



RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE, WITH CONDITIONS, A SEVEN PARTY SUPPLEMENT TO THE 2012 MEMORANDUM OF UNDERSTANDING THAT ADOPTED AN EARLY INVESTMENT STRATEGY PERTAINING TO THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

WHEREAS, The Early Investment Strategy, also known as the Early Investment Program, consists of three components: the Communications Based Overlay Signal System (also known as Positive Train Control), the electrification of the Caltrain line between San Jose and San Francisco, and the purchase of electric-multiple unit vehicles to operate on the electrified railroad; and

WHEREAS, The program will modernize the corridor, reduce train related emissions by up to 90 percent, provide faster and increased service to more stations, and prepare the Caltrain system for shared use with High-Speed Rail; and

WHEREAS, On April 24, 2012, through Resolution 12-62, the Transportation Authority Board authorized the Executive Director to execute, with conditions, a Memorandum of Understanding (MOU) with the California High-Speed Rail Authority (CHSRA), the Metropolitan Transportation Commission (MTC), and six other local and regional entities to establish a funding framework for a High-Speed Rail Early Investment Strategy for a blended system in the Peninsula Corridor; and

WHEREAS, At the time the MOU was executed in 2012, the total cost for the Early Investment Program was \$1.456 million, with a \$60 million local contribution from each of the three Peninsula Corridor Joint Powers Board (PCJPB) member counties (San Francisco, San Mateo and Santa Clara); and

WHEREAS, The Transportation Authority has committed funds to cover \$20.86 million of San Francisco's original \$60 million contribution (mostly from Prop K sales tax, with \$4 million in



Regional Improvement Program funds), with the City's Prop A General Obligation bond (2014) covering the rest; and

WHEREAS, The initial budget was subsequently updated by Caltrain staff to reflect a cost estimate study conducted in 2014 and to account for received bids, resulting in a new projected cost of \$1.22 billion, an increase of \$755 million; and

WHEREAS, The 2012 MOU identified \$125 million in Federal Transit Administration (FTA) transit formula funds that are needed by the PCJPB to advance critical state of good repair improvements necessary to maintain existing Caltrain operations, and the PCJPB has requested removal of these funds from the Early Investment Strategy, which creates a \$125 million funding gap: and

WHEREAS, As shown in the attached 2016 Supplemental MOU, most of the cost increase and funding gap are proposed to be covered by a FTA Core Capacity grant (\$647 million) and State Cap and Trade Program funds (including some from CHSRA's share), with MTC and PCJPB members also making increased contributions; and

WHEREAS, The 2016 Supplemental MOU would commit the three PCJPB members to a total local contribution of \$80 million each for the Early Investment Program for the Peninsula Corridor, a \$20 million increase over the 2012 MOU; and

WHEREAS, There is \$3.9 million remaining in the Electrification line item in the Prop K Strategic Plan that have been included in the proposed Fiscal Year 16/17 capital budget, which was the subject of a separate agenda item at the June 14, 2016 Finance Committee meeting; and

WHEREAS, The City and the Transportation Authority are jointly seeking to identify the remaining \$16.1 million which could include General Fund revenues associated with a proposed 2016 charter amendment establishing among other things a transportation set aside or a transportation sales tax measure; and



WHEREAS, As a precondition of the Supplemental MOU, the parties have agreed on an oversight protocol (attached) under which the funding partners will be able to closely monitor the project, have access to all project information, and participate in the decision making process, especially when related to changes in scope, schedule or cost; and

WHEREAS, Staff recommended authorizing the Executive Director to execute, with conditions, the attached seven party supplement to the 2012 Memorandum of Understanding that adopted an Early Investment Strategy pertaining to the Peninsula Corridor Electrification Project, with the condition being codification of the aforementioned oversight protocol in a separate staff level agreement; and

WHEREAS, At its May 25, 2016 meeting, the Citizens Advisory Committee was briefed on the subject request and unanimously adopted a motion of support for the staff recommendation; and

WHEREAS, At its June 21, 2016 meeting, the Plans and Programs Committee reviewed the subject request and unanimously recommended approval of the staff recommendation; now, therefore, be it

RESOLVED, That the Transportation Authority hereby authorizes the Executive Director to execute, with conditions, a seven party supplement to the 2012 Memorandum of Understanding that adopted an Early Investment Strategy pertaining to the Peninsula Corridor Electrification Project.

Attachments (2):

1. Seven Party Supplement to the 2012 MOU
2. Oversight Protocol



The foregoing Resolution was approved and adopted by the San Francisco County Transportation Authority at a regularly scheduled meeting thereof, this 28th day of June, 2016, by the following votes:

Ayes: Commissioners Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee (11)

Nays: (0)

Absent: (0)

Scott Wiener
Scott Wiener 6/29/16 Date
Chair

ATTEST: Tilly Chang 6/30/16
Tilly Chang Date
Executive Director

**SEVEN-PARTY SUPPLEMENT TO
2012 MEMORANDUM OF UNDERSTANDING (MOU)**

**FINANCIAL COMMITMENTS TO ADDRESS FUNDING GAP FOR
THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

BY AND AMONG THE FOLLOWING PARTIES (PARTIES)

SAN MATEO COUNTY TRANSPORTATION AUTHORITY (SMCTA)
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)
CITY AND COUNTY OF SAN FRANCISCO (CCSF)
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY (SFCTA)
METROPOLITAN TRANSPORTATION COMMISSION (MTC)
PENINSULA CORRIDOR JOINT POWERS BOARD (PCJPB)
CALIFORNIA HIGH SPEED RAIL AUTHORITY (CHSRA)

RECITALS

WHEREAS, during the spring of 2012, the California High Speed Rail Authority (CHSRA) and the Peninsula Corridor Joint Powers Board (PCJPB), together with the Metropolitan Transportation Commission (MTC), the San Francisco County Transportation Authority (SFCTA), the Santa Clara Valley Transportation Authority (VTA), the City of San Jose, the City and County of San Francisco (CCSF), the San Mateo County Transportation Authority (SMCTA), and the Transbay Joint Powers Authority entered into a Memorandum of Understanding that adopted an early investment strategy pertaining to the Blended System in the San Francisco to San Jose Segment of the Peninsula Rail Corridor (the "2012 Nine-Party MOU"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the 2012 Nine-Party MOU identifies two principal inter-related projects as essential to the early investment strategy: (1) the Peninsula Corridor Electrification Project, including associated rolling stock acquisition (the PCEP), and (2) construction of an advanced signal system, commonly known as the PCJPB's "CBOSS" project, which will incorporate federally mandated Positive Train Control (collectively, the "Early Investment Projects"); and

WHEREAS, the Parties to the 2012 Nine-Party MOU agreed to work together to identify the appropriate amounts and types of local resources that may be used to support the completion of the Early Investment Projects and to coordinate efforts to obtain funding using a mutually agreed-upon strategy, and in the event that funding for the program is constrained by statute, rescission of existing law, change in funding requirements or eligibility, reduction in funding level or availability, the Parties agreed to take steps to notify each other as needed in a timely manner; and

WHEREAS, \$125 million in FTA funds identified in the 2012 Early Investment Strategy funding plan included in the 2012 Nine-Party MOU is needed by the PCJPB to advance critical state of good repair improvements necessary to maintain existing Caltrain operations, and the PCJPB has requested to remove these funds from the early investment funding strategy, which would create a \$125 million funding gap; and

WHEREAS, a note to the 2012 early investment strategy funding plan included in the 2012 Nine-Party MOU indicated that other potential future funding sources could be substituted if secured; and

WHEREAS, the PCJPB conducted a cost estimate study for the PCEP in 2014 to update the 2008 cost estimate on which the 2012 Nine-Party MOU funding strategy for the PCEP was based, and the PCJPB has since included additional program contingency to the PCEP, such that the total anticipated budget for the PCEP is up to \$1.980 billion, which includes costs covering the contracts, program management, and contingency costs; and

WHEREAS, the Parties to this Seven-Party Supplement (Supplement) have met and discussed with all parties to the 2012 Nine-Party MOU additional funding needed for the PCEP to support contract award and have agreed to the funding commitments specified herein;

NOW, THEREFORE, it is mutually understood and agreed to by the PARTIES as follows:

1. To fully fund the PCEP, the parties to this Supplement commit to make the funding available to support the PCEP as set forth below. This funding is in addition to funding commitments

previously made by these parties in the 2012 Nine-Party MOU.

- a. The SMCTA will contribute an additional \$20 million;
- b. The VTA will contribute an additional \$20 million;
- c. The SFCTA and/or the CCSF will contribute an additional \$20 million;

(For SMCTA, VTA, and SFCTA and/or CCSF, each agency's contribution is contingent on the commitment of \$20 million each from the other two PCJPB partners, with the exact manner and timing of the contributions to be worked out with the PCJPB. The commitment of CCSF is subject to the Special Provisions in Exhibit C, attached to and incorporated in this MOU. These Special Provisions only apply to the funds to be provided by CCSF, and not any other parties to this Supplement.)

- d. The MTC will program \$28.4 million from Regional Measures 1 and 2;
 - e. The PCJPB will contribute \$9 million from funding provided by formula to Caltrain through the State of California's Low Carbon Transit Operations Program; and
 - f. The CHSRA will contribute an additional \$113 million.
2. The Parties to this Supplement also support the PCJPB's efforts to obtain \$647 million from FTA's Core Capacity Grant Program for the PCEP as a regional priority. The \$647 million would help provide funding needed for the PCEP, as well as funding to support a larger contingency set-aside for the PCEP program.
 3. The Parties to this Supplement understand PCJPB has requested \$225 million from the California State Transportation Agency's Transit & Intercity Rail Capital Program (Cap & Trade TIRCP) to support the PCEP, as contemplated in the 2012 Nine-Party MOU. These funds will be prioritized for PCEP and will be used to backfill any shortfall in requested FTA Core Capacity funds. If available, funding not needed for PCEP will be used to replace the remaining Caltrain diesel vehicles with Electric Multiple Units (EMUs). The exact remaining number of vehicles to be replaced will be contingent on the final Cap & Trade TIRCP grant award.
 4. The Parties to this Supplement also agree that, with the additional funding sources, \$125 million in FTA funds identified in the 2012 Early Investment Strategy funding plan will no longer be needed for the PCEP, and will instead be programmed by the MTC to the PCJPB to advance critical Caltrain state of good repair improvements through MTC's established regional Transit Capital Priorities process.
 5. The total anticipated amount of funding to be secured for the PCEP will be \$1.980 billion, which includes the funding sources outlined above in paragraphs 1, 2, and 3, along with the original funding sources in the 2012 Nine-Party MOU except the \$125 million noted in paragraph 4 above. The revised funding plan for the PCEP reflecting the changes described herein is attached as Exhibit B.
 6. The parties to this supplement agree to continue, through regular meetings, to provide opportunity for all nine parties to the 2012 Nine-Party MOU to discuss, review, and/or comment on relevant project matters and collectively provide advisory oversight to help advance the PCEP.

7. If overall program costs reflect a financial commitment that is below the funding plan of \$1.980 billion, funding commitments from the parties to this Supplement will be reduced proportionally according to their respective additional shares as stated in this Supplement.
8. In the event overall program costs reflect a financial commitment that is above the funding plan of \$1.980 billion, or if the FTA Core Capacity funds are awarded at less than \$647 million, the parties to this Supplement will discuss with all parties to the 2012 Nine-Party MOU how to secure additional funding beyond what is presently identified, and/or discuss project scope adjustments to match to funding availability.
9. The parties to the 2012 Nine-Party MOU will also discuss and agree in writing on program oversight roles for the funding partners prior to the award of the PCEP contracts.

IN WITNESS WHEREOF, this MOU has been executed by the PARTIES hereto as of the day and year indicated next to each signature, with the final signature date constituting the effective date.

Jim Hartnett, Executive Director Peninsula Corridor Joint Powers Board and San Mateo County Transportation Authority	Date
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Nuria Fernandez, General Manager/CEO Santa Clara Valley Transportation Authority	Date
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Edwin M. Lee, Mayor City and County of San Francisco Board of Supervisors Resolution No. _____ Dated: _____ Attest: _____ Clerk of the Board	Date
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Tilly Chang, Executive Director San Francisco County Transportation Authority	Date
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Steve Heminger, Executive Director Metropolitan Transportation Commission	Date
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Jeff Morales, Chief Executive Officer California High Speed Rail Authority	Date
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APPROVED AS TO FORM BY:

Attorney for Peninsula Corridor Joint Powers Board and San Mateo County Transportation Authority	Date
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Attorney for Santa Clara Valley Transportation Authority	Date
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Dennis J. Herrera, City Attorney

By:

Robin M. Reitzes, Deputy City Attorney Attorney for City and County of San Francisco	Date
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Attorney for San Francisco County Transportation Authority	Date
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Attorney for Metropolitan Transportation Commission	Date
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Attorney for California High Speed Rail Authority	Date
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EXHIBIT C

Special Provisions for the City and County of San Francisco

(References to “City” in Paragraphs 1 and 2 refer to the City and County of San Francisco)

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Guaranteed Maximum Costs. The City’s obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

3. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Attachment 2

FUNDING PARTNERS OVERSIGHT PROTOCOL FOR CALTRAIN'S CAL MOD PROGRAM

(Electrification, Vehicles, CBOSS)

1. The Caltrain Project Management staff (CPMT) will have an open door policy with the Funding Partners' oversight representatives (Partners), who will have access to project Section Managers and available information. The Funding Partners and their oversight representatives understand that some information will be confidential and commit to honor that confidentiality by not sharing or divulging any information so defined.
2. The Partners will attend all progress meetings with the CPMT, to stay abreast of all project activities and when warranted, may also attend, as observers, partnering sessions and progress meetings with the contractor. The CPMT will provide a list of current and anticipated regularly scheduled meetings, and the Partners and CPMT will jointly determine the meetings that would be most useful.
3. Subject to FTA concurrence, the Partners will also attend meetings with the FTA and its PMO. It will be the responsibility of the Partners to secure FTA's agreement to such participation. The CPMT will make the first approach to the FTA.
4. The CPMT will make available to the Partners all project deliverables, reports, plans, procedures, and progress and cost reports for review and comment, which will be performed within the stipulated review period. Should the Partners not provide comments by the due date, the CPMT may assume that they are not forthcoming.
5. The Partners will review progress and cost reports and provide comments.
6. The Partners will participate in consultant selection panels and proposal/bid reviews.
7. The Partners will monitor quality through regular discussions with the Quality Assurance Manager.
8. The Partners will be members of the Risk Management team and participate in all Risk Management meetings and receive copies of the original risk register, its monthly updates, and reports.
9. The CPMT will institute a Configuration Management Board (CMB), with one representative each from San Francisco, CHSRA, and VTA as voting members, to review all proposed changes, regardless of whether they are owner, designer, or contractor originated, to determine merit, agree on quantum, and ultimately authorize all changes for the project. The Partners agree that their representative to the CMB will have the appropriate technical and Project Management background. No member of the CMB will have Veto power.
10. The Partners will provide support to the CPMT on funding and financing issues.
11. The Partners will review and approve project invoices submitted to their respective Agencies and assure that they are processed on a timely manner.
12. The Partners will assist the CPMT with development of grant amendments and funding requests which are submitted to their respective Agencies for approval.