

Update on Implementation of JPB Governance Memorandum of Understanding

JPB Meeting
September 5, 2024



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 Caltrain direct service positions
- **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

- **Shared Services:** Provides for negotiation and execution of shared services agreement
- **MTC Payment:** Upon receipt of \$19.6M from MTC, SamTrans will reconvey its tenancy in common (TIC) 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 Real Property Ownership Agreement (RPOA) and Joint Powers Agreement (JPA) to conform to the MOU and to address inconsistencies, ambiguities, and uncodified practices

MOU TERMS

- **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/VTA do not pay by August 4, 2023

Completed Items

- MTC paid SamTrans \$19.6M (the outstanding balance owed under the 2008 RPOA) on September 19, 2023
- SamTrans has waived any claims against VTA and CCSF related to SamTrans' initial investment in ROW
- 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

Completed Items

- CCSF and VTA paid SamTrans \$6,080,000 and \$9,120,000, respectively, into escrow account before 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 in the event of nonpayment is void
- JPB staff, with support of SamTrans, completed asset inventory

On-Going Items: ED Authority

- MOU provides that Caltrain ED has sole authority over Rail employment decisions, subject only to SamTrans HR policies and salary ordinance
- Impasse between Caltrain ED and SamTrans over several employment decisions led to agreement: 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
- Caltrain and SamTrans continue to work to implement this understanding with respect to specific employment decisions

On-Going Items: MOU Positions

- MOU established five new rail direct service positions and provided that Caltrain could not replace existing shared services positions with new direct service positions without SamTrans consent
- Caltrain has hired three positions: Chief of Staff; Director of Real Estate; Director of Government and Community Affairs and is in the process of recruiting for two positions: Director of Grants and Fund Management and Director of Budgets and Financial Analysis
- SamTrans agreed to Caltrain's request to add Caltrain Chief Safety Officer, and Caltrain and SamTrans are discussing adding additional Caltrain safety positions

On-Going Items: Transfer of TIC Interest

- Caltrain and SamTrans filed application for exemption with Surface Transportation Board (STB)
- STB approved exemption and decision became final on June 19, 2024
- SamTrans is in the process of drafting all necessary documents to reconvey its interest in the ROW to JPB
- Parties expect transfer to be complete by end of 2024

On-Going Items: 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 paid \$19.6M to SamTrans
- 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

On-Going Items: Revision of the RPOA

- **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

On-Going Items: Revision of the RPOA

- 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 agreement
- Counsel for VTA and CCSF objected to revised draft and suggested parties pivot to negotiations over JPA; SamTrans agreed

On-Going Items: JPA Negotiations

- The MOU required counsel for the parties to negotiate and finalize amendments to the JPA following approval of the amended RPOA
- The MOU requires that the revised JPA: (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
- MOU specifies that provision requiring amendments to JPA shall not constitute an opportunity to re-open JPA in its entirety

On-Going Items: JPA Negotiations

- Following decision by counsel for member agencies to shift focus from RPOA negotiations to JPA negotiations, JPB counsel prepared draft amendments to JPA to (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
- JPB counsel invited counsel for member agencies to propose items for negotiation in connection with the codification of certain current practices that are inconsistent with the JPA
- Members exchanged proposals and met in May

On-Going Items: JPA Negotiations

- JPB counsel proposed to modify existing requirement that member agencies contribute to Caltrain operating costs to require member agencies to contribute to any operating deficit and to incorporate costs of Gilroy service into operating costs, as has occurred since 2000 and as specified in Measure RR
- SamTrans counsel proposed that member agencies agree to backstop Caltrain pension obligations in event of default or dissolution and share equally if that were to occur
- SamTrans counsel also proposed rejecting language in amended JPA providing that JPB is responsible for overseeing the ownership, maintenance, and operation of the ROW and instead proposed maintaining existing language regarding the role of the Managing Agency

On-Going Items: JPA Negotiations

- VTA counsel proposed to appoint SamTrans as Managing Agency for the term of the JPA (TBD in amended JPA), but to permit the JPB to replace SamTrans on one year's notice given at the end of any fiscal year following completion of a specified year of the term (TBD in amended JPA), and if the JPB did not exercise this authority, SMCTD would remain as Managing Agency unless and until it no longer chooses to do so, in which case it must provide a minimum of one year's written notice to the JPB
- SamTrans requested that VTA withdraw the proposal
- Counsel are scheduled to meet on September 26

On-Going Items: 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 Caltrain departments prepared work plans to identify share services needs
 - Caltrain and SamTrans staff are meeting to refine work plans
 - Parties hope to finalize shared services agreement by the end of the year

On-Going Items: CalPERS Application

- Caltrain submitted application to CalPERS on June 29, 2024, to become successor agency to SamTrans for Rail employees
- Caltrain, with support of SamTrans, is completing financial questionnaire
- Expect CalPERS decision on Caltrain's eligibility to contract with CalPERS by end of October
- If CalPERS deems Caltrain eligible, Caltrain and CalPERS will begin negotiations over contract
- Negotiations anticipated to take approximately one year, and contract is subject to approval of JPB



Summary of Status of MOU Implementation

- **MOU Positions:** Expect to be filled by end of the year
- **SamTrans Transfer of TIC:** Expect to be complete by end of the year
- **Shared Services Agreement:** Expect to be complete by end of the year
- **CalPERS Application and Contract:** Expect eligibility determination by end of October; if successful, expect contract by end of 2025
- **RPOA and JPA Negotiations:** On-going

Questions?

FOR MORE INFORMATION

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