

# Update on Implementation of JPB Governance Memorandum of Understanding

JPB Board Meeting  
June 1, 2023



# BACKGROUND: Events Leading to MOU

- **SMCTD's Investment:** SMCTD invested \$82M in purchase of ROW in 1991
- **Reimbursement:** Member Agencies agreed to use best efforts to reimburse SMCTD from non-local funds, or use their own funds, at their option, to pay their proportionate share
- **Rights:** SMCTD obtained tenancy in common right in ROW in San Mateo County and other real property interests until initial investment is repaid

# BACKGROUND: Events Leading to MOU (cont'd)

- **Managing Agency:** Under JPA, SMCTD has right to serve as Managing Agency until it is repaid
- **2008 Agreement:** MTC and Member Agencies agreed to pay SMCTD \$53.3M using state gas tax spillover funds for its initial investment and Member Agencies agreed that SMCTD could serve as Managing Agency for so long as it wishes
- **Payment:** SMCTD received \$33.5M of \$53.3M; state gas tax spillover funds disappeared, leaving a balance of \$19.8M

# BACKGROUND – Events Leading to MOU (cont'd)

- **Measure RR:** Member Agencies and JPB agreed to place dedicated sales tax for Caltrain on November 2020 ballot
- **JPB Resolution No. 2020-42:** JPB expressed intent to allow JPB to appoint the Caltrain executive director and to initiate efforts to reimburse SMCTD for its investment in Caltrain
- **Governance:** JPB considered various governance models and adopted term sheet on March 3, 2022

# MEMORANDUM OF UNDERSTANDING

- After extensive negotiations, the JPB and Member Agency Boards adopted resolutions approving the MOU
- The MOU became effective August 5, 2022, triggering several deadlines for implementing the governance changes and reimbursing SMCTD

# MOU TERMS

- **Caltrain ED:** Caltrain ED reports to JPB, which exercises authority over selection, hiring, annual goal setting, performance review, compensation, and termination of Caltrain ED
- **Caltrain ED's authority:** Caltrain ED has sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of Rail Division employees, subject only to SMCTD's salary ordinance and employee manual and policies

# MOU TERMS (cont'd)

- **New Direct Reports:** Establishes 5 new direct reports hired by and reporting to the Caltrain ED
- **Role of Managing Agency:** Role of Managing Agency is to support JPB through employment of staff directly supporting the railroad and the Caltrain ED and through provision of fully or partially shared services in the areas of HR, C&P, IT, Civil Rights, Accounting, Treasury, Budgets, Finance, Communications, Government and External Affairs, and Real Estate and Grants

# MOU TERMS (cont'd)

- **Shared Services:** Provides for negotiation and execution of shared services agreement
- **MTC Payment:** Upon receipt of \$19.6M from MTC (the balance left from the 2008 RPOA), SMCTD will reconvey its interest in the ROW, relinquish real property interests, and release any claims that it may have against CCSF and VTA for repayment of SMCTD's contribution towards the purchase of the ROW



# MOU TERMS (cont'd)

- **CCSF and VTA Payment:** Requires CCSF (\$6,080,000) and VTA (\$9,120,000) to pay SMCTD \$15.2M by August 4, 2023, to compensate SMCTD for delay in payment of \$19.6M and for assignment of certain rights as Managing Agency
- **RPOA and JPA:** Provides a timeline for negotiation of amendments to RPOA and JPA to conform to the MOU and to address inconsistencies, ambiguities, and uncodified practices

# MOU TERMS (cont'd)

- **Indemnification:** Provides for indemnification by JPB and SMCTD for actions for which they are responsible
- **Reversion:** Provides that the Managing Agency arrangement will revert to the terms of JPA and RPOA and that specified terms of MOU will be void if CCSF/VTA do not pay by August 4, 2023

# IMPLEMENTATION OF MOU

# 1. MTC Payment of \$19.6M to SMCTD

- MTC agreed to pay SMCTD \$19.6M (the outstanding balance owed under the 2008 RPOA) forthwith
- **Status:** MTC has paid SMCTD \$12.6M, and has allocated the remaining \$7M to SMCTD, with payment expected this summer

## 2. CCSF and VTA Payment to SMCTD of \$15.2M

- CCSF and VTA agreed to pay SMCTD \$6,080,000 and \$9,120,000, respectively, into escrow account by August 4, 2023, or the governance changes will revert back to the terms in place before the MOU
- **Status:** The parties hope to finalize the escrow agreement this week so CCSF and VTA may deposit their funds by August 4, 2023

# 3. Revision of the RPOA

- The MOU required counsel for the parties to negotiate and finalize a Revised RPOA by December 4, 2022, to be presented to the JPB and Member Agency Boards at their next regular meeting after MTC pays the full \$19.6M
- The MOU requires that the revised RPOA: (1) conform the RPOA with the terms of the MOU, (2) resolve inconsistencies between the RPOA and JPA, (3) clarify any ambiguities in the RPOA and JPA, and (4) codify certain current practices that are inconsistent with the JPA
- In the event of reversion, the Revised RPOA would be limited to conforming the RPOA with the MOU

# 3. Revision of the RPOA (cont'd)

- **Status:** The parties met deadlines to negotiate the Revised RPOA, but parties have been unable to agree on Revised RPOA
- JPB counsel distributed a final, revised version on March 30, 2023, in an effort to address the parties' concerns
- Counsel for VTA, CCSF and JPB have approved while counsel for SMCTD object to the JPB's proposed draft

# 3. Revision of the RPOA (cont'd)

- While SMCTD does not object to revising the RPOA, SMCTD counsel objects both to timing and scope of proposed changes
- SMCTD contends RPOA shouldn't be revised until it's clear whether reversion will occur
- To address this concern, counsel for JPB has drafted two versions, one that would go into effect if CCSF/VTA pay \$15.2M by August 4, and one that would go into effect if reversion were to occur
- SMCTD also contends certain provisions of the RPOA should not be amended, regardless of reversion



# 3. Revision of the RPOA (cont'd)

- Given this dispute, the parties may not be able to meet deadline in MOU to adopt the Revised RPOA after MTC makes final payment
- Failure to meet that deadline does not affect validity of MOU
- Parties will continue their efforts to reach agreement

# 4. Shared Services Agreement

- SMCTD and JPB must negotiate a shared services agreement to govern provision of partially and fully shared services within three months after CCSF/VTA pay \$15.2M
- **Status:** Parties have met multiple times to discuss terms and continue work together to meet deadline

# Authority of Caltrain ED

- MOU provides that Caltrain ED has sole authority over Rail Division employment decisions, subject only to SMCTD HR policies and salary ordinance
- As a result of impasse between Caltrain ED and SMCTD over several employment decisions, the matter was referred to counsel
- Caltrain counsel proposed revising HR policies to reflect Caltrain ED authority, e.g.:
  - “All employees of the District are employed ‘at will’ and serve at the pleasure of the General Manager/CEO, ***except employees in the Rail Division, who serve at the pleasure of the Caltrain Executive Director.***”

# Authority of Caltrain ED (cont'd)

- SMCTD special counsel and GM initially took the position that proposed change requires amendment to MOU, because SMCTD HR policies provide that all employees serve at pleasure of SMCTD GM, and authority of Caltrain ED is subject to HR policies
- JPB counsel believes this construction is inconsistent with plain language and intent of MOU

# Authority of Caltrain ED (cont'd)

- SMCTD construction would: (1) read “sole” out of existence because Caltrain ED’s authority to hire/fire would be subject to SMCTD GM veto and (2) contravene intent of parties to pay SMCTD \$15.2M in exchange, in part, for delegating certain duties as Managing Agency to JPB
- Where HR policies vest discretion in SMCTD GM, Caltrain ED should exercise that discretion for Rail Division employees, subject to limits imposed by HR policies and oversight of compliance with those policies by SMCTD

# Authority of Caltrain ED (cont'd)

- SMCTD and JPB counsel have engaged in additional discussions, Chair Gee engaged SMCTD Chair Josh Powell, and parties have reached a resolution
- Caltrain ED has authority over Rail Division employment decisions, subject to SMCTD's authority to verify compliance with SMCTD HR policies; disagreements regarding Caltrain ED's compliance with SMCTD's HR policies, and other disagreements regarding the implementation of the MOU, would be brought to JPB and SMCTD Chairs for discussion and resolution
- Agreement to be documented through supplement to SMCTD HR policies

# Questions?

FOR MORE INFORMATION

[WWW.CALTRAIN.COM](http://WWW.CALTRAIN.COM)

