

Update on Implementation of JPB Governance Memorandum of Understanding

JPB Board Meeting, Item 11
November 2, 2023



BACKGROUND: Events Leading to MOU

- **SamTrans' Investment:** SamTrans invested \$82M in purchase of ROW in 1991
- **Reimbursement:** Member Agencies agreed to use best efforts to reimburse SamTrans from non-local funds, or use their own funds, at their option, to pay their proportionate share
- **Rights:** SamTrans 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, SamTrans has right to serve as Managing Agency until it is repaid
- **2008 Agreement:** MTC and Member Agencies agreed to pay SamTrans \$53.3M using state gas tax spillover funds for its initial investment and Member Agencies agreed that SamTrans could serve as Managing Agency for so long as it wishes
- **Payment:** SamTrans 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 SamTrans 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 SamTrans

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 SamTrans's salary ordinance and employee manual and policies
- **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), SamTrans 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 SamTrans's contribution towards the purchase of the ROW
- **CCSF and VTA Payment:** Requires CCSF (\$6,080,000) and VTA (\$9,120,000) to pay SamTrans \$15.2M by August 4, 2023, to compensate SamTrans 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 SamTrans 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/MTA do not pay by August 4, 2023

IMPLEMENTATION OF MOU

1. MTC Payment of \$19.6M to SamTrans

- MTC agreed to pay SamTrans \$19.6M (the outstanding balance owed under the 2008 RPOA) forthwith
- **Status:** MTC completed its payment on September 19, 2023
 - SamTrans has waived any claims against VTA and CCSF related to SamTrans' initial investment in ROW
 - SamTrans is in the process of drafting all necessary documents to reconvey its interest in the ROW to JPB
 - SamTrans' equity conversion right has been extinguished
 - JPB now has sole authority over the management, acquisition, and disposition of real property, except that it cannot transfer or sell substantially all of the ROW without Member Agency approval

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

- CCSF and VTA agreed to pay SamTrans \$6,080,000 and \$9,120,000, respectively, into escrow account by August 4, 2023, or the governance changes will revert to the terms in place before the MOU
- **Status:** Parties established escrow account and CCSF and VTA deposited their funds into the account by August 4, 2023, deadline
- SamTrans certified that MTC had satisfied its commitment to pay SamTrans \$19.6M and escrow agent disbursed \$15.2M to SamTrans
- MOU section providing for reversion to pre-existing managing agency arrangement if VTA and CCSF did not pay is void

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 were not able to agree on Revised RPOA before the deadline for presentation to their respective boards (next regularly scheduled meeting following MTC's final payment to SamTrans on September 19, 2023)
- 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 approved while counsel for SamTrans objected to the JPB's proposed draft

3. Revision of the RPOA (cont'd)

- Following VTA and CCSF payment of \$15.2M to SamTrans, which eliminated the possibility of reversion, counsel for JPB and SamTrans revived negotiations and reached a tentative agreement last week
- Counsel have shared the proposed agreement with counsel for VTA and CCSF, which are considering it
- Assuming they agree, revised RPOA could be presented to parties' respective boards as early as December

4. Shared Services Agreement

- SamTrans 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, implementation, and Independent Cost Allocation Plan
 - Parties have exchanged draft agreement and a work plan template that would be used to facilitate provision of shared services
 - Parties expect to finalize draft for presentation to their respective boards within the next several months

5. Asset Inventory

- JPB must compile an inventory of its assets within three months after CCSF/VTA pay \$15.2M
- **Status:** Caltrain and SamTrans staff have developed inventory of capital assets and real property
 - Capital assets include rolling stock, stations, bridges, tunnels, ticket machines, etc.
 - Capital assets are tracked by project identification number, funding sources, general ledger account numbers, asset categories, etc., and staff calculate the depreciation and update the Net Book Value on monthly basis
 - Staff have also developed a matrix identifying JPB real property assets, including maps depicting the JPB's property ownership
 - Once this information is reviewed for accuracy and completeness, staff will make it available to Board

Authority of Caltrain ED

- MOU provides that Caltrain ED has sole authority over Rail Division employment decisions, subject only to SamTrans HR policies and salary ordinance
- As a result of impasse between Caltrain ED and SamTrans over several employment decisions, the matter was referred to counsel
- With the assistance of the Chairs of the Caltrain and SamTrans Boards, parties agreed on protocol
- Caltrain ED has authority over Rail employees, subject to SamTrans's authority to verify compliance with SamTrans HR policies; disagreements regarding Caltrain ED's compliance with SamTrans's HR policies will be brought to JPB and SamTrans Chairs for discussion and resolution, and to ad hoc committee of Boards if Chairs are unable to resolve



Chief Safety Officer

- MOU prohibits Caltrain from adding new direct report to replace shared service unless SamTrans consents
- Safety and security is a shared service
- Due to importance of rail safety, Caltrain requested SamTrans' consent to add a Caltrain Chief Safety Officer reporting directly to Caltrain ED
- SamTrans and Caltrain Boards approved proposal to establish Caltrain Chief Safety Officer reporting directly to Caltrain ED
- All other rail safety staff report to the SamTrans Director of Safety and Security



Questions?

FOR MORE INFORMATION

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