

**Metropolitan Transportation Commission  
Programming and Allocations Committee**

January 12, 2022

Agenda Item 4a - 21-1663

**Update on Caltrain Governance Discussions and Peninsula Corridor Electrification Project**

**Subject:**

Staff will provide an update and seek Committee direction on the Caltrain governance discussions, including Right-of-Way repayment. Further, staff will provide an update on the Peninsula Corridor Electrification project (“Caltrain Electrification”).

**Background:**

***Governance and Right-of-Way Repayment***

The Joint Powers Board (JPB) is concluding a Governance study that evaluated structural governance options for delivering Caltrain projects and service. JPB is presenting draft recommendations from the study at its January 6<sup>th</sup> meeting and will consider adopting final recommendations at its February meeting. In a related effort, MTC is just kicking off a Rail Governance Study that will examine governance and project delivery structures on this corridor and the region as a whole.

Central to the year-long JPB governance conversation is the repayment of Caltrain Right-of-Way (ROW) funds fronted by SamTrans. Attachment A synthesizes a very complicated series of agreements since the early 1990’s regarding repayment and parties involved. As of today, payment obligations are set forth in a 2007 settlement and 2008 Real Property Ownership Agreement (RPOA) amendment – and includes a remaining \$19.8 million principal balance owed to SamTrans. MTC was a party (though not a legal signatory) to the 2007 settlement agreement and agreed to take on a majority of the obligation of the counties with new and unexpected funding available to the region at the time. Critically, that unencumbered source of funding was eliminated through state action prior to achieving full reimbursement as outlined in the agreement, and no alternative funds have been identified to date.

The [JPB Governance Recommendation](#) item being presented in January assumes MTC will provide \$19.6 million of the outstanding balance (the remaining \$200,000 being assigned to SFMTA) to address the outstanding principal balance from the 2007 settlement agreement. Given that the agreement at the time relied on a fund source that no longer exists, the

Commission will need to reconsider its role in the ROW repayment and evaluate potential funding sources that could be available to address the repayment. Note that this would take the form of programming capacity for a SamTrans project or program and not straight cash. As well, it is important to establish at the outset that MTC does not believe that any interest payments are contractually attached to the outstanding balance, and will not be factored into any repayments by the Commission. The Commission will need to consider the funding trade-offs related to the \$19.6 million repayment, alongside the regional interest in addressing specific elements of Caltrain governance that have caused tensions among the three member counties of the JPB over the years. The JPB governance recommendation maintains SamTrans as the Caltrain managing entity in the near-term, and staff believes that several elements of the governance changes, including addressing the ROW repayment issue, will lay a stronger foundation to address on-going challenges that Caltrain faces in the near term. However, we also believe that this is the time for the JPB to assess longer term structural changes in a regional context that may better facilitate improved governance, administration, and project delivery along the corridor and throughout the region's rail network.

To that end, staff proposes that the Commission consider payment by MTC to SamTrans of the \$19.6 million principal subject to the following conditions:

1. The principal payment of \$19.6 million shall constitute full payment of any and all remaining MTC obligation for monies advanced by SamTrans for the purchase of the Caltrain right of way, with no expectation by SamTrans of future contributions by the Commission.
2. Inclusion of a policy statement affirming that the agreement does not preclude recommendations that may be forthcoming from the Network Management Business Case and/or the Regional Rail Study.
3. Inclusion in the recommendation that future evaluation and reconvening related to the MOU between the JPB and SamTrans should include consultation with MTC as it relates to network management recommendations that may be adopted before that time.

As an alternative, the Commission could proceed with condition (1) above, but not attach to the specific ROW repayment any further conditions that JPB agree to be a willing partner in regional governance forums—though it may consider other avenues to pursue such engagement.

Staff is seeking Committee and Commission direction on the nature and scope of MTC's involvement in the ROW repayment, including the options above. Based on this direction, staff can provide a refined proposal and set of conditions to the January Commission meeting for approval, and to inform the JPB February action on its governance recommendations.

### ***Peninsula Corridor Electrification Project***

The JPB announced a significant cost increase earlier this year on the Electrification project. As a reminder, the Caltrain Electrification project will install electrification equipment on 51 miles of Caltrain right-of-way, from San Francisco to Tamien Station in San José. The project includes an overhead contact system, traction power facilities, and a signal system, along with 96 new electric railcars. Revenue service is expected in September 2024.

The key reasons for the cost overruns include:

- Delays and cost increases arising from the COVID-19 pandemic
- Unforeseen site conditions
- Resolution of commercial disputes with contractor on signal system scope and outstanding change orders

The total additional cost for the project is \$462.4 million, increasing the total project cost to \$2.4 billion. The cost increase and settlement with the contractor were approved by the JPB in December 2021,

In early 2022, the JPB is required to submit to the Federal Transit Administration and the California High Speed Rail Authority a plan to fund the cost increase. At its December 6<sup>th</sup> 2021 meeting, the JPB approved a funding approach that included:

- \$52.4 Million in Federal American Rescue Plan

- \$150 Million in JPB credit financing
- \$60 Million in Measure RR capital reserve
- \$200 Million in “Super Contingency” – a 2017 funding commitment made by MTC, SFCTA, SMCTA, and VTA. Each agency committed \$50 million to support execution of FTA’s Full Funding Grant Agreement should the project experience cost overruns. MTC Resolution 4267 committed future Regional Transportation Improvement Program funds to meet the commitment.
- The funding strategy noted that JPB will seek federal and state funds to cover the \$200 million Super Contingency, including language to the effect:

Caltrain will seek state and federal funding to complete the project. Should those grants or funds not be sufficient, Caltrain will work to identify “own source” funds to fill any gap, including member agency funding, Measure RR revenues, and proceeds from bonds secured by Measure RR or low carbon fuel standards credits revenue.

MTC staff generally supports this funding approach as it does not require MTC to identify funding in the near-term for its share of the super contingency. However, it will be important to coordinate this federal and state advocacy with other Bay Area project requests and for JPB to honor its planned \$210 million local contributions to the cost overrun.

Further, and related to all major projects in the region going forward, staff recommends that an expectation be set that MTC will condition the release of future regional funding under its discretion on the continued adherence upon negotiated and agreed upon provisions to ensure project delivery and cost containment. These provisions can be developed through the Major Project Advancement Policy.

### ***Major Project Advancement Policy***

At its September 2021 meeting, the Programming and Allocations Committee received a staff report on the development of a new delivery and sequencing strategy for the next generation of major transit capital projects, to help implement the vision developed in Plan Bay Area 2050. The Committee directed staff to move forward and work with partners on strategies and sequencing of projects to better advocate for federal and state funding. Importantly, the

development of the Major Project Advancement Policy will include a risk management component focused on multiple risk mitigation tools including cost management and meeting project delivery timelines to improve the region's competitiveness for future federal and state funding opportunities.

**Next Steps:**

Staff recommends convening a workshop in the next several months focused on rail capital project delivery and governance, as the region is confronting significant cost overruns and assessing governance on several major projects. Further, a more in-depth discussion on the topic could provide valuable and timely inputs to the Rail Governance study and Major Project Advancement Policy.

**Recommendations:**

Direction from Committee members on the scope and nature of MTC's contribution and involvement in the Right-of-Way settlement agreement. A refined proposal based on direction received will be brought to the January 26<sup>th</sup> Commission meeting for approval.

**Attachments:**

- Attachment A: Summary of Right-of-Way Payments and Balances
- Attachment B: Letter to Caltrain General Manager, Michelle Bouchard
- Attachment C: Presentation Slides - Update on the Caltrain Peninsula Corridor Electrification Project



Therese W. McMillan

**Attachment A – From Olson Remcho Law Firm – Report to JPB Board – April 1, 2021**

**Purchase of ROW Mainline – From 1991 Purchase Sale and Option Agreement**

\$120M	Prop 116 Funds
\$ 82 M	SamTrans
\$ 10M	Credit for Construction of Maintenance Facility
<b>\$212M</b>	<b>Total Cost of Purchase</b>

<b>Original ROW purchase amount owed to SamTrans</b>	<b>43.0 million</b>
<i>Amount attributed to VTA</i>	<i>34.7 million</i>
<i>Amount attributed to SF</i>	<i>8.3 million</i>
<b>Compounded interest prior to 2008 RPOA Reset</b>	<b>48.5 million</b>
<b>Total amount owed to SamTrans prior to 2008 RPOA Reset</b>	<b>91.5 million</b>
<b>2008 RPOA Reset amount owed to SamTrans</b>	<b>53.3 million</b>

**Repayment of Principal to SamTrans – From Real Property Ownership Agreement (RPOA) – Amended 2008**

- The parties<sup>1</sup> agreed to reset the amount of the additional contribution attributable to VTA and San Francisco at \$53.3 million, to be paid partly by San Francisco (\$2 million) and VTA (\$8 million) and partly by MTC (\$43.3 million). Of the \$43.3 million to be paid by MTC, approximately 80% would be paid on behalf of VTA, and 20% on behalf of San Francisco.
- The parties also agreed that SamTrans could serve as managing agency for as long as it chose to do so in exchange for forgiving \$38.2 million of the \$48.5 million it was owed in accrued interest on its initial contribution.

**Summary of Current Payments/Balances as a Result of the 2007 Agreement and 2008 RPOA**

	<b>2007 Agreed to Payment to SamTrans</b>	<b>Paid to Date</b>	<b>Remaining Principal Balance</b>
<b>Total</b>	<b>53.3 million</b>	<b>33.5 million</b>	<b>19.8 million</b>
<i>MTC</i>	<i>43.3 million</i>	<i>23.7 million</i>	<i>19.6 million</i>
<i>VTA</i>	<i>8 million</i>	<i>8 million</i>	<i>0</i>
<i>SF</i>	<i>2 million</i>	<i>1.8 million</i>	<i>0.2 million</i>

Note #1 - above calculations represent information from report related to principal repayment.

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<sup>1</sup> Santa Clara Valley Transportation Authority, San Francisco City and County, and San Mateo County Transit District



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January 4, 2022

Michelle Bouchard  
Acting Executive Director  
Caltrain Joint Powers Board  
1250 San Carlos Ave.  
San Carlos, CA, 94070-1306

Dear Ms. Bouchard:

As follow-up to recent discussions and in reference to the January 6th Joint Powers Board (JPB) item #8, Draft Recommendation on Caltrain Governance, I plan to brief and seek input from the MTC Commission on the nature and scope of their role, going forward, in the \$19.6 million right-of-way repayment principal balance. I note that the JPB Draft Governance Recommendation Part C assumes MTC will provide this repayment. The timeline for final action on the Governance Recommendation at the February 3<sup>rd</sup> JPB meeting provides time for the Commission to weigh in on this important matter.

I also plan to provide an update to the Commission this month on the Caltrain Peninsula Corridor Electrification project given the December 2021 action by the JPB to approve a cost increase, global settlement with the contractor, and a revised funding strategy. It will be important to acknowledge the intersection of this situation with the ROW repayment, as regional fund programming capacity for each very likely comes from similar sources—all of which are limited compared to transportation demands across the Bay Area. As well, there will be interest in the project delivery challenges the Electrification project and other mega projects face, and the connections those have to implementation of Plan Bay Area 2050 and other inter-related initiatives such as the Regional Rail Governance Study and the Megaproject Advancement Policy.

I look forward to continuing to work closely with you on these efforts in the coming months.

Sincerely,

Therese W. McMillan  
Executive Director

# Update on the Caltrain Governance Discussions and Peninsula Corridor Electrification Project





# Links to Governance and SamTrans ROW

- JPB is completing a Governance study to evaluate structural governance options for delivering Caltrain projects and service. JPB is expected to consider adopting recommendations from the study at its February meeting
- MTC's Rail Governance Study will examine governance and project delivery structures on this corridor and the region as a whole
- Repayment of Right-of-Way funds fronted by SamTrans has been central to governance conversations
  - Payment obligations are set forth in a 2007 settlement and 2008 RPOA amendment

# Summary of Caltrain Right of Way Repayment

## Purchase of ROW Mainline – From 1991 Purchase Sale and Option Agreement

- \$120M Prop 116 Funds
- \$ 82 M SamTrans
- \$ 10M Credit for Construction of Maintenance Facility
- **\$212M Total Cost of Purchase**

*From Olson Remcho Law Firm – Report to JPB Board – April 1, 2021*

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## Consideration of MTC Contribution and Potential Conditions

- Staff proposes that the Commission consider payment by MTC to SamTrans of the \$19.6 million principal subject to the following conditions:
  - Principal payment of \$19.6 million constitutes full payment of any and all remaining MTC obligation for monies advanced by SamTrans for the purchase of the Caltrain right of way, with no expectation by SamTrans of future contributions by the Commission.
  - Inclusion of a policy statement affirming agreement does not preclude recommendations forthcoming from the Network Management Business Case and/or the Regional Rail Study.
  - Inclusion in the recommendation that future evaluation and reconvening related to the MOU between the JPB and SamTrans should include consultation with MTC as it relates to network management recommendations that may be adopted before that time.

# Caltrain Electrification Project Overview

- San Francisco to San Jose (Tamien Station)
- 51 miles
- Revenue service: Sept. 2024
- Electrification
  - Overhead Contact System (OCS)
  - Traction Power Facilities
  - Signal System
- Electric Trains
  - 19 7-car train sets (133 cars - *96 cars funded by project; 37 cars funded by State TIRCP*)



# Caltrain Electrification Funding Plan Prior to Cost Increase

Fund Source	Amount
FTA Core Capacity	647,000,000
FTA Section 5307 (EMU)/SMCTA	315,000,000
FTA Section 5307 (Environmental)	15,676,000
Prop 1A	600,000,000
High Speed Rail Non-Prop 1A	113,000,000
TIRCP	20,000,000
Prop 1B	8,000,000
Bridge Tolls (RM1/RM2)	39,430,000
Carl Moyer	20,000,000
JPB Members 7 & 9 Party MOU	184,146,533
Caltrain LCTOP	9,000,000
Prior Local Contribution	9,000,000
<b>Total</b>	<b>1,980,252,533</b>

# Key Reasons for Cost Overruns

- Delays and cost increases arising from the COVID-19 pandemic
- Unforeseen site conditions
- Resolution of commercial disputes with contractor on signal system scope and outstanding change orders





# Project Cost Overruns

- Updated project cost and schedule
  - \$2.4B
  - No change to 2024 revenue service
- Additional cost \$462.4M key elements
  - Global settlement with BBII \$346.68M
  - Project budget scrub \$115.76M
- Peninsula Corridor JPB approved budget increase and global settlement on December 6<sup>th</sup>



# Funding Strategy

- Funding need ~\$410M (Project Cost Increase ~\$462M; Federal American Rescue Plan funding to date \$52.4M)
- Cashflow sufficient through June 2023, additional funding needed to complete project
- FTA/CHSRA Recovery Plan
  - \$52.4 ARP
  - \$150M credit financing
  - \$60M Measure RR capital reserve
  - \$200M super contingency (2017 Commitment by MTC, SFCTA, SMCTA, VTA);
    - Caltrain will seek state and federal funding to complete the project. Should those grants or funds not be sufficient, Caltrain will work to identify “own source” funds to fill any gap, including member agency funding, Measure RR revenues, and proceeds from bonds secured by Measure RR or low carbon fuel standards credits revenue.

# Megaproject Advancement Policy

- Focused framework based on Plan Bay Area 2050
- Include *multi-modal* strategies and sequencing of projects to better advocate for federal and state funding
- Development of the strategy will include assessment of project risks and plan for managing risk over the course of new and ongoing projects
- Apply lessons learned and experience from past megaproject delivery

## Next Steps / Action

- Staff recommends convening a **workshop** in the coming months focused on **rail capital project delivery and governance** to provide valuable and timely inputs to the Rail Governance study and Major Project Advancement Policy.
- **Direction from Committee** on scope and nature of MTC's contribution and involvement in the **Right-of-Way settlement agreement**. A refined proposal based on direction received will be brought to the January 26th Commission meeting for approval.