the extent the rate of interest payable on such Subordinate Obligations prior to such redemption or purchase date is not known, such rate of interest shall be assumed to be the Maximum Rate payable thereon or (ii), but only if applicable, the Trustee shall receive a confirmation from the Rating Agency then rating the Subordinate Obligations that the defeasance will not result in the reduction or withdrawal of the then-current ratings on the Subordinate Obligations, if any.

The Issuer may at any time surrender to the Trustee for cancellation by it the applicable Note previously issued and delivered, which the Issuer may have acquired in any manner whatsoever, and the Note, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 13.03 Deposit of Money or Securities with Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust money or securities

in the necessary amount to pay the applicable Note, the money or securities so to be deposited or held may include money or securities held by the Trustee or by the Issuer in the funds and accounts (other than the Rebate Fund) established pursuant to this Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of the applicable Loans and all unpaid interest thereon to maturity and the applicable Lender Fees and Expenses, or

(b) noncallable and non-prepayable investment securities consisting of (i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed as to full and timely payment by, the United States of America, (ii) any certificates, receipts, securities or other obligations (excluding mutual funds and unit investment trusts) evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i), the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal of and all unpaid interest to maturity, on the applicable Loans to be paid, as such principal and interest become due and applicable Lender Fees and Expenses as such become due; provided, in each case, that the Trustee, escrow agent or other fiduciary shall have been irrevocably instructed (by the terms of this Indenture or by Request of the Issuer) to apply such money to the payment of such principal and interest with respect to the applicable Loans and applicable Lender Fees and Expenses.

SECTION 13.04 Payment of Note After Discharge of Indenture. Any moneys held by the Trustee in trust for the payment of the applicable Loan Debt Service and applicable Lender Fees and Expenses and remaining unclaimed for two (2) years after the principal of the applicable Loans has become due and payable, if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when the applicable Loans became due and payable, shall, upon Request of the Issuer, be repaid to the Issuer free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease. All moneys held by or on behalf of the Trustee for the payment of the applicable Loan Debt Service and Lender Fees and Expenses shall be held uninvested, in trust for the account of the Owners thereof, and the Trustee shall not be required to pay Owners any interest on, or be liable to the Owners or any other person (other than the Issuer) for any interest earned on, moneys so held. Any interest earned thereon (other than to the extent required to be deposited in the Rebate Fund) shall belong to the Issuer and shall be deposited monthly by the Trustee into the Note Interest Fund.

#### **ARTICLE XIV DEFEASANCE OF SENIOR LIEN BONDS**

SECTION 14.01 Discharge of Indenture. Senior Lien Bonds of any Series or a portion thereof may be paid by the Issuer in any of the following ways:

(a) by paying or causing to be paid the Bond Obligation of and interest on such Outstanding Bonds, as and when they become due and payable;

(b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 14.03) to pay or redeem such Outstanding Senior Lien Bonds; or

(c) by delivering to the Trustee, for cancellation by it, such Outstanding Senior Lien Bonds.

If the Issuer shall pay all Series for which any Senior Lien Bonds are Outstanding and also pay or cause to be paid all other sums payable hereunder by the Issuer, then and in that case, at the election of the Issuer (evidenced by a Certificate of the Issuer, filed with the Trustee, signifying the intention of the Issuer to discharge all such indebtedness and this Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture and all covenants, agreements and other obligations of the Issuer under this Indenture shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon Request of the Issuer, the Trustee shall cause an accounting for such period or periods as may be requested by the Issuer to be prepared and filed with the Issuer and shall execute and deliver to the Issuer all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the Issuer all moneys or securities or other property held by it pursuant to this Indenture which, as evidenced by a verification report, upon which the Trustee may conclusively rely, from an independent certified public accountant, a firm of independent certified public accountants or other independent consulting firm, are not required for the payment or redemption of Senior Lien Bonds not theretofore surrendered for such payment or redemption,

**SECTION 14.02**      Discharge of Liability on Senior Lien Bonds. Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 14.03) to pay or redeem any Outstanding Senior Lien Bond (whether upon or prior to its maturity or the redemption date of such Senior Lien Bond), provided that, if such Senior Lien Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Section 5.02 provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Issuer in respect of such Senior Lien Bond shall cease, terminate and be completely discharged, provided that the Holder thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Senior Lien Bonds, and the Issuer shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment.

If the Senior Lien Bonds being discharged are Variable Rate Indebtedness, (i) the Senior Lien Bonds shall be redeemed at the first possible redemption date or purchase date applicable to such Senior Lien Bonds and to the extent the rate of interest payable on such Senior Lien Bonds prior to such redemption or purchase date is not known, such rate of interest shall be assumed to be the Maximum Rate payable thereon or (ii) the Trustee shall receive a confirmation from the Rating Agency then rating the Senior Lien Bonds that the defeasance will not result in the reduction or withdrawal of the then-current ratings on the Senior Lien Bonds.

The Issuer may at any time surrender to the Trustee for cancellation by it any Senior Lien Bonds previously issued and delivered, which the Issuer may have acquired in any manner whatsoever, and such Senior Lien Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Notwithstanding anything in this Section 14.02 to the contrary, if the principal of or interest on a Series of Senior Lien Bonds shall be paid by a Credit Provider pursuant to the Credit Enhancement issued in connection with such Series of Senior Lien Bonds, the obligations of the Issuer shall not be deemed to be satisfied or considered paid by the Issuer by virtue of such payments, and the right, title and interest of the Issuer herein and hereto and the obligations of the Issuer hereunder shall not be discharged and shall continue to exist and to run to the benefit of such Credit Provider, and such Credit Provider shall be subrogated to the rights of the Holders of the Senior Lien Bonds of such Series.

SECTION 14.03      Deposit of Money or Securities. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust money or securities in the necessary amount to pay or redeem any Senior Lien Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be:

(a)      lawful money of the United States of America in an amount equal to the principal amount of such Senior Lien Bonds and all unpaid interest thereon to maturity, except that, in the case of Senior Lien Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Section 5.02 provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Senior Lien Bonds and all unpaid interest thereon to the redemption date; or

(b)      Defeasance Securities the principal of and interest on which when due will, in the opinion of an independent certified public accountant, a firm of independent certified public accountants or other independent consulting firm delivered to the Trustee (as confirmed by a verification report upon which verification report the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Senior Lien Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Senior Lien Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Section 5.02 provided or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Request of the Issuer) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Senior Lien Bonds.

SECTION 14.04      Payment of Senior Lien Bonds After Discharge of Indenture. Any moneys held by the Trustee in trust for the payment of the principal, Redemption Price, or interest on any Senior Lien Bond and remaining unclaimed for one year after such principal, Redemption Price, or interest has become due and payable (whether at maturity or upon call for redemption as

provided in this Indenture), if such moneys were so held at such date, or one year after the date of deposit of such principal, Redemption Price or interest on any Senior Lien Bond if such moneys were deposited after the date when such Senior Lien Bond became due and payable, shall be repaid to the Issuer free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Issuer as aforesaid, the Trustee may (at the cost of the Issuer) first mail to the Holders of any Senior Lien Bonds remaining unpaid at the addresses shown on the registration books maintained by the Trustee a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Senior Lien Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Issuer of the moneys held for the payment thereof. All moneys held by or on behalf of the Trustee for the payment of principal or Accreted Value of or interest or premium on Senior Lien Bonds, whether at redemption or maturity, shall be held in trust for the account of the Holders thereof and the Trustee shall not be required to pay Holders any interest on, or be liable to the Holders or any other person (other than the Issuer) for interest earned on, moneys so held. Any interest earned thereon shall belong to the Issuer and shall be deposited upon receipt by the Trustee into the Sales Tax Revenue Fund.

## **ARTICLE XV SUBORDINATION PROVISIONS**

SECTION 15.01     Agreement to Subordinate. All Subordinate Obligations and Junior Obligations shall be subordinated, to the extent and in the manner provided in this ARTICLE XV, to the prior payment in full of amounts then due and payable on the Senior Lien Debt. All Junior Obligations shall be subordinated, to the extent and in the manner provided in this ARTICLE XV, to the prior payment in full of amounts then due and payable on of the Subordinate Obligations.

SECTION 15.02     Subordinated Pledge of Revenues. All Revenues are pledged, on a subordinate and junior basis to the pledge of Revenues securing Senior Lien Debt, to secure the payment of Subordinate Obligations. All Revenues are pledged, on a subordinate and junior bases to the pledge of Revenues securing Senior Lien Debt, and to the pledge of Revenues securing Subordinate Obligations, to secure the payment of Junior Obligations. In accordance with Section 7.01 and Section 7.02, Subordinate Obligations are junior and subordinate in all respects to the Senior Lien Debt as to lien on and source and security for payment from the Revenues, and as otherwise provided in this ARTICLE XV. In accordance with Section 7.01 and Section 7.02, Junior Obligations are junior and subordinate in all respects to the Senior Lien Debt and Subordinate Obligations as to lien on and source and security for payment from the Revenues, and as otherwise provided in this ARTICLE XV.

SECTION 15.03     Liquidation; Dissolution; Bankruptcy. Upon any distribution to creditors of the Issuer following an Event of Default under Section 10.01(e), Section 10.01(f) or Section 10.01(g):

(a)     Holders of the Senior Lien Debt shall be entitled to receive payment, pursuant to Section 10.03 hereof, in cash, of the interest on and principal or Redemption Price, if applicable, of such Senior Lien Debt then due and payable and other amounts then payable with respect thereto, then Holders of the Subordinate Obligations shall be entitled to receive payment,

pursuant to Section 10.03 hereof, in cash, of the interest on and principal or Redemption Price, if applicable, of such Subordinate Obligations then due and payable and other amounts then payable with respect thereto, in each case before any Holder of Junior Obligations shall be entitled to receive any payment of interest on or principal or Redemption Price, if applicable, of such Junior Obligations, pursuant to Section 10.03 hereof; and

(b) until the interest and principal or Redemption Price, if applicable, of Senior Lien Debt then due and payable are paid, in cash, any distribution to which Holders of Subordinate Obligations would be entitled but for this ARTICLE XV shall be made to the Trustee for the benefit of the Holders of the Senior Lien Debt as their interests may appear; and

(c) until the interest and principal or Redemption Price, if applicable, of Senior Lien Debt and Subordinate Obligations then due and payable are paid in accordance with Section 10.03 hereof, in cash, any distribution to which Holders of Junior Obligations would be entitled but for this ARTICLE XV shall be made to the Trustee for the benefit of the Holders of first, the Senior Lien Debt and then the Holders of Subordinate Obligations as their interests may appear.

For purposes of this Section 15.03, a distribution may consist of cash, securities or other property, by set-off or otherwise.

**SECTION 15.04**     Relationship Upon Default of Senior Lien Debt, Subordinate Obligations and Junior Obligations.

(a) If any Event of Default shall have occurred and be continuing, Holders of Indenture Obligations shall be entitled to payment in the priority set forth in Section 10.03.

(b) The provisions of (a) above are solely for the purpose of defining the relative rights of the Holders of the Indenture Obligations, and nothing herein shall impair, as between the Issuer and the Holders of any Indenture Obligations, the obligation of the Issuer, which is unconditional and absolute, to pay to the Holders of the Indenture Obligations the principal of and interest thereon then due and payable in accordance with their terms; nor shall anything therein prevent the Holders of Indenture Obligations from exercising all remedies otherwise permitted by applicable law or hereunder upon default hereunder, subject to the limitations contained in this ARTICLE XV and the rights under (a) above.

**SECTION 15.05**     When Distribution Must be Paid Over. In the event that the Issuer or the Trustee shall make any payment to the Holder of any Subordinate Obligations or Subordinate Obligation other than in the order of priority set forth in Section 10.03, such payment shall be held by such Holder in trust for the benefit of, and shall be paid forthwith over and delivered to, the Trustee for the benefit of the Holders of Senior Lien Debt or the Holders of Senior Lien Debt and Subordinate Obligations (first to the Holders of Senior Lien Debt and pro rata as to each of such Holders on the basis of the principal amount then due and payable on the Senior Lien Debt held by them and second to the Holders of Subordinate Obligations and pro rata as to each of such Holders on the basis of the principal amount then due and payable on the Subordinate Obligations held by them), as applicable, as their respective interests may appear, for application

to the payment of all amounts then due and payable under the Senior Lien Debt and the Subordinate Obligations.

SECTION 15.06 Limitation on Exercise of Remedies. All rights and remedies of Senior Lien Debt, Subordinate Obligations and Junior Obligations are subject to the provisions and limitations set forth in ARTICLE X of this Indenture.

SECTION 15.07 Subordination May Not Be Impaired by Trustee, Authority or Holder. No right of any Holder of Senior Lien Debt to enforce the subordination of the Subordinate Obligations shall be impaired by any act or failure to act by the Trustee, the Issuer or such Holder. No right of any Holder of Senior Lien Debt or Subordinate Obligations to enforce the subordination of the Junior Obligations shall be impaired by any act or failure to act by the Trustee, the Issuer or such Holder.

SECTION 15.08 Distribution or Notice. Whenever a distribution is to be made or a notice given to the Holders of Senior Lien Debt, Subordinate Obligations or Junior Obligations pursuant to this ARTICLE XV, the distribution may be made and the notice given to the Trustee.

## **ARTICLE XVI MISCELLANEOUS**

SECTION 16.01 Liability of Authority Limited to Revenues. Notwithstanding anything in this Indenture or in any Indenture Obligation contained, the Issuer shall not be required to advance any moneys derived from any source of income other than the Revenues and other assets pledged hereunder (including under a Credit Agreement or a Supplemental Indenture) for any of the purposes in this Indenture mentioned, whether for the payment of the principal or Redemption Price of or interest on the Senior Lien Bonds or the Loans or for any other purpose of this Indenture. The Issuer may, however, advance funds for any such purpose, provided such funds are derived from a source legally available for such purpose.

SECTION 16.02 Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Issuer or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Issuer or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 16.03 Limitation of Rights to Specified Parties. Nothing in this Indenture or any Indenture Obligation, expressed or implied, is intended or shall be construed to give to any person other than the Issuer, the Trustee, the Owners of the Indenture Obligations, and any Counterparty, Liquidity Provider or Credit Provider, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Issuer, the Trustee, the Owners of the Indenture Obligations, and any Counterparty, Liquidity Provider or Credit Provider.

SECTION 16.04 Lender to Act as Noteholder; Limitations on Lender's Rights. Notwithstanding anything contained herein to the contrary, the Lender shall be treated as the sole Noteholder for all provisions hereof regarding consents, approvals, directions, waivers, appointments, requests or other actions by Noteholders or any portion thereof. Further, notwithstanding anything herein to the contrary, any such provisions or any provisions regarding consents, approvals, directions, waivers, appointments, requests or other actions by Noteholders or any portion thereof or of the Lender shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Noteholders and/or Lender were not mentioned therein at any time when (A) there is no Loan outstanding under the Credit Agreement and (B)(1) the Lender has failed to honor a properly presented and conforming request for Loan under the Credit Agreement or (2) the Credit Agreement shall at any time for any reason cease to be valid and binding on the Lender in a final non-appealable judgment of a court of competent jurisdiction, or has terminated in accordance with its terms.

SECTION 16.05 Waiver of Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 16.06 Destruction or Delivery of Canceled Note. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Issuer of the Senior Lien Bonds or the Note, the Trustee may, in its sole discretion, in lieu of such cancellation and delivery, destroy the applicable Senior Lien Bond or the Note, and deliver a certificate of such destruction to the Issuer.

SECTION 16.07 Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Senior Lien Bonds or the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Issuer hereby declares that it would have adopted this Indenture and each and every other Section, subsection, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Senior Lien Bonds and the Note pursuant thereto irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 16.08 Notices. Except as otherwise provided herein, for the purposes of this Indenture each such agreement, respectively, any notice to or demand may be served or presented, and such demand may be made and shall be deemed to have been sufficiently given or served for all purposes by being deposited, first-class mail postage prepaid, in a post office letter box, addressed, as the case may be, to the parties as follows (or in each case at such other or additional addresses as may have been filed in writing with the Trustee): **[CONFIRM WITH TRUSTEE RE ELECTRONIC NOTICE]**



Authority: Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, California 94070-1306  
Attention: Chief Financial Officer  
Telephone: (650) 508-7950  
Fax: (650) 508-6415

Trustee: U.S. Bank National Association  
[One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Global Corporate Trust Services  
Telephone: (415) 677-3593  
Fax: (415) 677-3769]

SECTION 16.09 Evidence of Rights of Holders. Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Holders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Holders by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Issuer if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Notes shall be proved by the Note registration books held by the Trustee. The Trustee may establish a record date as of which to measure consent of the Noteowners in order to determine whether the requisite consents are received.

The ownership of the Senior Lien Bonds shall be proved by the Bond Register held by the Trustee. The Trustee may establish a record date as of which to measure consent of the Bondholders in order to determine whether the requisite consents are received.

Any request, consent, or other instrument or writing of the Owner of the Note or the Senior Lien Bonds shall bind every future Owner of the same Note or Senior Lien Bonds and the Owner of every Note or Senior Lien Bonds issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Issuer in accordance therewith or reliance thereon.

SECTION 16.10 Disqualified Indenture Obligations. In determining whether the Owners of the requisite aggregate principal amount of some or all Indenture Obligations have

concurrent in any demand, request, direction, consent or waiver under this Indenture, any interest in the Indenture Obligations owned or held by or for the account of the Issuer, or by any other obligor on the Indenture Obligations, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Issuer or any other obligor on the Indenture Obligations, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Any interest in the Indenture Obligations so owned, which has been pledged in good faith, may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote its interest in the Indenture Obligations and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Issuer or any other obligor on the Indenture Obligations. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

SECTION 16.11 Money Held for Particular Indenture Obligation. The money held by the Trustee for the payment of the interest or principal due on any date with respect to any particular Indenture Obligation shall, on and after such date and pending such payment, be set aside on books of the Trustee and held in trust by the Trustee for the Owners of such Indenture Obligation entitled thereto, subject, however, to the provisions of Sections 13.04 and 14.04 hereof.

SECTION 16.12 Funds and Accounts. Any fund required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the industry, to the extent practicable, and with due regard for the protection of the security of the Indenture Obligations and the rights of every Holder thereof.

SECTION 16.13 Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 16.14 Waiver of Personal Liability. No Board member, officer, agent or employee of the Issuer or the Trustee shall be individually or personally liable for the payment of any Indenture Obligation or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such Board member, officer, agent or employee of the Issuer or the Trustee from the performance of any official duty provided by law or by this Indenture.

SECTION 16.15 Governing Law. This Indenture shall be construed and governed in accordance with the laws of the State.

SECTION 16.16 Business Day. Except as specifically set forth in a Supplemental Indenture, any payments or transfers, which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day with the same effect as if made on such prior date; provided that with respect to the Note, interest shall accrue as provided in the Credit Agreement.

SECTION 16.17 Effective Date of Indenture. This Indenture shall take effect upon its execution and delivery.

SECTION 16.18 Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Indenture by their officers thereunto duly authorized as of the day and year first written above.

PENINSULA CORRIDOR JOINT  
POWERS BOARD

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_

Authorized Officer

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**FIRST SUPPLEMENTAL INDENTURE OF TRUST**

between

PENINSULA CORRIDOR JOINT POWERS BOARD

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

relating to:

PENINSULA CORRIDOR JOINT POWERS BOARD  
PCEP FACILITY NOTES

Dated as of August 1, 2021

(Supplemental to the Indenture of Trust dated as of August 1, 2021)

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## FIRST SUPPLEMENTAL INDENTURE OF TRUST

This **FIRST SUPPLEMENTAL INDENTURE OF TRUST**, dated as of August 1, 2021 (this “**First Supplemental Indenture**”), is between the **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “**Issuer**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the “**Trustee**”), and amends that certain Indenture of Trust, dated as of August 1, 2021 (the “**Indenture**”), between the Issuer and the Trustee;

### WITNESSETH:

**WHEREAS**, the Issuer is duly organized and existing pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and created pursuant to a Joint Powers Agreement, made and entered into on October 3, 1996 (as more fully defined in Section 1.01 of the Indenture, the “**JPA Agreement**”), by and between the Santa Clara Valley Authority (“**VTA**”), formerly known as the Santa Clara County Transit District, the City and County of San Francisco (“**CCSF**”), and the San Mateo County Transit District (“**SamTrans**”) (each a “**Member Agency**,” and hereinafter collectively referred to as the “**Member Agencies**”);

**WHEREAS**, the Issuer is authorized to issue from time to time indebtedness payable in whole or in part from revenues of the Sales Tax; and

**WHEREAS**, the Indenture provides for the issuance of Notes and other Subordinate Obligations and for the execution and delivery of Supplemental Indentures; and

**WHEREAS**, the Issuer previously executed an Amended and Restated Credit Agreement with an affiliate of JPMorgan Chase Bank, National Association. (the “**Prior PCEP Lender**”) for the Peninsula Corridor Electrification Project (the “**PCEP**”), dated January 1, 2019 (the “**Prior PCEP Agreement**”), and such Prior Agreement was secured in part by Project Funds and Farebox Revenues (each as defined in the Prior PCEP Agreement); and

**WHEREAS**, the Issuer has determined to enter into a new Credit Agreement dated as of August 1, 2021, with Wells Fargo Bank, National Association (the “**PCEP Lender**”) to replace the Prior PCEP Agreement and provide funding for the PCEP, and Wells Fargo Bank, National Association has agreed to provide such new credit agreement (the “**PCEP Facility**”); and

**WHEREAS**, in order to secure the payment of the principal of and interest on the Loans under the PCEP Facility (the “**PCEP Loans**”) and other “**Obligations**” (as defined in the PCEP Facility) under the PCEP Facility, Revenues will be pledged on a parity basis with any other Subordinate Obligations issued from time to time under the Indenture, and on a subordinate basis to any Senior Lien Debt issued from time to time; and

**WHEREAS**, the PCEP Loans are further secured by PCEP Project Funds (as defined in the PCEP Facility); and

**WHEREAS**, all acts, conditions, and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this First Supplemental Indenture do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Supplemental Indenture; and

NOW, THEREFORE, the Issuer and the Trustee, each in consideration of the representations, warranties, covenants and agreements of the other as set forth herein, mutually represent, warrant, covenant and agree as follows:

## **ARTICLE I** **DEFINITIONS**

SECTION 1.01 Definitions. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Indenture, as amended by this First Supplemental Indenture. The following definitions shall apply to the terms used in this First Supplemental Indenture unless the context clearly requires otherwise.

**“Maximum Rate”** means (i) for the purpose of calculating the Accrued Subordinate Interest for a future calendar month, shall be the maximum interest rate paid with respect to the PCEP Facility Notes during the month prior to the month of such calculation, plus one percent (1%), (ii) for the purpose of calculating the interest rate for the purposes of Section 13.02 of the Indenture, shall be the maximum interest rate paid with respect to the PCEP Facility Notes during the month prior to the month of deposit plus one percent (1%), and (iii) for any other purpose, shall have the meaning ascribed thereto in the PCEP Facility.

**“PCEP Facility”** has the meaning set forth in the recitals hereto and shall also refer to the “PCEP Facility” as defined in the Indenture.

**“PCEP Facility Tax-Exempt Note”** means, the “Tax-Exempt Note” as defined in the PCEP Facility.

**“PCEP Facility Taxable Note”** means, the “Taxable Note” as defined in the PCEP Facility.

**“PCEP Lender”** has the meaning set forth in the recitals hereto and shall also refer to the “PCEP Facility” as defined in the Indenture.

**“PCEP Loans”** has the meaning set forth in the recitals hereto and constitute “Initial Loans” and “Loans” as defined in the Indenture.

**“PCEP Notes Tax Certificate”** means the Note Tax Certificate executed in connection with the PCEP Facility Tax-Exempt Note.

**“Prior PCEP Agreement”** has the meaning set forth in the recitals hereto.

**“Prior PCEP Lender”** has the meaning set forth in the recitals hereto.



**ARTICLE II**  
**ISSUANCE OF PCEP FACILITY NOTES**

SECTION 2.04      Issuance of PCEP Facility Notes. A PCEP Facility Tax-Exempt Note and a PCEP Facility Taxable Note shall be issued in registered form to the PCEP Lender and shall be in the form specified in the PCEP Facility. Each of the PCEP Facility Notes shall be executed and authenticated as provided in Sections 2.03 and 2.04 of the Indenture. The PCEP Facility Notes are the “Initial Notes” defined in the Indenture and constitute “Notes” as defined in the Indenture.

SECTION 2.05      Notes Under the Indenture; Security; Lien Priority; Further Security. The PCEP Facility Notes are issued under and subject to the terms of the Indenture and are secured by and payable from Revenues as Subordinate Obligations on a parity with other Subordinate Obligations in accordance with the terms of the Indenture. The PCEP Facility Notes are further secured by and payable from a pledge of PCEP Project Funds as further described in the PCEP Facility. Such PCEP Project Funds do not secure any other Indenture Obligations.

**ARTICLE III**  
**CREATION OF ACCOUNTS AND SUBACCOUNTS**

SECTION 3.01      PCEP Notes Construction Account. The Trustee shall establish a separate account within the Note Construction Fund designated the “PCEP Facility Construction Account.” The Trustee shall maintain and hold in trust such account. The moneys in the PCEP Facility Construction Account shall be disbursed, upon a Requisition of the Issuer, to pay Costs incurred in connection with the portion of the PCEP financed with such PCEP Loan deposited in the PCEP Facility Construction Account (or to make reimbursements to the Issuer for such costs). Such Requisition of the Issuer shall be substantially in the form set forth in Exhibit A hereto and shall set forth the name of the person or persons to whom said amounts are to be disbursed and shall state that the amounts to be disbursed are for costs properly chargeable to the PCEP Facility Construction Account and that such amounts have not been the subject of any previous Requisition of the Issuer.

SECTION 3.02      PCEP Notes Costs of Issuance Subaccount. The Trustee shall establish a separate subaccount within the PCEP Facility Construction Account designated the “PCEP Facility Notes Costs of Issuance Subaccount.” The Trustee shall maintain and hold in trust such subaccount. Moneys deposited in the PCEP Facility Notes Costs of Issuance Subaccount from a PCEP Loan [and will be identified in the PCEP Notes Tax Certificate] and shall be used to pay Costs of Issuance incurred in connection with such PCEP Loan, upon completion by the Issuer of a Requisition of the Issuer. Such Requisition of the Issuer shall be substantially in the form attached as Exhibit B hereto and shall state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said PCEP Facility Notes Costs of Issuance Subaccount. At the end of one hundred eighty (180) days from the date of each PCEP Loan, or upon such earlier date as the Issuer shall determine that amounts in said PCEP Facility Notes Costs of Issuance Subaccount are no longer required for the payment of Costs of Issuance related to such PCEP Loan, any amounts then remaining in the PCEP Facility Notes Costs of Issuance Subaccount representing the proceeds of such PCEP Loan shall be transferred by the Trustee

either (a) if and to the extent proceeds of such PCEP Loan were deposited to the Note Construction Fund and the Certificate of the Issuer described in Section 8.01 of the Indenture has not yet been delivered with respect to such PCEP Loan, to the Note Construction Fund, and (b) otherwise to the Note Interest Fund to be applied to the next payment of interest on the related PCEP Facility Note. Such funds in the PCEP Facility Notes Costs of Issuance Subaccount do not secure any other Indenture Obligations.

SECTION 3.03 PCEP Notes Note Interest Account. The Trustee shall establish a separate account within the Note Interest Fund designated the “PCEP Facility Note Interest Account.” The Trustee shall maintain and hold in trust such account. One Business Day prior to when interest is due and owing under the PCEP Facility Notes, the Issuer shall first transfer PCEP Project Funds to the PCEP Facility Interest Note Account to pay interest then due and owing under the PCEP Facility Notes. To the extent there is a deficiency in the PCEP Facility Note Interest Account, the Trustee shall transfer Revenues from the Note Interest Fund into the PCEP Facility Note Interest Account to make interest payments then due and owing under the PCEP Facility Notes. Such funds in the PCEP Facility Note Interest Account do not secure any other Indenture Obligations.

SECTION 3.04 PCEP Notes Note Principal Account. The Trustee shall establish a separate account within the Note Principal Fund designated the “PCEP Facility Note Principal Account.” The Trustee shall maintain and hold in trust such account. One Business Day prior to when principal is due and owing under the PCEP Facility Notes, the Issuer shall first transfer PCEP Project Funds to the PCEP Facility Principal Note Account to pay principal then due and owing under the PCEP Facility Notes. To the extent there is a deficiency in the PCEP Facility Note Principal Account, the Trustee shall transfer Revenues from the Note Principal Fund into the PCEP Facility Note Principal Account to make principal payments then due and owing under the PCEP Facility Notes. Such funds in the PCEP Facility Note Principal Account do not secure any other Indenture Obligations.

SECTION 3.05 PCEP Notes Note Rebate Account. The Trustee shall establish a separate account within the Note Rebate Fund designated the “PCEP Facility Note Rebate Account” in connection with the PCEP Facility Tax-Exempt Note. The Trustee shall maintain and hold in trust such account and shall be administered as the Issuer shall direct in writing to comply with the terms and requirements of the PCEP Notes Tax Certificate and Section 9.06 of the Indenture.

#### **ARTICLE IV** **MISCELLANEOUS**

SECTION 4.01 Limited Obligation. Neither the faith and credit nor the taxing power of the Counties, the State or any political subdivision or agency thereof, other than the Issuer to the extent of the Revenues and PCEP Project Funds are pledged to the payment of the PCEP Facility Notes.

The PCEP Facility Notes are limited obligations of the Issuer and are payable, both as to principal and interest, from the Revenues and PCEP Project Funds. The general fund of the Issuer is not liable, and neither the credit nor the taxing power of the Issuer is pledged (other than

as described in the preceding sentence), for the payment of the PCEP Facility Notes or their interest. The PCEP Facility Notes are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the Issuer or any of its income or receipts, except the Revenues and the PCEP Project Funds as further described in the PCEP Facility and the Indenture.

SECTION 4.02        Successor Is Deemed Included in All References to Predecessor. Whenever in this First Supplemental Indenture either the Issuer or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this First Supplemental Indenture contained by or on behalf of the Issuer or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 4.03        Limitation of Rights to Specified Parties. Nothing in this First Supplemental Indenture, expressed or implied, is intended or shall be construed to give to any person other than the Issuer, the Trustee, the Owners of the PCEP Facility Notes, any legal or equitable right, remedy or claim under or in respect of this First Supplemental Indenture or any covenant, condition or provision therein or herein contained; all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Issuer, the Trustee, and the Owners of the PCEP Facility Notes.

SECTION 4.04        Severability. If any provision of this First Supplemental Indenture shall be determined to be unenforceable, such determination shall not affect any other provision of this First Supplemental Indenture.

SECTION 4.05        Governing Law. This First Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of California.

SECTION 4.06        Captions. The captions in this First Supplemental Indenture are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this First Supplemental Indenture.

SECTION 4.07        Counterparts. This First Supplemental Indenture may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

SECTION 4.08        Effectiveness of Remainder of the Indenture. Except as otherwise amended herein, the Indenture shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Supplemental Indenture by their officers thereunto duly authorized as of the date first above written.

PENINSULA CORRIDOR JOINT POWERS  
BOARD

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By \_\_\_\_\_  
Authorized Officer

[Signature page to First Supplemental Indenture]

**EXHIBIT A**

Form of Requisition — PCEP Facility Construction Account

REQUISITION NO. \_\_\_

The undersigned, \_\_\_\_\_, hereby certifies as follows:

1. I am the \_\_\_\_\_ of the Peninsula Corridor Joint Powers Board, a public entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”).

2. Pursuant to the provisions of that certain Indenture of Trust, dated as of August 1, 2021 (the “Indenture”), and the First Supplemental Indenture of Trust, dated as of August 1, 2021 (the “First Supplemental Indenture”), each between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), I am an Authorized Representative (as such term is defined in the Indenture) of the Issuer and I am delivering this Requisition on behalf of the Issuer.

3. The undersigned, acting on behalf of the Issuer, does hereby authorize disbursement of funds from the PCEP Facility Construction Account (the “Construction Fund”) created pursuant to Section 3.01 of the First Supplemental Indenture in connection with the payment of the Costs of the [PCEP][Project] (as such term is defined in the Indenture) being financed with the proceeds of the applicable PCEP Loan (as such term is defined in the First Supplemental Indenture).

TOTAL DISBURSEMENT AMOUNT AUTHORIZED: \$ \_\_\_\_\_

4. The undersigned, acting on behalf of the Issuer, hereby certifies that: (a) the Costs of the [PCEP][Project] [or interest on the PCEP Facility Notes] in the amount set forth herein have been incurred by the Issuer and are presently due and payable; and (b) that each item is a proper charge against the Construction Fund and has not been previously paid from the Construction Fund.

5. The undersigned, acting on behalf of the Issuer, hereby certifies that there has not been filed with or served upon the Issuer notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the amounts payable to any of the parties identified on Exhibit A to this Requisition, which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen’s or mechanics’ liens accruing by mere operation of law.

Dated: \_\_\_\_\_

PENINSULA CORRIDOR JOINT  
POWERS BOARD

By: \_\_\_\_\_  
Authorized Representative

EXHIBIT A

PCEP Facility Construction Account of the Construction Fund

Party To Be Paid	Payment Amount	Nature of Expenditure	Payment Instructions
	\$ _____		

**EXHIBIT B**

Form of Requisition — PCEP Facility Notes Costs of Issuance Subaccount

REQUISITION NO. \_\_\_

The undersigned, \_\_\_\_\_, hereby certifies as follows:

1. I am the \_\_\_\_\_, of the Peninsula Corridor Joint Powers Board, a public entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”).

2. Pursuant to the provisions of that certain Indenture of Trust, dated as of August 1, 2021 (the “Indenture”), and the First Supplemental Indenture of Trust, dated as of August 1, 2021 (the “First Supplemental Indenture”), each between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), I am an Authorized Representative (as such term is defined in the Indenture) of the Issuer and I am delivering this Requisition on behalf of the Issuer.

3. The undersigned hereby authorizes payment of the amounts specified in Exhibit A hereto to the persons identified in Exhibit A, such amounts to be paid from the PCEP Facility Notes Costs of Issuance Subaccount (the “Costs of Issuance Subaccount”) established pursuant to the Indenture.

4. The undersigned hereby certifies that: (i) obligations in the amounts stated in Exhibit A have been incurred by the Issuer and are presently due and payable; (ii) each item is a proper charge against the Costs of Issuance Subaccount; and (iii) each item has not been previously paid from said Costs of Issuance Subaccount.

Dated: \_\_\_\_\_.

PENINSULA CORRIDOR JOINT  
POWERS BOARD

By: \_\_\_\_\_  
Authorized Representative

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**SECOND SUPPLEMENTAL INDENTURE OF TRUST**

between

PENINSULA CORRIDOR JOINT POWERS BOARD

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

relating to:

PENINSULA CORRIDOR JOINT POWERS BOARD  
WORKING CAPITAL FACILITY NOTES

Dated as of August 1, 2021

(Supplemental to the Indenture of Trust dated as of August 1, 2021)

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## SECOND SUPPLEMENTAL INDENTURE OF TRUST

This **SECOND SUPPLEMENTAL INDENTURE OF TRUST**, dated as of August 1, 2021 (this “**Second Supplemental Indenture**”), is between the **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “**Issuer**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the “**Trustee**”), and amends that certain Indenture of Trust, dated as of August 1, 2021 (the “**Indenture**”), between the Issuer and the Trustee;

### WITNESSETH:

**WHEREAS**, the Issuer is duly organized and existing pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and created pursuant to a Joint Powers Agreement, made and entered into on October 3, 1996 (as more fully defined in Section 1.01 of the Indenture, the “**JPA Agreement**”), by and between the Santa Clara Valley Authority (“**VTA**”), formerly known as the Santa Clara County Transit District, the City and County of San Francisco (“**CCSF**”), and the San Mateo County Transit District (“**SamTrans**”) (each a “**Member Agency**,” and hereinafter collectively referred to as the “**Member Agencies**”);

**WHEREAS**, the Issuer is authorized to issue from time to time indebtedness payable in whole or in part from revenues of the Sales Tax; and

**WHEREAS**, the Indenture provides for the issuance of Notes and other Subordinate Obligations and for the execution and delivery of Supplemental Indentures; and

**WHEREAS**, the Issuer previously executed a Credit Agreement with an affiliate of JPMorgan Chase Bank, National Association (the “**Prior Lender**”) for working capital purposes, dated January 1, 2019 (the “**Prior Working Capital Agreement**”); and

**WHEREAS**, the Issuer has determined to enter into a new credit agreement dated as of August 1, 2021, with Wells Fargo Bank, National Association (the “**Working Capital Lender**”) to replace the Prior Working Capital Agreement, and Wells Fargo Bank, National Association has agreed to provide such new credit agreement for working capital purposes of the Issuer (the “**Working Capital Facility**”); and

**WHEREAS**, in order to secure the payment of the principal of and interest on the Loans under the Working Capital Facility (the “**Working Capital Loans**”) and other Obligations (as defined in the Working Capital Facility) under the Working Capital Facility, Revenues will be pledged on a parity basis with any other Subordinate Obligations issued from time to time under the Indenture, and on a subordinate basis to any Senior Lien Debt issued from time to time; and

**WHEREAS**, all acts, conditions, and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Second Supplemental Indenture do exist, have happened and have been performed in regular

and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Second Supplemental Indenture; and

NOW, THEREFORE, the Issuer and the Trustee, each in consideration of the representations, warranties, covenants and agreements of the other as set forth herein, mutually represent, warrant, covenant and agree as follows:

## **ARTICLE I** **DEFINITIONS**

SECTION 1.01 Definitions. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Indenture, as amended by this Second Supplemental Indenture. The following definitions shall apply to the terms used in this Second Supplemental Indenture unless the context clearly requires otherwise.

**“Maximum Rate”** means (i) for the purpose of calculating the Accrued Subordinate Interest for a future calendar month, shall be the maximum interest rate paid with respect to the Working Capital Facility Notes during the month prior to the month of such calculation, plus one percent (1%), (ii) for the purpose of calculating the interest rate for the purposes of Section 13.02, shall be the maximum interest rate paid with respect to the Working Capital Facility Notes during the month prior to the month of deposit plus one percent (1%), and (iii) for any other purpose, shall have the meaning ascribed thereto in the Working Capital Facility.

**“Prior Working Capital Agreement”** has the meaning set forth in the recitals hereto.

**“Prior Lender”** has the meaning set forth in the recitals hereto.

**“Working Capital Facility”** has the meaning set forth in the recitals hereto and shall also refer to the “Working Capital Facility” as defined in the Indenture.

**“Working Capital Facility Tax-Exempt Note”** means, the “Tax-Exempt Note” as defined in the Working Capital Facility.

**“Working Capital Facility Taxable Note”** means, the “Taxable Note” as defined in the Working Capital Facility.

**“Working Capital Lender”** has the meaning set forth in the recitals hereto.

**“Working Capital Loans”** has the meaning set forth in the recitals hereto and constitute “Initial Loans” and “Loans” as defined in the Indenture.

**“Working Capital Notes Tax Certificate”** means the Note Tax Certificate executed in connection with the Working Capital Facility Tax-Exempt Note.

**ARTICLE II**  
**ISSUANCE OF WORKING CAPITAL FACILITY NOTES**

SECTION 2.04 Issuance of Working Capital Facility Notes. A Working Capital Facility Tax-Exempt Note and a Working Capital Facility Taxable Note shall be issued in registered form to the Lender and shall be in the form specified in the Working Capital Facility. Each of the Working Capital Facility Notes shall be executed and authenticated as provided in Sections 2.03 and 2.04 of the Indenture. The Working Capital Facility Notes are the “Initial Notes” and “Notes” as defined in the Indenture.

SECTION 2.05 Notes Under the Indenture; Security; Lien Priority; Further Security. The Working Capital Facility Notes are issued under and subject to the terms of the Indenture and are secured by and payable from Revenues as Subordinate Obligations on a parity with other Subordinate Obligations in accordance with the terms of the Indenture.

**ARTICLE III**  
**CREATION OF ACCOUNTS AND SUBACCOUNTS**

SECTION 3.01 [Working Capital Notes Other Note Proceeds Account. The Trustee shall establish a separate account within the Other Note Proceeds Fund designated the “Working Capital Facility Account.” The Trustee shall maintain and hold in trust such account. The moneys in the Working Capital Facility Construction Account shall be disbursed, upon a Request of the Issuer.][**TBD IF ACCOUNT WILL BE HELD AT TRUSTEE**]

SECTION 3.02 Working Capital Notes Costs of Issuance [Subaccount]. The Trustee shall establish a separate [subaccount] within the Other Note Proceeds Fund designated the “Working Capital Facility Notes Costs of Issuance Subaccount.” The Trustee shall maintain and hold in trust such subaccount. Moneys deposited in the Working Capital Facility Notes Costs of Issuance Subaccount from a Working Capital Loan [and will be identified in the Working Capital Notes Tax Certificate] and shall be used to pay Costs of Issuance incurred in connection with such Working Capital Loan, upon completion by the Issuer of a Requisition of the Issuer. Such Requisition of the Issuer shall be substantially in the form attached as Exhibit A hereto and shall state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said Working Capital Facility Notes Costs of Issuance [Subaccount]. At the end of one hundred eighty (180) days from the date of each Working Capital Loan, or upon such earlier date as the Issuer shall determine that amounts in said Working Capital Facility Notes Costs of Issuance Subaccount are no longer required for the payment of Costs of Issuance related to such Working Capital Loan, any amounts then remaining in the Working Capital Facility Notes Costs of Issuance Subaccount representing the proceeds of such Working Capital Loan shall be transferred by the Trustee to the Note Interest Fund to be applied to the next payment of interest on the related Working Capital Facility Note. Such funds in the Working Capital Facility Notes Costs of Issuance Subaccount do not secure any other Indenture Obligations.

SECTION 3.03 Working Capital Notes Note Interest Account. The Trustee shall establish a separate account within the Note Interest Fund designated the “Working Capital Facility Note Interest Account.” The Trustee shall maintain and hold in trust such account. One

Business Day prior to when interest is due and owing under the Working Capital Facility Notes, the Trustee shall transfer Revenues into the Working Capital Facility Note Interest Account to make interest payments then due and owing under the Working Capital Facility Notes. Such funds in the Working Capital Facility Note Interest Account do not secure any other Indenture Obligations.

SECTION 3.04 Working Capital Notes Note Principal Account. The Trustee shall establish a separate account within the Note Principal Fund designated the “Working Capital Facility Note Principal Account.” The Trustee shall maintain and hold in trust such account. One Business Day prior to when principal is due and owing under the Working Capital Facility Notes, the Trustee shall transfer Revenues into the Working Capital Facility Note Principal Account to make principal payments then due and owing under the Working Capital Facility Notes. Such funds in the Working Capital Facility Note Principal Account do not secure any other Indenture Obligations.

SECTION 3.05 Working Capital Notes Note Rebate Account. The Trustee shall establish a separate account within the Note Rebate Fund designated the “Working Capital Facility Note Rebate Account” in connection with the Working Capital Facility Tax-Exempt Note. The Trustee shall maintain and hold in trust such account and shall be administered as the Issuer shall direct in writing to comply with the terms and requirements of the Working Capital Notes Tax Certificate and Section 9.06 of the Indenture.

#### **ARTICLE IV** **MISCELLANEOUS**

SECTION 4.01 Limited Obligation. Neither the faith and credit nor the taxing power of the Counties, the State or any political subdivision or agency thereof, other than the Issuer to the extent of the Revenues is pledged to the payment of the Working Capital Facility Notes.

The Working Capital Facility Notes are limited obligations of the Issuer and are payable, both as to principal and interest, solely from the Revenues. The general fund of the Issuer is not liable, and neither the credit nor the taxing power of the Issuer is pledged (other than as described in the preceding sentence), for the payment of the Working Capital Facility Notes or their interest. The Working Capital Facility Notes are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the Issuer or any of its income or receipts, except the Revenues.

SECTION 4.02 Successor Is Deemed Included in All References to Predecessor. Whenever in this Second Supplemental Indenture either the Issuer or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Second Supplemental Indenture contained by or on behalf of the Issuer or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 4.03 Limitation of Rights to Specified Parties. Nothing in this Second Supplemental Indenture, expressed or implied, is intended or shall be construed to give to any

person other than the Issuer, the Trustee, the Owners of the Working Capital Facility Notes, any legal or equitable right, remedy or claim under or in respect of this Second Supplemental Indenture or any covenant, condition or provision therein or herein contained; all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Issuer, the Trustee, and the Owners of the Working Capital Facility Notes.

SECTION 4.04 Severability. If any provision of this Second Supplemental Indenture shall be determined to be unenforceable, such determination shall not affect any other provision of this Second Supplemental Indenture.

SECTION 4.05 Governing Law. This Second Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of California.

SECTION 4.06 Captions. The captions in this Second Supplemental Indenture are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Second Supplemental Indenture.

SECTION 4.07 Counterparts. This Second Supplemental Indenture may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

SECTION 4.08 Effectiveness of Remainder of the Indenture. Except as otherwise amended herein, the Indenture shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Supplemental Indenture by their officers thereunto duly authorized as of the date first above written.

PENINSULA CORRIDOR JOINT POWERS  
BOARD

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By \_\_\_\_\_  
Authorized Officer

[Signature page to Second Supplemental Indenture]

**EXHIBIT A**

Form of Requisition — Working Capital Note Costs of Issuance [Subaccount]

REQUISITION NO. \_\_

The undersigned, \_\_\_\_\_, hereby certifies as follows:

1. I am the \_\_\_\_\_, of the Peninsula Corridor Joint Powers Board, a public entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”).

2. Pursuant to the provisions of that certain Indenture of Trust, dated as of August 1, 2021 (the “Indenture”), and the Second Supplemental Indenture of Trust, dated as of August 1, 2021 (the “Second Supplemental Indenture”), each between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), I am an Authorized Representative (as such term is defined in the Indenture) of the Issuer and I am delivering this Requisition on behalf of the Issuer.

3. The undersigned hereby authorizes payment of the amounts specified in Exhibit A hereto to the persons identified in Exhibit A, such amounts to be paid from the Working Capital Facility Notes Costs of Issuance Subaccount (the “Costs of Issuance Subaccount”) established pursuant to the Indenture.

4. The undersigned hereby certifies that: (i) obligations in the amounts stated in Exhibit A have been incurred by the Issuer and are presently due and payable; (ii) each item is a proper charge against the Costs of Issuance Subaccount; and (iii) each item has not been previously paid from said Costs of Issuance Subaccount.

Dated: \_\_\_\_\_.

PENINSULA CORRIDOR JOINT  
POWERS BOARD

By: \_\_\_\_\_  
Authorized Representative



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**CREDIT AGREEMENT**

between

**PENINSULA CORRIDOR JOINT POWERS BOARD**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

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Dated as of August 1, 2021

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Exhibit B – Form of Borrowing Notice

Exhibit C – Form of Request for Extended Funding Period

Exhibit D – Form of Certificate of Compliance

THIS CREDIT AGREEMENT, dated as of August 1, 2021, is between the **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “Borrower”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (together with its successors and assigns) (the “Lender”).

## RECITALS

The Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Lender has agreed to extend, certain credit facilities to the Borrower.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** The following capitalized terms have the meanings indicated below unless the context shall clearly indicate otherwise.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” means this Credit Agreement, as amended, modified or supplemented from time to time. This Agreement constitutes the “PCEP Facility” and is one of the “Initial Credit Agreements” under the Indenture.

“*Alternate Base Rate*” means, for any day, the highest of (a) the Prime Rate in effect for such day and (b) the Federal Funds Rate in effect for such day plus one-half of one percent (0.50%). Each change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall take effect at the time of such change in the Prime Rate or the Federal Funds Rate, as the case may be. Each determination of the Alternate Base Rate by the Lender will be conclusive and binding on the Borrower, absent manifest error.

“*Amortization Amount*” shall have the meaning assigned to such term in Section 2.05(b).

“*Amortization End Date*” means the first to occur of (a) the fifth anniversary of the Maturity Date, and (b) the date on which all of the Loans have been redeemed, repaid, prepaid, cancelled or on which the Loans mature in accordance with the terms of the Indenture.

“*Amortization Interest Payment Date*” means the first Business Day of each month and the Amortization End Date.

“*Amortization Payment Commencement Date*” means the first Business Day of the month in which the one-year anniversary of the Maturity Date occurs.

“*Amortization Period*” shall have the meaning assigned to such term in Section 2.05(b).

“*Amortization Principal Payment*” shall have the meaning assigned to such term in Section 2.05(b).

“*Amortization Principal Payment Date*” means (a) Amortization Payment Commencement Date, (b) quarterly on the first Business Day of the month in which each three-month anniversary of the Amortization Payment Commencement Date occurs, and (c) the Amortization End Date.

“*Anti-Corruption Laws*” means: (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which the Borrower is located or doing business.

“*Anti-Money Laundering Laws*” means applicable laws or regulations in any jurisdiction in which the Borrower is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

“*Applicable Factor*” means 80%; provided that upon a change in the Maximum Federal Corporate Tax Rate, the Applicable Factor shall mean a percentage equal to the greater of (i) the current Applicable Factor multiplied by the Margin Rate Factor and (ii) 70%.

“*Applicable Tax-Exempt Margin*” has the meaning set forth in the Fee and Pricing Agreement.

“*Applicable Taxable Margin*” has the meaning set forth in the Fee and Pricing Agreement.

“*Audited Financial Statements*” means, with respect to any Fiscal Year, the audited statements of net position of the Borrower for such Fiscal Year, and the related statements of revenues, expenses and changes in net position and statements of cash flows for such Fiscal Year, including the notes thereto, accompanied by an audit report from a nationally or regionally recognized firm of independent public accountants with expertise in auditing the financial statements of California governmental and quasi-governmental entities.

“*Authorized Officer*” means the Executive Director, the Chief Financial Officer or the Director of Treasury or any other person designated to act on behalf of the Borrower by a written notice of the Executive Director, the Chief Financial Officer or the Director of Treasury delivered to the Lender.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertakes to make or provide



funds to the Borrower or to make payment of, or to purchase or provide credit enhancement for bonds or notes of the Borrower secured by or payable from Revenues.

“*Bank Rate*” means, for any date of determination, a fluctuating rate of interest per annum as specified below:

<b>Period</b>	<b>Rate</b>
Maturity Date through the 180 <sup>th</sup> day following such date; and	Base Rate
181st day following the Maturity Date through Amortization End Date	Base Rate plus 1.00%

“*Base Rate*” means, for any day, the highest of (a) the Prime Rate in effect for such day plus one percent (1.00%), (b) the Federal Funds Rate in effect for such day plus two percent (2.00%) and (c) seven percent (7.00%) per annum. Each change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall take effect at the time of such change in the Prime Rate or the Federal Funds Rate, as the case may be. Each determination of the Base Rate by the Lender will be conclusive and binding on the Borrower, absent manifest error.

“*Beneficial Owner*” has the meanings set forth in Section 2.13(a) hereof.

“*Borrower*” has the meaning given that term in the preamble to this Agreement.

“*Borrowing*” has the meaning given that term in Section 2.02.

“*Borrowing Date*” has the meaning given that term in Section 2.02.

“*Borrowing Notice*” has the meaning given that term in Section 2.02.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or San Francisco, California are authorized or required by law to remain closed.

“*CCSF*” means the City and County of San Francisco, California.

“*CDTFA*” means the California Department of Tax and Fee Administration or any State agency or that succeeds to, and is vested with, its duties, powers and responsibilities with respect to the collection of sales taxes on behalf of the Borrower and deposit of the Sales Tax Revenues with the Trustee pursuant to the CDTFA Contract.

“*CDTFA Contract*” means the Agreement for State Administration of District Transactions and Use Taxes dated as of [\_\_\_\_\_, \_\_\_\_], between the Borrower and the CDTFA, [\_\_\_\_\_].<sup>1</sup>

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<sup>1</sup> Drafting Note: Definition to track Indenture definition.

“*Change in Law*” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by the Lender (or by the lending office of the Lender or by the Lender’s holding company, if any) with any request, guideline or directive (whether or not have the force of laws) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time.

“*Commitment*” means, subject to Section 6.02(a), \$100,000,000, less the aggregate amount of all Commitment reductions made pursuant to Section 2.08.

“*Commitment Fee*” has the meaning set forth in the Fee and Pricing Agreement.

“*Commitment Period*” means the period commencing on the Effective Date and ending on the Commitment Termination Date.

“*Commitment Termination Date*” means the earliest of (a) 5:00 p.m., Eastern time, on the Maturity Date; and (b) the date on which the Commitment has been reduced to \$0, whether by termination pursuant to Section 6.02(a) or voluntary reduction pursuant to Section 2.08.

“*Computation Date*” means the second London Banking Day preceding each LIBOR Rate Reset Date; provided, however, that for purposes of determining the LIBOR Rate with respect to the period from and including the Effective Date to the following LIBOR Rate Reset Date, “*Computation Date*” shall mean the second London Banking Day preceding the Effective Date.

“*Counties*” means, collectively, CCSF, the County of San Mateo and the County of Santa Clara.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) all obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument.

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” means, for any day, the Base Rate in effect for such day plus three percent (3.00%).

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*Dollars*” and “\$” means the lawful currency of the United States of America.

“*Effective Date*” means **[August 13, 2021]**, subject to the satisfaction of the conditions precedent set forth in Section 5.01 hereof.

“*EMMA*” means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

“*Environmental Laws*” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*Eurodollar Reserve Percentage*” means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“*Event of Default*” has the meaning given that term in Section 6.01 hereof.

“*Event of Taxability*” means (a) a change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Borrower, or the failure to take any action by the Borrower, or the making by the Borrower of any misrepresentation herein or in any certificate required to be given in connection with this Agreement or the making of any Tax-Exempt Loan) which has the effect of causing interest paid or payable on such Tax-Exempt Loan (or the Tax-Exempt Note evidencing such Tax-Exempt Loan) to become includable, in whole or in part, in the gross income of the recipient thereof or any former recipient thereof for federal income tax purposes or (b) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or on any Tax-Exempt Loan (or the Tax-Exempt Note evidencing such Tax-Exempt Loan) to become includable, in whole or in part, in the gross income of the recipient thereof or any former recipient thereof for federal income tax purposes.

“*Excess Interest*” has the meaning given that term in Section 2.12 hereof.

“*Existing JPB Documents*” means the Joint Powers Agreement, the Real Property Agreement and the Purchase Agreement.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Lender from three federal funds brokers of recognized standing selected by the Lender. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. Each determination of the Federal Funds Rate by the Lender shall be deemed conclusive and binding on the Borrower absent manifest error.

“*Fee and Pricing Agreement*” means that certain Fee and Pricing Agreement of even date herewith between the Borrower and the Lender addressing the payment by the Borrower of certain fees and other amounts in connection with this Agreement and the Loans, as such Fee and Pricing Agreement may subsequently be amended or amended and restated.

“*First Supplemental Indenture*” means the First Supplemental Indenture of Trust, dated as of August 1, 2021, between the Borrower and the Trustee, as supplemented and amended from time to time pursuant to its terms.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the next succeeding calendar year.

“*Fitch*” means Fitch Ratings, its successors and assigns.

“*Fuel Swap Contract*” means a fuel price cap agreement or similar Swap Contract entered into from time to time by the Borrower in the ordinary course of its business pursuant to which the Borrower hedges its exposure to increased fuel costs.

“*GAAP*” means generally accepted accounting principles in the United States as in effect from time to time, as modified by changes permitted or required by the Governmental Accounting Standards Board or any similar accounting authority, applied by the Borrower on a basis consistent with the Borrower’s most recent financial statements furnished to the Lender pursuant to Section 4.02(a) hereof.

“*Government Acts*” means any act or omission to act, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

“*Governmental Approval*” means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“*Governmental Authority*” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, tribunal, agency, bureau, court or entity (including the Federal Deposit Insurance Corporation or the Federal

Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind any of the parties to this Agreement at law.

“*Guarantees*” means, for any Person, all guarantees and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“*Indemnatee*” has the meaning set forth in Section 7.07(b).

“*Indenture*” means the Indenture of Trust, dated as of August 1, 2021, as supplemented and amended by the First Supplemental Indenture and the Second Supplemental Indenture, and as further supplemented and amended from time to time pursuant to its terms, each between the Borrower and the Trustee.

“*Interest Rate Swap Agreement*” has the meaning set forth in the Indenture.

“*Interest Period*” means each period commencing on a LIBOR Rate Reset Date (or, in the case of the initial Interest Period for a Loan, the applicable Borrowing Date) and ending on and including the day immediately preceding the next LIBOR Rate Reset Date.

“*Joint Powers Agreement*” means the Joint Powers Agreement Peninsula Corridor Project entered into on October 3, 1996, among VTA, CCSF and SamTrans, together with all amendments, modifications and supplements thereto and restatements thereof.

“*Junior Obligations*” means any obligations of the Borrower secured by and payable from Revenues on a basis which is subordinate to Senior Lien Debt, the Loan Debt Service and other Subordinate Obligations, including, without limitation, certain fees and expenses and Swap Termination Payments, the terms of which are issued pursuant to this Indenture and a Supplemental Indenture (as defined in the Indenture).

“*Kroll*” means Kroll Bond Rating Agency, Inc., its successors and assigns.

“*Law*” means any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any Governmental Authority or court with applicable jurisdiction.

“*Lender*” has the meaning given that term in the preamble to this Agreement. The Lender is the “Initial Lender” under the Indenture.

“*Lender Fees and Expenses*” means all Obligations other than the Loan Debt Service.

“*LIBOR*” mean the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Lender, at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period. Each calculation by the Lender of LIBOR shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, in no event shall LIBOR be less than zero percent (0%).

“*LIBOR Rate*” means a rate per annum determined by the Lender pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00\text{-Eurodollar Reserve Percentage}}$$

“*LIBOR Rate Reset Date*” means the first Business Day of each calendar month.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Loan*” has the meaning given that term in Section 2.01 hereof. The Loan made hereunder and under the Working Capital Facility constitute the “Initial Loans” under the Indenture.

“*Loan Debt Service*” means payment of principal of, and interest on, Loans (as defined in the Indenture), including the Loans hereunder and under the Working Capital Facility.

“*London Banking Day*” means any day on which dealings in U.S. Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

“*Margin Rate Factor*” means the product of (i) one minus the then current Maximum Federal Corporate Tax Rate in effect on the date of calculation multiplied by (ii) the quotient of (A) one divided by (B) one minus the Maximum Federal Corporate Tax Rate on the Effective Date. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change. As of the Effective Date, the Margin Rate Factor equals 1.0.

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the Federal Reserve Bank, as now and hereafter from time to time in effect.

“*Material Adverse Change*” means any event, circumstance, change or effect that, individually or in the aggregate, results in, or could reasonably be expected to result in, a Material Adverse Effect.

“*Material Adverse Effect*” means: (a) a material impairment of the ability of the Borrower to timely perform its obligations under any Related Document to which it is a party or under any Existing JPB Document to which it is a party or under the Working Capital Facility; (b) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Related Document to which it is a party or of any Existing JPB Document to which it is a party or under the Working Capital Facility or upon the rights, security, interests or remedies of the Lender hereunder, under any other Related Document or under the Working Capital Facility; (c)

the existence of a Lien over the Revenues other than the Lien created by the Indenture; or (d) the existence of a Lien over the PCEP Project Funds other than the Lien created by this Agreement.

“*Maturity Date*” means [August 13, 2024].

“*Maximum Federal Corporate Tax Rate*” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Lender, the maximum statutory rate of federal income taxation which could apply to the Lender. As of the Effective Date, the Maximum Federal Corporate Tax Rate is 21%.

“*Maximum Rate*” means the lower of (a) eighteen percent (18%) and (b) maximum rate of interest, if any, payable by the Borrower under applicable Law in respect of debt obligations of the Borrower.

“*Measure RR*” means the measure adopted by the voters in the Counties on November 3, 2020, approving 1/8th cent sales and use tax on taxable transactions in the Counties.

“*Member Agency*” means each of CCSF, SamTrans and VTA, in each case for so long as such entity shall remain a party to the Joint Powers Agreement, an each other entity who shall become a Member Agency pursuant to the Joint Powers Agreement.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns.

“*Nine Party MOU*” means that certain Memorandum of Understanding (MOU), High Speed Rail Early Investment Strategy for a Blended System in the San Francisco to San Jose segment known as the Peninsula Corridor of the Statewide High-Speed Rail System, by and among California High Speed Rail Authority, Metropolitan Transportation Commission, Peninsula Corridor Joint Powers Board, San Francisco County Transportation Authority, San Mateo County Transportation Authority, Santa Clara Valley Transportation Authority, City of San Jose, City and County of San Francisco, and Transbay Joint Power Authority, effective January 25, 2013.

“*Note*” and “*Notes*” each has the meaning given that term in Section 2.03. Each Note hereunder constitutes a “PCEP Facility Note” and is one of the “Initial Notes” under the Indenture.

“*Obligations*” means all indebtedness, obligations and liabilities of the Borrower to the Lender from time to time arising under or in connection with or evidenced or secured by this Agreement or any other Related Document to which the Borrower is a party, and all extensions, renewals or refinancings thereof, whether such indebtedness, obligations or liabilities are direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising.

“*Other Taxes*” has the meaning given that term in Section 2.10(a).

“*Participant*” has the meaning given that term in Section 7.02(b).

“*Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

[“*PCEP*” or “*Peninsula Corridor Electrification Project*” means [collectively, (i)] the electrification of the Peninsula Corridor to accommodate a high-speed train service and improve local passenger rail service as described in the Nine Party MOU [and (ii) the projects underlying the TIRCP Grants as more particularly described in award number 13 set forth in the Transit and Intercity Rail Capital Program Third Round Selected Projects – Project Detail Summary dated April 26, 2018.]<sup>2</sup>

[“*PCEP Project Funds*” means amounts anticipated to be received by the Borrower to be used towards the funding of the PCEP from federal, state, regional and local sources, including, but not limited to, (i) grants from the federal government, (ii) funding made available pursuant to The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, commonly referred to as Proposition 1A, The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, commonly referred to as Proposition 1B, the Transit Intercity Rail Capital Program<sup>3</sup> and the Caltrain Low Carbon Transportation Operations Program, (iii) funding allocated by the Metropolitan Transportation Commission and the Bay Area Air Quality Management District, and (iv) funding allocated by the Member Agencies.]<sup>4</sup>

[“*Peninsula Corridor*” means the railway system between the Transbay Transit Center in the City of San Francisco and mile post 51.4 at the Tamien Station in the City of San Jose.]<sup>5</sup>

“*Pension Plan*” means any “employee pension benefit plan” which is (a) maintained by the Borrower or (b) maintained by any other Person and to which the Borrower contributes (or permits any other Person to contribute) or has an obligation to contribute, or has made contributions at any time during the immediately preceding six (6) plan years.

“*Permit*” means any permit, approval, authorization, certification, license, variance or permission required from a Governmental Authority under an applicable Law.

“*Person*” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*Prime Rate*” means the rate of interest per annum publicly announced from time to time by the Lender as its prime rate. Each change in the Prime Rate shall be effective as of the opening

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<sup>2</sup> Issuer and Bond Counsel to confirm. This definition was taken from the JPM A/R Credit Agreement. Confirm the project relating to the TIRCP Grants should be included here. The TIRCP Grants were specifically include in the Project Funds definition in the JPM A/R Credit Agreement but it is less clear whether they are included in the PCEP Project Funds definition under the Indenture.

<sup>3</sup> Issuer and Bond Counsel to confirm. Does this include TIRCP Grants per the JPM Facility? Use TIRCP definition instead?

<sup>4</sup> Issuer and Bond Counsel to confirm. Why is this definition different that the “Project Funds” under the JPM facility?

<sup>5</sup> Issuer and Bond Counsel to confirm that this description is accurate.



of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks. Each determination of the Prime Rate by the Lender shall be deemed conclusive and binding on the Borrower absent manifest error.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Purchase Agreement*” means the Purchase, Sale and Option Agreement, dated November 22, 1991, between Southern Pacific Transportation Company, as Seller, the Borrower, as Purchaser, and SamTrans, pursuant to which the Borrower acquired the right of way for the Peninsula Corridor.

“*Rating*” means, with respect to a Rating Agency that provides a rating with respect to Senior Lien Debt, the lowest long-term unenhanced rating assigned by such Rating Agency to Senior Lien Debt.

“*Rating Agency*” means any of Moody’s, Kroll, Fitch or S&P and “*Rating Agencies*” means Moody’s, Kroll, Fitch and S&P.

“*Real Property Agreement*” means the Real Property Ownership Agreement entered into the 24th day of December, 1991 among the Borrower and the Member Agencies (or their predecessors), as amended by the First Amendment to Real Property Ownership Agreement entered into the 31st day of October, 2008 among the Borrower and the Member Agencies (or their predecessors).

“*Related Documents*” means this Agreement, the Notes, the Fee and Pricing Agreement, the Indenture and the CDTFA Contract.

“*Related Parties*” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“*Revenues*” means during any fiscal period the sum of the following amounts for such fiscal period:

- (1) all Sales Tax Revenues; and
- (2) all investment earnings on amounts held by the Trustee in the funds and accounts under the Indenture other than amounts deposited to the Senior Lien Bond Rebate Fund and the Note Rebate Fund (as each is defined in the Indenture); and
- (3) all Swap Revenues (as defined in the Indenture).

“*Resolution*” means Resolution Number 2020-40 adopted by the Borrower on [\_\_\_\_\_, 2020], which called and provided for an election for the purpose of submitting to the voters a measure known as Measure RR.<sup>6</sup>

“*Right of Way*” means the real property and other assets acquired from Southern Pacific Transportation Company pursuant to the Purchase Agreement, which real property and other assets permit the Borrower to operate the Peninsula Corridor.

“*S&P*” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC business, its successors and assigns.

“*Sales Tax*” means the retail transactions and use tax levied pursuant to the Resolution and applicable in the Counties in accordance with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code of the State of California at the rate of one-eighth of one percent (1/8th%), or such greater amount as may be authorized pursuant to a modification of the Resolution.

“*Sales Tax Revenues*” means 100% of the amounts collected by the CDTFA on behalf of the Borrower pursuant to the Resolution relating to the Sales Tax and distributed to the Trustee pursuant to the CDFTA Contract, less the administrative fee deducted by the CDTFA.

“*SamTrans*” means the San Mateo County Transit District.

“*Sanctions*” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future statute or Executive Order, (b) the United Nations Security Council, (c) the European Union, (d) the United Kingdom, or (e) any other Governmental Authority with jurisdiction over the Borrower.

“*Sanctioned Target*” means any target of Sanctions, including: (a) Persons on any list of targets identified or designated pursuant to any Sanctions, (b) Persons, countries, or territories that are the target of any territorial or country-based Sanctions program, (c) Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Target(s), or (d) otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“*Second Supplemental Indenture*” means the Second Supplemental Indenture of Trust, dated as of August 1, 2021, between the Borrower and the Trustee, as supplemented and amended from time to time pursuant to its terms.

“*Senior Lien Bonds*” means “Senior Lien Bonds” issued pursuant to Section 4.02, Section 4.03 or Section 4.04 of the Indenture.

“*Senior Lien Debt*” means all Senior Lien Bonds and Senior Lien Obligations.

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<sup>6</sup> Drafting Note: To be conformed to Indenture definition.

“*Senior Lien Obligations*” means all indebtedness, obligations for borrowed money or other obligations of the Borrower other than Senior Lien Bonds that has a lien upon the Revenues that is on a parity with that of the Senior Lien Bonds and that is senior to that of the Loan Debt Service, the Lender Fees and Expenses, any other Subordinate Obligations, and any Junior Obligations, including any Interest Rate Swap Agreement (excluding fees and expenses thereon and Swap Termination Payments, which shall be secured as Junior Obligations) entered into in connection with a Series of Senior Lien Bonds, in each case incurred in accordance with Section 4.05 of the Indenture, and in each case having a lien and charge upon the Revenues and therefore being payable on a parity with the Senior Lien Bonds.

“*Seven Party MOU Supplement*” means that certain Seven-Party Supplement to 2012 Memorandum of Understanding (MOU), Financial Commitments to Address Funding Gap for the Peninsula Corridor Electrification Project, by and among San Mateo County Transportation Authority, Santa Clara Valley Transportation Authority, City and County of San Francisco, San Francisco County Transportation Authority, Metropolitan Transportation Commission, Peninsula Corridor Joint Powers Board and California High Speed Rail Authority, effective August 30, 2016.

“*Solvent*” means, with respect to any Person and as of any date of determination (without duplication), both (i) (a) the sum of such Person’s debt (including contingent liabilities) does not exceed all of its property, at a fair valuation; (b) the Person is able to pay the probable liabilities on such Person’s then existing debts as they become absolute and mature; (c) such Person’s capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (d) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is “solvent” within the meaning given that term and similar terms under applicable Laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (discounted to present value at rates believed to be reasonable by such Person acting in good faith).

“*State*” means the State of California.

“*Subordinate Obligations*” means all indebtedness or other obligations of the Borrower for borrowed money, any interest rate swap agreement and any other obligation of the Borrower having a subordinate lien to the Senior Lien Obligations, an equal lien upon the Sales Tax Revenues and therefore payable on a parity with the Loan Debt Service (whether or not any principal amount of the Loans is outstanding), the Lender Fees and Expenses, and a senior lien to the Junior Obligations.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing

(including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Payment*” has the meaning given that term in the Indenture.

“*Tax Certificate*” means the Master Tax Certificate of the Borrower of even date herewith, as amended or supplemented from time to time in accordance with the terms hereof and thereof.

“*Tax Event*” shall be deemed to have occurred on the first to occur of the following: (a) the date of entry of any decree or judgment by a court of competent jurisdiction (whether or not such decree or judgment is appealable or deemed to be final under applicable procedural law, or by operation of law) that interest on a Tax-Exempt Loan is includable in the gross income of the recipient thereof for federal income tax purposes, or (b) the date of the issuance by the Internal Revenue Service of a Letter 4413 Notice of Proposed Adverse Determination to the effect that all or any portion of the interest on a Tax-Exempt Loan is not excluded from gross income for federal income tax purposes, or (c) delivery to the Borrower and the Lender of a written legal opinion (which opinion shall not be a reasoned opinion and shall be subject to only customary assumptions and exclusions) of nationally recognized bond counsel reasonably acceptable to the Borrower and the Lender to the effect that an Event of Taxability has occurred with respect to a Tax-Exempt Loan, or (d) on that date when the Borrower shall receive notice from the Lender (or any assignee or Participant thereof) that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Person the interest on a Tax-Exempt Loan due to the occurrence of an Event of Taxability, or (e) on that date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability with respect to a Tax-Exempt Loan shall have in fact occurred, or (f) on the date when the Borrower shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Borrower, or upon any review or audit of the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred with respect to a Tax-Exempt Loan; provided, however, no Tax Event shall occur under subparagraph (d) or (f) hereunder unless the Borrower has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Tax Event shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Lender (or any assignee or Participant thereof), the Borrower shall promptly reimburse, but solely from payments made by the Borrower, the Lender (or any assignee or Participant thereof) for any payments, including any taxes, interest, penalties or other charges, the Lender (or any assignee or Participant thereof) shall be obligated to make as a result of the Tax Event.

“*Tax-Exempt Index Rate*” means a per annum rate of interest established on each Computation Date equal to the sum of (a) the product of the Applicable Tax-Exempt Margin

multiplied by the Margin Rate Factor; plus (b) the product of the LIBOR Rate multiplied by the Applicable Factor. The Tax-Exempt Index Rate shall be rounded upwards to the fifth decimal place.

“*Tax-Exempt Loan*” means each Loan designated by the Borrower as a “Tax-Exempt Loan” in the Borrowing Notice requesting such Loan.

“*Tax-Exempt Note*” has the meaning given that term in Section 2.03.

“*Taxable Date*” means, with respect to a Tax-Exempt Loan, the date as of which interest on such Tax-Exempt Loan is first includible in gross income of the recipient thereof (or any assignee or Participant thereof) as a result of an Event of Taxability as such a date is established pursuant to a Tax Event.

“*Taxable Index Rate*” means a per annum rate of interest established on each Computation Date equal to the sum of (i) the Applicable Taxable Margin and (ii) the LIBOR Rate. The Taxable Index Rate shall be rounded upwards to the fifth decimal place.

“*Taxable Loan*” means each Loan designated by the Borrower as a “Taxable Loan” in the Borrowing Notice requesting such Loan.

“*Taxable Note*” has the meaning given that term in Section 2.03.

“*Taxable Period*” has the meaning set forth in Section 2.13(a) hereof.

“*Taxable Rate*” means, with respect to a Taxable Period, the product of (i) the average interest rate on the Tax-Exempt Loans during such period and (ii) the quotient of (a) one divided by (b) one minus the Maximum Federal Corporate Tax Rate in effect on the date of calculation.

“*Taxes*” has the meaning given that term in Section 2.10(a) hereof.

**[“TIRCP” means the Transit and Intercity Rail Capital Program created by California Senate Bill (SB) 862 (Chapter 36, Statutes of 2014) and modified by California Senate Bill 9 (Chapter 710, Statutes of 2015).**

**“TIRCP Grants” means the grants awarded to the Borrower in 2018 under TIRCP in the amount of \$123,182,000 for Fiscal Years 2018/2019 through 2022/23 and \$41,340,000 for Fiscal Years 2023/2024 through 2027/2028.]<sup>7</sup>**

“*Trustee*” means U.S. Bank National Association in its capacity as trustee for the Holders (as defined in the Indenture) of the Senior Lien Debt, Subordinated Obligations and Junior Obligations issued from time to time pursuant to the Indenture.

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<sup>7</sup> Issuer and Bond Counsel to confirm if these definitions continue to be relevant. These were carried over from the JPMorgan Agreement and were used in the old JPM definitions of Project Funds and may be needed depending on whether TIRCP Grants are included in the PCEP Project Funds.

“*Unfunded Pension Liability*” means the excess of a Pension Plan’s benefit liabilities over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan for the applicable plan year.

“*VTA*” means the Santa Clara Valley Authority (formerly known as the Santa Clara County Transit District).

“*U.S.*” and “*United States*” means the United States of America.

“*Working Capital Facility*” means the Credit Agreement of even date herewith between the Borrower and the Lender pursuant to which the Lender has agreed to make loans to the Borrower from time to time in an amount not to exceed \$100,000,000, the proceeds of which will be used to fund working capital of the Borrower.

“*Written*” or “*in writing*” means any form of written communication, including email, or a communication by means of telecopier.

**Section 1.02. Interpretation.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

**Section 1.03. Accounting Matters.**

(a) All accounting terms used herein without definition shall be interpreted in accordance with GAAP, and except as otherwise expressly provided herein all accounting determinations required to be made pursuant to this Agreement shall be made in accordance with

GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 4.02(a), except as otherwise specifically prescribed herein.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Related Document, and either the Borrower or the Lender shall so request, the Lender and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

## ARTICLE II

### LOANS

**Section 2.01. Loans.** Subject to the terms and conditions set forth herein, during the Commitment Period, the Lender agrees to make loans to the Borrower (each, a Loan”) from time to time on any Business Day in an aggregate principal amount not to exceed at any time outstanding the Commitment then in effect. Subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans. No more than twenty (20) Loans may be outstanding at any one time. Loans may be either Tax-Exempt Loans or Taxable Loans.

**Section 2.02. Borrowing Notice.** The Borrower may borrow under the Commitment (each, a “Borrowing”) during the Commitment Period on any Business Day, provided that the Borrower shall first give the Lender irrevocable notice in the form attached hereto as Exhibit B (each, a “Borrowing Notice”), which notice must be received by the Lender prior to 11:00 a.m., New York City time, three Business Days prior to the date on which funds are to be delivered (the “Borrowing Date”) and must specify whether the requested Loan is to be a Taxable Loan or a Tax-Exempt Loan. No more than three Borrowings shall be permitted per month and each Borrowing shall be an amount equal to \$1,000,000 or a whole multiple of \$1,000 in excess thereof unless (i) such Borrowing is to be used to pay interest on existing Loans, in which case such Borrowing may be in the amount of interest then due or (ii) the Commitment is less than \$1,000,000, in which case such Borrowing may be in the amount equal to the then existing Commitment. Each Borrowing will be made available to the Borrower or its designee no later than 2:00 p.m., New York City time, on the Borrowing Date set forth in the applicable Borrowing Notice.

**Section 2.03. Note.** The Tax-Exempt Loans shall be evidenced by a promissory note of the Borrower made in favor of the Lender in the form set forth in Exhibit A-1 hereto (as amended or supplemented from time to time, the “Tax-Exempt Note”). The Taxable Loans shall be evidenced by a promissory note of the Borrower made in favor of the Lender in the form set forth in Exhibit A-2 hereto (as amended or supplemented from time to time, the “Taxable Note;” the Taxable Note and the Tax-Exempt Note are collectively referred to herein as the “Notes,” and individually as a “Note”). Each Note shall (a) be issued to the Lender on the Effective Date in a principal amount equal to one hundred million Dollars (\$100,000,000), (b) be dated the Effective

Date, and (c) mature on the Maturity Date. The Tax-Exempt Loans made by the Lender and all prepayments made on account of principal thereof shall be recorded by the Lender on the schedule (or a continuation thereof) attached to the Tax-Exempt Note, it being understood, however, that failure by the Lender to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Tax-Exempt Note in respect of unpaid principal and interest on the Tax-Exempt Loans. The Taxable Loans made by the Lender and all prepayments made on account of principal thereof shall be recorded by the Lender on the schedule (or a continuation thereof) attached to the Taxable Note, it being understood, however, that failure by the Lender to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Taxable Note in respect of unpaid principal and interest on the Taxable Loans.

**Section 2.04. Interest.** Interest shall accrue on each Loan from and including the date such Loan is made by the Lender to and including the day on which such Loan is repaid or prepaid in full. Interest on Loans shall be calculated on the basis of a year consisting of three hundred sixty (360) days and the actual number of days elapsed. Interest on each Loan shall be paid on each LIBOR Rate Reset Date, on each date of prepayment (if such date is not a LIBOR Rate Reset Date), on the Maturity Date and, following the Maturity Date, upon demand. For the avoidance of doubt, the Borrower may request additional Loans pursuant to the terms hereof to pay interest on existing Loans when due. The Lender shall use commercially reasonable efforts to provide the Borrower with an invoice with respect to the estimated interest due on each Loan on each LIBOR Rate Reset Date at least five (5) Business Days prior to the applicable interest payment date, provided that (i) the failure of the Bank to provide (or timely provide) the Borrower with any such invoice or (ii) if any such invoice contains an amount which differs from the amount of interest due hereunder and under the applicable Note (whether due to subsequent change in Applicable Tax-Exempt Margin, Applicable Taxable Margin, error or otherwise), such failure or difference shall not relieve the Borrower of its obligation to make timely payments hereunder and under the applicable Note. Subject to Section 2.12, interest shall accrue at a daily rate per annum equal to, (a) in the case of a Tax-Exempt Loan, the Tax-Exempt Index Rate, or (b) in the case of a Taxable Loan, Taxable Index Rate. Unless repaid in full on the Maturity Date, interest shall accrue thereafter at the Default Rate.

**Section 2.05. Repayment of Loans.**

(a) The Loans shall be due and payable in full, together with accrued and unpaid interest thereon, on the Maturity Date.

(b) Notwithstanding subsection (a) above, in the event the Loans are not repaid in full, together with accrued and unpaid interest thereon, on the Maturity Date, and on the Maturity Date no Default or Event of Default has occurred and is continuing and the representations and warranties of the Borrower set forth in Article III are true and correct in all material respects, assuming they are made on the Maturity Date, an amount equal to the principal amount of Loans (the "Amortization Amount") shall be due and payable on the date that is 30 days after the Maturity Date. During such 30-day period the unpaid amount equal to the Amortization Amount shall accrue interest at the Bank Rate which shall be payable by the Borrower on each Amortization Period Interest Payment Date. In the event that the Amortization Amount is due and payable on the date that is 30 days following the Maturity Date, upon delivery of a written request from the Borrower to the



Lender in the form of Exhibit C hereto no later than 30 days after the Maturity Date and provided that (i) no Default or Event of Default shall have occurred and be continuing and (ii) the representations and warranties set forth in Article III shall be true and correct on the date that is 30 days following the Maturity Date, then the Borrower shall instead pay to the Lender an amount equal to the Amortization Amount in installments payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on Maturity Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Borrower may prepay, or cause to be prepaid, some or all of the Amortization Amount on any Business Day with one Business Days’ notice to the Lender, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

**Section 2.06. Evidence of Debt.** The Lender shall maintain in accordance with its usual practice an account evidencing the indebtedness of the Borrower to the Lender resulting from the Loans, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in the account maintained pursuant to the preceding sentence shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such account or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

**Section 2.07. Prepayments; Break Funding Payments.**

(a) The Borrower shall have the right at any time and from time to time to prepay any Loan, in whole or in part, from any source of available funds, including Revenues and PCEP Project Funds, subject to prior notice in accordance with paragraph (c) of this Section and, if such prepayment occurs other than on a LIBOR Rate Reset Date, subject to the payment of the amounts described in paragraph (d) of this Section.

(b) In the event the outstanding principal balance of the Loans at any time exceeds the Commitment, the Borrower shall prepay Loans as soon as practicable in a principal amount at least equal to such excess and shall specify the Loans to be prepaid. In such event, the Borrower shall deliver prior notice of prepayment to the Lender in accordance with paragraph (c) of this Section and, if such prepayment occurs other than on a LIBOR Rate Reset Date, the Borrower shall pay the amounts described in paragraph (d) of this Section.

(c) The Borrower shall notify the Lender by electronic mail of any prepayment to be made hereunder not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the Loan or Loans to be prepaid, the prepayment date and the principal amount(s) of the Loan or Loans to be prepaid. In the case of a partial prepayment made pursuant to paragraph (a)

of this Section, such prepayment shall be in an amount not less than \$1,000,000 and increments of \$1,000 in excess thereof. Prepayments shall be accompanied by accrued interest.

(d) In the event of (i) the prepayment of the principal of any Loan other than on a LIBOR Rate Reset Date or (ii) the failure of the Borrower to borrow any Loan on the Borrowing Date specified in the Borrowing Notice for such Loan, then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event which shall be deemed to include an amount determined by the Lender to be the excess, if any, of (A) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, for the period that would have been the Interest Period for such Loan), over (B) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

**Section 2.08. Reduction or Termination of Commitment.** The Borrower may, upon written notice to the Lender, terminate the Commitment, or from time to time permanently reduce the Commitment; provided that (i) any such notice shall be received by the Lender not later than 11:00 a.m., New York City time, five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Commitment if, after giving effect thereto and to any concurrent prepayment of Loans hereunder, the aggregate principal amount of all outstanding Loans would exceed the reduced Commitment; and (iv) the Borrower shall pay all Commitment Fees accrued until the effective date of such termination or reduction applicable to the portion of the Commitment terminated or reduced along with all termination or reduction fees, if any, payable pursuant to the Fee and Pricing Agreement.

**Section 2.09. Payments; Electronic Transmissions.** All payments to the Lender hereunder and under the Notes shall be paid on the dates due, in immediately available funds, to the account specified by the Lender in writing to the Borrower from time to time. Amounts paid to the Lender hereunder and under the Notes shall not be refundable under any circumstances absent manifest error. The Lender is authorized to accept and process any amendments, instructions, consents, waivers and all other documents which are sent to the Lender by electronic transmission, including SWIFT, electronic mail, telecopy, courier, mail or other computer generated telecommunications, and such electronic communication has the same legal effect as if written and shall be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission.

**Section 2.10. Net of Taxes, Etc.**

(a) Any and all payments to the Lender (or any assignee or Participant) by the Borrower hereunder, under the Fee and Pricing Agreement or under either Note shall be made without setoff or counterclaim and shall be free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, charges, fees, assessments, withholdings or liabilities of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, excluding, however, taxes imposed on or measured by the net income or capital of the Lender (or any assignee or Participant) by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Lender (or any such assignee or Participant) and such jurisdiction or political subdivision (all such non excluded taxes, levies, imposts, duties, deductions, charges, fees, assessments, withholdings and liabilities being hereinafter referred to as “Taxes”). If the Borrower shall be required by law to withhold or deduct any Taxes so levied or imposed from or in respect of any sum payable hereunder, under the Fee and Pricing Agreement or under either Note to the Lender (or any assignee or Participant), (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Lender (or any such assignee or Participant) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. In addition, the Borrower agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise from any payment made hereunder, under the Fee and Pricing Agreement or under either Note or from the execution or delivery or otherwise with respect to this Agreement or any other Related Document, excluding, however, taxes imposed on or measured by the net income or capital of the Lender (or any assignee or Participant) by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Lender (or any such assignee or Participant) and such jurisdiction or political subdivision (hereinafter referred to as “Other Taxes”). The Lender (or any assignee or Participant) shall provide to the Borrower within a reasonable time a copy of any written notification it receives with respect to Other Taxes owing by the Borrower to the Lender (or any assignee or Participant) hereunder provided that the Lender’s failure to send such notice shall not relieve the Borrower of its obligation to pay such amounts hereunder.

(b) The Borrower shall, to the fullest extent permitted by law, pay the Lender (or any assignee or Participant) for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section paid by the Lender (or any assignee or Participant) or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that the Borrower shall not be obligated to pay the Lender (or any assignee or Participant) for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Lender’s (or any assignee’s or Participant’s) gross negligence or willful misconduct. The Lender (or any assignee or Participant) agrees to give notice to the Borrower of the assertion of any claim against the Lender (or any assignee or Participant) relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; provided that the Lender (or any

assignee's or Participant's) failure to notify the Borrower promptly of such assertion shall not relieve the Borrower of its obligation under this Section. Payments by the Borrower pursuant to this Section shall be made within thirty (30) days from the date the Lender makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Lender (or any assignee or Participant) agrees to repay to the Borrower any refund (including that portion of any interest that was included as part of such refund) actually received by the Lender (or any assignee or Participant) with respect to Taxes or Other Taxes paid by the Borrower pursuant to this Section received by the Lender (or any assignee or Participant) for Taxes or Other Taxes that were paid by the Borrower pursuant to this Section; provided, however, the Borrower agrees to repay any refund (including that portion of any interest that was included as part of such refund) actually received by the Lender (or any assignee or Participant) and paid to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the extent the Lender (or any assignee or Participant) is required for any reason to return such refund. The Lender (or any assignee or Participant) also agrees to reasonably contest (at the direction of the Borrower, with the cooperation of the Borrower and at the sole cost and expense of the Borrower) any such Taxes or Other Taxes which the Borrower reasonably believes not to have been properly assessed, provided that such obligation to contest shall not result in any liability to the Lender (or any assignee or Participant) or any parent company thereof or adversely affect any tax position of the Lender (or any assignee or Participant) or any parent company thereof. Notwithstanding anything to the contrary in this paragraph (b), in no event will the Lender (or any assignee or Participant) be required to pay any amount to the Borrower pursuant to this paragraph (b) the payment of which would place the Lender (or any assignee or Participant) or any parent company thereof in a less favorable net after-Tax position than the Lender (or any assignee or Participant) or any parent company thereof would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph will not be construed to require the Lender (or any assignee or Participant) or any parent company thereof to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(c) Within thirty (30) days after the date of any payment of Taxes or Other Taxes by the Borrower, the Borrower shall furnish to the Lender (or any assignee or Participant), the original or a certified copy of a receipt evidencing payment thereof.

(d) The obligations of the Borrower under this Section shall survive the termination of this Agreement and the repayment of the Loan.

### **Section 2.11. Increased Costs.**

(a) If any Change in Law shall:

(i) subject the Lender (or any assignee or Participant) to any tax, charge, fee, deduction or withholding of any kind with respect to its loans, loan principal, commitments or other obligations, or its deposits, reserves, other

liabilities or capital attributable thereto (other than any tax measured by or based upon the overall net income of the Lender (or any assignee or Participant));

(ii) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Lender (or any assignee or Participant);

(iii) change the basis of taxation of payments due the Lender (or any assignee or Participant) under this Agreement or any other Related Document (other than a change in taxation of the overall net income of the Lender (or any assignee or Participant)); or

(iv) impose on the Lender or the London interbank market any other condition, cost or expense affecting this Agreement or any Loans (while bearing interest determined by reference to the LIBOR Rate);

and the result of any of the foregoing is to increase the cost to the Lender (or any assignee or Participant) of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Lender (or any assignee or Participant) hereunder or under either Note (whether of principal, interest or any other amount), then, upon the written request of the Lender, the Borrower shall not later than thirty (30) days after notice and demand pay to the Lender (or any assignee or Participant) such amount or amounts as will compensate the Lender (or any assignee or Participant) for such additional costs incurred or reduction suffered. A certificate setting forth in reasonable detail such additional costs incurred or reduction as a result of any event mentioned in this paragraph shall be submitted by the Lender (or any assignee or Participant) to the Borrower and such certificate shall, in the absence of manifest error, be conclusive as to the amount thereof.

(b) In addition to the foregoing, if after the Effective Date the Lender (or any assignee or Participant) shall have determined that any Change in Law affecting the Lender (or any assignee or Participant) or any lending office of the Lender (or any assignee or Participant) or such Lender's (or any assignee's or Participant's) holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Lender's (or any assignee's or Participant's) capital or on the capital of the Lender's (or any assignee's or Participant's) holding company, if any, as a consequence of this Agreement, the Notes or the Loans to a level below that which the Lender (or any assignee or Participant) or the Lender's (or any assignee's or Participant's) holding company could have achieved but for such Change in Law (taking into consideration the Lender's (or any assignee's or Participant's) policies and the policies of the Lender's (or any assignee's or Participant's) holding company with respect to capital adequacy), then, from time to time upon the written request of the Lender (or any assignee or Participant), the Borrower shall not later than thirty (30) days after notice and demand pay to the Lender (or any assignee or Participant) such additional amount or amounts as will compensate the Lender (or any assignee or Participant) or the Lender's (or any assignee's or Participant's) holding company for any such reduction suffered. A certificate setting forth in reasonable detail such reduction in the rate of return on capital, or such

capital increase, of the Lender (or any assignee or Participant) or the Lender's (or any assignee's or Participant's) holding company as a result of any event mentioned in this paragraph shall be submitted by the Lender (or any assignee or Participant) to the Borrower and such certificate shall, in the absence of manifest error, be conclusive as to the amount thereof.

(c) Notwithstanding anything in this Section to the contrary, if such costs are to be incurred on a continuing basis and the Lender (or any assignee or Participant) shall so notify the Borrower in writing as to the amount thereof, such costs shall be paid by the Borrower monthly in arrears.

(d) The Borrower's obligations under this Section shall survive the termination of this Agreement and payment in full of the Loans.

**Section 2.12. Maximum Rate.** If any rate of interest on the Loans or either Note shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (b) an amount equal to the difference between (i) the rate of interest calculated in accordance with the terms of Section 2.04, and (ii) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time, to the extent permitted by law, the Borrower shall pay to the Lender, with respect to amounts then payable to the Lender that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Lender to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (i) the date of payment in full of all amounts due hereunder by the Borrower to the Lender (other than Excess Interest which has not been recaptured) and this Agreement is no longer in effect, and (ii) the date on which all deferred Excess Interest is fully paid to the Lender. In consideration for the limitation of the rate of interest otherwise payable on the Loans and the Notes, to the extent permitted by applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to any remaining deferred Excess Interest on the date the last Loan is repaid in full.

**Section 2.13. Tax Event.**

(a) In the event a Tax Event occurs, in addition to the amounts required to be paid with respect to any affected Tax-Exempt Loans by the Borrower under this Agreement and the Tax-Exempt Note, the Borrower hereby agrees to pay to the Lender and each of its successors, assigns and Participants (each, a "Beneficial Owner") with respect to the affected Tax-Exempt Loans of the Borrower pursuant to this Agreement and the other Related Documents, on demand therefor (A) an amount equal to the difference between (I) the amount of interest that would have been paid to such Beneficial Owner with respect to the affected Tax-Exempt Loans during the period for which interest on the affected Tax-Exempt Loans is includable in the gross income of such Beneficial Owner if the affected Tax-Exempt Loans had borne interest at the Taxable Rate, beginning on the Taxable Date (the "Taxable Period"), and (II) the amount of interest actually paid to the Beneficial Owner during the Taxable Period, and (B) an amount equal to any interest, penalties or charges owed by such Beneficial Owner as a result of interest on the affected Tax-Exempt Loans

becoming includable in the gross income of such Beneficial Owner, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by such Beneficial Owner in connection therewith.

(b) Subject to the provisions of clauses (c) and (d) below, such Beneficial Owner shall afford the Borrower the opportunity, at the Borrower's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the affected Tax-Exempt Loans (or any one of them) to be includable in the gross income of such Beneficial Owner or (2) any challenge to the validity of the tax exemption with respect to the interest on the affected Tax-Exempt Loans (or any one of them), including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) The following shall constitute conditions precedent to the exercise by the Borrower of its right to contest set forth in subsection (b) above: the Borrower shall, on demand, immediately reimburse such Beneficial Owner for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by such Beneficial Owner in its sole discretion) that may be incurred by such Beneficial Owner in connection with any such contest, and shall, on demand, immediately reimburse such Beneficial Owner for any and all penalties or other charges payable by such Beneficial Owner for failure to include such interest in its gross income; and

(d) The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment in full of the Loans.

**Section 2.14. Source of Payments.** The obligations of the Borrower to pay the Loans and the other Obligations due and owing to the Lender under this Agreement and under the Notes are limited obligations of the Borrower payable solely from Revenues and PCEP Project Funds. The obligation of Borrower to pay all Obligations does not represent or constitute a general obligation of the Borrower. The Lender acknowledges that it has no claim hereunder to have payments made from any funds other than Revenues and PCEP Project Funds.

**Section 2.15. Security; Pledge; Negative Pledge.**

(a) In order to secure the timely payment of all Obligations and to secure the performance and observance of all of the covenants, agreements and conditions contained in this Agreement and the Related Documents to which the Borrower is a party, the Borrower, in accordance with Section 6.02 of the Indenture, has designated the Obligations as Subordinate Obligations under the Indenture and irrevocably pledged the Revenues to the Lender (for the benefit of the Lender and each Beneficial Owner) pursuant to Section 7.01 of the Indenture and on parity with any other Subordinate Obligation issued from time to time under the Indenture, and on a subordinate basis to any Senior Lien Debt issued from time to time under the Indenture. The pledge of and lien on the Revenues provided for in the Indenture constitutes a valid pledge of and charge and lien upon the Revenues, immediately attaches and is effective, binding and enforceable against the Borrower, its successors, creditors and all others asserting rights therein to the extent set forth in, and in accordance with, the Indenture, irrespective of whether those parties have notice of the

pledge of and lien on the Revenues and without the need for any physical delivery, recordation, filing or further act.

(b) In order to secure the timely payment of all Obligations and to secure the performance and observance of all of the covenants, agreements and conditions contained in this Agreement and the Related Documents to which the Borrower is a party, the Borrower hereby pledges and grants to the Lender a security interest in all PCEP Project Funds. The Borrower shall not create, incur, assume or suffer to exist, any Lien on, and shall not sell, assign, or otherwise transfer, pledge or grant a security interest in the PCEP Project Funds to any Person other than the Lender in order to secure the Borrower's obligations under this Agreement.

(c) The Borrower shall cause all PCEP Project Funds, all of which PCEP Project Funds are received by or payable to the Borrower to reimburse the Borrower for its prior payments of costs of the Peninsula Corridor Electrification Project, to be deposited into a segregated depository account as soon as practicable following receipt or payment. The Borrower shall comply with all federal and State guidelines required as a condition of receipt of the PCEP Project Funds and will diligently pursue all steps necessary to secure payment of such PCEP Project Funds to the Borrower.

**Section 2.16. Fee and Pricing Agreement.** The Borrower shall pay to the Lender and its counsel the fees and expenses in the amounts and on the dates and at the times set forth in the Fee and Pricing Agreement. The terms of the Fee and Pricing Agreement are incorporated herein by this reference and any reference herein or in any other document to fees and/or other amounts or obligations payable hereunder will include all fees and other amounts or obligations payable pursuant to the Fee and Pricing Agreement, and any reference to this Agreement includes a reference to the Fee and Pricing Agreement.

**Section 2.17. Changed Circumstances.**

(a) *Circumstances Affecting LIBOR Rate Availability.* If for any reason (i) the Lender shall determine (which determination shall be conclusive and binding absent manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, (ii) the Lender shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the LIBOR Rate for such Interest Period with respect to a proposed Loan or (iii) the Lender shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to the Lender of making or maintaining such Loans, then the Lender shall promptly give notice thereof to the Borrower. Thereafter, until the Lender notifies the Borrower that such circumstances no longer exist, the obligation of the Lender to make Loans shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such Loan together with accrued interest thereon (subject to Section 2.07(d)), on the next succeeding interest payment date with respect to such Loan or on the last day of the then current Interest Period applicable to such Loan; or (B) the



then outstanding principal amount of each such Loan shall be converted to a Loan bearing interest at the Alternate Base Rate as of the last day of such Interest Period.

(b) ***Laws Affecting LIBOR Rate Availability.*** If, after the date hereof, the introduction of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for the Lender (or its lending office) to honor its obligations hereunder to make or maintain any Loan, the Lender shall promptly give notice to the Borrower. Thereafter, until the Lender notifies the Borrower that such circumstances no longer exist, (i) the obligation of the Lender to make Loans shall be suspended, (ii) the Lender may not lawfully continue to maintain a Loan bearing interest in relation to the LIBOR Rate, the applicable Loan shall immediately be converted to a Loan bearing interest at the Alternate Base Rate and (iii) the Lender may not lawfully continue to maintain a Loan bearing interest in relation to the LIBOR Rate to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Loan bearing interest at the Alternate Base Rate for the remainder of such Interest Period.(c) ***Benchmark Replacement Setting.***

(i) Benchmark Replacement.

(A) Notwithstanding anything to the contrary herein or in any other Related Document (and any Swap Contract shall be deemed not to be a “Related Document” for purposes of this Section 2.17(c)), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Related Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Related Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Related Document in respect of any Benchmark setting and will become effective at 5:00 p.m., Eastern time on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is provided to the Borrower without any amendment to this Agreement or further action or consent of the Borrower.

(B) Notwithstanding anything to the contrary herein or in any other Related Document, if a Term SOFR Transition Event and its related

Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Related Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Related Document; provided that this paragraph (B) shall not be effective unless the Lender has delivered to the Borrower a Term SOFR Notice. For the avoidance of doubt, the Lender shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Related Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Borrower.

(iii) Notices; Standards for Decisions and Determinations. The Lender will promptly notify the Borrower of (A) any occurrence of a Benchmark Transition Event or a Term SOFR Transition Event, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.17(c)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.17(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower.

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Related Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or the LIBOR Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Lender may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a

Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Approving Opinion. The Borrower shall cause an Approving Opinion to be delivered to the Lender each time a new Benchmark Replacement is determined with respect to a Tax-Exempt Loan and, notwithstanding anything to the contrary herein or in any other Loan Document, in no event shall a Benchmark Replacement replace the then-current Benchmark prior to the Lender’s receipt of the Approving Opinion with respect to such Benchmark Replacement.

(vi) Benchmark Unavailability Period. For any determination of interest hereunder or under any other Loan Document during a Benchmark Unavailability Period, the principal amount of Loans shall bear interest determined in relation to the Alternate Base Rate, computed as otherwise described herein; provided, however, that no such determination of interest shall take effect during any applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the ICE Benchmark Administration (the “IBA”), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the “FCA”), the regulatory supervisor of the IBA, announced in public statements (the “Announcements”) that the final publication or representativeness date for (i) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (ii) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Lender to notify any parties of such Benchmark Transition Event pursuant to clause (iii) of this Section 2.17(c) shall be deemed satisfied.

(vii) Certain Defined Terms. As used in this Section 2.17(c):

“*Approving Opinion*” means, with respect to any action relating to a Tax-Exempt Loan, the occurrence of which requires an opinion of counsel, an opinion of counsel delivered by Counsel to the effect that such action (a) is permitted by this Agreement and (b) will not adversely affect the exclusion of interest on the Tax-Exempt Loan from gross income of the

Lender for purposes of federal income taxation. Any such opinion of counsel shall be in form and substance satisfactory to Lender.

*“Available Tenor”* means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.17(c)(iv).

*“Benchmark”* means, initially, the LIBOR Index; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the LIBOR Index or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17(c)(i).

*“Benchmark Replacement”* means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(2) the sum of: (A) SOFR Average and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Lender as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (B) the related Benchmark Replacement Adjustment; or

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

provided that, (i) in the case of clause (a)(1), if the Lender decides that Term SOFR is not administratively feasible for the Lender, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3) or clause (b) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Related Documents.

*“Benchmark Replacement Adjustment”* means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (a)(2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Lender:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Available Tenor of such Benchmark;

(2) for purposes of clause (a)(3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on

the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities; and

(3) for purposes of clause (b) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of the LIBOR Index with a SOFR-based rate;

provided that, (x) in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Lender in its reasonable discretion and (y) if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement that will replace such Benchmark in accordance with Section 2.17(c)(i) will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of “Benchmark Replacement Adjustment” shall be deemed to be, with respect to each Unadjusted Benchmark Replacement having a payment period for interest calculated with reference thereto, the Available Tenor that has approximately the same length (disregarding business day adjustments) as such payment period.

*“Benchmark Replacement Conforming Changes”* means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Lender decides is reasonably

necessary in connection with the administration of this Agreement and the other Related Documents).

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Lender has provided the Term SOFR Notice to the Borrower pursuant to Section 2.17(c)(i)(B); or

(4) in the case of an Early Opt-in Election, the first (1st) Business Day after the date notice of such Early Opt-in Election is provided to the Borrower.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.17(c) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.17(c).

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Early Opt-in Election*” means, if the then-current Benchmark is the LIBOR Index, the occurrence of the election in writing by the Lender to trigger a fallback from the LIBOR Index and the provision by the Lender of written notice of such election to the Borrower.



“*Floor*” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBOR Index.

“*Interest Period*” means a term of one month.

“*ISDA Definitions*” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“*Reference Time*” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the LIBOR Index, 11:00 a.m. (London time) on the day that is two (2) London banking days preceding the date of such setting, and (2) if such Benchmark is not the LIBOR Index, the time determined by the Lender in its reasonable discretion.

“*Relevant Governmental Body*” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*SOFR*” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SOFR Average*” means the compounded average of SOFR over a rolling calendar day period of thirty (30) days published by the SOFR Administrator.

“*Term SOFR*” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

*“Term SOFR Notice”* means a notification by the Lender to the Borrower of the occurrence of a Term SOFR Transition Event.

*“Term SOFR Transition Event”* means the determination by the Lender that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Lender and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.17(c) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

*“Unadjusted Benchmark Replacement”* means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower makes the following representations and warranties to the Lender as of the Effective Date (which representations and warranties shall survive the execution and delivery of this Agreement) and on each Borrowing Date:

**Section 3.01. Existence and Power.** The Borrower is a joint exercise of powers agency duly organized and validly existing under and by virtue of the laws of the State. The Borrower has the power and authority to (i) own its properties, (ii) carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter, (iii) pledge Revenues and PCEP Project Funds, and (iv) undertake the Peninsula Corridor Electrification Project. Subject to the rights of SamTrans described in Schedule I attached hereto, the Borrower owns the Right of Way.

**Section 3.02. Due Authorization; Approvals.** The Borrower has the right, power and authority and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and each of the Related Documents to which it is a party in accordance with their respective terms and has taken, as of the date hereof, all necessary action required to undertake the Peninsula Corridor Electrification Project. All authorizations, consents and approvals (including, without limitation, Governmental Approvals) necessary for the Borrower to enter into this Agreement and the Related Documents to which it is a party have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. All authorizations, consents and approvals (including, without limitation, Governmental Approvals) necessary for the Borrower to (i) perform the transactions contemplated hereby and under the other Related Documents and (ii) undertake the Peninsula Corridor Electrification Project, have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required for the due execution, delivery and

performance by the Borrower of this Agreement and each of the Related Documents to which it is a party. No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required for the Borrower to undertake and proceed with the Peninsula Corridor Electrification Project.

**Section 3.03. Valid and Binding Obligations.** This Agreement and each of the other Related Documents to which the Borrower is a party has been duly executed and delivered by one or more duly authorized officers of the Borrower and is a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each Existing JPB Document to which the Borrower is a party has been duly executed and delivered by one or more duly authorized officers of the Borrower and is a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 3.04. Non-contravention.** The execution, delivery and performance of this Agreement, each of the other Related Documents in accordance with their respective terms and each of the Existing JPB Documents to which the Borrower is a party in accordance with their respective terms and the undertaking of the Peninsula Corridor Electrification Project do not and will not (i) contravene the Joint Powers Agreement, (ii) require any consent or approval of any Member Agency (other than those that have been obtained), (iii) violate any Laws (including, without limitation, Regulations T, U or X of the Board of Governors of the Federal Reserve System of the United States, or any successor regulations), (iv) conflict with, result in a breach of or constitute a default under any contract to which the Borrower is a party or by which it or any of its Property may be bound which could reasonably be expected to result in a Material Adverse Effect or (v) result in or require the creation or imposition of any Lien upon or with respect to the Revenues, or the PCEP Project Fund, except such Liens, if any, expressly created by any Related Document.

**Section 3.05. Compliance with Laws.** The Borrower is in compliance in all material respects with the requirements of all Laws applicable to it and all orders, writs, injunctions and decrees applicable to it or to its Properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and for which appropriate reserves have been established in the financial records of the Borrower in accordance with GAAP or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**Section 3.06. Pending Litigation and Other Proceedings.** There is no action, suit or proceeding pending (with service of process completed against the Borrower), or to the knowledge of the Borrower, threatened in any court, with any other Governmental Authority with jurisdiction over the Borrower or in any arbitration: (i) against the Borrower or any of its Properties, the Revenues or the PCEP Project Funds; (ii) in respect of any of the Related Documents to which it is a party or any of the Existing JPB Documents to which it is a party; (iii) questioning in any

manner the Borrower's pledge of the Revenues or PCEP Project Funds contained in this Agreement; (iv) questioning in any manner the Borrower's ability to undertake and proceed with the Peninsula Corridor Electrification Project; or (v) questioning the Borrower's ownership of the Right of Way.

**Section 3.07. Financial Statements.** The most recent Audited Financial Statements delivered to the Lender present fairly in accordance with GAAP the financial condition of the Borrower as of the dates referenced therein and the results of its operations for the periods then ended and referenced therein. Since the date of such Audited Financial Statements, there has been no Material Adverse Change.

**Section 3.08. Pension Plans.** The Borrower does not maintain any Pension Plan. The Borrower contributes to Pension Plans maintained by SamTrans.

**Section 3.09. No Defaults.** No default by the Borrower has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Debt of the Borrower secured by Revenues. No bankruptcy, insolvency or other similar proceedings pertaining to the Borrower is pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No "default" or "event of default" under, and as defined in, any of the other Related Documents or any Swap Contract has occurred and is continuing. The Borrower is not presently in default under any material agreement to which it is a party which default could reasonably be expected to have a Material Adverse Effect. The Borrower is not in violation of any material term of the Joint Powers Agreement applicable to it or any material term of any bond indenture, trust agreement or other agreement to which it is a party which could reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Borrower, no Member Agency is in violation of any material term of the Joint Powers Agreement applicable to it.

**Section 3.10. Insurance.** The Borrower currently maintains insurance coverage with insurance companies believed by the Borrower to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to Borrower and/or maintains self-insurance and is in full compliance with Section 4.14 hereof.

**Section 3.11. Title to Assets.** Except as is otherwise described on Schedule I attached hereto with respect to the Right of Way and on Schedule II attached hereto with respect to certain engines and railcars and except where the failure to have good and marketable title to any of its assets would not have a Material Adverse Effect, the Borrower has good and marketable title to its assets (other than Revenues), including the Right of Way, and the engines and railcars used by the Peninsula Corridor. The Revenues are free and clear of all Liens other than Liens permitted pursuant to Section 4.16. The PCEP Project Funds are free and clear of all Liens other than the Lien of this Agreement.

**Section 3.12. Incorporation by Reference.** The representations and warranties of the Borrower contained in the Related Documents (other than this Agreement) to which the Borrower is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Borrower in such Sections are hereby made for the benefit of the Lender. No amendment to or waiver of

such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Lender.

**Section 3.13. Correct Information.** All written information, reports and other papers and data furnished by the Borrower to the Lender were, at the time the same were so furnished, correct in all material respects. No fact is known to the Borrower which has had or in the reasonable judgment of the Borrower may in the future have a Material Adverse Effect which has not been set forth in the most recent Audited Financial Statements furnished to the Lender or disclosed in writing to the Lender prior to the Effective Date. The documents furnished to the Lender in connection with the negotiation, preparation or execution of this Agreement, the Fee and Pricing Agreement and the Notes do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

**Section 3.14. Margin Stock.** The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

**Section 3.15. Tax Exempt Status.** Neither the Borrower nor, to the knowledge of the Borrower, SamTrans or any other Member Agency has taken any action or omitted to take any action, and the Borrower has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Tax-Exempt Loans from gross income for federal income tax purposes or the exemption of interest on the Tax-Exempt Loans from State personal income taxes.

**Section 3.16. Usury.** Assuming that the Lender is an exempted class of person within the meaning of Article 15 of the California Constitution, the terms of this Agreement and the other Related Documents regarding the calculation and payment of interest and fees do not contravene any applicable usury laws.

**Section 3.17. Pending Legislation and Decisions.** To the knowledge of the Borrower, there is no proposed amendment to the Constitution of the State or any State law or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Effect.

**Section 3.18. No Sovereign Immunity.** The Borrower is subject to claims and to suit for damages in connection with its obligations under this Agreement, the other Related Documents and the Existing JPB Documents pursuant to and in accordance with the procedural laws of the State.

**Section 3.19. Environmental Matters.** The operations of the Borrower are in compliance with all of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where a failure to comply with any such requirement or the need for any such remedial action could reasonably be expected to result in a Material Adverse Effect.

**Section 3.20. Solvency.** The Borrower is Solvent.

**Section 3.21. Taxes.** The Borrower has paid all taxes, assessments, fees and other governmental charges upon the Borrower or upon any of its Property thereof which are due and payable, and no claims are being asserted with respect to any past due taxes, assessments, fees or other governmental charges against the Borrower or any of its Properties, except, in each case, as are being contested in good faith by appropriate proceedings for which adequate reserves are being maintained in accordance with GAAP.

**Section 3.22. Swap Contracts.** The Borrower has not entered into any Swap Contract secured by Revenues (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the principal of, or interest on, the Loans or, (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

**Section 3.23. Labor Matters.** The Borrower has no knowledge of any existing or pending strike, walkout or work stoppage.

**Section 3.24. Sanctions.** To the knowledge of the Borrower, the Borrower (a) is not currently the subject of any Sanctions and is in compliance with Anti-Corruption Laws and Anti-Money Laundering Laws, (b) is not located, organized or residing in any Designated Jurisdiction, or (c) is not nor has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. The Borrower has no Related Parties.

## ARTICLE IV

### COVENANTS OF THE BORROWER

Until the Loans and all other Obligations payable under this Agreement and the Notes shall have been paid in full, unless the Lender shall otherwise consent in writing, the Borrower covenants and agrees as follows:

**Section 4.01. Notice of Default.** Upon an Authorized Officer of the Borrower becoming aware of the existence of any Default or any Event of Default, the Borrower will give prompt notice in writing to the Lender of the occurrence of such event and of any other development, financial or otherwise, which could reasonably be expected to materially adversely affect the ability of the Borrower to perform its obligations under this Agreement and the Notes or to undertake or complete the Peninsula Corridor Electrification Project, which notice shall state what action the Borrower proposes to take in regard to such occurrence.

**Section 4.02. Reporting Requirements.** The Borrower will furnish to the Lender each of the following:

(a) **Annual Financial Statements.** As soon as available, and in any event within two hundred ten (210) days after the end of the Fiscal Year, the Audited Financial Statements for such Fiscal Year prepared in the usual and customary format utilized by the Borrower (and previously delivered to the Lender) accompanied by a report thereon of a firm of independent public accountants of recognized national or regional standing with

expertise in auditing the financial statements of California governmental and quasi-governmental entities, selected by the Borrower and reasonably satisfactory to the Lender, to the effect that such Audited Financial Statements have been prepared in accordance with the accounting practice used by the Borrower in its immediately preceding Fiscal Year and present fairly in accordance with GAAP the financial condition of the Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances or to similar effect, and such report shall contain no material qualifications or reservations.

(b) ***Certificate of Compliance.*** Simultaneously with the delivery of each set of financial statements referred to in Section 4.02(a), a certificate of compliance substantially in the form of Exhibit D hereto, signed by an Authorized Officer stating that, to the best of his or her knowledge, the Borrower has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement on the Borrower's part to be performed and is not in default in the performance or observance of any of the terms, covenants, provisions or conditions thereof, or if the Borrower shall be in default, such certificate shall specify all such defaults, the nature and status thereof and any remedial steps taken or proposed to correct such default.

(c) ***Offering Circulars.*** As soon as practicable but in any event within thirty (30) days after the issuance or incurrence thereof, (i) copies of any prospectus, official statement, offering circular, placement memorandum, or similar or corresponding document, and any supplements thereto and updates and amendments thereof, that the Borrower makes available in connection with the offering for sale of any securities secured by a pledge of Revenues or PCEP Project Funds, or, in the case of any ordinance, indenture, contract or agreement by the Borrower involving the creation of any Debt, but not involving the offering for sale of any securities related thereto, a copy of such ordinance, indenture, contract or agreement creating the related obligation, together with, in either case, (ii) a certificate of an Authorized Officer stating that to the best of his or her knowledge the covenants set forth herein and in the Indenture were complied with at the time such securities were issued or such obligation was incurred and otherwise providing the Lender with such additional assurance of compliance with the covenants, terms and other provisions of this Agreement at the time such securities were issued or such obligation was incurred.

(d) ***Budget.*** As soon as available after adoption, and in any event within sixty (60) days of the end of each Fiscal Year, a copy of the Borrower's budget for each Fiscal Year or notice that such document is available without restriction on the Borrower's website and providing the address.

(e) ***PCEP Project Funds.*** As soon as available after adoption, and in any event within sixty (60) days of the end of each Fiscal Year, a summary of the PCEP Project Funds received by the Borrower for such Fiscal Year.

(f) **Quarterly Sales Tax Revenue Reports.** As soon as available, and in any event within thirty (30) days after the end of each fiscal quarter, commencing with the fiscal quarter ending September 30, 2021, a report in form and substance acceptable to the Lender, on the collection of the Sales Tax Revenues.

(g) **Continuing Disclosure Documents.** On the same day as the filing thereof, all continuing disclosure documents filed by the Borrower with respect to Debt of the Borrower secured by Revenues or PCEP Project Funds in compliance with Securities and Exchange Commission rules codified at 17 C.F.R. Section 240.15c2-12 or notice that such filing is available without restriction through EMMA.

(h) **Notice of Material Adverse Change.** Promptly upon learning thereof, notice of the occurrence of any event, occurrence or change in circumstance that could reasonably be expected to result in a Material Adverse Effect.

(i) **Notice of Event of Taxability.** Promptly upon learning thereof, notice of an Event of Taxability.

(j) **Litigation; Investigations; Labor Notices.** As promptly as practicable, written notice of (i) all actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower before any arbitrator of any kind or before any court or other Governmental Authority which if determined adversely to the Borrower could reasonably be expected to result in a Material Adverse Effect, (ii) any significant investigation or proceeding against the Borrower or any of its securities by the Securities and Exchange Commission, the Department of Justice or the Internal Revenue Service, (iii) any significant criminal investigation or proceeding by a Governmental Authority involving the Borrower or any member of its governing board or officer of the Borrower and (iv) any communication from any labor union of an intent to strike the Borrower or cause a labor stoppage at a future date with such notice to include a description of the action or actions that the Borrower proposes to take with respect thereto.

(k) **Ratings.** As soon as practicable, notice of any change in, or the suspension, withdrawal or unavailability of, any Rating.

(l) **Amendments.** Promptly after the adoption thereof, copies of any amendments to the Related Documents or the Existing JPB Documents.

(m) **Other Information.** Such other information respecting the business, properties or the condition or operations, financial or otherwise of the Borrower as the Lender may from time to time reasonably request.

**Section 4.03. Maintenance of Books and Records.** The Borrower shall keep proper books of record and account in which complete and correct entries will be made in accordance with GAAP reflecting all financial transactions of the Borrower and its commuter rail service. All financial statements delivered by the Borrower to the Lender under this Agreement will be complete and accurate and will fairly present the financial condition of the Borrower and its commuter rail service as at the dates thereof and for the periods covered thereby, and all of same will be prepared in accordance with GAAP.



**Section 4.04. Access to Books and Records.** The Borrower shall permit any Person designated by the Lender (at the expense of the Lender, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the Borrower) to visit any of the offices of the Borrower to examine the books and financial records (except books and financial records the examination of which by the Lender is prohibited by Law or by attorney client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Borrower with its officers, employees and independent public accountants, all at such reasonable times and upon reasonable notice and as often as the Lender may reasonably request.

**Section 4.05. Compliance with Law.** The Borrower will comply with and observe the obligations and requirements set forth in the Constitution of the State and in all statutes and regulations binding upon it and its Property relating to this Agreement, the other Related Documents to which it is a party or the Existing JPB Documents to which it is a party. Without limiting the obligations of the Borrower set forth in the preceding sentence, the Borrower shall comply with all applicable Environmental Laws and cure any material defect (or cause other Persons to cure any such defect) to the extent necessary to bring any real property owned, leased, occupied or operated by the Borrower back into material compliance with Environmental Laws and to comply in all material respects with any cleanup orders issued by a Governmental Authority having jurisdiction thereover. The Borrower shall at all times use commercially reasonable efforts to render or maintain any real property owned, leased, occupied or operated by the Borrower safe and fit for its intended uses.

**Section 4.06. Pension Plans.** In the event the Borrower adopts a Pension Plan, the Borrower shall maintain such Pension Plan in compliance in all material respects with the applicable provisions of the Code and other applicable Law and shall make all required contributions to any Pension Plan. In the event the Borrower adopts a Pension Plan, the Borrower shall not permit, at any time, such Pension Plan to: (a) engage in any nonexempt “prohibited transaction” (as defined in Section 503 of the Code); (b) fail to comply with applicable Laws; (c) incur any material increase in its Unfunded Pension Liability; or (d) terminate in any manner; which, in the case of any such event, has resulted, or could reasonably be expected to result, in a Material Adverse Effect. If SamTrans maintains any Pension Plan to which the Borrower has an obligation to contribute, the Borrower shall make such contributions in accordance with the terms of any such Pension Plan and applicable Law.

**Section 4.07. Payment of Taxes.** The Borrower shall timely pay all taxes, assessments, fees and other governmental charges upon the Borrower or upon any of its Property except, in each case, as are being contested in good faith by appropriate proceedings for which adequate reserves are being maintained in accordance with GAAP.

**Section 4.08. Payment of Debts.** The Borrower will timely pay all of its Debts secured by Revenues in accordance with the terms thereof.

**Section 4.09. Compliance with Documents.** The Borrower shall perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents (other than this Agreement) and the Existing JPB Documents to which it is a party, which provisions of the Related Documents (other than this Agreement), as well as related

defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Lender and shall be enforceable against the Borrower. To the extent that any such incorporated provision permits the Borrower to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Borrower, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Lender in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Lender which shall only be evidenced by the written approval by the Lender of the same. Except as permitted by Section 4.10, no termination or amendment to such covenants and agreements or defined terms or release of the Borrower with respect thereto shall be effective to terminate or amend such covenants and agreements and defined terms or release the Borrower with respect thereto in each case as incorporated by reference herein without the prior written consent of the Lender. Notwithstanding any termination or expiration of any Related Document to which the Borrower is a party, the Borrower shall continue to observe the covenants therein contained and incorporated herein for the benefit of the Lender until the termination of this Agreement and the payment in full of the Loans and all other Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

**Section 4.10. Amendment of Related Documents.** The Borrower shall not amend or modify, or permit to be amended or modified in any manner whatsoever any Related Document, the Purchase Agreement or the Real Property Agreement in a manner which could reasonably be expected to materially adversely affect the security for the Loans and the other Obligations or the Borrower's ability to repay when due the Loans or the other Obligations or the interests, security, rights or remedies of the Lender without the prior written consent of the Lender.

**Section 4.11. Existence.** The Borrower shall use its best efforts to maintain its existence as a public entity duly organized and existing as a joint exercise of powers agency, shall not seek to merge or consolidate with any other Person and shall not seek to dissolve. The Borrower shall take all reasonable action to maintain all Permits necessary for the normal conduct of its business, unless the failure to maintain any such Permit could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.12. Maintenance of Approvals; Filings, Etc.** The Borrower at all times shall maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals and authorizations as may be necessary under any applicable Law (i) for its execution, delivery and performance of this Agreement and the Notes and (ii) to undertake and complete the Peninsula Corridor Electrification Project.

**Section 4.13. Maintenance of Properties.** The Borrower shall (a) maintain, preserve and protect all of its material Properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect; and (c) use commercially reasonable efforts to operate and maintain its commuter rail system in a manner believed by the Borrower to

be consistent with prevailing industry standards, except to the extent failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.14. Maintenance of Insurance.** The Borrower shall (a)(i) maintain insurance with reputable insurance companies or associations believed by the Borrower at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage and/or (ii) self-insure and (b) maintain insurance in accordance with the terms of the Indenture. The Borrower shall upon request of the Lender furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section.

**Section 4.15. No Acceleration.** The Borrower shall not enter into any Bank Agreement (including by means of amendment, modification, supplement or restatement of an existing Bank Agreement) which grants any other Person the right to accelerate payment of the principal thereof upon the occurrence of a “default,” an “event of default,” a “termination event,” a “mandatory prepayment event,” a “mandatory redemption event” or other similar event.

**Section 4.16. No Liens.** The Borrower shall not create, incur or permit to exist any Lien of any kind over the Revenues except for the Liens over Revenues created by the Indenture, this Agreement and the Working Capital Facility. The Borrower shall not create, incur or permit to exist any Lien of any kind over the PCEP Project Funds except for the Lien created by the First Supplemental Indenture and this Agreement.

**Section 4.17. Preservation of Pledge.** The Borrower shall take all necessary action to defend, maintain and preserve the pledge of Revenues and PCEP Project Funds securing the Obligations and the payment and performance of the Borrower’s obligations hereunder and under the Notes.

**Section 4.18. No Impairment.** The Borrower shall not enter into or otherwise consent to any amendment, supplement or other modification of any agreement or take any action or omit to take action which impairs the security provided to the Lender for repayment of the Loans and the other Obligations.

**Section 4.19. Sovereign Immunity.** If as a result of a Change in Law the defense of sovereign immunity in respect of contract claims becomes available to the Borrower, the Borrower agrees, to the fullest extent permitted by law, not to assert the defense of sovereign immunity in any proceeding to enforce any of the obligations of the Borrower under this Agreement or any other Related Document or any Existing JPB Document to which the Borrower is a party in any court of competent jurisdiction.

**Section 4.20. Maintenance of Tax-Exempt Status.** The Borrower shall comply with its agreements set forth in the Tax Certificate and shall not act in any other manner which would adversely affect the exclusion of the interest on the Tax-Exempt Loans or the Tax-Exempt Note from the gross income of the Beneficial Owners thereof for federal income or State income tax purposes.

**Section 4.21. Use of Proceeds.** The Borrower shall not use, and shall ensure that its operator and the operator's officers and employees shall not use, the proceeds of any Loan (a) in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, or (b) in any manner that would result in the violation of any Sanctions applicable to any party hereto. The Borrower will use the proceeds of the Loans solely to pay-off the Prior PCEP Agreement (as defined in the First Supplemental Indenture) and provide funding for the Peninsula Corridor Electrification Project. The Borrower shall not use any portion of the proceeds of the Loans for the purpose of carrying or purchasing any Margin Stock.

**Section 4.22. Collection of Sales Tax Revenues; Ratings.** The Borrower shall levy and collect the Sales Tax and transmit the Sales Tax Revenues in accordance with Section 9.02 of the Indenture. The Borrower shall maintain at least two Ratings commencing on the earlier to occur of (i) the date of issuance of Senior Lien Bonds and (ii) March 31, 2022.

**Section 4.23. Additional Senior Lien Debt and Subordinate Obligations Secured By Revenues.**

(a) The Borrower shall not issue, incur or suffer to exist any Senior Lien Debt payable from Revenues and secured by the pledge of the Indenture except in accordance with the Indenture, and upon the satisfaction of the following condition:

(i) The Borrower shall file with the Lender a certificate prepared by the Borrower showing that the amount of Sales Tax Revenues collected during any 12 consecutive calendar months specified by the Borrower within the most recent 18 calendar months immediately preceding the date on which such additional Senior Lien Debt will become Outstanding shall have been at least equal to 2.0 times Maximum Annual Debt Service on all Senior Lien Debt then Outstanding and the additional Senior Lien Debt then proposed to be issued, which certificate shall also set forth the computations upon which such certificate is based; provided that if the Resolution is amended to increase the rate of the Sales Tax under the applicable provisions of law and such increased rate was not in effect during all or any portion of the 12-consecutive-calendar month period, then the Issuer may add to the amount of Sales Tax Revenues for such period an amount equal to the amount of Sales Tax Revenues that would have been generated if the increased rate were in effect for the full period, as calculated by the Borrower using such reasonable assumptions as it determines.

(b) The Borrower shall not issue, incur or suffer to exist any Subordinate Obligation payable from Revenues and secured by the pledge of the Indenture except in accordance with the Indenture and upon the satisfaction of the following condition:

(i) The Borrower shall file with the Lender a certificate prepared by the Borrower showing that the amount of Sales Tax Revenues collected during any 12 consecutive calendar months specified by the Issuer within the most recent 18 calendar months immediately preceding the date on which such additional Subordinate Obligations will become Outstanding shall have been at least equal to 1.5 times Maximum Annual Debt Service on Senior Lien Debt and Subordinate

Obligations then Outstanding and the additional Subordinate Obligations then proposed to be issued, which certificate shall also set forth the computations upon which such certificate is based; provided that if the Resolution is amended to increase the rate of the Sales Tax under the applicable provisions of law and such increased rate was not in effect during all or any portion of the 12-consecutive-calendar month period, then the Issuer may add to the amount of Sales Tax Revenues for such period an amount equal to the amount of Sales Tax Revenues that would have been generated if the increased rate were in effect for the full period, as calculated by the Issuer using such reasonable assumptions as it determines.

**Section 4.24. Swap Contracts.** The Borrower shall not enter into any Swap Contract secured by Revenues (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the principal of, or interest on, the Loans or, (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

**Section 4.25. Investments.** The Borrower shall not make any investments except as permitted by its investment policy or by applicable Law.

**Section 4.26. Use of Lender's Name.** Except for such use (i) as may be required by applicable Law (including, but not limited to, federal and state securities laws), (ii) in the Borrower's staff reports to the governing body of the Borrower, (iii) the Borrower's financial statements, (iv) in presentations to rating agencies made by the Borrower and (v) as may be consented to by the Lender in writing, the Borrower shall not use the Lender's name in any published materials.

**Section 4.27. Filing of the Agreement.** In the event the Borrower elects to file a copy of this Agreement with EMMA, the Borrower shall file only a complete copy of this Agreement containing such redactions as directed by the Lender in its sole discretion.

**Section 4.28. Further Assurances.** The Borrower shall take such action and execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Lender, all such actions, instruments and documents as in the reasonable opinion of the Lender are necessary to effectuate the provisions of this Agreement and the other Related Documents.

**Section 4.29. Other Bank Agreements.** In the event the Borrower shall, enter into or otherwise consent to any Bank Agreement which provides such Person with a covenant or agreement which incorporates by reference additional or more restrictive, covenants, events of default or remedies provided in other Bank Agreements to such Person (such covenant, a "Most Favored Nations Provision"), the Borrower shall promptly enter into an amendment to this Agreement to include such Most Favored Nations Provision; *provided* that the Lender shall have and maintain the benefit of such Most Favored Nations Provision even if the Borrower fails to provide such amendment.

## ARTICLE V

### CONDITIONS PRECEDENT

**Section 5.01. Conditions to Effectiveness.** This Agreement shall become effective upon satisfaction or waiver by the Lender of the following conditions precedent:

(a) **Documentary Conditions.** On or prior to the date of the execution and delivery of this Agreement, the Lender shall have received, in form and substance satisfactory to the Lender, the following:

(i) A true and complete executed original of this Agreement, and the Fee and Pricing Agreement;

(ii) The original executed Notes;

(iii) (A) An executed copy of the Indenture (including all supplements and amendments thereto), the Joint Powers Agreement and the Real Property Agreement, accompanied by a certificate of an Authorized Officer of the Borrower or the Secretary of the governing body of the Borrower certifying that each such copy is complete and accurate and that each such agreement remains in full force and effect; and (B) an executed copy of the Purchase Agreement, which delivery requirement shall be satisfied by delivering the Purchase Agreement to the Lender via a cloud-based application, accompanied by a certificate of an Authorized Officer of the Borrower or the Secretary of the governing body of the Borrower certifying that the Purchase Agreement so delivered is complete and accurate and that each such agreement remains in full force and effect;

(iv) An executed copy of the Tax Certificate;

(v) A copy of the resolutions of the governing body of the Borrower approving the execution, delivery and performance of this Agreement, the Fee and Pricing Agreement, the Notes and the Tax Certificate, certified by an Authorized Officer of the Borrower or the Secretary of the governing body of the Borrower as being true and complete and in full force and effect on the Effective Date;

(vi) An incumbency certificate with respect to the officers of the Borrower who are authorized to execute any documents or instruments on behalf of the Borrower under this Agreement and the other Related Documents;

(vii) A copy of each notice of a joint powers agreement filed by the Borrower with the Office of the California Secretary of State;

(viii) A copy of the most recent Audited Financial Statements;

(ix) A copy of the Borrower's investment policy in effect as of the Effective Date;

(x) An opinion of counsel to the Borrower, addressed to the Lender and dated the Effective Date, opining as to the Borrower's legal existence, power and authority, due authorization of transactions and the Peninsula Corridor Electrification Project, due execution and delivery of documents, enforceability of this Agreement and of the other Related Documents to which it is a party, no conflicts with law, the Related Documents or other agreements and documents to which the Borrower is a party, no litigation, no consents required, perfection of security interests in favor of the Lender and such other customary matters as the Lender may reasonably request;

(xi) An opinion of Nixon Peabody LLP, bond counsel, addressed to the Borrower and dated the Effective Date, to the effect that the interest on the Tax-Exempt Loans evidenced by the Tax-Exempt Note is excludable from gross income for federal income tax purposes and such other customary matters as the Lender may reasonable request, together with a reliance letter, addressed to the Lender and dated the Effective Date, stating that the Lender may rely upon such opinion to the same extent as if such opinion were addressed to the Lender;

(xii) A certificate dated the Effective Date and executed by an Authorized Officer certifying that: (A) other than as previously provided to the Lender in writing, there has been no event or circumstance since June 30, 2020, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) the representations and warranties contained in Article III that are not qualified by concepts of materiality are true and correct in all material respects on the Effective Date, (C) the representations and warranties contained in Article III hereof that are qualified by concepts of materiality (including Material Adverse Effect) are true and correct in all respects on the Effective Date and (D) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default;

(xiii) True and correct copies of all material Governmental Approvals, if any, necessary for the Borrower (including resolutions of each Member Agency adopted pursuant to Section 6586.5 of the California Government Code) to execute, deliver and perform its obligations under the Related Documents to which it is a party and to undertake the Peninsula Corridor Electrification Project; and

(xiv) A copy of the most recent staff report to the governing body of the Borrower describing the Borrower's insurance program.

(b) ***Certain Payments.*** The Borrower shall have paid, or caused to be paid, to the Lender and its counsel the fees and expenses set forth in the Fee and Pricing Agreement that are required to be paid on or prior to the Effective Date.

(c) ***Litigation.*** The Lender shall be satisfied that no action, suit or proceeding is pending or threatened against the Borrower or any of the Borrower's Properties in any court or before any arbitrator of any kind or before or by any Governmental Authority or

non-governmental body which, if determined adversely to the Borrower, could reasonably be expected to result in a Material Adverse Effect.

(d) ***No Material Adverse Change.*** Other than as previously provided to the Lender in writing, no Material Adverse Change shall have occurred since June 30, 2020.

(e) ***Other Matters.*** All legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Lender and its counsel, and the Lender shall have received such other statements, certificates, agreements, documents and information with respect to the Borrower and the other parties to the Related Documents and matters contemplated by this Agreement as the Lender may reasonably request.

(f) ***No Offering Document.*** No offering document or official statement shall have been prepared for use in connection with the issuance of the Notes. For the avoidance of doubt, the Lender has not requested and does not require that such an offering document be prepared.

(g) ***No Legal Limitations.*** No law, regulation, ruling or other action of the United States or the State or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement.

**Section 5.02. Conditions to Making of Loans.** The obligation of the Lender to make any Loan is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower contained in Article III shall be true and correct in all material respects (or if such representation and warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct) on and as of the applicable Borrowing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or if such representation and warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct) as of such earlier date;

(b) No Default shall exist, or would result from the making of such proposed Loan or from the application of the proceeds thereof; and

(c) The Lender shall have received a duly and properly completed and executed Borrowing Notice.

Each request for a Loan submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing Date.



## ARTICLE VI

### EVENTS OF DEFAULT; REMEDIES

**Section 6.01. Events of Default.** The occurrence and continuance of any one or more of the following events shall be an event of default (“Event of Default”):

(a) the Borrower fails to pay, or cause to be paid, when due: (i) any principal of or interest on any Loan for any reason; (ii) any Commitment Fees and such failure continues for thirty (30) calendar days; or (iii) any other Obligation owing to the Lender hereunder and such failure continues for five (5) Business Days; or

(b) (i) any representation or warranty made by the Borrower in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder that is not qualified by the concept of “materiality” shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered or (ii) any representation or warranty made by the Borrower in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder that is qualified by the concept of “materiality” shall be incorrect or untrue in any respect when made or deemed to have been made or delivered; or

(c) (i) the Borrower fails to perform or observe any term, covenant or agreement contained in Section 4.01, 4.02(a), 4.10, 4.11, 4.15, 4.16, 4.17, 4.18, 4.21, 4.22, 4.23 or 4.24; or (ii) the Borrower fails to perform or observe any other term, covenant or agreement contained in this Agreement (other than those referred to in Sections 6.01(a) and (c)(i)) and any such failure cannot be cured or, if curable, remains uncured after the earlier of (A) sixty (60) days after written notice thereof to the Borrower, or (B) knowledge by responsible officers of the Borrower of the occurrence thereof; or

(d) this Agreement, any other Related Document, any Existing JPB Document, the Nine Party MOU, the Seven Party MOU Supplement or any material provision hereof or thereof shall at any time for any reason cease to be valid and binding on the Borrower (or, in the case of the Nine Party MOU or the Seven Party MOU Supplement, on any party thereto) or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by any officer of the Borrower, any Member Agency (or, in the case of the Nine Party MOU or the Seven Party MOU Supplement, by any party thereto) or by any Governmental Authority having jurisdiction, or the Borrower shall deny that it has any or further liability or obligation under this Agreement or any other Related Document or any Existing JPB Document, or any party to the Nine Party MOU or the Seven Party MOU Supplement shall deny that it has any or further liability or obligation thereunder; or

(e) a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction is imposed by any Governmental Authority (including the Borrower) on the repayment when due and payable of the principal of or interest on any Debt of the Borrower payable from, and secured by, Revenues or any portion thereof; or

(f) the Borrower shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 6.01(g); or

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.01(f)(v) shall be instituted against the Borrower and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of sixty (60) or more days; or

(h) the Borrower shall (i) default in any payment of principal of, premium, if any, or interest on any Debt secured by Revenues; or (ii) default in the observance or performance of any other agreement or condition relating to any Debt secured by Revenues or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Debt secured by Revenues (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries), as the case may be, to take remedial action with respect to such Debt; or

(i) a “default” or an “event of default” shall have occurred under the Working Capital Facility; or

(j) (i) there shall be entered against the Borrower any final uninsured judgment (or insured judgment if the insurer has disputed coverage in writing) which, singly or with any other final uninsured judgment or judgments (or insured judgment or insured judgments if the insurer has disputed coverage in writing) against the Borrower, exceeds \$5,000,000, is payable from Revenues or PCEP Project Funds and remains unpaid for a period of thirty (30) calendar days or, if longer, when due, or (ii) any of the Revenues or PCEP Project Funds shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the Borrower and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within sixty (60) calendar days after its issue or levy; or

(k) the Lender fails to have an enforceable pledge of the Revenues with the priority as contemplated by Section 2.15(a) or the PCEP Project Funds with the priority as contemplated by Section 2.15(b); or

(l) any “event of default” under any Related Document (as defined respectively therein) other than this Agreement shall have occurred and, if permitted to be cured under the terms thereof, shall not have been cured within such permitted cure period; or

(m) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, any such Rating Agency shall have downgraded its Rating to below “BBB-” (or its equivalent) or “Baa3” (or its equivalent), or shall have suspended or withdrawn its Rating; or

(n) (i) if there are three Member Agencies, at least two Member Agencies declare in writing their intent to withdraw as a “member agency” under the Joint Powers Agreement; (ii) if there are two Member Agencies, a Member Agency declares in writing its intent to withdraw as a “member agency” under the Joint Powers Agreement; (iii) the Borrower shall cease to exist as a joint exercise of powers agency; (iv) the Borrower shall merge, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property (whether now owned or hereafter acquired) to or in favor of any Person; (v) the Borrower shall engage in any line of business other than the ownership and operation of its commuter rail service along the Peninsula Corridor or businesses incidental thereto; or (vi) the Borrower shall cease for any reason to maintain its ownership rights in the Right of Way.

**Section 6.02. Remedies.** If an Event of Default occurs and is continuing, the Lender may exercise any one or more of the following rights and remedies:

(a) declare the Commitment to make Loans to be terminated, whereupon the Commitment shall be terminated; or

(b) require that all Obligations bear interest at the Default Rate; or

(c) pursue any other action available at law or in equity, including seeking a writ of mandamus;

provided, however, that upon the occurrence of an Event of Default of the type described in Section 6.01(f) or 6.01(g), the Commitment and the obligation of the Lender to make Loans shall automatically terminate without further act of the Lender.

**Section 6.03. No Waiver; Cumulative Remedies.** No failure by the Lender to exercise, and no delay by the Lender in exercising, any right, remedy, power or privilege hereunder or under any other Related Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.01. Changes to Agreement.** No provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 7.02. Successors and Assigns.**

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however,* that (i) the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Lender and any assignment without such consent shall be void, and (ii) (A) if the Commitment has not terminated and the Lender remains obligated to make Loans hereunder, unless the intended assignee is an Affiliate of the Lender, the Lender may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Borrower and any assignment without such consent shall be void (*provided* that no such consent of the Borrower shall be required upon the occurrence and during the continuance of any Event of Default hereunder) and (B) if the Commitment has terminated and the Lender is no longer obligated to make Loans hereunder, the Lender may assign or transfer any of its rights or obligations hereunder without the prior written consent of the Borrower. In the event of any assignment or transfer in accordance with the provisions of this Section 7.02, the Borrower shall be provided with the name and address of the assignee or transferee. The Borrower and the Lender acknowledge that the Notes may not be publicly offered.

(b) The Lender shall have the right at any time to grant participations in all or part of its rights hereunder, under the Fee and Pricing Agreement and under either Note or both Notes and the obligations of the Borrower hereunder, under the Fee and Pricing Agreement and under the Notes to any other institutional purchaser (each, a “Participant”) without the consent of the Borrower or any other Person; *provided, however,* that any such participation shall not relieve the Lender from any of its obligations under this Agreement, shall not result in any increase in costs to the Borrower and the Borrower shall be entitled to deal exclusively with the Lender for all purposes of this Agreement (including the making of all payments on Loans). The Lender may disclose to any Participant or prospective Participant any information or other data or material in the Lender’s possession relating to this Agreement, any other Related Document and any Existing JPB Document, without the consent of or notice to the Borrower. Upon receipt of written request from the Borrower, the Lender shall disclose to the Borrower the identity of all Participants.

(c) Notwithstanding paragraph (a) above, the Lender may assign and pledge all or any portion of the amounts owing to it with respect to the Loans hereunder or either Note or both Notes to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System

and any Operating Circular issued by such Federal Reserve Bank. No such assignment or pledge shall release the Lender from its obligations under this Agreement.

**Section 7.03. Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing addressed as provided below and shall be deemed effectively given upon the earlier of actual receipt, or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt:

If to the Lender, to:

Wells Fargo Bank, National Association  
333 Market Street, 15<sup>th</sup> Floor  
MAC: A0109-150  
San Francisco, California 94105  
Attention: Dale Barton, Vice President  
Telephone: (628) 260-3382  
Email: [dale.r.barton@wellsfargo.com](mailto:dale.r.barton@wellsfargo.com)

With a copy to:

Wells Fargo Bank, National Association  
1700 Lincoln, Floor 9  
MAC C7300-09E  
Denver, Colorado 80203  
Attention: Mike Cook, Assistant Vice President  
Telephone: (303)863-5524  
Email: [Michael.r.cook@wellsfargo.com](mailto:Michael.r.cook@wellsfargo.com)

If to the Borrower:

Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, California 94070-1306  
Attention: Executive Director  
Telephone: (650) 508-6269  
Email: [hartnettj@samtrans.com](mailto:hartnettj@samtrans.com)

With a copy to:

Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, California 94070-1306

Attention: Chief Financial Officer  
Telephone: (650) 508-6274  
Email: hanseld@samtrans.com

and a further copy to:

Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, California 94070-1306  
Attention: Director of Treasury  
Telephone: (650) 508-7765  
Email: moble-ritterc@samtrans.com

and a further copy to:

debt@samtrans.com

Notwithstanding anything to the contrary contained in this Section 7.03, Borrowing Notices must be submitted to the Lender by facsimile and email. Each of the Lender and the Borrower may change its address, fax number, telephone number or email address for notices and other communications hereunder by notice to the other party hereto.

**Section 7.04. Obligations Absolute.** The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation: (i) any lack of validity, enforceability or legal effect of this Agreement or any other Related Document or any Existing JPB Document, or any term or provision herein or therein; (ii) the existence of any claim, set-off, defense or other right that the Borrower or any other Person may have at any time against the Lender or any other Person; and (iii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing, that might, but for this paragraph, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Borrower's obligations hereunder (whether against the Lender or any other Person).

**Section 7.05. Holidays.** Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

**Section 7.06. Liability of the Lender.**

(a) None of the Lender, its Affiliates or any of their respective employees, officers or directors shall be liable or responsible for: (i) the use which may be made of the proceeds of any Loan or for any acts or omissions of the Borrower in connection therewith; (ii) the validity, sufficiency, accuracy or genuineness of documents, or of any endorsement thereon, even if such documents should in fact prove to be in any or all respects invalid,

insufficient, fraudulent or forged; (iii) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, courier, telecopier or otherwise; or (iv) any other circumstances whatsoever in funding any Loan; except only that the Borrower shall have a claim against the Lender, and the Lender shall be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the Borrower which the Borrower proves by final order of a court of competent jurisdiction were caused by the Lender's willful misconduct or gross negligence in failing to fund a Loan under this Agreement after the presentation to it by the Borrower of a Borrowing Notice strictly complying with the terms and conditions of this Agreement. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(b) The Borrower assumes all risks associated with the acceptance by the Lender of documents received by telecommunication, it being agreed that the use of telecommunication devices is for the benefit of the Borrower and that the Lender assumes no liabilities or risks with respect thereto.

#### **Section 7.07. Costs and Expenses; Indemnification; Damage Waiver.**

(a) The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the preparation, negotiation, execution and delivery of this Agreement, the Notes and the Fee and Pricing Agreement, (ii) all fees and expenses payable to the California Debt Investment and Advisory Commission and any other Person (including bond counsel) in connection with the issuance of the Notes, and (iii) all out of pocket expenses incurred by the Lender (including the reasonable fees, charges and disbursements of any counsel for the Lender), and all fees and time charges for attorneys who may be employees of the Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Related Documents, including its rights under this Section, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loans.

(b) To the maximum extent permitted by law, the Borrower shall indemnify the Lender and each Related Party of the Lender (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all reasonable fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any Member Agency) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Related Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Related Documents, (ii) the issuance of the Notes, (iii) the use or proposed use of

the proceeds of the Loans, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, and (v) any Government Acts, in each case whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnitee is a party thereto; provided that the indemnity obligations of the Borrower contained in this Section shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Notes, this Agreement, any other Related Document, any Existing JPB Document, any Borrowing Notice or the use of the proceeds of the Loans. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(d) Unless otherwise provided in this Section, all amounts due under this Section shall be payable not later than thirty (30) days after demand therefor.

(e) The agreements in this Section shall survive the payment in full of the Loans, the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

**Section 7.08. Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any debtor relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

**Section 7.09. Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the Fee and Pricing Agreement, the Indenture and the Notes constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or email



transmission (e.g., “pdf” or “tif”) shall be as effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Related Document, upon the request of any party, such fax transmission or email transmission shall be promptly followed by such manually executed counterpart.

**Section 7.10. Survival of Representations and Warranties.** All representations and warranties of the Borrower made hereunder or other document delivered pursuant hereto or thereto by the Borrower or in connection herewith shall survive the execution and delivery hereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default on the Effective Date, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied.

**Section 7.11. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 7.12. Governing Law; Jurisdiction, Etc.**

(a) **Governing Law.** This Agreement and the other Related Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Related Document (except, as to any other Related Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of California.

(b) **Submission to Jurisdiction.** The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Lender of the foregoing in any way relating to this Agreement or any other Related Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of California, and of the United States District Courts located in the State of California, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such California State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) **Waiver of Venue.** The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Related Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7.03. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

**Section 7.13. Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND CONSENT AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 7.14. No Advisory or Fiduciary Relationship.** In connection with all aspects of the transactions contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' (if any) understanding, that: (a) (i) the services regarding this Agreement provided by the Lender and any Affiliate thereof are arm's-length commercial transactions between the Borrower and its Affiliates (if any), on the one hand, and the Lender and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Lender and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any other Person and (ii) neither the Lender nor any of its Affiliates

has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Lender or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**Section 7.15. Electronic Execution of Certain Documents.** The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Related Document (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Lender, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 7.16. USA Patriot Act.** The Lender is subject to the Patriot Act and hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and Anti-Money Laundering Laws, including the Patriot Act.

**Section 7.17. No Third Party Rights.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

**Section 7.18. Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 7.19. Dissemination of Information.** The Lender may disseminate information relating to the Borrower, this Agreement, any other Related Document or any Existing JPB Document (i) in connection with any assignment or participation; (ii) upon the order of any court or otherwise to the extent required by statute, rule, regulation or judicial process; (iii) to bank examiners or upon the request or demand of any other administrative, regulatory agency, or authority; or (iv) to any domestic or foreign branch, subsidiary or affiliate, representative office or agent of the Lender and third parties selected by any of the foregoing entities, wherever situated, for confidential use (including in connection with the provision of any service and for data

processing, statistical and risk analysis purposes), or in connection with the Lender's performance, administration or enforcement of this Agreement.

[Remainder of page intentional left blank; signature page immediately follows.]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Derek S. Hansel,  
Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_  
Dale Barton  
Vice President

## **SCHEDULE I**

### **INFORMATION RELATING TO OWNERSHIP OF RIGHT OF WAY**

See page ii under the caption “History” and Note 1, page 17 of the Audited Financials of the Borrower for the Fiscal Year Ended June 30, 2018 for a discussion of ownership of the right of way. All payments to SamTrans for reimbursement of SamTrans’ advances of funds on behalf of the VTA and CCSF to acquire the right of way in 1991 have been paid in accordance with the Amendment of the Real Property Ownership Agreement, dated October 31, 2008, with the exception of the \$19.8 million that is due from the Metropolitan Transportation Commission.

**SCHEDULE II**  
**TITLE TO ASSETS**

**Lease/Leaseback Transaction**

See Note 13 on page 37 of the Audited Financials of the Borrower for the Fiscal Year Ended June 30, 2018 for a discussion of a 2002 lease-leaseback transaction in respect of 13 locomotives, 38 trailer cars and 14 cab cars.

**Property Rights in the 4th and King Areas**

In 1991, the Borrower received a grant deed from the Southern Pacific Transportation Company. The grant deed conveyed the rights held by Southern Pacific Transportation Company at the time, which consisted of perpetual easements over a number of parcels for “railroad, transportation and communication purposes.” There are limitations upon the size and type of buildings that the railroad (now the Borrower) can erect on some of the property, but this limitation does not affect the right to operate rail service. Thus, the Borrower has perpetual, deeded easement rights to the right of way, not a leasehold interest of any kind. Any use by the fee owner cannot impair the Borrower’s use of the property.

**EXHIBIT A-1**

**[FORM OF TAX-EXEMPT NOTE]**

**TRANSFER OF THIS TAX-EXEMPT NOTE IS RESTRICTED  
AS SET FORTH IN THE CREDIT AGREEMENT**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
PROMISSORY NOTE**

**[August 13, 2021]**  
San Carlos, California  
\$100,000,000

PENINSULA CORRIDOR JOINT POWERS BOARD, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “Borrower”), for value received, hereby promises to pay, solely from the funds hereinafter referred to, to WELLS FARGO BANK, NATIONAL ASSOCIATION (the “Lender”), the principal sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000) or, if less, the aggregate principal amount of all Tax-Exempt Loans made by the Lender to the Borrower, payable at such times and at such location as are specified in the Credit Agreement, dated as of August 1, 2021 (the “Credit Agreement”), between the Borrower and the Lender, together with accrued and unpaid interest thereon. Capitalized terms not otherwise defined herein have the meaning set forth in the Credit Agreement.

The unpaid principal amount of the Tax-Exempt Loans evidenced by this Tax-Exempt Note (this “Note”) from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Credit Agreement. This Note constitutes a PCEP Facility Note and an Initial Note under the Indenture.

Payments of both principal and interest are to be made in lawful money of the United States of America.

Annexed hereto and made a part hereof is a grid (the “Grid”) on which shall be shown all Tax-Exempt Loans made by the Lender from time to time under the Credit Agreement and the amounts of principal and interest payable and paid from time to time under the Credit Agreement. The Borrower hereby appoints the Lender as its agent to endorse the Grid and note thereon the date and the amount of each Tax-Exempt Loan and the date and amount of each payment of interest thereon and the date and amount of each repayment or prepayment of principal thereof. In any legal action or proceeding in respect of this Note, the entries made on the Grid shall be prima facie evidence of the existence and the amounts of the obligations of the Borrower recorded therein.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Credit Agreement, to which reference is hereby made for a statement of said terms and



provisions, including those terms and provisions under which this Note may be paid prior to its due date and the restrictions on transfer set forth therein.

THIS NOTE IS A LIMITED OBLIGATION OF THE BORROWER PAYABLE SOLELY FROM REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT AND IS NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, LIEN OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF THE BORROWER OR ANY OF ITS INCOME OR RECEIPTS, EXCEPT THE REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT.

The Borrower hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever in connection with the delivery, acceptance, performance and enforcement of this Note.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Credit Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance and delivery of this Note have been duly authorized by resolution of the Borrower duly adopted.

IN WITNESS WHEREOF, the Peninsula Corridor Joint Powers Board has caused this Note to be duly executed in its name by the manual or facsimile signature of an Authorized Officer as of the date and year first above referenced.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**TAX-EXEMPT NOTE GRID**

**TAX-EXEMPT LOANS AND PAYMENTS OF PRINCIPAL AND INTEREST**

Date of Tax-Exempt Loan	Amount of Tax-Exempt Loan	Principal Amount of Tax-Exempt Loan Repaid	Amount of Interest on Tax-Exempt Loan Repaid	Aggregate Tax-Exempt Loan Balance	Notation Made By

Note: Additional grid pages may be attached to this Tax-Exempt Note as may be necessary to record certain information regarding each Tax-Exempt Loan.

**EXHIBIT A-2**

**[FORM OF TAXABLE NOTE]**

**TRANSFER OF THIS TAXABLE NOTE IS RESTRICTED  
AS SET FORTH IN THE CREDIT AGREEMENT**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
PROMISSORY NOTE**

**[August 13, 2021]**  
San Carlos, California  
\$100,000,000

PENINSULA CORRIDOR JOINT POWERS BOARD, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “Borrower”), for value received, hereby promises to pay, solely from the funds hereinafter referred to, to WELLS FARGO BANK, NATIONAL ASSOCIATION (the “Lender”), the principal sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000) or, if less, the aggregate principal amount of all Taxable Loans made by the Lender to the Borrower, payable at such times and at such location as are specified in the Credit Agreement, dated as of August 1, 2021 (the “Credit Agreement”), between the Borrower and the Lender, together with accrued and unpaid interest thereon. Capitalized terms not otherwise defined herein have the meaning set forth in the Credit Agreement.

The unpaid principal amount of the Taxable Loans evidenced by this Taxable Note (this “Note”) from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Credit Agreement. This Note constitutes a PCEP Facility Note and an Initial Note under the Indenture.

Payments of both principal and interest are to be made in lawful money of the United States of America.

Annexed hereto and made a part hereof is a grid (the “Grid”) on which shall be shown all Taxable Loans made by the Lender from time to time under the Credit Agreement and the amounts of principal and interest payable and paid from time to time under the Credit Agreement. The Borrower hereby appoints the Lender as its agent to endorse the Grid and note thereon the date and the amount of each Taxable Loan and the date and amount of each payment of interest thereon and the date and amount of each repayment or prepayment of principal thereof. In any legal action or proceeding in respect of this Note, the entries made on the Grid shall be prima facie evidence of the existence and the amounts of the obligations of the Borrower recorded therein.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Credit Agreement, to which reference is hereby made for a statement of said terms and provisions, including those terms and provisions under which this Note may be paid prior to its due date and the restrictions on transfer set forth therein.

THIS NOTE IS A LIMITED OBLIGATION OF THE BORROWER PAYABLE SOLELY FROM REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT AND IS NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, LIEN OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF THE BORROWER OR ANY OF ITS INCOME OR RECEIPTS, EXCEPT THE REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT.

The Borrower hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever in connection with the delivery, acceptance, performance and enforcement of this Note.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Credit Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance and delivery of this Note have been duly authorized by resolution of the Borrower duly adopted.

IN WITNESS WHEREOF, the Peninsula Corridor Joint Powers Board has caused this Note to be duly executed in its name by the manual or facsimile signature of an Authorized Officer as of the date and year first above referenced.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**TAXABLE NOTE GRID**  
**TAXABLE LOANS AND PAYMENTS OF PRINCIPAL AND INTEREST**

Date of Taxable Loan	Amount of Taxable Loan	Principal Amount of Taxable Loan Repaid	Amount of Interest on Taxable Loan Repaid	Aggregate Taxable Loan Balance	Notation Made By

Note: Additional grid pages may be attached to this Taxable Note as may be necessary to record certain information regarding each Taxable.

**EXHIBIT B**  
**FORM OF BORROWING NOTICE**  
**BORROWING NOTICE**

Date: \_\_\_\_\_

Wells Fargo Bank, National Association  
333 Market Street, 15th Floor  
MAC: A0109-150  
San Francisco, California 94105  
Attention: Dale Barton, Vice President  
Telephone: (628) 260-3382  
Email: [dale.r.barton@wellsfargo.com](mailto:dale.r.barton@wellsfargo.com)

Wells Fargo Bank, National Association  
1700 Lincoln, Floor 9  
MAC C7300-09E  
Denver, Colorado 80203  
Attention: Mike Cook, Assistant Vice President  
Telephone: (303) 863-5524  
Email: [Michael.r.cook@wellsfargo.com](mailto:Michael.r.cook@wellsfargo.com)

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 1, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), between Peninsula Corridor Joint Powers Board (the "Borrower") and Wells Fargo Bank, National Association. Terms used herein have the meanings assigned to them in the Credit Agreement.

The Borrower hereby requests a Borrowing of a [Tax-Exempt Loan] [Taxable Loan] (delete as applicable):

1. On \_\_\_\_\_ (the "Borrowing Date")
2. In the amount of \$ \_\_\_\_\_
3. The Borrower hereby irrevocably authorizes the Lender to disburse the proceeds of such Loan to the deposit account of the Borrower maintained by the Lender which ends in [xxxx].

The Borrowing requested herein complies with the requirements of Section 2.02 of the Credit Agreement. The Borrower hereby represents and warrants that each of the conditions set forth in Section 5.02 of the Credit Agreement will be satisfied on and as of the Borrowing Date.

Delivery of an executed counterpart of a signature page of this Borrowing Notice by fax transmission and by electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Borrowing Notice.

IN WITNESS WHEREOF, the Borrower has caused this Borrowing Notice to be duly executed in its name by the signature of an Authorized Officer as of the date of this Borrowing Notice set forth above.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

## EXHIBIT C

### FORM OF REQUEST FOR EXTENDED FUNDING PERIOD

Date: \_\_\_\_\_

Wells Fargo Bank, National Association  
333 Market Street, 15th Floor  
MAC: A0109-150  
San Francisco, California 94105  
Attention: Dale Barton, Vice President  
Telephone: (628) 260-3382  
Email: [dale.r.barton@wellsfargo.com](mailto:dale.r.barton@wellsfargo.com)

Wells Fargo Bank, National Association  
1700 Lincoln, Floor 9  
MAC C7300-09E  
Denver, Colorado 80203  
Attention: Mike Cook, Assistant Vice President  
Telephone: (303) 863-5524  
Email: [Michael.r.cook@wellsfargo.com](mailto:Michael.r.cook@wellsfargo.com)

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 1, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), between Peninsula Corridor Joint Powers Board (the "Borrower") and Wells Fargo Bank, National Association. Terms used herein have the meanings assigned to them in the Credit Agreement.

The Borrower hereby requests, pursuant to Section 2.05(b) of the Credit Agreement, that the principal of the Loans outstanding on the Maturity Date be payable on each Amortization Principal Payment Date with interest as provided in Section 2.05(b).

In connection with such request, the Borrower hereby represents and warrants that:

- (a) no Default or Event of Default has occurred and is continuing under the Credit Agreement on the Amortization Payment Commencement Date; and
- (b) all representations and warranties of the Borrower in the Credit Agreement are true and correct and are deemed to be made on the Amortization Payment Commencement Date.

We have enclosed along with this request the following information:



1. The outstanding principal amount of the Loans;
2. The nature of any and all Defaults and Events of Default; and
3. Any other pertinent information previously requested by the Lender.

Please advise if the foregoing terms are acceptable.

Very truly yours,

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**EXHIBIT D**

**FORM OF CERTIFICATE OF COMPLIANCE**

This Certificate of Compliance is delivered to you pursuant to that certain Credit Agreement dated as of August 1, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”), between Peninsula Corridor Joint Powers Board (the “Borrower”) and Wells Fargo Bank, National Association (the “Lender”). Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

**THE UNDERSIGNED HEREBY CERTIFIES THAT:**

1. I am the duly appointed [Insert Title of Authorized Officer] of the Borrower;
2. I have reviewed the terms of the Credit Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. The financial statements required by Section 4.02(a) of the Credit Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Borrower in accordance with GAAP (subject to year-end adjustments) as of the dates and for the periods covered thereby.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

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The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

Draft

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**CREDIT AGREEMENT**

between

**PENINSULA CORRIDOR JOINT POWERS BOARD**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

\_\_\_\_\_

Dated as of August 1, 2021

\_\_\_\_\_

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Exhibit C – Form of Request for Extended Funding Period

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THIS CREDIT AGREEMENT, dated as of August 1, 2021, is between the **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “Borrower”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (together with its successors and assigns) (the “Lender”).

## RECITALS

The Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Lender has agreed to extend, certain credit facilities to the Borrower.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** The following capitalized terms have the meanings indicated below unless the context shall clearly indicate otherwise.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” means this Credit Agreement, as amended, modified or supplemented from time to time. This Agreement constitutes the “Working Capital Facility” and is one of the “Initial Credit Agreements” under the Indenture.

“*Alternate Base Rate*” means, for any day, the highest of (a) the Prime Rate in effect for such day and (b) the Federal Funds Rate in effect for such day plus one-half of one percent (0.50%). Each change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall take effect at the time of such change in the Prime Rate or the Federal Funds Rate, as the case may be. Each determination of the Alternate Base Rate by the Lender will be conclusive and binding on the Borrower, absent manifest error.

“*Amortization Amount*” shall have the meaning assigned to such term in Section 2.05(b).

“*Amortization End Date*” means the first to occur of (a) the fifth anniversary of the Maturity Date, and (b) the date on which all of the Loans have been redeemed, repaid, prepaid, cancelled or on which the Loans mature in accordance with the terms of the Indenture.

“*Amortization Interest Payment Date*” means the first Business Day of each month and the Amortization End Date.

“*Amortization Payment Commencement Date*” means the first Business Day of the month in which the one-year anniversary of the Maturity Date occurs.

“*Amortization Period*” shall have the meaning assigned to such term in Section 2.05(b).

“*Amortization Principal Payment*” shall have the meaning assigned to such term in Section 2.05(b).

“*Amortization Principal Payment Date*” means (a) Amortization Payment Commencement Date, (b) quarterly on the first Business Day of the month in which each three-month anniversary of the Amortization Payment Commencement Date occurs, and (c) the Amortization End Date.

“*Anti-Corruption Laws*” means: (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which the Borrower is located or doing business.

“*Anti-Money Laundering Laws*” means applicable laws or regulations in any jurisdiction in which the Borrower is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

“*Applicable Factor*” means 80%; provided that upon a change in the Maximum Federal Corporate Tax Rate, the Applicable Factor shall mean a percentage equal to the greater of (i) the current Applicable Factor multiplied by the Margin Rate Factor and (ii) 70%.

“*Applicable Tax-Exempt Margin*” has the meaning set forth in the Fee and Pricing Agreement.

“*Applicable Taxable Margin*” has the meaning set forth in the Fee and Pricing Agreement.

“*Audited Financial Statements*” means, with respect to any Fiscal Year, the audited statements of net position of the Borrower for such Fiscal Year, and the related statements of revenues, expenses and changes in net position and statements of cash flows for such Fiscal Year, including the notes thereto, accompanied by an audit report from a nationally or regionally recognized firm of independent public accountants with expertise in auditing the financial statements of California governmental and quasi-governmental entities.

“*Authorized Officer*” means the Executive Director, the Chief Financial Officer or the Director of Treasury or any other person designated to act on behalf of the Borrower by a written notice of the Executive Director, the Chief Financial Officer or the Director of Treasury delivered to the Lender.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertakes to make or provide

funds to the Borrower or to make payment of, or to purchase or provide credit enhancement for bonds or notes of the Borrower secured by or payable from Revenues.

“*Bank Rate*” means, for any date of determination, a fluctuating rate of interest per annum as specified below:

<b>Period</b>	<b>Rate</b>
Maturity Date through the 180 <sup>th</sup> day following such date; and	Base Rate
181st day following the Maturity Date through Amortization End Date	Base Rate plus 1.00%

“*Base Rate*” means, for any day, the highest of (a) the Prime Rate in effect for such day plus one percent (1.00%), (b) the Federal Funds Rate in effect for such day plus two percent (2.00%) and (c) seven percent (7.00%) per annum. Each change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall take effect at the time of such change in the Prime Rate or the Federal Funds Rate, as the case may be. Each determination of the Base Rate by the Lender will be conclusive and binding on the Borrower, absent manifest error.

“*Beneficial Owner*” has the meanings set forth in Section 2.13(a) hereof.

“*Borrower*” has the meaning given that term in the preamble to this Agreement.

“*Borrowing*” has the meaning given that term in Section 2.02.

“*Borrowing Date*” has the meaning given that term in Section 2.02.

“*Borrowing Notice*” has the meaning given that term in Section 2.02.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or San Francisco, California are authorized or required by law to remain closed.

“*CCSF*” means the City and County of San Francisco, California.

“*CDTFA*” means the California Department of Tax and Fee Administration or any State agency or that succeeds to, and is vested with, its duties, powers and responsibilities with respect to the collection of sales taxes on behalf of the Borrower and deposit of the Sales Tax Revenues with the Trustee pursuant to the CDTFA Contract.

“*CDTFA Contract*” means the Agreement for State Administration of District Transactions and Use Taxes dated as of [\_\_\_\_\_, \_\_\_\_], between the Borrower and the CDTFA, [\_\_\_\_\_].<sup>1</sup>

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<sup>1</sup> Drafting Note: Definition to track Indenture definition.

“*Change in Law*” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by the Lender (or by the lending office of the Lender or by the Lender’s holding company, if any) with any request, guideline or directive (whether or not have the force of laws) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time.

“*Commitment*” means, subject to Section 6.02(a), \$100,000,000, less the aggregate amount of all Commitment reductions made pursuant to Section 2.08.

“*Commitment Fee*” has the meaning set forth in the Fee and Pricing Agreement.

“*Commitment Period*” means the period commencing on the Effective Date and ending on the Commitment Termination Date.

“*Commitment Termination Date*” means the earliest of (a) 5:00 p.m., Eastern time, on the Maturity Date; and (b) the date on which the Commitment has been reduced to \$0, whether by termination pursuant to Section 6.02(a) or voluntary reduction pursuant to Section 2.08.

“*Computation Date*” means the second London Banking Day preceding each LIBOR Rate Reset Date; provided, however, that for purposes of determining the LIBOR Rate with respect to the period from and including the Effective Date to the following LIBOR Rate Reset Date, “*Computation Date*” shall mean the second London Banking Day preceding the Effective Date.

“*Counties*” means, collectively, CCSF, the County of San Mateo and the County of Santa Clara.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) all obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument.

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” means, for any day, the Base Rate in effect for such day plus three percent (3.00%).

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*Dollars*” and “\$” means the lawful currency of the United States of America.

“*Effective Date*” means **[August 13, 2021]**, subject to the satisfaction of the conditions precedent set forth in Section 5.01 hereof.

“*EMMA*” means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

“*Environmental Laws*” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*Eurodollar Reserve Percentage*” means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“*Event of Default*” has the meaning given that term in Section 6.01 hereof.

“*Event of Taxability*” means (a) a change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Borrower, or the failure to take any action by the Borrower, or the making by the Borrower of any misrepresentation herein or in any certificate required to be given in connection with this Agreement or the making of any Tax-Exempt Loan) which has the effect of causing interest paid or payable on such Tax-Exempt Loan (or the Tax-Exempt Note evidencing such Tax-Exempt Loan) to become includable, in whole or in part, in the gross income of the recipient thereof or any former recipient thereof for federal income tax purposes or (b) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or on any Tax-Exempt Loan (or the Tax-Exempt Note evidencing such Tax-Exempt Loan) to become includable, in whole or in part, in the gross income of the recipient thereof or any former recipient thereof for federal income tax purposes.

“*Excess Interest*” has the meaning given that term in Section 2.12 hereof.

“*Existing JPB Documents*” means the Joint Powers Agreement, the Real Property Agreement and the Purchase Agreement.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Lender from three federal funds brokers of recognized standing selected by the Lender. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. Each determination of the Federal Funds Rate by the Lender shall be deemed conclusive and binding on the Borrower absent manifest error.

“*Fee and Pricing Agreement*” means that certain Fee and Pricing Agreement of even date herewith between the Borrower and the Lender addressing the payment by the Borrower of certain fees and other amounts in connection with this Agreement and the Loans, as such Fee and Pricing Agreement may subsequently be amended or amended and restated.

“*First Supplemental Indenture*” means the First Supplemental Indenture of Trust, dated as of August 1, 2021, between the Borrower and the Trustee, as supplemented and amended from time to time pursuant to its terms.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the next succeeding calendar year.

“*Fitch*” means Fitch Ratings, its successors and assigns.

“*Fuel Swap Contract*” means a fuel price cap agreement or similar Swap Contract entered into from time to time by the Borrower in the ordinary course of its business pursuant to which the Borrower hedges its exposure to increased fuel costs.

“*GAAP*” means generally accepted accounting principles in the United States as in effect from time to time, as modified by changes permitted or required by the Governmental Accounting Standards Board or any similar accounting authority, applied by the Borrower on a basis consistent with the Borrower’s most recent financial statements furnished to the Lender pursuant to Section 4.02(a) hereof.

“*Government Acts*” means any act or omission to act, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

“*Governmental Approval*” means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“*Governmental Authority*” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, tribunal, agency, bureau, court or entity (including the Federal Deposit Insurance Corporation or the Federal

Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind any of the parties to this Agreement at law.

“*Guarantees*” means, for any Person, all guarantees and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“*Indemnatee*” has the meaning set forth in Section 7.07(b).

“*Indenture*” means the Indenture of Trust, dated as of August 1, 2021, as supplemented and amended by the First Supplemental Indenture and the Second Supplemental Indenture, and as further supplemented and amended from time to time pursuant to its terms, each between the Borrower and the Trustee.

“*Interest Rate Swap Agreement*” has the meaning set forth in the Indenture.

“*Interest Period*” means each period commencing on a LIBOR Rate Reset Date (or, in the case of the initial Interest Period for a Loan, the applicable Borrowing Date) and ending on and including the day immediately preceding the next LIBOR Rate Reset Date.

“*Joint Powers Agreement*” means the Joint Powers Agreement Peninsula Corridor Project entered into on October 3, 1996, among VTA, CCSF and SamTrans, together with all amendments, modifications and supplements thereto and restatements thereof.

“*Junior Obligations*” means any obligations of the Borrower secured by and payable from Revenues on a basis which is subordinate to Senior Lien Debt, the Loan Debt Service and other Subordinate Obligations, including, without limitation, certain fees and expenses and Swap Termination Payments, the terms of which are issued pursuant to this Indenture and a Supplemental Indenture (as defined in the Indenture).

“*Kroll*” means Kroll Bond Rating Agency, Inc., its successors and assigns.

“*Law*” means any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any Governmental Authority or court with applicable jurisdiction.

“*Lender*” has the meaning given that term in the preamble to this Agreement. The Lender is the “Initial Lender” under the Indenture.

“*Lender Fees and Expenses*” means all Obligations other than the Loan Debt Service.

“*LIBOR*” mean the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Lender, at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period. Each calculation by the Lender of LIBOR shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, in no event shall LIBOR be less than zero percent (0%).



“LIBOR Rate” means a rate per annum determined by the Lender pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00\text{-Eurodollar Reserve Percentage}}$$

“LIBOR Rate Reset Date” means the first Business Day of each calendar month.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” has the meaning given that term in Section 2.01 hereof. The Loan made hereunder and under the PCEP Facility constitute the “Initial Loans” under the Indenture.

“Loan Debt Service” means payment of principal of, and interest on, Loans (as defined in the Indenture), including the Loans hereunder and under the PCEP Facility.

“London Banking Day” means any day on which dealings in U.S. Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

“Margin Rate Factor” means the product of (i) one minus the then current Maximum Federal Corporate Tax Rate in effect on the date of calculation multiplied by (ii) the quotient of (A) one divided by (B) one minus the Maximum Federal Corporate Tax Rate on the Effective Date. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change. As of the Effective Date, the Margin Rate Factor equals 1.0.

“Margin Stock” has the meaning ascribed to such term in Regulation U promulgated by the Federal Reserve Bank, as now and hereafter from time to time in effect.

“Material Adverse Change” means any event, circumstance, change or effect that, individually or in the aggregate, results in, or could reasonably be expected to result in, a Material Adverse Effect.

“Material Adverse Effect” means: (a) a material impairment of the ability of the Borrower to timely perform its obligations under any Related Document to which it is a party or under any Existing JPB Document to which it is a party or under the PCEP Facility; (b) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Related Document to which it is a party or of any Existing JPB Document to which it is a party or under the PCEP Facility or upon the rights, security, interests or remedies of the Lender hereunder, under any other Related Document or under the PCEP Facility; or (c) the existence of a Lien over the Revenues other than the Lien created by the Indenture.

“*Maturity Date*” means [August 13, 2024].

“*Maximum Federal Corporate Tax Rate*” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Lender, the maximum statutory rate of federal income taxation which could apply to the Lender. As of the Effective Date, the Maximum Federal Corporate Tax Rate is 21%.

“*Maximum Rate*” means the lower of (a) eighteen percent (18%) and (b) maximum rate of interest, if any, payable by the Borrower under applicable Law in respect of debt obligations of the Borrower.

“*Measure RR*” means the measure adopted by the voters in the Counties on November 3, 2020, approving 1/8th cent sales and use tax on taxable transactions in the Counties.

“*Member Agency*” means each of CCSF, SamTrans and VTA, in each case for so long as such entity shall remain a party to the Joint Powers Agreement, and each other entity who shall become a Member Agency pursuant to the Joint Powers Agreement.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns.

“*Note*” and “*Notes*” each has the meaning given that term in Section 2.03. Each Note hereunder constitutes a “Working Capital Facility Note” and is one of the “Initial Notes” under the Indenture.

“*Obligations*” means all indebtedness, obligations and liabilities of the Borrower to the Lender from time to time arising under or in connection with or evidenced or secured by this Agreement or any other Related Document to which the Borrower is a party, and all extensions, renewals or refinancings thereof, whether such indebtedness, obligations or liabilities are direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising.

“*Other Taxes*” has the meaning given that term in Section 2.10(a).

“*Participant*” has the meaning given that term in Section 7.02(b).

“*Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

“*PCEP Facility*” means the Credit Agreement of even date herewith between the Borrower and the Lender pursuant to which the Lender has agreed to make loans to the Borrower from time to time in an amount not to exceed \$100,000,000, the proceeds of which will be used to fund working capital of the Borrower.

**[“*Peninsula Corridor*” means the railway system between the Transbay Transit Center in the City of San Francisco and mile post 51.4 at the Tamien Station in the City of San Jose.]<sup>2</sup>**

“*Pension Plan*” means any “employee pension benefit plan” which is (a) maintained by the Borrower or (b) maintained by any other Person and to which the Borrower contributes (or permits any other Person to contribute) or has an obligation to contribute, or has made contributions at any time during the immediately preceding six (6) plan years.

“*Permit*” means any permit, approval, authorization, certification, license, variance or permission required from a Governmental Authority under an applicable Law.

“*Person*” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*Prime Rate*” means the rate of interest per annum publicly announced from time to time by the Lender as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks. Each determination of the Prime Rate by the Lender shall be deemed conclusive and binding on the Borrower absent manifest error.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Purchase Agreement*” means the Purchase, Sale and Option Agreement, dated November 22, 1991, between Southern Pacific Transportation Company, as Seller, the Borrower, as Purchaser, and SamTrans, pursuant to which the Borrower acquired the right of way for the Peninsula Corridor.

“*Rating*” means, with respect to a Rating Agency that provides a rating with respect to Senior Lien Debt, the lowest long-term unenhanced rating assigned by such Rating Agency to Senior Lien Debt.

“*Rating Agency*” means any of Moody’s, Kroll, Fitch or S&P and “*Rating Agencies*” means Moody’s, Kroll, Fitch and S&P.

“*Real Property Agreement*” means the Real Property Ownership Agreement entered into the 24th day of December, 1991 among the Borrower and the Member Agencies (or their predecessors), as amended by the First Amendment to Real Property Ownership Agreement entered into the 31st day of October, 2008 among the Borrower and the Member Agencies (or their predecessors).

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<sup>2</sup> Issuer and Bond Counsel to confirm that this description is accurate.

“*Related Documents*” means this Agreement, the Notes, the Fee and Pricing Agreement, the Indenture and the CDTFA Contract.

“*Related Parties*” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“*Revenues*” means during any fiscal period the sum of the following amounts for such fiscal period:

- (1) all Sales Tax Revenues; and
- (2) all investment earnings on amounts held by the Trustee in the funds and accounts under the Indenture other than amounts deposited to the Senior Lien Bond Rebate Fund and the Note Rebate Fund (as each is defined in the Indenture); and
- (3) all Swap Revenues (as defined in the Indenture).

“*Resolution*” means Resolution Number 2020-40 adopted by the Borrower on [\_\_\_\_\_, 2020], which called and provided for an election for the purpose of submitting to the voters a measure known as Measure RR.<sup>3</sup>

“*Right of Way*” means the real property and other assets acquired from Southern Pacific Transportation Company pursuant to the Purchase Agreement, which real property and other assets permit the Borrower to operate the Peninsula Corridor.

“*S&P*” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC business, its successors and assigns.

“*Sales Tax*” means the retail transactions and use tax levied pursuant to the Resolution and applicable in the Counties in accordance with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code of the State of California at the rate of one-eighth of one percent (1/8th%), or such greater amount as may be authorized pursuant to a modification of the Resolution.

“*Sales Tax Revenues*” means 100% of the amounts collected by the CDTFA on behalf of the Borrower pursuant to the Resolution relating to the Sales Tax and distributed to the Trustee pursuant to the CDTFA Contract, less the administrative fee deducted by the CDTFA.

“*SamTrans*” means the San Mateo County Transit District.

“*Sanctions*” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future

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<sup>3</sup> Drafting Note: To be conformed to Indenture definition.

statute or Executive Order, (b) the United Nations Security Council, (c) the European Union, (d) the United Kingdom, or (e) any other Governmental Authority with jurisdiction over the Borrower.

“*Sanctioned Target*” means any target of Sanctions, including: (a) Persons on any list of targets identified or designated pursuant to any Sanctions, (b) Persons, countries, or territories that are the target of any territorial or country-based Sanctions program, (c) Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Target(s), or (d) otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“*Second Supplemental Indenture*” means the Second Supplemental Indenture of Trust, dated as of August 1, 2021, between the Borrower and the Trustee, as supplemented and amended from time to time pursuant to its terms.

“*Senior Lien Bonds*” means “Senior Lien Bonds” issued pursuant to Section 4.02, Section 4.03 or Section 4.04 of the Indenture.

“*Senior Lien Debt*” means all Senior Lien Bonds and Senior Lien Obligations.

“*Senior Lien Obligations*” means all indebtedness, obligations for borrowed money or other obligations of the Borrower other than Senior Lien Bonds that has a lien upon the Revenues that is on a parity with that of the Senior Lien Bonds and that is senior to that of the Loan Debt Service, the Lender Fees and Expenses, any other Subordinate Obligations, and any Junior Obligations, including any Interest Rate Swap Agreement (excluding fees and expenses thereon and Swap Termination Payments, which shall be secured as Junior Obligations) entered into in connection with a Series of Senior Lien Bonds, in each case incurred in accordance with Section 4.05 of the Indenture, and in each case having a lien and charge upon the Revenues and therefore being payable on a parity with the Senior Lien Bonds.

“*Solvent*” means, with respect to any Person and as of any date of determination (without duplication), both (i) (a) the sum of such Person’s debt (including contingent liabilities) does not exceed all of its property, at a fair valuation; (b) the Person is able to pay the probable liabilities on such Person’s then existing debts as they become absolute and mature; (c) such Person’s capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (d) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is “solvent” within the meaning given that term and similar terms under applicable Laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (discounted to present value at rates believed to be reasonable by such Person acting in good faith).

“*State*” means the State of California.

“*Subordinate Obligations*” means all indebtedness or other obligations of the Borrower for borrowed money, any interest rate swap agreement and any other obligation of the Borrower having a subordinate lien to the Senior Lien Obligations, an equal lien upon the Sales Tax Revenues and therefore payable on a parity with the Loan Debt Service (whether or not any

principal amount of the Loans is outstanding), the Lender Fees and Expenses, and a senior lien to the Junior Obligations.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Payment*” has the meaning given that term in the Indenture.

“*Tax Certificate*” means the Master Tax Certificate of the Borrower of even date herewith, as amended or supplemented from time to time in accordance with the terms hereof and thereof.

“*Tax Event*” shall be deemed to have occurred on the first to occur of the following: (a) the date of entry of any decree or judgment by a court of competent jurisdiction (whether or not such decree or judgment is appealable or deemed to be final under applicable procedural law, or by operation of law) that interest on a Tax-Exempt Loan is includable in the gross income of the recipient thereof for federal income tax purposes, or (b) the date of the issuance by the Internal Revenue Service of a Letter 4413 Notice of Proposed Adverse Determination to the effect that all or any portion of the interest on a Tax-Exempt Loan is not excluded from gross income for federal income tax purposes, or (c) delivery to the Borrower and the Lender of a written legal opinion (which opinion shall not be a reasoned opinion and shall be subject to only customary assumptions and exclusions) of nationally recognized bond counsel reasonably acceptable to the Borrower and the Lender to the effect that an Event of Taxability has occurred with respect to a Tax-Exempt Loan, or (d) on that date when the Borrower shall receive notice from the Lender (or any assignee or Participant thereof) that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Person the interest on a Tax-Exempt Loan due to the occurrence of an Event of Taxability, or (e) on that date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability with respect to a Tax-Exempt Loan shall have in fact occurred, or (f) on the date when the Borrower shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Borrower, or upon any review or audit of the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred with respect to a Tax-Exempt Loan; provided, however, no Tax Event shall occur under subparagraph (d) or (f) hereunder unless the Borrower has been afforded the

opportunity, at its expense, to contest any such assessment, and, further, no Tax Event shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Lender (or any assignee or Participant thereof), the Borrower shall promptly reimburse, but solely from payments made by the Borrower, the Lender (or any assignee or Participant thereof) for any payments, including any taxes, interest, penalties or other charges, the Lender (or any assignee or Participant thereof) shall be obligated to make as a result of the Tax Event.

“*Tax-Exempt Index Rate*” means a per annum rate of interest established on each Computation Date equal to the sum of (a) the product of the Applicable Tax-Exempt Margin multiplied by the Margin Rate Factor; plus (b) the product of the LIBOR Rate multiplied by the Applicable Factor. The Tax-Exempt Index Rate shall be rounded upwards to the fifth decimal place.

“*Tax-Exempt Loan*” means each Loan designated by the Borrower as a “Tax-Exempt Loan” in the Borrowing Notice requesting such Loan.

“*Tax-Exempt Note*” has the meaning given that term in Section 2.03.

“*Taxable Date*” means, with respect to a Tax-Exempt Loan, the date as of which interest on such Tax-Exempt Loan is first includible in gross income of the recipient thereof (or any assignee or Participant thereof) as a result of an Event of Taxability as such a date is established pursuant to a Tax Event.

“*Taxable Index Rate*” means a per annum rate of interest established on each Computation Date equal to the sum of (i) the Applicable Taxable Margin and (ii) the LIBOR Rate. The Taxable Index Rate shall be rounded upwards to the fifth decimal place.

“*Taxable Loan*” means each Loan designated by the Borrower as a “Taxable Loan” in the Borrowing Notice requesting such Loan.

“*Taxable Note*” has the meaning given that term in Section 2.03.

“*Taxable Period*” has the meaning set forth in Section 2.13(a) hereof.

“*Taxable Rate*” means, with respect to a Taxable Period, the product of (i) the average interest rate on the Tax-Exempt Loans during such period and (ii) the quotient of (a) one divided by (b) one minus the Maximum Federal Corporate Tax Rate in effect on the date of calculation.

“*Taxes*” has the meaning given that term in Section 2.10(a) hereof.

“*Trustee*” means U.S. Bank National Association in its capacity as trustee for the Holders (as defined in the Indenture) of the Senior Lien Debt, Subordinated Obligations and Junior Obligations issued from time to time pursuant to the Indenture.

“*Unfunded Pension Liability*” means the excess of a Pension Plan’s benefit liabilities over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan for the applicable plan year.

“VTA” means the Santa Clara Valley Authority (formerly known as the Santa Clara County Transit District).

“U.S.” and “United States” means the United States of America.

“Written” or “in writing” means any form of written communication, including email, or a communication by means of telecopier.

**Section 1.02. Interpretation.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

**Section 1.03. Accounting Matters.**

(a) All accounting terms used herein without definition shall be interpreted in accordance with GAAP, and except as otherwise expressly provided herein all accounting determinations required to be made pursuant to this Agreement shall be made in accordance with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 4.02(a), except as otherwise specifically prescribed herein.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Related Document, and either the Borrower or the Lender shall so request, the Lender and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with



GAAP prior to such change therein and (ii) the Borrower shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

## ARTICLE II

### LOANS

**Section 2.01. Loans.** Subject to the terms and conditions set forth herein, during the Commitment Period, the Lender agrees to make loans to the Borrower (each, a Loan”) from time to time on any Business Day in an aggregate principal amount not to exceed at any time outstanding the Commitment then in effect. Subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans. No more than twenty (20) Loans may be outstanding at any one time. Loans may be either Tax-Exempt Loans or Taxable Loans.

**Section 2.02. Borrowing Notice.** The Borrower may borrow under the Commitment (each, a “Borrowing”) during the Commitment Period on any Business Day, provided that the Borrower shall first give the Lender irrevocable notice in the form attached hereto as Exhibit B (each, a “Borrowing Notice”), which notice must be received by the Lender prior to 11:00 a.m., New York City time, three Business Days prior to the date on which funds are to be delivered (the “Borrowing Date”) and must specify whether the requested Loan is to be a Taxable Loan or a Tax-Exempt Loan. No more than three Borrowings shall be permitted per month and each Borrowing shall be an amount equal to \$1,000,000 or a whole multiple of \$1,000 in excess thereof unless (i) such Borrowing is to be used to pay interest on existing Loans, in which case such Borrowing may be in the amount of interest then due or (ii) the Commitment is less than \$1,000,000, in which case such Borrowing may be in the amount equal to the then existing Commitment. Each Borrowing will be made available to the Borrower or its designee no later than 2:00 p.m., New York City time, on the Borrowing Date set forth in the applicable Borrowing Notice.

**Section 2.03. Note.** The Tax-Exempt Loans shall be evidenced by a promissory note of the Borrower made in favor of the Lender in the form set forth in Exhibit A-1 hereto (as amended or supplemented from time to time, the “Tax-Exempt Note”). The Taxable Loans shall be evidenced by a promissory note of the Borrower made in favor of the Lender in the form set forth in Exhibit A-2 hereto (as amended or supplemented from time to time, the “Taxable Note;” the Taxable Note and the Tax-Exempt Note are collectively referred to herein as the “Notes,” and individually as a “Note”). Each Note shall (a) be issued to the Lender on the Effective Date in a principal amount equal to one hundred million Dollars (\$100,000,000), (b) be dated the Effective Date, and (c) mature on the Maturity Date. The Tax-Exempt Loans made by the Lender and all prepayments made on account of principal thereof shall be recorded by the Lender on the schedule (or a continuation thereof) attached to the Tax-Exempt Note, it being understood, however, that failure by the Lender to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Tax-Exempt Note in respect of unpaid principal and interest on the Tax-Exempt Loans. The Taxable Loans made by the Lender and all prepayments made on account of principal thereof shall be recorded by the Lender on the schedule (or a continuation thereof) attached to the Taxable Note, it being understood, however, that failure by the Lender to make any

such endorsement shall not affect the obligations of the Borrower hereunder or under the Taxable Note in respect of unpaid principal and interest on the Taxable Loans.

**Section 2.04. Interest.** Interest shall accrue on each Loan from and including the date such Loan is made by the Lender to and including the day on which such Loan is repaid or prepaid in full. Interest on Loans shall be calculated on the basis of a year consisting of three hundred sixty (360) days and the actual number of days elapsed. Interest on each Loan shall be paid on each LIBOR Rate Reset Date, on each date of prepayment (if such date is not a LIBOR Rate Reset Date), on the Maturity Date and, following the Maturity Date, upon demand. For the avoidance of doubt, the Borrower may request additional Loans pursuant to the terms hereof to pay interest on existing Loans when due. The Lender shall use commercially reasonable efforts to provide the Borrower with an invoice with respect to the estimated interest due on each Loan on each LIBOR Rate Reset Date at least five (5) Business Days prior to the applicable interest payment date, provided that (i) the failure of the Bank to provide (or timely provide) the Borrower with any such invoice or (ii) if any such invoice contains an amount which differs from the amount of interest due hereunder and under the applicable Note (whether due to subsequent change in Applicable Tax-Exempt Margin, Applicable Taxable Margin, error or otherwise), such failure or difference shall not relieve the Borrower of its obligation to make timely payments hereunder and under the applicable Note. Subject to Section 2.12, interest shall accrue at a daily rate per annum equal to, (a) in the case of a Tax-Exempt Loan, the Tax-Exempt Index Rate, or (b) in the case of a Taxable Loan, Taxable Index Rate. Unless repaid in full on the Maturity Date, interest shall accrue thereafter at the Default Rate.

**Section 2.05. Repayment of Loans.**

(a) The Loans shall be due and payable in full, together with accrued and unpaid interest thereon, on the Maturity Date.

(b) Notwithstanding subsection (a) above, in the event the Loans are not repaid in full, together with accrued and unpaid interest thereon, on the Maturity Date, and on the Maturity Date no Default or Event of Default has occurred and is continuing and the representations and warranties of the Borrower set forth in Article III are true and correct in all material respects, assuming they are made on the Maturity Date, an amount equal to the principal amount of Loans (the “Amortization Amount”) shall be due and payable on the date that is 30 days after the Maturity Date. During such 30-day period the unpaid amount equal to the Amortization Amount shall accrue interest at the Bank Rate which shall be payable by the Borrower on each Amortization Period Interest Payment Date. In the event that the Amortization Amount is due and payable on the date that is 30 days following the Maturity Date, upon delivery of a written request from the Borrower to the Lender in the form of Exhibit C hereto no later than 30 days after the Maturity Date and provided that (i) no Default or Event of Default shall have occurred and be continuing and (ii) the representations and warranties set forth in Article III shall be true and correct on the date that is 30 days following the Maturity Date, then the Borrower shall instead pay to the Lender an amount equal to the Amortization Amount in installments payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on Maturity

Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Borrower may prepay, or cause to be prepaid, some or all of the Amortization Amount on any Business Day with one Business Days’ notice to the Lender, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

**Section 2.06. Evidence of Debt.** The Lender shall maintain in accordance with its usual practice an account evidencing the indebtedness of the Borrower to the Lender resulting from the Loans, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in the account maintained pursuant to the preceding sentence shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such account or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

**Section 2.07. Prepayments; Break Funding Payments.**

(a) The Borrower shall have the right at any time and from time to time to prepay any Loan, in whole or in part, from any source of available funds, including Revenues, subject to prior notice in accordance with paragraph (c) of this Section and, if such prepayment occurs other than on a LIBOR Rate Reset Date, subject to the payment of the amounts described in paragraph (d) of this Section.

(b) In the event the outstanding principal balance of the Loans at any time exceeds the Commitment, the Borrower shall prepay Loans as soon as practicable in a principal amount at least equal to such excess and shall specify the Loans to be prepaid. In such event, the Borrower shall deliver prior notice of prepayment to the Lender in accordance with paragraph (c) of this Section and, if such prepayment occurs other than on a LIBOR Rate Reset Date, the Borrower shall pay the amounts described in paragraph (d) of this Section.

(c) The Borrower shall notify the Lender by electronic mail of any prepayment to be made hereunder not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the Loan or Loans to be prepaid, the prepayment date and the principal amount(s) of the Loan or Loans to be prepaid. In the case of a partial prepayment made pursuant to paragraph (a) of this Section, such prepayment shall be in an amount not less than \$1,000,000 and increments of \$1,000 in excess thereof. Prepayments shall be accompanied by accrued interest.

(d) In the event of (i) the prepayment of the principal of any Loan other than on a LIBOR Rate Reset Date or (ii) the failure of the Borrower to borrow any Loan on the Borrowing Date specified in the Borrowing Notice for such Loan, then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to

such event which shall be deemed to include an amount determined by the Lender to be the excess, if any, of (A) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, for the period that would have been the Interest Period for such Loan), over (B) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

**Section 2.08. Reduction or Termination of Commitment.** The Borrower may, upon written notice to the Lender, terminate the Commitment, or from time to time permanently reduce the Commitment; provided that (i) any such notice shall be received by the Lender not later than 11:00 a.m., New York City time, five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Commitment if, after giving effect thereto and to any concurrent prepayment of Loans hereunder, the aggregate principal amount of all outstanding Loans would exceed the reduced Commitment; and (iv) the Borrower shall pay all Commitment Fees accrued until the effective date of such termination or reduction applicable to the portion of the Commitment terminated or reduced along with all termination or reduction fees, if any, payable pursuant to the Fee and Pricing Agreement.

**Section 2.09. Payments; Electronic Transmissions.** All payments to the Lender hereunder and under the Notes shall be paid on the dates due, in immediately available funds, to the account specified by the Lender in writing to the Borrower from time to time. Amounts paid to the Lender hereunder and under the Notes shall not be refundable under any circumstances absent manifest error. The Lender is authorized to accept and process any amendments, instructions, consents, waivers and all other documents which are sent to the Lender by electronic transmission, including SWIFT, electronic mail, telecopy, courier, mail or other computer generated telecommunications, and such electronic communication has the same legal effect as if written and shall be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission.

**Section 2.10. Net of Taxes, Etc.**

(a) Any and all payments to the Lender (or any assignee or Participant) by the Borrower hereunder, under the Fee and Pricing Agreement or under either Note shall be made without setoff or counterclaim and shall be free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, charges, fees, assessments, withholdings or liabilities of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, excluding, however, taxes imposed on or measured by the net income or capital of the

Lender (or any assignee or Participant) by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Lender (or any such assignee or Participant) and such jurisdiction or political subdivision (all such non excluded taxes, levies, imposts, duties, deductions, charges, fees, assessments, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to withhold or deduct any Taxes so levied or imposed from or in respect of any sum payable hereunder, under the Fee and Pricing Agreement or under either Note to the Lender (or any assignee or Participant), (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Lender (or any such assignee or Participant) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. In addition, the Borrower agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise from any payment made hereunder, under the Fee and Pricing Agreement or under either Note or from the execution or delivery or otherwise with respect to this Agreement or any other Related Document, excluding, however, taxes imposed on or measured by the net income or capital of the Lender (or any assignee or Participant) by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Lender (or any such assignee or Participant) and such jurisdiction or political subdivision (hereinafter referred to as "Other Taxes"). The Lender (or any assignee or Participant) shall provide to the Borrower within a reasonable time a copy of any written notification it receives with respect to Other Taxes owing by the Borrower to the Lender (or any assignee or Participant) hereunder provided that the Lender's failure to send such notice shall not relieve the Borrower of its obligation to pay such amounts hereunder.

(b) The Borrower shall, to the fullest extent permitted by law, pay the Lender (or any assignee or Participant) for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section paid by the Lender (or any assignee or Participant) or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that the Borrower shall not be obligated to pay the Lender (or any assignee or Participant) for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Lender's (or any assignee's or Participant's) gross negligence or willful misconduct. The Lender (or any assignee or Participant) agrees to give notice to the Borrower of the assertion of any claim against the Lender (or any assignee or Participant) relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; provided that the Lender (or any assignee's or Participant's) failure to notify the Borrower promptly of such assertion shall not relieve the Borrower of its obligation under this Section. Payments by the Borrower pursuant to this Section shall be made within thirty (30) days from the date the Lender makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Lender (or any assignee or Participant) agrees to repay to the Borrower any refund (including that portion of any interest that was included as part of such refund) actually received by the Lender (or any

assignee or Participant) with respect to Taxes or Other Taxes paid by the Borrower pursuant to this Section received by the Lender (or any assignee or Participant) for Taxes or Other Taxes that were paid by the Borrower pursuant to this Section; provided, however, the Borrower agrees to repay any refund (including that portion of any interest that was included as part of such refund) actually received by the Lender (or any assignee or Participant) and paid to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the extent the Lender (or any assignee or Participant) is required for any reason to return such refund. The Lender (or any assignee or Participant) also agrees to reasonably contest (at the direction of the Borrower, with the cooperation of the Borrower and at the sole cost and expense of the Borrower) any such Taxes or Other Taxes which the Borrower reasonably believes not to have been properly assessed, provided that such obligation to contest shall not result in any liability to the Lender (or any assignee or Participant) or any parent company thereof or adversely affect any tax position of the Lender (or any assignee or Participant) or any parent company thereof. Notwithstanding anything to the contrary in this paragraph (b), in no event will the Lender (or any assignee or Participant) be required to pay any amount to the Borrower pursuant to this paragraph (b) the payment of which would place the Lender (or any assignee or Participant) or any parent company thereof in a less favorable net after-Tax position than the Lender (or any assignee or Participant) or any parent company thereof would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph will not be construed to require the Lender (or any assignee or Participant) or any parent company thereof to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(c) Within thirty (30) days after the date of any payment of Taxes or Other Taxes by the Borrower, the Borrower shall furnish to the Lender (or any assignee or Participant), the original or a certified copy of a receipt evidencing payment thereof.

(d) The obligations of the Borrower under this Section shall survive the termination of this Agreement and the repayment of the Loan.

#### **Section 2.11. Increased Costs.**

(a) If any Change in Law shall:

(i) subject the Lender (or any assignee or Participant) to any tax, charge, fee, deduction or withholding of any kind with respect to its loans, loan principal, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (other than any tax measured by or based upon the overall net income of the Lender (or any assignee or Participant));

(ii) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Lender (or any assignee or Participant);

(iii) change the basis of taxation of payments due the Lender (or any assignee or Participant) under this Agreement or any other Related Document (other than a change in taxation of the overall net income of the Lender (or any assignee or Participant)); or

(iv) impose on the Lender or the London interbank market any other condition, cost or expense affecting this Agreement or any Loans (while bearing interest determined by reference to the LIBOR Rate);

and the result of any of the foregoing is to increase the cost to the Lender (or any assignee or Participant) of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Lender (or any assignee or Participant) hereunder or under either Note (whether of principal, interest or any other amount), then, upon the written request of the Lender, the Borrower shall not later than thirty (30) days after notice and demand pay to the Lender (or any assignee or Participant) such amount or amounts as will compensate the Lender (or any assignee or Participant) for such additional costs incurred or reduction suffered. A certificate setting forth in reasonable detail such additional costs incurred or reduction as a result of any event mentioned in this paragraph shall be submitted by the Lender (or any assignee or Participant) to the Borrower and such certificate shall, in the absence of manifest error, be conclusive as to the amount thereof.

(b) In addition to the foregoing, if after the Effective Date the Lender (or any assignee or Participant) shall have determined that any Change in Law affecting the Lender (or any assignee or Participant) or any lending office of the Lender (or any assignee or Participant) or such Lender's (or any assignee's or Participant's) holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Lender's (or any assignee's or Participant's) capital or on the capital of the Lender's (or any assignee's or Participant's) holding company, if any, as a consequence of this Agreement, the Notes or the Loans to a level below that which the Lender (or any assignee or Participant) or the Lender's (or any assignee's or Participant's) holding company could have achieved but for such Change in Law (taking into consideration the Lender's (or any assignee's or Participant's) policies and the policies of the Lender's (or any assignee's or Participant's) holding company with respect to capital adequacy), then, from time to time upon the written request of the Lender (or any assignee or Participant), the Borrower shall not later than thirty (30) days after notice and demand pay to the Lender (or any assignee or Participant) such additional amount or amounts as will compensate the Lender (or any assignee or Participant) or the Lender's (or any assignee's or Participant's) holding company for any such reduction suffered. A certificate setting forth in reasonable detail such reduction in the rate of return on capital, or such capital increase, of the Lender (or any assignee or Participant) or the Lender's (or any assignee's or Participant's) holding company as a result of any event mentioned in this paragraph shall be submitted by the Lender (or any assignee or Participant) to the Borrower and such certificate shall, in the absence of manifest error, be conclusive as to the amount thereof.

(c) Notwithstanding anything in this Section to the contrary, if such costs are to be incurred on a continuing basis and the Lender (or any assignee or Participant) shall

so notify the Borrower in writing as to the amount thereof, such costs shall be paid by the Borrower monthly in arrears.

(d) The Borrower's obligations under this Section shall survive the termination of this Agreement and payment in full of the Loans.

**Section 2.12. Maximum Rate.** If any rate of interest on the Loans or either Note shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (b) an amount equal to the difference between (i) the rate of interest calculated in accordance with the terms of Section 2.04, and (ii) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time, to the extent permitted by law, the Borrower shall pay to the Lender, with respect to amounts then payable to the Lender that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Lender to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (i) the date of payment in full of all amounts due hereunder by the Borrower to the Lender (other than Excess Interest which has not been recaptured) and this Agreement is no longer in effect, and (ii) the date on which all deferred Excess Interest is fully paid to the Lender. In consideration for the limitation of the rate of interest otherwise payable on the Loans and the Notes, to the extent permitted by applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to any remaining deferred Excess Interest on the date the last Loan is repaid in full.

**Section 2.13. Tax Event.**

(a) In the event a Tax Event occurs, in addition to the amounts required to be paid with respect to any affected Tax-Exempt Loans by the Borrower under this Agreement and the Tax-Exempt Note, the Borrower hereby agrees to pay to the Lender and each of its successors, assigns and Participants (each, a "Beneficial Owner") with respect to the affected Tax-Exempt Loans of the Borrower pursuant to this Agreement and the other Related Documents, on demand therefor (A) an amount equal to the difference between (I) the amount of interest that would have been paid to such Beneficial Owner with respect to the affected Tax-Exempt Loans during the period for which interest on the affected Tax-Exempt Loans is includable in the gross income of such Beneficial Owner if the affected Tax-Exempt Loans had borne interest at the Taxable Rate, beginning on the Taxable Date (the "Taxable Period"), and (II) the amount of interest actually paid to the Beneficial Owner during the Taxable Period, and (B) an amount equal to any interest, penalties or charges owed by such Beneficial Owner as a result of interest on the affected Tax-Exempt Loans becoming includable in the gross income of such Beneficial Owner, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by such Beneficial Owner in connection therewith.

(b) Subject to the provisions of clauses (c) and (d) below, such Beneficial Owner shall afford the Borrower the opportunity, at the Borrower's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the affected Tax-Exempt Loans (or any one of them) to be includable in the gross income of



such Beneficial Owner or (2) any challenge to the validity of the tax exemption with respect to the interest on the affected Tax-Exempt Loans (or any one of them), including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) The following shall constitute conditions precedent to the exercise by the Borrower of its right to contest set forth in subsection (b) above: the Borrower shall, on demand, immediately reimburse such Beneficial Owner for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by such Beneficial Owner in its sole discretion) that may be incurred by such Beneficial Owner in connection with any such contest, and shall, on demand, immediately reimburse such Beneficial Owner for any and all penalties or other charges payable by such Beneficial Owner for failure to include such interest in its gross income; and

(d) The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment in full of the Loans.

**Section 2.14. Source of Payments.** The obligations of the Borrower to pay the Loans and the other Obligations due and owing to the Lender under this Agreement and under the Notes are limited obligations of the Borrower payable solely from Revenues. The obligation of Borrower to pay all Obligations does not represent or constitute a general obligation of the Borrower. The Lender acknowledges that it has no claim hereunder to have payments made from any funds other than Revenues.

**Section 2.15. Security.** In order to secure the timely payment of all Obligations and to secure the performance and observance of all of the covenants, agreements and conditions contained in this Agreement and the Related Documents to which the Borrower is a party, the Borrower, in accordance with Section 6.02 of the Indenture, has designated the Obligations as Subordinate Obligations under the Indenture and irrevocably pledged the Revenues to the Lender (for the benefit of the Lender and each Beneficial Owner) pursuant to Section 7.01 of the Indenture and on parity with any other Subordinate Obligation issued from time to time under the Indenture, and on a subordinate basis to any Senior Lien Debt issued from time to time under the Indenture. The pledge of and lien on the Revenues provided for in the Indenture constitutes a valid pledge of and charge and lien upon the Revenues, immediately attaches and is effective, binding and enforceable against the Borrower, its successors, creditors and all others asserting rights therein to the extent set forth in, and in accordance with, the Indenture, irrespective of whether those parties have notice of the pledge of and lien on the Revenues and without the need for any physical delivery, recordation, filing or further act.

**Section 2.16. Fee and Pricing Agreement.** The Borrower shall pay to the Lender and its counsel the fees and expenses in the amounts and on the dates and at the times set forth in the Fee and Pricing Agreement. The terms of the Fee and Pricing Agreement are incorporated herein by this reference and any reference herein or in any other document to fees and/or other amounts or obligations payable hereunder will include all fees and other amounts or obligations payable pursuant to the Fee and Pricing Agreement, and any reference to this Agreement includes a reference to the Fee and Pricing Agreement.

## **Section 2.17. Changed Circumstances.**

(a) ***Circumstances Affecting LIBOR Rate Availability.*** If for any reason (i) the Lender shall determine (which determination shall be conclusive and binding absent manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, (ii) the Lender shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the LIBOR Rate for such Interest Period with respect to a proposed Loan or (iii) the Lender shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to the Lender of making or maintaining such Loans, then the Lender shall promptly give notice thereof to the Borrower. Thereafter, until the Lender notifies the Borrower that such circumstances no longer exist, the obligation of the Lender to make Loans shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such Loan together with accrued interest thereon (subject to Section 2.07(d)), on the next succeeding interest payment date with respect to such Loan or on the last day of the then current Interest Period applicable to such Loan; or (B) the then outstanding principal amount of each such Loan shall be converted to a Loan bearing interest at the Alternate Base Rate as of the last day of such Interest Period.

(b) ***Laws Affecting LIBOR Rate Availability.*** If, after the date hereof, the introduction of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for the Lender (or its lending office) to honor its obligations hereunder to make or maintain any Loan, the Lender shall promptly give notice to the Borrower. Thereafter, until the Lender notifies the Borrower that such circumstances no longer exist, (i) the obligation of the Lender to make Loans shall be suspended, (ii) the Lender may not lawfully continue to maintain a Loan bearing interest in relation to the LIBOR Rate, the applicable Loan shall immediately be converted to a Loan bearing interest at the Alternate Base Rate and (iii) the Lender may not lawfully continue to maintain a Loan bearing interest in relation to the LIBOR Rate to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Loan bearing interest at the Alternate Base Rate for the remainder of such Interest Period.(c) ***Benchmark Replacement Setting.***

(i) **Benchmark Replacement.**

(A) Notwithstanding anything to the contrary herein or in any other Related Document (and any Swap Contract shall be deemed not to be a “Related Document” for purposes of this Section 2.17(c)), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a

Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Related Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Related Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Related Document in respect of any Benchmark setting and will become effective at 5:00 p.m., Eastern time on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is provided to the Borrower without any amendment to this Agreement or further action or consent of the Borrower.

(B) Notwithstanding anything to the contrary herein or in any other Related Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Related Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Related Document; provided that this paragraph (B) shall not be effective unless the Lender has delivered to the Borrower a Term SOFR Notice. For the avoidance of doubt, the Lender shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Related Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Borrower.

(iii) Notices; Standards for Decisions and Determinations. The Lender will promptly notify the Borrower of (A) any occurrence of a Benchmark Transition Event or a Term SOFR Transition Event, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.17(c)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.17(c), including any determination with

respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower.

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Related Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or the LIBOR Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Lender may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Approving Opinion. The Borrower shall cause an Approving Opinion to be delivered to the Lender each time a new Benchmark Replacement is determined with respect to a Tax-Exempt Loan and, notwithstanding anything to the contrary herein or in any other Loan Document, in no event shall a Benchmark Replacement replace the then-current Benchmark prior to the Lender's receipt of the Approving Opinion with respect to such Benchmark Replacement.

(vi) Benchmark Unavailability Period. For any determination of interest hereunder or under any other Loan Document during a Benchmark Unavailability Period, the principal amount of Loans shall bear interest determined in relation to the Alternate Base Rate, computed as otherwise described herein; provided, however, that no such determination of interest shall take effect during any applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the ICE Benchmark Administration (the "IBA"), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the "FCA"), the regulatory supervisor of the IBA, announced in public statements (the "Announcements") that the final publication or representativeness date for (i) 1-

week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (ii) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Lender to notify any parties of such Benchmark Transition Event pursuant to clause (iii) of this Section 2.17(c) shall be deemed satisfied.

(vii) Certain Defined Terms. As used in this Section 2.17(c):

*“Approving Opinion”* means, with respect to any action relating to a Tax-Exempt Loan, the occurrence of which requires an opinion of counsel, an opinion of counsel delivered by Counsel to the effect that such action (a) is permitted by this Agreement and (b) will not adversely affect the exclusion of interest on the Tax-Exempt Loan from gross income of the Lender for purposes of federal income taxation. Any such opinion of counsel shall be in form and substance satisfactory to Lender.

*“Available Tenor”* means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.17(c)(iv).

*“Benchmark”* means, initially, the LIBOR Index; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the LIBOR Index or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17(c)(i).

*“Benchmark Replacement”* means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(2) the sum of: (A) SOFR Average and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Lender as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (B) the related Benchmark Replacement Adjustment; or

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

provided that, (i) in the case of clause (a)(1), if the Lender decides that Term SOFR is not administratively feasible for the Lender, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3) or clause (b) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Related Documents.

*“Benchmark Replacement Adjustment”* means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (a)(2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Lender:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Available Tenor of such Benchmark;

(2) for purposes of clause (a)(3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities; and

(3) for purposes of clause (b) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of the LIBOR Index with a SOFR-based rate;

provided that, (x) in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Lender in its reasonable discretion and (y) if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement that will replace such Benchmark in accordance with Section 2.17(c)(i) will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of “Benchmark Replacement Adjustment” shall be deemed to be, with respect to each Unadjusted Benchmark Replacement having a payment period for interest calculated with reference thereto, the Available Tenor that has approximately the same length (disregarding business day adjustments) as such payment period.

*“Benchmark Replacement Conforming Changes”* means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Related Documents).

*“Benchmark Replacement Date”* means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Lender has provided the Term SOFR Notice to the Borrower pursuant to Section 2.17(c)(i)(B); or

(4) in the case of an Early Opt-in Election, the first (1st) Business Day after the date notice of such Early Opt-in Election is provided to the Borrower.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any



Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.17(c) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.17(c).

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Early Opt-in Election*” means, if the then-current Benchmark is the LIBOR Index, the occurrence of the election in writing by the Lender to trigger a fallback from the LIBOR Index and the provision by the Lender of written notice of such election to the Borrower.

“*Floor*” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBOR Index.

“*Interest Period*” means a term of one month.

“*ISDA Definitions*” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“*Reference Time*” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the LIBOR Index, 11:00 a.m. (London time) on the day that is two (2) London banking days preceding the date of such setting, and (2) if such Benchmark is not the LIBOR Index, the time determined by the Lender in its reasonable discretion.

“*Relevant Governmental Body*” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*SOF*” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day

published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

*"SOFR Administrator"* means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

*"SOFR Administrator's Website"* means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

*"SOFR Average"* means the compounded average of SOFR over a rolling calendar day period of thirty (30) days published by the SOFR Administrator.

*"Term SOFR"* means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

*"Term SOFR Notice"* means a notification by the Lender to the Borrower of the occurrence of a Term SOFR Transition Event.

*"Term SOFR Transition Event"* means the determination by the Lender that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Lender and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.17(c) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

*"Unadjusted Benchmark Replacement"* means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower makes the following representations and warranties to the Lender as of the Effective Date (which representations and warranties shall survive the execution and delivery of this Agreement) and on each Borrowing Date:

**Section 3.01. Existence and Power.** The Borrower is a joint exercise of powers agency duly organized and validly existing under and by virtue of the laws of the State. The Borrower has the power and authority to (i) own its properties, (ii) carry on its businesses as now being

conducted and as currently contemplated to be conducted hereafter, an (iii) pledge Revenues. Subject to the rights of SamTrans described in Schedule I attached hereto, the Borrower owns the Right of Way.

**Section 3.02. Due Authorization; Approvals.** The Borrower has the right, power and authority and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and each of the Related Documents to which it is a party in accordance with their respective terms. All authorizations, consents and approvals (including, without limitation, Governmental Approvals) necessary for the Borrower to enter into this Agreement and the Related Documents to which it is a party have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. All authorizations, consents and approvals (including, without limitation, Governmental Approvals) necessary for the Borrower to perform the transactions contemplated hereby and under the other Related Documents have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required for the due execution, delivery and performance by the Borrower of this Agreement and each of the Related Documents to which it is a party.

**Section 3.03. Valid and Binding Obligations.** This Agreement and each of the other Related Documents to which the Borrower is a party has been duly executed and delivered by one or more duly authorized officers of the Borrower and is a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each Existing JPB Document to which the Borrower is a party has been duly executed and delivered by one or more duly authorized officers of the Borrower and is a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 3.04. Non-contravention.** The execution, delivery and performance of this Agreement, each of the other Related Documents in accordance with their respective terms and each of the Existing JPB Documents to which the Borrower is a party in accordance with their respective terms do not and will not (i) contravene the Joint Powers Agreement, (ii) require any consent or approval of any Member Agency (other than those that have been obtained), (iii) violate any Laws (including, without limitation, Regulations T, U or X of the Board of Governors of the Federal Reserve System of the United States, or any successor regulations), (iv) conflict with, result in a breach of or constitute a default under any contract to which the Borrower is a party or by which it or any of its Property may be bound which could reasonably be expected to result in a Material Adverse Effect or (v) result in or require the creation or imposition of any Lien upon or with respect to the Revenues, except such Liens, if any, expressly created by any Related Document.

**Section 3.05. Compliance with Laws.** The Borrower is in compliance in all material respects with the requirements of all Laws applicable to it and all orders, writs, injunctions and decrees applicable to it or to its Properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and for which appropriate reserves have been established in the financial records of the Borrower in accordance with GAAP or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**Section 3.06. Pending Litigation and Other Proceedings.** There is no action, suit or proceeding pending (with service of process completed against the Borrower), or to the knowledge of the Borrower, threatened in any court, with any other Governmental Authority with jurisdiction over the Borrower or in any arbitration: (i) against the Borrower or any of its Properties, the Revenues; (ii) in respect of any of the Related Documents to which it is a party or any of the Existing JPB Documents to which it is a party; (iii) questioning in any manner the Borrower's pledge of the Revenues contained in this Agreement; or (iv) questioning the Borrower's ownership of the Right of Way.

**Section 3.07. Financial Statements.** The most recent Audited Financial Statements delivered to the Lender present fairly in accordance with GAAP the financial condition of the Borrower as of the dates referenced therein and the results of its operations for the periods then ended and referenced therein. Since the date of such Audited Financial Statements, there has been no Material Adverse Change.

**Section 3.08. Pension Plans.** The Borrower does not maintain any Pension Plan. The Borrower contributes to Pension Plans maintained by SamTrans.

**Section 3.09. No Defaults.** No default by the Borrower has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Debt of the Borrower secured by Revenues. No bankruptcy, insolvency or other similar proceedings pertaining to the Borrower is pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No "default" or "event of default" under, and as defined in, any of the other Related Documents or any Swap Contract has occurred and is continuing. The Borrower is not presently in default under any material agreement to which it is a party which default could reasonably be expected to have a Material Adverse Effect. The Borrower is not in violation of any material term of the Joint Powers Agreement applicable to it or any material term of any bond indenture, trust agreement or other agreement to which it is a party which could reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Borrower, no Member Agency is in violation of any material term of the Joint Powers Agreement applicable to it.

**Section 3.10. Insurance.** The Borrower currently maintains insurance coverage with insurance companies believed by the Borrower to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to Borrower and/or maintains self-insurance and is in full compliance with Section 4.14 hereof.

**Section 3.11. Title to Assets.** Except as is otherwise described on Schedule I attached hereto with respect to the Right of Way and on Schedule II attached hereto with respect to certain engines and railcars and except where the failure to have good and marketable title to any of its

assets would not have a Material Adverse Effect, the Borrower has good and marketable title to its assets (other than Revenues), including the Right of Way, and the engines and railcars used by the Peninsula Corridor. The Revenues are free and clear of all Liens other than Liens permitted pursuant to Section 4.16.

**Section 3.12. Incorporation by Reference.** The representations and warranties of the Borrower contained in the Related Documents (other than this Agreement) to which the Borrower is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Borrower in such Sections are hereby made for the benefit of the Lender. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Lender.

**Section 3.13. Correct Information.** All written information, reports and other papers and data furnished by the Borrower to the Lender were, at the time the same were so furnished, correct in all material respects. No fact is known to the Borrower which has had or in the reasonable judgment of the Borrower may in the future have a Material Adverse Effect which has not been set forth in the most recent Audited Financial Statements furnished to the Lender or disclosed in writing to the Lender prior to the Effective Date. The documents furnished to the Lender in connection with the negotiation, preparation or execution of this Agreement, the Fee and Pricing Agreement and the Notes do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

**Section 3.14. Margin Stock.** The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

**Section 3.15. Tax Exempt Status.** Neither the Borrower nor, to the knowledge of the Borrower, SamTrans or any other Member Agency has taken any action or omitted to take any action, and the Borrower has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Tax-Exempt Loans from gross income for federal income tax purposes or the exemption of interest on the Tax-Exempt Loans from State personal income taxes.

**Section 3.16. Usury.** Assuming that the Lender is an exempted class of person within the meaning of Article 15 of the California Constitution, the terms of this Agreement and the other Related Documents regarding the calculation and payment of interest and fees do not contravene any applicable usury laws.

**Section 3.17. Pending Legislation and Decisions.** To the knowledge of the Borrower, there is no proposed amendment to the Constitution of the State or any State law or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Effect.

**Section 3.18. No Sovereign Immunity.** The Borrower is subject to claims and to suit for damages in connection with its obligations under this Agreement, the other Related Documents and the Existing JPB Documents pursuant to and in accordance with the procedural laws of the State.

**Section 3.19. Environmental Matters.** The operations of the Borrower are in compliance with all of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where a failure to comply with any such requirement or the need for any such remedial action could reasonably be expected to result in a Material Adverse Effect.

**Section 3.20. Solvency.** The Borrower is Solvent.

**Section 3.21. Taxes.** The Borrower has paid all taxes, assessments, fees and other governmental charges upon the Borrower or upon any of its Property thereof which are due and payable, and no claims are being asserted with respect to any past due taxes, assessments, fees or other governmental charges against the Borrower or any of its Properties, except, in each case, as are being contested in good faith by appropriate proceedings for which adequate reserves are being maintained in accordance with GAAP.

**Section 3.22. Swap Contracts.** The Borrower has not entered into any Swap Contract secured by Revenues (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the principal of, or interest on, the Loans or, (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

**Section 3.23. Labor Matters.** The Borrower has no knowledge of any existing or pending strike, walkout or work stoppage.

**Section 3.24. Sanctions.** To the knowledge of the Borrower, the Borrower (a) is not currently the subject of any Sanctions and is in compliance with Anti-Corruption Laws and Anti-Money Laundering Laws, (b) is not located, organized or residing in any Designated Jurisdiction, or (c) is not nor has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. The Borrower has no Related Parties.

## ARTICLE IV

### COVENANTS OF THE BORROWER

Until the Loans and all other Obligations payable under this Agreement and the Notes shall have been paid in full, unless the Lender shall otherwise consent in writing, the Borrower covenants and agrees as follows:

**Section 4.01. Notice of Default.** Upon an Authorized Officer of the Borrower becoming aware of the existence of any Default or any Event of Default, the Borrower will give prompt notice in writing to the Lender of the occurrence of such event and of any other development, financial or otherwise, which could reasonably be expected to materially adversely affect the

ability of the Borrower to perform its obligations under this Agreement and the Notes, which notice shall state what action the Borrower proposes to take in regard to such occurrence.

**Section 4.02. Reporting Requirements.** The Borrower will furnish to the Lender each of the following:

(a) ***Annual Financial Statements.*** As soon as available, and in any event within two hundred ten (210) days after the end of the Fiscal Year, the Audited Financial Statements for such Fiscal Year prepared in the usual and customary format utilized by the Borrower (and previously delivered to the Lender) accompanied by a report thereon of a firm of independent public accountants of recognized national or regional standing with expertise in auditing the financial statements of California governmental and quasi-governmental entities, selected by the Borrower and reasonably satisfactory to the Lender, to the effect that such Audited Financial Statements have been prepared in accordance with the accounting practice used by the Borrower in its immediately preceding Fiscal Year and present fairly in accordance with GAAP the financial condition of the Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances or to similar effect, and such report shall contain no material qualifications or reservations.

(b) ***Certificate of Compliance.*** Simultaneously with the delivery of each set of financial statements referred to in Section 4.02(a), a certificate of compliance substantially in the form of Exhibit D hereto, signed by an Authorized Officer stating that, to the best of his or her knowledge, the Borrower has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement on the Borrower's part to be performed and is not in default in the performance or observance of any of the terms, covenants, provisions or conditions thereof, or if the Borrower shall be in default, such certificate shall specify all such defaults, the nature and status thereof and any remedial steps taken or proposed to correct such default.

(c) ***Offering Circulars.*** As soon as practicable but in any event within thirty (30) days after the issuance or incurrence thereof, (i) copies of any prospectus, official statement, offering circular, placement memorandum, or similar or corresponding document, and any supplements thereto and updates and amendments thereof, that the Borrower makes available in connection with the offering for sale of any securities secured by a pledge of Revenues, or, in the case of any ordinance, indenture, contract or agreement by the Borrower involving the creation of any Debt, but not involving the offering for sale of any securities related thereto, a copy of such ordinance, indenture, contract or agreement creating the related obligation, together with, in either case, (ii) a certificate of an Authorized Officer stating that to the best of his or her knowledge the covenants set forth herein and in the Indenture were complied with at the time such securities were issued or such obligation was incurred and otherwise providing the Lender with such additional assurance of compliance with the covenants, terms and other provisions of this Agreement at the time such securities were issued or such obligation was incurred.



(d) **Budget.** As soon as available after adoption, and in any event within sixty (60) days of the end of each Fiscal Year, a copy of the Borrower's budget for each Fiscal Year or notice that such document is available without restriction on the Borrower's website and providing the address.

(e) **Quarterly Sales Tax Revenue Reports.** As soon as available, and in any event within thirty (30) days after the end of each fiscal quarter, commencing with the fiscal quarter ending September 30, 2021, a report in form and substance acceptable to the Lender, on the collection of the Sales Tax Revenues.

(f) **Continuing Disclosure Documents.** On the same day as the filing thereof, all continuing disclosure documents filed by the Borrower with respect to Debt of the Borrower secured by Revenues in compliance with Securities and Exchange Commission rules codified at 17 C.F.R. Section 240.15c2-12 or notice that such filing is available without restriction through EMMA.

(g) **Notice of Material Adverse Change.** Promptly upon learning thereof, notice of the occurrence of any event, occurrence or change in circumstance that could reasonably be expected to result in a Material Adverse Effect.

(h) **Notice of Event of Taxability.** Promptly upon learning thereof, notice of an Event of Taxability.

(i) **Litigation; Investigations; Labor Notices.** As promptly as practicable, written notice of (i) all actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower before any arbitrator of any kind or before any court or other Governmental Authority which if determined adversely to the Borrower could reasonably be expected to result in a Material Adverse Effect, (ii) any significant investigation or proceeding against the Borrower or any of its securities by the Securities and Exchange Commission, the Department of Justice or the Internal Revenue Service, (iii) any significant criminal investigation or proceeding by a Governmental Authority involving the Borrower or any member of its governing board or officer of the Borrower and (iv) any communication from any labor union of an intent to strike the Borrower or cause a labor stoppage at a future date with such notice to include a description of the action or actions that the Borrower proposes to take with respect thereto.

(j) **Ratings.** As soon as practicable, notice of any change in, or the suspension, withdrawal or unavailability of, any Rating.

(k) **Amendments.** Promptly after the adoption thereof, copies of any amendments to the Related Documents or the Existing JPB Documents.

(l) **Other Information.** Such other information respecting the business, properties or the condition or operations, financial or otherwise of the Borrower as the Lender may from time to time reasonably request.

**Section 4.03. Maintenance of Books and Records.** The Borrower shall keep proper books of record and account in which complete and correct entries will be made in accordance

with GAAP reflecting all financial transactions of the Borrower and its commuter rail service. All financial statements delivered by the Borrower to the Lender under this Agreement will be complete and accurate and will fairly present the financial condition of the Borrower and its commuter rail service as at the dates thereof and for the periods covered thereby, and all of same will be prepared in accordance with GAAP.

**Section 4.04. Access to Books and Records.** The Borrower shall permit any Person designated by the Lender (at the expense of the Lender, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the Borrower) to visit any of the offices of the Borrower to examine the books and financial records (except books and financial records the examination of which by the Lender is prohibited by Law or by attorney client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Borrower with its officers, employees and independent public accountants, all at such reasonable times and upon reasonable notice and as often as the Lender may reasonably request.

**Section 4.05. Compliance with Law.** The Borrower will comply with and observe the obligations and requirements set forth in the Constitution of the State and in all statutes and regulations binding upon it and its Property relating to this Agreement, the other Related Documents to which it is a party or the Existing JPB Documents to which it is a party. Without limiting the obligations of the Borrower set forth in the preceding sentence, the Borrower shall comply with all applicable Environmental Laws and cure any material defect (or cause other Persons to cure any such defect) to the extent necessary to bring any real property owned, leased, occupied or operated by the Borrower back into material compliance with Environmental Laws and to comply in all material respects with any cleanup orders issued by a Governmental Authority having jurisdiction thereover. The Borrower shall at all times use commercially reasonable efforts to render or maintain any real property owned, leased, occupied or operated by the Borrower safe and fit for its intended uses.

**Section 4.06. Pension Plans.** In the event the Borrower adopts a Pension Plan, the Borrower shall maintain such Pension Plan in compliance in all material respects with the applicable provisions of the Code and other applicable Law and shall make all required contributions to any Pension Plan. In the event the Borrower adopts a Pension Plan, the Borrower shall not permit, at any time, such Pension Plan to: (a) engage in any nonexempt “prohibited transaction” (as defined in Section 503 of the Code); (b) fail to comply with applicable Laws; (c) incur any material increase in its Unfunded Pension Liability; or (d) terminate in any manner; which, in the case of any such event, has resulted, or could reasonably be expected to result, in a Material Adverse Effect. If SamTrans maintains any Pension Plan to which the Borrower has an obligation to contribute, the Borrower shall make such contributions in accordance with the terms of any such Pension Plan and applicable Law.

**Section 4.07. Payment of Taxes.** The Borrower shall timely pay all taxes, assessments, fees and other governmental charges upon the Borrower or upon any of its Property except, in each case, as are being contested in good faith by appropriate proceedings for which adequate reserves are being maintained in accordance with GAAP.

**Section 4.08. Payment of Debts.** The Borrower will timely pay all of its Debts secured by Revenues in accordance with the terms thereof.

**Section 4.09. Compliance with Documents.** The Borrower shall perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents (other than this Agreement) and the Existing JPB Documents to which it is a party, which provisions of the Related Documents (other than this Agreement), as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Lender and shall be enforceable against the Borrower. To the extent that any such incorporated provision permits the Borrower to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Borrower, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Lender in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Lender which shall only be evidenced by the written approval by the Lender of the same. Except as permitted by Section 4.10, no termination or amendment to such covenants and agreements or defined terms or release of the Borrower with respect thereto shall be effective to terminate or amend such covenants and agreements and defined terms or release the Borrower with respect thereto in each case as incorporated by reference herein without the prior written consent of the Lender. Notwithstanding any termination or expiration of any Related Document to which the Borrower is a party, the Borrower shall continue to observe the covenants therein contained and incorporated herein for the benefit of the Lender until the termination of this Agreement and the payment in full of the Loans and all other Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

**Section 4.10. Amendment of Related Documents.** The Borrower shall not amend or modify, or permit to be amended or modified in any manner whatsoever any Related Document, the Purchase Agreement or the Real Property Agreement in a manner which could reasonably be expected to materially adversely affect the security for the Loans and the other Obligations or the Borrower's ability to repay when due the Loans or the other Obligations or the interests, security, rights or remedies of the Lender without the prior written consent of the Lender.

**Section 4.11. Existence.** The Borrower shall use its best efforts to maintain its existence as a public entity duly organized and existing as a joint exercise of powers agency, shall not seek to merge or consolidate with any other Person and shall not seek to dissolve. The Borrower shall take all reasonable action to maintain all Permits necessary for the normal conduct of its business, unless the failure to maintain any such Permit could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.12. Maintenance of Approvals; Filings, Etc.** The Borrower at all times shall maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals and authorizations as may be necessary under any applicable Law for its execution, delivery and performance of this Agreement and the Notes.

**Section 4.13. Maintenance of Properties.** The Borrower shall (a) maintain, preserve and protect all of its material Properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect; and (c) use commercially reasonable efforts to operate and maintain its commuter rail system in a manner believed by the Borrower to be consistent with prevailing industry standards, except to the extent failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.14. Maintenance of Insurance.** The Borrower shall (a)(i) maintain insurance with reputable insurance companies or associations believed by the Borrower at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage and/or (ii) self-insure and (b) maintain insurance in accordance with the terms of the Indenture. The Borrower shall upon request of the Lender furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section.

**Section 4.15. No Acceleration.** The Borrower shall not enter into any Bank Agreement (including by means of amendment, modification, supplement or restatement of an existing Bank Agreement) which grants any other Person the right to accelerate payment of the principal thereof upon the occurrence of a “default,” an “event of default,” a “termination event,” a “mandatory prepayment event,” a “mandatory redemption event” or other similar event.

**Section 4.16. No Liens.** The Borrower shall not create, incur or permit to exist any Lien of any kind over the Revenues except for the Liens over Revenues created by the Indenture, this Agreement and the PCEP Facility.

**Section 4.17. Preservation of Pledge.** The Borrower shall take all necessary action to defend, maintain and preserve the pledge of Revenues securing the Obligations and the payment and performance of the Borrower’s obligations hereunder and under the Notes.

**Section 4.18. No Impairment.** The Borrower shall not enter into or otherwise consent to any amendment, supplement or other modification of any agreement or take any action or omit to take action which impairs the security provided to the Lender for repayment of the Loans and the other Obligations.

**Section 4.19. Sovereign Immunity.** If as a result of a Change in Law the defense of sovereign immunity in respect of contract claims becomes available to the Borrower, the Borrower agrees, to the fullest extent permitted by law, not to assert the defense of sovereign immunity in any proceeding to enforce any of the obligations of the Borrower under this Agreement or any other Related Document or any Existing JPB Document to which the Borrower is a party in any court of competent jurisdiction.

**Section 4.20. Maintenance of Tax-Exempt Status.** The Borrower shall comply with its agreements set forth in the Tax Certificate and shall not act in any other manner which would adversely affect the exclusion of the interest on the Tax-Exempt Loans or the Tax-Exempt Note

from the gross income of the Beneficial Owners thereof for federal income or State income tax purposes.

**Section 4.21. Use of Proceeds.** The Borrower shall not use, and shall ensure that its operator and the operator's officers and employees shall not use, the proceeds of any Loan (a) in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, or (b) in any manner that would result in the violation of any Sanctions applicable to any party hereto. The Borrower will use the proceeds of the Loans solely to pay-off the Prior Working Capital Agreement (as defined in the Second Supplemental Indenture) and for working capital purposes. The Borrower shall not use any portion of the proceeds of the Loans for the purpose of carrying or purchasing any Margin Stock.

**Section 4.22. Collection of Sales Tax Revenues; Ratings.** The Borrower shall levy and collect the Sales Tax and transmit the Sales Tax Revenues in accordance with Section 9.02 of the Indenture. The Borrower shall maintain at least two Ratings commencing on the earlier to occur of (i) the date of issuance of Senior Lien Bonds and (ii) March 31, 2022.

**Section 4.23. Additional Senior Lien Debt and Subordinate Obligations Secured By Revenues.**

(a) The Borrower shall not issue, incur or suffer to exist any Senior Lien Debt payable from Revenues and secured by the pledge of the Indenture except in accordance with the Indenture, and upon the satisfaction of the following condition:

(i) The Borrower shall file with the Lender a certificate prepared by the Borrower showing that the amount of Sales Tax Revenues collected during any 12 consecutive calendar months specified by the Borrower within the most recent 18 calendar months immediately preceding the date on which such additional Senior Lien Debt will become Outstanding shall have been at least equal to 2.0 times Maximum Annual Debt Service on all Senior Lien Debt then Outstanding and the additional Senior Lien Debt then proposed to be issued, which certificate shall also set forth the computations upon which such certificate is based; provided that if the Resolution is amended to increase the rate of the Sales Tax under the applicable provisions of law and such increased rate was not in effect during all or any portion of the 12-consecutive-calendar month period, then the Issuer may add to the amount of Sales Tax Revenues for such period an amount equal to the amount of Sales Tax Revenues that would have been generated if the increased rate were in effect for the full period, as calculated by the Borrower using such reasonable assumptions as it determines.

(b) The Borrower shall not issue, incur or suffer to exist any Subordinate Obligation payable from Revenues and secured by the pledge of the Indenture except in accordance with the Indenture and upon the satisfaction of the following condition:

(i) The Borrower shall file with the Lender a certificate prepared by the Borrower showing that the amount of Sales Tax Revenues collected during any 12 consecutive calendar months specified by the Issuer within the most recent 18

calendar months immediately preceding the date on which such additional Subordinate Obligations will become Outstanding shall have been at least equal to 1.5 times Maximum Annual Debt Service on Senior Lien Debt and Subordinate Obligations then Outstanding and the additional Subordinate Obligations then proposed to be issued, which certificate shall also set forth the computations upon which such certificate is based; provided that if the Resolution is amended to increase the rate of the Sales Tax under the applicable provisions of law and such increased rate was not in effect during all or any portion of the 12-consecutive-calendar month period, then the Issuer may add to the amount of Sales Tax Revenues for such period an amount equal to the amount of Sales Tax Revenues that would have been generated if the increased rate were in effect for the full period, as calculated by the Issuer using such reasonable assumptions as it determines.

**Section 4.24. Swap Contracts.** The Borrower shall not enter into any Swap Contract secured by Revenues (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the principal of, or interest on, the Loans or, (b) which requires the Borrower to post cash collateral to secure its obligations thereunder.

**Section 4.25. Investments.** The Borrower shall not make any investments except as permitted by its investment policy or by applicable Law.

**Section 4.26. Use of Lender's Name.** Except for such use (i) as may be required by applicable Law (including, but not limited to, federal and state securities laws), (ii) in the Borrower's staff reports to the governing body of the Borrower, (iii) the Borrower's financial statements, (iv) in presentations to rating agencies made by the Borrower and (v) as may be consented to by the Lender in writing, the Borrower shall not use the Lender's name in any published materials.

**Section 4.27. Filing of the Agreement.** In the event the Borrower elects to file a copy of this Agreement with EMMA, the Borrower shall file only a complete copy of this Agreement containing such redactions as directed by the Lender in its sole discretion.

**Section 4.28. Further Assurances.** The Borrower shall take such action and execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Lender, all such actions, instruments and documents as in the reasonable opinion of the Lender are necessary to effectuate the provisions of this Agreement and the other Related Documents.

**Section 4.29. Other Bank Agreements.** In the event the Borrower shall, enter into or otherwise consent to any Bank Agreement which provides such Person with a covenant or agreement which incorporates by reference additional or more restrictive, covenants, events of default or remedies provided in other Bank Agreements to such Person (such covenant, a "Most Favored Nations Provision"), the Borrower shall promptly enter into an amendment to this Agreement to include such Most Favored Nations Provision; *provided* that the Lender shall have and maintain the benefit of such Most Favored Nations Provision even if the Borrower fails to provide such amendment.

## ARTICLE V

### CONDITIONS PRECEDENT

**Section 5.01. Conditions to Effectiveness.** This Agreement shall become effective upon satisfaction or waiver by the Lender of the following conditions precedent:

(a) **Documentary Conditions.** On or prior to the date of the execution and delivery of this Agreement, the Lender shall have received, in form and substance satisfactory to the Lender, the following:

(i) A true and complete executed original of this Agreement, and the Fee and Pricing Agreement;

(ii) The original executed Notes;

(iii) (A) An executed copy of the Indenture (including all supplements and amendments thereto), the Joint Powers Agreement and the Real Property Agreement, accompanied by a certificate of an Authorized Officer of the Borrower or the Secretary of the governing body of the Borrower certifying that each such copy is complete and accurate and that each such agreement remains in full force and effect; and (B) an executed copy of the Purchase Agreement, which delivery requirement shall be satisfied by delivering the Purchase Agreement to the Lender via a cloud-based application, accompanied by a certificate of an Authorized Officer of the Borrower or the Secretary of the governing body of the Borrower certifying that the Purchase Agreement so delivered is complete and accurate and that each such agreement remains in full force and effect;

(iv) An executed copy of the Tax Certificate;

(v) A copy of the resolutions of the governing body of the Borrower approving the execution, delivery and performance of this Agreement, the Fee and Pricing Agreement, the Notes and the Tax Certificate, certified by an Authorized Officer of the Borrower or the Secretary of the governing body of the Borrower as being true and complete and in full force and effect on the Effective Date;

(vi) An incumbency certificate with respect to the officers of the Borrower who are authorized to execute any documents or instruments on behalf of the Borrower under this Agreement and the other Related Documents;

(vii) A copy of each notice of a joint powers agreement filed by the Borrower with the Office of the California Secretary of State;

(viii) A copy of the most recent Audited Financial Statements;

(ix) A copy of the Borrower's investment policy in effect as of the Effective Date;

(x) An opinion of counsel to the Borrower, addressed to the Lender and dated the Effective Date, opining as to the Borrower's legal existence, power and authority, due authorization of transactions, due execution and delivery of documents, enforceability of this Agreement and of the other Related Documents to which it is a party, no conflicts with law, the Related Documents or other agreements and documents to which the Borrower is a party, no litigation, no consents required, perfection of security interests in favor of the Lender and such other customary matters as the Lender may reasonably request;

(xi) An opinion of Nixon Peabody LLP, bond counsel, addressed to the Borrower and dated the Effective Date, to the effect that the interest on the Tax-Exempt Loans evidenced by the Tax-Exempt Note is excludable from gross income for federal income tax purposes and such other customary matters as the Lender may reasonable request, together with a reliance letter, addressed to the Lender and dated the Effective Date, stating that the Lender may rely upon such opinion to the same extent as if such opinion were addressed to the Lender;

(xii) A certificate dated the Effective Date and executed by an Authorized Officer certifying that: (A) other than as previously provided to the Lender in writing, there has been no event or circumstance since June 30, 2020, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) the representations and warranties contained in Article III that are not qualified by concepts of materiality are true and correct in all material respects on the Effective Date, (C) the representations and warranties contained in Article III hereof that are qualified by concepts of materiality (including Material Adverse Effect) are true and correct in all respects on the Effective Date and (D) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default;

(xiii) True and correct copies of all material Governmental Approvals, if any, necessary for the Borrower (including resolutions of each Member Agency adopted pursuant to Section 6586.5 of the California Government Code) to execute, deliver and perform its obligations under the Related Documents to which it is a party; and

(xiv) A copy of the most recent staff report to the governing body of the Borrower describing the Borrower's insurance program.

(b) **Certain Payments.** The Borrower shall have paid, or caused to be paid, to the Lender and its counsel the fees and expenses set forth in the Fee and Pricing Agreement that are required to be paid on or prior to the Effective Date.

(c) **Litigation.** The Lender shall be satisfied that no action, suit or proceeding is pending or threatened against the Borrower or any of the Borrower's Properties in any court or before any arbitrator of any kind or before or by any Governmental Authority or



non-governmental body which, if determined adversely to the Borrower, could reasonably be expected to result in a Material Adverse Effect.

(d) ***No Material Adverse Change.*** Other than as previously provided to the Lender in writing, no Material Adverse Change shall have occurred since June 30, 2020.

(e) ***Other Matters.*** All legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Lender and its counsel, and the Lender shall have received such other statements, certificates, agreements, documents and information with respect to the Borrower and the other parties to the Related Documents and matters contemplated by this Agreement as the Lender may reasonably request.

(f) ***No Offering Document.*** No offering document or official statement shall have been prepared for use in connection with the issuance of the Notes. For the avoidance of doubt, the Lender has not requested and does not require that such an offering document be prepared.

(g) ***No Legal Limitations.*** No law, regulation, ruling or other action of the United States or the State or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement.

**Section 5.02. Conditions to Making of Loans.** The obligation of the Lender to make any Loan is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower contained in Article III shall be true and correct in all material respects (or if such representation and warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct) on and as of the applicable Borrowing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or if such representation and warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct) as of such earlier date;

(b) No Default shall exist, or would result from the making of such proposed Loan or from the application of the proceeds thereof; and

(c) The Lender shall have received a duly and properly completed and executed Borrowing Notice.

Each request for a Loan submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing Date.

## ARTICLE VI

### EVENTS OF DEFAULT; REMEDIES

**Section 6.01. Events of Default.** The occurrence and continuance of any one or more of the following events shall be an event of default (“Event of Default”):

(a) the Borrower fails to pay, or cause to be paid, when due: (i) any principal of or interest on any Loan for any reason; (ii) any Commitment Fees and such failure continues for thirty (30) calendar days; or (iii) any other Obligation owing to the Lender hereunder and such failure continues for five (5) Business Days; or

(b) (i) any representation or warranty made by the Borrower in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder that is not qualified by the concept of “materiality” shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered or (ii) any representation or warranty made by the Borrower in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder that is qualified by the concept of “materiality” shall be incorrect or untrue in any respect when made or deemed to have been made or delivered; or

(c) (i) the Borrower fails to perform or observe any term, covenant or agreement contained in Section 4.01, 4.02(a), 4.10, 4.11, 4.15, 4.16, 4.17, 4.18, 4.21, 4.22, 4.23 or 4.24; or (ii) the Borrower fails to perform or observe any other term, covenant or agreement contained in this Agreement (other than those referred to in Sections 6.01(a) and (c)(i)) and any such failure cannot be cured or, if curable, remains uncured after the earlier of (A) sixty (60) days after written notice thereof to the Borrower, or (B) knowledge by responsible officers of the Borrower of the occurrence thereof; or

(d) this Agreement, any other Related Document, any Existing JPB Document or any material provision hereof or thereof shall at any time for any reason cease to be valid and binding on the Borrower or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by any officer of the Borrower, any Member Agency or by any Governmental Authority having jurisdiction, or the Borrower shall deny that it has any or further liability or obligation under this Agreement or any other Related Document or any Existing JPB Document; or

(e) a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction is imposed by any Governmental Authority (including the Borrower) on the repayment when due and payable of the principal of or interest on any Debt of the Borrower payable from, and secured by, Revenues or any portion thereof; or

(f) the Borrower shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner,

liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 6.01(g); or

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.01(f)(v) shall be instituted against the Borrower and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of sixty (60) or more days; or

(h) the Borrower shall (i) default in any payment of principal of, premium, if any, or interest on any Debt secured by Revenues; or (ii) default in the observance or performance of any other agreement or condition relating to any Debt secured by Revenues or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Debt secured by Revenues (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries), as the case may be, to take remedial action with respect to such Debt; or

(i) a “default” or an “event of default” shall have occurred under the PCEP Facility; or

(j) (i) there shall be entered against the Borrower any final uninsured judgment (or insured judgment if the insurer has disputed coverage in writing) which, singly or with any other final uninsured judgment or judgments (or insured judgment or insured judgments if the insurer has disputed coverage in writing) against the Borrower, exceeds \$5,000,000, is payable from Revenues and remains unpaid for a period of thirty (30) calendar days or, if longer, when due, or (ii) any of the Revenues shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the Borrower and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within sixty (60) calendar days after its issue or levy; or

(k) the Lender fails to have an enforceable pledge of the Revenues with the priority as contemplated by Section 2.15(a); or

(l) any “event of default” under any Related Document (as defined respectively therein) other than this Agreement shall have occurred and, if permitted to be cured under the terms thereof, shall not have been cured within such permitted cure period; or

(m) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, any such Rating Agency shall have downgraded its Rating to below “BBB-” (or its equivalent) or “Baa3” (or its equivalent), or shall have suspended or withdrawn its Rating; or

(n) (i) if there are three Member Agencies, at least two Member Agencies declare in writing their intent to withdraw as a “member agency” under the Joint Powers Agreement; (ii) if there are two Member Agencies, a Member Agency declares in writing its intent to withdraw as a “member agency” under the Joint Powers Agreement; (iii) the Borrower shall cease to exist as a joint exercise of powers agency; (iv) the Borrower shall merge, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property (whether now owned or hereafter acquired) to or in favor of any Person; (v) the Borrower shall engage in any line of business other than the ownership and operation of its commuter rail service along the Peninsula Corridor or businesses incidental thereto; or (vi) the Borrower shall cease for any reason to maintain its ownership rights in the Right of Way.

**Section 6.02. Remedies.** If an Event of Default occurs and is continuing, the Lender may exercise any one or more of the following rights and remedies:

- (a) declare the Commitment to make Loans to be terminated, whereupon the Commitment shall be terminated; or
- (b) require that all Obligations bear interest at the Default Rate; or
- (c) pursue any other action available at law or in equity, including seeking a writ of mandamus;

provided, however, that upon the occurrence of an Event of Default of the type described in Section 6.01(f) or 6.01(g), the Commitment and the obligation of the Lender to make Loans shall automatically terminate without further act of the Lender.

**Section 6.03. No Waiver; Cumulative Remedies.** No failure by the Lender to exercise, and no delay by the Lender in exercising, any right, remedy, power or privilege hereunder or under any other Related Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.01. Changes to Agreement.** No provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

## **Section 7.02. Successors and Assigns.**

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that (i) the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Lender and any assignment without such consent shall be void, and (ii) (A) if the Commitment has not terminated and the Lender remains obligated to make Loans hereunder, unless the intended assignee is an Affiliate of the Lender, the Lender may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Borrower and any assignment without such consent shall be void (*provided* that no such consent of the Borrower shall be required upon the occurrence and during the continuance of any Event of Default hereunder) and (B) if the Commitment has terminated and the Lender is no longer obligated to make Loans hereunder, the Lender may assign or transfer any of its rights or obligations hereunder without the prior written consent of the Borrower. In the event of any assignment or transfer in accordance with the provisions of this Section 7.02, the Borrower shall be provided with the name and address of the assignee or transferee. The Borrower and the Lender acknowledge that the Notes may not be publicly offered.

(b) The Lender shall have the right at any time to grant participations in all or part of its rights hereunder, under the Fee and Pricing Agreement and under either Note or both Notes and the obligations of the Borrower hereunder, under the Fee and Pricing Agreement and under the Notes to any other institutional purchaser (each, a “Participant”) without the consent of the Borrower or any other Person; *provided, however*, that any such participation shall not relieve the Lender from any of its obligations under this Agreement, shall not result in any increase in costs to the Borrower and the Borrower shall be entitled to deal exclusively with the Lender for all purposes of this Agreement (including the making of all payments on Loans). The Lender may disclose to any Participant or prospective Participant any information or other data or material in the Lender’s possession relating to this Agreement, any other Related Document and any Existing JPB Document, without the consent of or notice to the Borrower. Upon receipt of written request from the Borrower, the Lender shall disclose to the Borrower the identity of all Participants.

(c) Notwithstanding paragraph (a) above, the Lender may assign and pledge all or any portion of the amounts owing to it with respect to the Loans hereunder or either Note or both Notes to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank. No such assignment or pledge shall release the Lender from its obligations under this Agreement.

**Section 7.03. Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing addressed as provided below and shall be deemed effectively given upon the earlier of actual receipt, or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient’s next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or

(iv) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt:

If to the Lender, to:

Wells Fargo Bank, National Association  
333 Market Street, 15<sup>th</sup> Floor  
MAC: A0109-150  
San Francisco, California 94105  
Attention: Dale Barton, Vice President  
Telephone: (628) 260-3382  
Email: [dale.r.barton@wellsfargo.com](mailto:dale.r.barton@wellsfargo.com)

With a copy to:

Wells Fargo Bank, National Association  
1700 Lincoln, Floor 9  
MAC C7300-09E  
Denver, Colorado 80203  
Attention: Mike Cook, Assistant Vice President  
Telephone: (303)863-5524  
Email: [Michael.r.cook@wellsfargo.com](mailto:Michael.r.cook@wellsfargo.com)

If to the Borrower:

Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, California 94070-1306  
Attention: Executive Director  
Telephone: (650) 508-6269  
Email: [hartnettj@samtrans.com](mailto:hartnettj@samtrans.com)

With a copy to:

Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, California 94070-1306  
Attention: Chief Financial Officer  
Telephone: (650) 508-6274  
Email: [hanseld@samtrans.com](mailto:hanseld@samtrans.com)

and a further copy to:

Peninsula Corridor Joint Powers Board  
c/o San Mateo County Transit District  
1250 San Carlos Avenue

San Carlos, California 94070-1306  
Attention: Director of Treasury  
Telephone: (650) 508-7765  
Email: moble-ritterc@samtrans.com

and a further copy to:

debt@samtrans.com

Notwithstanding anything to the contrary contained in this Section 7.03, Borrowing Notices must be submitted to the Lender by facsimile and email. Each of the Lender and the Borrower may change its address, fax number, telephone number or email address for notices and other communications hereunder by notice to the other party hereto.

**Section 7.04. Obligations Absolute.** The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation: (i) any lack of validity, enforceability or legal effect of this Agreement or any other Related Document or any Existing JPB Document, or any term or provision herein or therein; (ii) the existence of any claim, set-off, defense or other right that the Borrower or any other Person may have at any time against the Lender or any other Person; and (iii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing, that might, but for this paragraph, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Borrower's obligations hereunder (whether against the Lender or any other Person).

**Section 7.05. Holidays.** Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

**Section 7.06. Liability of the Lender.**

(a) None of the Lender, its Affiliates or any of their respective employees, officers or directors shall be liable or responsible for: (i) the use which may be made of the proceeds of any Loan or for any acts or omissions of the Borrower in connection therewith; (ii) the validity, sufficiency, accuracy or genuineness of documents, or of any endorsement thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (iii) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, courier, telecopier or otherwise; or (iv) any other circumstances whatsoever in funding any Loan; except only that the Borrower shall have a claim against the Lender, and the Lender shall be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the Borrower which the Borrower proves by final order of a court of competent jurisdiction were caused by the Lender's willful misconduct or gross negligence in failing to fund a Loan under this Agreement after the presentation to it by the Borrower of a

Borrowing Notice strictly complying with the terms and conditions of this Agreement. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(b) The Borrower assumes all risks associated with the acceptance by the Lender of documents received by telecommunication, it being agreed that the use of telecommunication devices is for the benefit of the Borrower and that the Lender assumes no liabilities or risks with respect thereto.

**Section 7.07. Costs and Expenses; Indemnification; Damage Waiver.**

(a) The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the preparation, negotiation, execution and delivery of this Agreement, the Notes and the Fee and Pricing Agreement, (ii) all fees and expenses payable to the California Debt Investment and Advisory Commission and any other Person (including bond counsel) in connection with the issuance of the Notes, and (iii) all out of pocket expenses incurred by the Lender (including the reasonable fees, charges and disbursements of any counsel for the Lender), and all fees and time charges for attorneys who may be employees of the Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Related Documents, including its rights under this Section, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loans.

(b) To the maximum extent permitted by law, the Borrower shall indemnify the Lender and each Related Party of the Lender (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all reasonable fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any Member Agency) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Related Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Related Documents, (ii) the issuance of the Notes, (iii) the use or proposed use of the proceeds of the Loans, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, and (v) any Government Acts, in each case whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnatee is a party thereto; provided that the indemnity obligations of the Borrower contained in this Section shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-



appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Notes, this Agreement, any other Related Document, any Existing JPB Document, any Borrowing Notice or the use of the proceeds of the Loans. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(d) Unless otherwise provided in this Section, all amounts due under this Section shall be payable not later than thirty (30) days after demand therefor.

(e) The agreements in this Section shall survive the payment in full of the Loans, the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

**Section 7.08. Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any debtor relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

**Section 7.09. Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the Fee and Pricing Agreement, the Indenture and the Notes constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or email transmission (e.g., “pdf” or “tif”) shall be as effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Related Document, upon the request of any party, such fax transmission or email transmission shall be promptly followed by such manually executed counterpart.

**Section 7.10. Survival of Representations and Warranties.** All representations and warranties of the Borrower made hereunder or other document delivered pursuant hereto or thereto by the Borrower or in connection herewith shall survive the execution and delivery hereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default on the Effective Date, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied.

**Section 7.11. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 7.12. Governing Law; Jurisdiction, Etc.**

(a) ***Governing Law.*** This Agreement and the other Related Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Related Document (except, as to any other Related Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of California.

(b) ***Submission to Jurisdiction.*** The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Lender of the foregoing in any way relating to this Agreement or any other Related Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of California, and of the United States District Courts located in the State of California, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such California State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) ***Waiver of Venue.*** The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Related Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7.03. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

**Section 7.13. Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND CONSENT AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 7.14. No Advisory or Fiduciary Relationship.** In connection with all aspects of the transactions contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' (if any) understanding, that: (a) (i) the services regarding this Agreement provided by the Lender and any Affiliate thereof are arm's-length commercial transactions between the Borrower and its Affiliates (if any), on the one hand, and the Lender and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Lender and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any other Person and (ii) neither the Lender nor any of its Affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Lender or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**Section 7.15. Electronic Execution of Certain Documents.** The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Related Document (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Lender, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 7.16. USA Patriot Act.** The Lender is subject to the Patriot Act and hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and Anti-Money Laundering Laws, including the Patriot Act.

**Section 7.17. No Third Party Rights.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

**Section 7.18. Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 7.19. Dissemination of Information.** The Lender may disseminate information relating to the Borrower, this Agreement, any other Related Document or any Existing JPB Document (i) in connection with any assignment or participation; (ii) upon the order of any court or otherwise to the extent required by statute, rule, regulation or judicial process; (iii) to bank examiners or upon the request or demand of any other administrative, regulatory agency, or authority; or (iv) to any domestic or foreign branch, subsidiary or affiliate, representative office or agent of the Lender and third parties selected by any of the foregoing entities, wherever situated, for confidential use (including in connection with the provision of any service and for data processing, statistical and risk analysis purposes), or in connection with the Lender’s performance, administration or enforcement of this Agreement.

[Remainder of page intentional left blank; signature page immediately follows.]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Derek S. Hansel,  
Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_  
Dale Barton  
Vice President

## **SCHEDULE I**

### **INFORMATION RELATING TO OWNERSHIP OF RIGHT OF WAY**

See page ii under the caption “History” and Note 1, page 17 of the Audited Financials of the Borrower for the Fiscal Year Ended June 30, 2018 for a discussion of ownership of the right of way. All payments to SamTrans for reimbursement of SamTrans’ advances of funds on behalf of the VTA and CCSF to acquire the right of way in 1991 have been paid in accordance with the Amendment of the Real Property Ownership Agreement, dated October 31, 2008, with the exception of the \$19.8 million that is due from the Metropolitan Transportation Commission.

**SCHEDULE II**  
**TITLE TO ASSETS**

**Lease/Leaseback Transaction**

See Note 13 on page 37 of the Audited Financials of the Borrower for the Fiscal Year Ended June 30, 2018 for a discussion of a 2002 lease-leaseback transaction in respect of 13 locomotives, 38 trailer cars and 14 cab cars.

**Property Rights in the 4th and King Areas**

In 1991, the Borrower received a grant deed from the Southern Pacific Transportation Company. The grant deed conveyed the rights held by Southern Pacific Transportation Company at the time, which consisted of perpetual easements over a number of parcels for “railroad, transportation and communication purposes.” There are limitations upon the size and type of buildings that the railroad (now the Borrower) can erect on some of the property, but this limitation does not affect the right to operate rail service. Thus, the Borrower has perpetual, deeded easement rights to the right of way, not a leasehold interest of any kind. Any use by the fee owner cannot impair the Borrower’s use of the property.

**EXHIBIT A-1**

**[FORM OF TAX-EXEMPT NOTE]**

**TRANSFER OF THIS TAX-EXEMPT NOTE IS RESTRICTED  
AS SET FORTH IN THE CREDIT AGREEMENT**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
PROMISSORY NOTE**

**[August 13, 2021]**  
San Carlos, California  
\$100,000,000

PENINSULA CORRIDOR JOINT POWERS BOARD, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “Borrower”), for value received, hereby promises to pay, solely from the funds hereinafter referred to, to WELLS FARGO BANK, NATIONAL ASSOCIATION (the “Lender”), the principal sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000) or, if less, the aggregate principal amount of all Tax-Exempt Loans made by the Lender to the Borrower, payable at such times and at such location as are specified in the Credit Agreement, dated as of August 1, 2021 (the “Credit Agreement”), between the Borrower and the Lender, together with accrued and unpaid interest thereon. Capitalized terms not otherwise defined herein have the meaning set forth in the Credit Agreement.

The unpaid principal amount of the Tax-Exempt Loans evidenced by this Tax-Exempt Note (this “Note”) from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Credit Agreement. This Note constitutes a PCEP Facility Note and an Initial Note under the Indenture.

Payments of both principal and interest are to be made in lawful money of the United States of America.

Annexed hereto and made a part hereof is a grid (the “Grid”) on which shall be shown all Tax-Exempt Loans made by the Lender from time to time under the Credit Agreement and the amounts of principal and interest payable and paid from time to time under the Credit Agreement. The Borrower hereby appoints the Lender as its agent to endorse the Grid and note thereon the date and the amount of each Tax-Exempt Loan and the date and amount of each payment of interest thereon and the date and amount of each repayment or prepayment of principal thereof. In any legal action or proceeding in respect of this Note, the entries made on the Grid shall be prima facie evidence of the existence and the amounts of the obligations of the Borrower recorded therein.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Credit Agreement, to which reference is hereby made for a statement of said terms and



provisions, including those terms and provisions under which this Note may be paid prior to its due date and the restrictions on transfer set forth therein.

THIS NOTE IS A LIMITED OBLIGATION OF THE BORROWER PAYABLE SOLELY FROM REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT AND IS NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, LIEN OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF THE BORROWER OR ANY OF ITS INCOME OR RECEIPTS, EXCEPT THE REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT.

The Borrower hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever in connection with the delivery, acceptance, performance and enforcement of this Note.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Credit Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance and delivery of this Note have been duly authorized by resolution of the Borrower duly adopted.

IN WITNESS WHEREOF, the Peninsula Corridor Joint Powers Board has caused this Note to be duly executed in its name by the manual or facsimile signature of an Authorized Officer as of the date and year first above referenced.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**TAX-EXEMPT NOTE GRID**

**TAX-EXEMPT LOANS AND PAYMENTS OF PRINCIPAL AND INTEREST**

Date of Tax-Exempt Loan	Amount of Tax-Exempt Loan	Principal Amount of Tax-Exempt Loan Repaid	Amount of Interest on Tax-Exempt Loan Repaid	Aggregate Tax-Exempt Loan Balance	Notation Made By

Note: Additional grid pages may be attached to this Tax-Exempt Note as may be necessary to record certain information regarding each Tax-Exempt Loan.

**EXHIBIT A-2**

**[FORM OF TAXABLE NOTE]**

**TRANSFER OF THIS TAXABLE NOTE IS RESTRICTED  
AS SET FORTH IN THE CREDIT AGREEMENT**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
PROMISSORY NOTE**

**[August 13, 2021]**  
San Carlos, California  
\$100,000,000

PENINSULA CORRIDOR JOINT POWERS BOARD, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “Borrower”), for value received, hereby promises to pay, solely from the funds hereinafter referred to, to WELLS FARGO BANK, NATIONAL ASSOCIATION (the “Lender”), the principal sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000) or, if less, the aggregate principal amount of all Taxable Loans made by the Lender to the Borrower, payable at such times and at such location as are specified in the Credit Agreement, dated as of August 1, 2021 (the “Credit Agreement”), between the Borrower and the Lender, together with accrued and unpaid interest thereon. Capitalized terms not otherwise defined herein have the meaning set forth in the Credit Agreement.

The unpaid principal amount of the Taxable Loans evidenced by this Taxable Note (this “Note”) from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Credit Agreement. This Note constitutes a PCEP Facility Note and an Initial Note under the Indenture.

Payments of both principal and interest are to be made in lawful money of the United States of America.

Annexed hereto and made a part hereof is a grid (the “Grid”) on which shall be shown all Taxable Loans made by the Lender from time to time under the Credit Agreement and the amounts of principal and interest payable and paid from time to time under the Credit Agreement. The Borrower hereby appoints the Lender as its agent to endorse the Grid and note thereon the date and the amount of each Taxable Loan and the date and amount of each payment of interest thereon and the date and amount of each repayment or prepayment of principal thereof. In any legal action or proceeding in respect of this Note, the entries made on the Grid shall be prima facie evidence of the existence and the amounts of the obligations of the Borrower recorded therein.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Credit Agreement, to which reference is hereby made for a statement of said terms and provisions, including those terms and provisions under which this Note may be paid prior to its due date and the restrictions on transfer set forth therein.

THIS NOTE IS A LIMITED OBLIGATION OF THE BORROWER PAYABLE SOLELY FROM REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT AND IS NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, LIEN OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF THE BORROWER OR ANY OF ITS INCOME OR RECEIPTS, EXCEPT THE REVENUES AND THE OTHER SOURCES IDENTIFIED IN THE CREDIT AGREEMENT.

The Borrower hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever in connection with the delivery, acceptance, performance and enforcement of this Note.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Credit Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance and delivery of this Note have been duly authorized by resolution of the Borrower duly adopted.

IN WITNESS WHEREOF, the Peninsula Corridor Joint Powers Board has caused this Note to be duly executed in its name by the manual or facsimile signature of an Authorized Officer as of the date and year first above referenced.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**TAXABLE NOTE GRID**  
**TAXABLE LOANS AND PAYMENTS OF PRINCIPAL AND INTEREST**

Date of Taxable Loan	Amount of Taxable Loan	Principal Amount of Taxable Loan Repaid	Amount of Interest on Taxable Loan Repaid	Aggregate Taxable Loan Balance	Notation Made By

Note: Additional grid pages may be attached to this Taxable Note as may be necessary to record certain information regarding each Taxable.

**EXHIBIT B**  
**FORM OF BORROWING NOTICE**  
**BORROWING NOTICE**

Date: \_\_\_\_\_

Wells Fargo Bank, National Association  
333 Market Street, 15th Floor  
MAC: A0109-150  
San Francisco, California 94105  
Attention: Dale Barton, Vice President  
Telephone: (628) 260-3382  
Email: [dale.r.barton@wellsfargo.com](mailto:dale.r.barton@wellsfargo.com)

Wells Fargo Bank, National Association  
1700 Lincoln, Floor 9  
MAC C7300-09E  
Denver, Colorado 80203  
Attention: Mike Cook, Assistant Vice President  
Telephone: (303) 863-5524  
Email: [Michael.r.cook@wellsfargo.com](mailto:Michael.r.cook@wellsfargo.com)

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 1, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), between Peninsula Corridor Joint Powers Board (the "Borrower") and Wells Fargo Bank, National Association. Terms used herein have the meanings assigned to them in the Credit Agreement.

The Borrower hereby requests a Borrowing of a [Tax-Exempt Loan] [Taxable Loan] (delete as applicable):

1. On \_\_\_\_\_ (the "Borrowing Date")
2. In the amount of \$ \_\_\_\_\_
3. The Borrower hereby irrevocably authorizes the Lender to disburse the proceeds of such Loan to the deposit account of the Borrower maintained by the Lender which ends in [xxxx].

The Borrowing requested herein complies with the requirements of Section 2.02 of the Credit Agreement. The Borrower hereby represents and warrants that each of the conditions set forth in Section 5.02 of the Credit Agreement will be satisfied on and as of the Borrowing Date.

Delivery of an executed counterpart of a signature page of this Borrowing Notice by fax transmission and by electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Borrowing Notice.

IN WITNESS WHEREOF, the Borrower has caused this Borrowing Notice to be duly executed in its name by the signature of an Authorized Officer as of the date of this Borrowing Notice set forth above.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

## EXHIBIT C

### FORM OF REQUEST FOR EXTENDED FUNDING PERIOD

Date: \_\_\_\_\_

Wells Fargo Bank, National Association  
333 Market Street, 15th Floor  
MAC: A0109-150  
San Francisco, California 94105  
Attention: Dale Barton, Vice President  
Telephone: (628) 260-3382  
Email: [dale.r.barton@wellsfargo.com](mailto:dale.r.barton@wellsfargo.com)

Wells Fargo Bank, National Association  
1700 Lincoln, Floor 9  
MAC C7300-09E  
Denver, Colorado 80203  
Attention: Mike Cook, Assistant Vice President  
Telephone: (303) 863-5524  
Email: [Michael.r.cook@wellsfargo.com](mailto:Michael.r.cook@wellsfargo.com)

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 1, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), between Peninsula Corridor Joint Powers Board (the "Borrower") and Wells Fargo Bank, National Association. Terms used herein have the meanings assigned to them in the Credit Agreement.

The Borrower hereby requests, pursuant to Section 2.05(b) of the Credit Agreement, that the principal of the Loans outstanding on the Maturity Date be payable on each Amortization Principal Payment Date with interest as provided in Section 2.05(b).

In connection with such request, the Borrower hereby represents and warrants that:

(a) no Default or Event of Default has occurred and is continuing under the Credit Agreement on the Amortization Payment Commencement Date; and

(b) all representations and warranties of the Borrower in the Credit Agreement are true and correct and are deemed to be made on the Amortization Payment Commencement Date.

We have enclosed along with this request the following information:



1. The outstanding principal amount of the Loans;
2. The nature of any and all Defaults and Events of Default; and
3. Any other pertinent information previously requested by the Lender.

Please advise if the foregoing terms are acceptable.

Very truly yours,

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**EXHIBIT D**

**FORM OF CERTIFICATE OF COMPLIANCE**

This Certificate of Compliance is delivered to you pursuant to that certain Credit Agreement dated as of August 1, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”), between Peninsula Corridor Joint Powers Board (the “Borrower”) and Wells Fargo Bank, National Association (the “Lender”). Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

**THE UNDERSIGNED HEREBY CERTIFIES THAT:**

1. I am the duly appointed [Insert Title of Authorized Officer] of the Borrower;
2. I have reviewed the terms of the Credit Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. The financial statements required by Section 4.02(a) of the Credit Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Borrower in accordance with GAAP (subject to year-end adjustments) as of the dates and for the periods covered thereby.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

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The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Title: Authorized Officer

**FEE AND PRICING AGREEMENT  
DATED [AUGUST 13, 2021]**

Reference is hereby made to that certain Credit Agreement dated as of August 1, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “*Agreement*”), between **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “*Borrower*”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the “*Lender*”), the proceeds of which will be used for the Peninsula Corridor Electrification Project (as defined in the Agreement). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

The purpose of this Fee and Pricing Agreement is to confirm the agreement between the Lender and the Borrower with respect to certain pricing terms and certain fees payable by the Borrower to the Lender. This Fee and Pricing Agreement is the Fee and Pricing Agreement referenced in the Agreement, and the terms hereof are incorporated by reference into the Agreement. This Fee and Pricing Agreement and the Agreement are to be construed as one agreement among the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee and Pricing Agreement.

ARTICLE I. DEFINED TERMS.

For purposes of the Agreement, the following defined terms shall have the meanings set forth below:

“*Applicable Tax-Exempt Margin*” means, (i) initially 0.290% per annum and (ii) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, the rate per annum associated with the Level corresponding to the applicable Rating assigned by any of Moody’s, S&P, Fitch or Kroll, as specified below.

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	KROLL RATING	APPLICABLE TAX-EXEMPT MARGIN
Level 1	Aa3 or above	AA- or above	AA- or above	AA- or above	0.290%
Level 2	A1	A+	A+	A+	0.365%
Level 3	A2	A	A	A	0.515%
Level 4	A3	A-	A-	A-	0.665%
Level 5	Baa1	BBB+	BBB+	BBB+	0.915%
Level 6	Baa2	BBB	BBB	BBB	1.265%
Level 7	Baa3	BBB-	BBB-	BBB-	1.765%

In the event of a split Rating (i.e., one of the Ratings is at a different Level than one or more of the other Ratings), the Applicable Tax-Exempt Margin will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level 7 is

the lowest Level and Level 1 is the highest Level). Any change in the Applicable Tax-Exempt Margin resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings are references to rating categories as determined by the Rating Agencies at the Effective Date, and, in the event of adoption of any new or changed rating system by any Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced rating assigned to the Agency in connection with the adoption of a “global” rating scale, each of the Ratings referred to herein from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date. Any change in the Applicable Tax-Exempt Margin shall be applied on the LIBO Rate Reset Date next succeeding the date on which the change in Rating occurs. The Agency acknowledges that as of the Effective Date the Applicable Tax-Exempt Margin is that specified above for Level 1.

“*Applicable Taxable Margin*” means (i) initially 0.360% per annum and (ii) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, the rate per annum associated with the Level corresponding to the applicable Rating assigned by any of Moody’s, S&P, Fitch or Kroll, as specified below.

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	KROLL RATING	APPLICABLE TAXABLE MARGIN
Level 1	Aa3 or above	AA- or above	AA- or above	AA- or above	0.360%
Level 2	A1	A+	A+	A+	0.435%
Level 3	A2	A	A	A	0.585%
Level 4	A3	A-	A-	A-	0.735%
Level 5	Baa1	BBB+	BBB+	BBB+	0.985%
Level 6	Baa2	BBB	BBB	BBB	1.335%
Level 7	Baa3	BBB-	BBB-	BBB-	1.835%

In the event of a split Rating (i.e., one of the Ratings is at a different Level than one or more of the other Ratings), the Applicable Taxable Margin will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level 7 is the lowest Level and Level 1 is the highest Level). Any change in the Applicable Taxable Margin resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings are references to rating categories as determined by the Rating Agencies at the Effective Date, and, in the event of adoption of any new or changed rating system by any Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced rating assigned to the Agency in connection with the adoption of a “global” rating scale, each of the Ratings referred to herein from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date. Any change in the Applicable Taxable Margin shall be applied on the LIBO Rate Reset Date next succeeding the date on which the change in Rating occurs. The Agency acknowledges that as of the Effective Date the Applicable Taxable Margin is that specified above for Level 1.

ARTICLE II. FEES.

*Section 2.1. Commitment Fee.* The Borrower agrees to pay to the Lender on October 1, 2021, for the period from and including the Effective Date to and including September 30, 2021, and in arrears on the first Business Day of each January, April, July and October occurring thereafter to the Commitment Termination Date, a non-refundable commitment fee (the “*Commitment Fee*”) at a rate per annum equal to: (i) initially, 0.23% per annum and (ii) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, the rate per annum associated the rate associated with the Rating specified below (the “*Commitment Fee Rate*”) on the average daily unused portion of the Commitment during each quarterly period.

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	KROLL RATING	COMMITMENT FEE RATE
Level 1	Aa3 or above	AA- or above	AA- or above	AA- or above	0.230%
Level 2	A1	A+	A+	A+	0.255%
Level 3	A2	A	A	A	0.305%
Level 4	A3	A-	A-	A-	0.355%
Level 5	Baa1	BBB+	BBB+	BBB+	0.505%
Level 6	Baa2	BBB	BBB	BBB	0.755%
Level 7	Baa3	BBB-	BBB-	BBB-	1.105%

In the event of a split Rating (i.e., one of the Ratings is at a different Level than one or more of the other Ratings), the Commitment Fee Rate will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level 7 is the lowest Level and Level 1 is the highest Level). Any change in the Commitment Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings are references to rating categories as determined by the Rating Agencies at the Effective Date, and, in the event of adoption of any new or changed rating system by any Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced rating assigned to the Agency in connection with the adoption of a “global” rating scale, each of the Ratings referred to herein from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date. Upon the occurrence and during the continuance of an Event of Default, the Commitment Fee Rate shall increase by an additional 1.00% per annum above the Commitment Fee Rate set forth in Level 7 above. The Commitment Fee shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

*Section 2.2. Termination or Reduction Fee.* (i) The Borrower hereby agrees to pay to the Lender a termination fee in connection with the termination of the Commitment prior to the first anniversary of the Effective Date in an amount equal to the product of (A) the Commitment Fee Rate in effect pursuant to Section 2.1 above on the date of termination, (B) the Commitment then in effect (without regard to any temporary reductions of the Commitment), and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to and including the first anniversary of the Effective Date and the denominator of which is 360, payable on the date the Commitment is terminated.

(ii) The Borrower hereby agrees to pay to the Lender a reduction fee in connection with each and every permanent reduction of the Commitment prior to the first anniversary of the Effective Date in an amount equal to the product of (A) the Commitment Fee Rate in effect pursuant to Section 2.1 above on the date of such reduction, (B) the difference between the Commitment (without regard to any temporary reductions of the Commitment) prior to such reduction and the Commitment (without regard to any temporary reductions of the Commitment) after such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the first anniversary of the Closing Date and the denominator of which is 360, payable on the date the Commitment is reduced.

*Section 2.3. Amendment or Waiver Fee.* The Borrower shall pay to the Lender a fee for each amendment to this Agreement or any other Related Document or any consent or waiver by the Lender with respect to any such Related Document, in each case, in a minimum amount of \$2,500, plus the reasonable fees and expenses of counsel to the Lender.

### ARTICLE III MISCELLANEOUS.

*Section 3.1. Amendments.* No amendment to this Fee and Pricing Agreement shall become effective except by a written instrument executed by the Borrower and the Lender.

*Section 3.2. Governing Law.* This Fee and Pricing Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Fee and Pricing Agreement and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of California.

*Section 3.3. Counterparts.* This Fee and Pricing Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument.

*Section 3.4. Severability.* Any provision of this Fee and Pricing Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[SIGNATURE PAGE FOLLOWS]

Draft

IN WITNESS WHEREOF, the parties hereto have caused this Fee and Pricing Agreement to be duly executed and delivered by their respective officers as of the date first written above.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Name: Derek S. Hansel  
Title: Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: Dale Barton  
Title: Vice President



**FEE AND PRICING AGREEMENT**  
**DATED [AUGUST 13, 2021]**

Reference is hereby made to that certain Credit Agreement dated as of August 1, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “*Agreement*”), between **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public entity duly organized and existing as a joint exercise of powers agency under and by virtue of the laws of the State of California (the “*Borrower*”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the “*Lender*”), the proceeds of which will be used for working capital purposes. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

The purpose of this Fee and Pricing Agreement is to confirm the agreement between the Lender and the Borrower with respect to certain pricing terms and certain fees payable by the Borrower to the Lender. This Fee and Pricing Agreement is the Fee and Pricing Agreement referenced in the Agreement, and the terms hereof are incorporated by reference into the Agreement. This Fee and Pricing Agreement and the Agreement are to be construed as one agreement among the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee and Pricing Agreement.

ARTICLE I. DEFINED TERMS.

For purposes of the Agreement, the following defined terms shall have the meanings set forth below:

“*Applicable Tax-Exempt Margin*” means, (i) initially 0.290% per annum and (ii) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, the rate per annum associated with the Level corresponding to the applicable Rating assigned by any of Moody’s, S&P, Fitch or Kroll, as specified below.

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	KROLL RATING	APPLICABLE TAX-EXEMPT MARGIN
Level 1	Aa3 or above	AA- or above	AA- or above	AA- or above	0.290%
Level 2	A1	A+	A+	A+	0.365%
Level 3	A2	A	A	A	0.515%
Level 4	A3	A-	A-	A-	0.665%
Level 5	Baa1	BBB+	BBB+	BBB+	0.915%
Level 6	Baa2	BBB	BBB	BBB	1.265%
Level 7	Baa3	BBB-	BBB-	BBB-	1.765%

In the event of a split Rating (i.e., one of the Ratings is at a different Level than one or more of the other Ratings), the Applicable Tax-Exempt Margin will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level 7 is the lowest Level and Level 1 is the highest Level). Any change in the Applicable Tax-Exempt

Margin resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings are references to rating categories as determined by the Rating Agencies at the Effective Date, and, in the event of adoption of any new or changed rating system by any Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced rating assigned to the Agency in connection with the adoption of a “global” rating scale, each of the Ratings referred to herein from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date. Any change in the Applicable Tax-Exempt Margin shall be applied on the LIBO Rate Reset Date next succeeding the date on which the change in Rating occurs. The Agency acknowledges that as of the Effective Date the Applicable Tax-Exempt Margin is that specified above for Level 1.

“*Applicable Taxable Margin*” means (i) initially 0.360% per annum and (ii) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, the rate per annum associated with the Level corresponding to the applicable Rating assigned by any of Moody’s, S&P, Fitch or Kroll, as specified below.

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	KROLL RATING	APPLICABLE TAXABLE MARGIN
Level 1	Aa3 or above	AA- or above	AA- or above	AA- or above	0.360%
Level 2	A1	A+	A+	A+	0.435%
Level 3	A2	A	A	A	0.585%
Level 4	A3	A-	A-	A-	0.735%
Level 5	Baa1	BBB+	BBB+	BBB+	0.985%
Level 6	Baa2	BBB	BBB	BBB	1.335%
Level 7	Baa3	BBB-	BBB-	BBB-	1.835%

In the event of a split Rating (i.e., one of the Ratings is at a different Level than one or more of the other Ratings), the Applicable Taxable Margin will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level 7 is the lowest Level and Level 1 is the highest Level). Any change in the Applicable Taxable Margin resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings are references to rating categories as determined by the Rating Agencies at the Effective Date, and, in the event of adoption of any new or changed rating system by any Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced rating assigned to the Agency in connection with the adoption of a “global” rating scale, each of the Ratings referred to herein from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date. Any change in the Applicable Taxable Margin shall be applied on the LIBO Rate Reset Date next succeeding the date on which the change in Rating occurs. The Agency acknowledges that as of the Effective Date the Applicable Taxable Margin is that specified above for Level 1.

ARTICLE II. FEES.

*Section 2.1. Commitment Fee.* The Borrower agrees to pay to the Lender on October 1, 2021, for the period from and including the Effective Date to and including September 30, 2021, and in arrears on the first Business Day of each January, April, July and October occurring thereafter to the Commitment Termination Date, a non-refundable commitment fee (the “*Commitment Fee*”) at a rate per annum equal to: (i) initially, 0.23% per annum and (ii) upon the issuance of a long-term unenhanced rating to Senior Lien Debt, the rate per annum associated the rate associated with the Rating specified below (the “*Commitment Fee Rate*”) on the average daily unused portion of the Commitment during each quarterly period.

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	KROLL RATING	COMMITMENT FEE RATE
Level 1	Aa3 or above	AA- or above	AA- or above	AA- or above	0.230%
Level 2	A1	A+	A+	A+	0.255%
Level 3	A2	A	A	A	0.305%
Level 4	A3	A-	A-	A-	0.355%
Level 5	Baa1	BBB+	BBB+	BBB+	0.505%
Level 6	Baa2	BBB	BBB	BBB	0.755%
Level 7	Baa3	BBB-	BBB-	BBB-	1.105%

In the event of a split Rating (i.e., one of the Ratings is at a different Level than one or more of the other Ratings), the Commitment Fee Rate will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level 7 is the lowest Level and Level 1 is the highest Level). Any change in the Commitment Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings are references to rating categories as determined by the Rating Agencies at the Effective Date, and, in the event of adoption of any new or changed rating system by any Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced rating assigned to the Agency in connection with the adoption of a “global” rating scale, each of the Ratings referred to herein from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date. Upon the occurrence and during the continuance of an Event of Default, the Commitment Fee Rate shall increase by an additional 1.00% per annum above the Commitment Fee Rate set forth in Level 7 above. The Commitment Fee shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

*Section 2.2. Termination or Reduction Fee.* (i) The Borrower hereby agrees to pay to the Lender a termination fee in connection with the termination of the Commitment prior to the first anniversary of the Effective Date in an amount equal to the product of (A) the Commitment Fee Rate in effect pursuant to Section 2.1 above on the date of termination, (B) the Commitment then in effect (without regard to any temporary reductions of the Commitment), and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to and including the first anniversary of the Effective Date and the denominator of which is 360, payable on the date the Commitment is terminated.

(ii) The Borrower hereby agrees to pay to the Lender a reduction fee in connection with each and every permanent reduction of the Commitment prior to the first anniversary of the Effective Date in an amount equal to the product of (A) the Commitment Fee Rate in effect pursuant to Section 2.1 above on the date of such reduction, (B) the difference between the Commitment (without regard to any temporary reductions of the Commitment) prior to such reduction and the Commitment (without regard to any temporary reductions of the Commitment) after such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the first anniversary of the Closing Date and the denominator of which is 360, payable on the date the Commitment is reduced.

*Section 2.3. Amendment or Waiver Fee.* The Borrower shall pay to the Lender a fee for each amendment to this Agreement or any other Related Document or any consent or waiver by the Lender with respect to any such Related Document, in each case, in a minimum amount of \$2,500, plus the reasonable fees and expenses of counsel to the Lender.

### ARTICLE III MISCELLANEOUS.

*Section 3.1. Amendments.* No amendment to this Fee and Pricing Agreement shall become effective except by a written instrument executed by the Borrower and the Lender.

*Section 3.2. Governing Law.* This Fee and Pricing Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Fee and Pricing Agreement and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of California.

*Section 3.3. Counterparts.* This Fee and Pricing Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument.

*Section 3.4. Severability.* Any provision of this Fee and Pricing Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[SIGNATURE PAGE FOLLOWS]

Draft

IN WITNESS WHEREOF, the parties hereto have caused this Fee and Pricing Agreement to be duly executed and delivered by their respective officers as of the date first written above.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Name: Derek S. Hansel  
Title: Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: Dale Barton  
Title: Vice President

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STAFF REPORT**

TO: Joint Powers Board

THROUGH: Michelle Bouchard  
Acting Executive Director

FROM: Sebastian Petty  
Deputy Chief, Planning, Caltrain

SUBJECT: **UPDATE ON SERVICE RESTORATION**



Finance Committee  
Recommendation



Work Program-Legislative-Planning  
Committee Recommendation



Staff Coordinating  
Council Reviewed



Staff Coordinating Council  
Recommendation

**ACTION**

This item is for information only.

**SIGNIFICANCE**

Caltrain is currently operating a reduced, 70-train per weekday service based on the significant reduction in demand resulting from the COVID-19 Pandemic. The current service has been developed to conserve agency resources while continuing to provide a foundational level of regional rail service to communities in San Francisco, San Mateo, and Santa Clara counties.

As the COVID-19 Pandemic recedes and the region and state relax and lift public health orders, transit operators across the region are preparing to adjust and restore service. Caltrain has finalized plans for a service change and expansion starting on August 30. This restoration will allow the railroad to provide a competitive service offering as some employees return to in-office work and in-person education resumes. The planned service change also provides a further opportunity to continue implementation of the Equity, Connectivity Recovery and Growth Framework adopted by the Board in 2020 – with an emphasis on providing improved service at all times of day, a simplified set of stopping patterns, and coordinated connections with other transit operators at key regional transfer points. At the same time, Caltrain must manage the increase in service while still balancing constraints created by significant ongoing construction activities, staffing availability, and overall financial capacity.

At the August JPB meeting, staff will provide a brief overview of the final schedule, which will go into effect Monday, August 30, 2021.

## **BUDGET IMPACT**

There is no budget impact associated with receiving this informational update. The restoration of service described falls within the authority provided in the adopted FY22 operating budget. Staff will closely monitor service costs and ongoing restoration plans throughout FY22 and will notify the board as early as possible if there is a potential need to consider an amendment to the FY22 operating budget.

## **BACKGROUND**

Starting in March of 2020, the emergence of the COVID-19 Pandemic resulted in a rapid and severe crisis for the railroad, with ridership plummeting by as much as 98%. Caltrain quickly implemented significant service cuts and has been restoring and adjusting service over subsequent months as the pandemic has continued.

At the June 2020 Board Meeting, staff announced that activity on the Caltrain Business Plan would pause and pivot toward COVID Recovery Planning efforts. At the September 2020 Board Meeting the Board adopted the Equity, Connectivity, Recovery & Growth Framework (the Framework) – a significant policy document that outlines Caltrain's approach to recovering from the COVID-19 Pandemic and growing the system in a manner consistent with the larger Business Plan process. The framework includes specific policies and actions that describe how Caltrain can recover in a way that emphasizes improving equity outcomes on the system and enhancing connectivity to the region's transit network.

The Equity, Connectivity, Recovery & Growth Framework was used to develop a reduced, 70 train per weekday service that was implemented at the end of 2020 and adjusted in March of 2021 to coincide with an update to BART's timetable. This service focused on initial implementation of the Framework by providing a simplified set of train patterns, improved midday and weekend service levels, and coordinated connections at the Millbrae BART station.

The service restoration will build off these improvements and not only restore service to pre-pandemic levels, but will also provide additional enhancements to capture new ridership markets and adjust to changing travel behaviors. This includes increased train frequencies at most stations throughout the day, along with a variety of new limited and "Baby Bullet" express trains to provide a competitive and reliable transit service to the region.

Prepared by: Ted Burgwyn, Director, Rail Network and Operations Planning, Caltrain  
650-551-6139