

Metropolitan Transportation Commission Programming and Allocations Committee

July 8, 2020

Agenda Item 3b - 20-0810

Diridon Station Cooperative Agreement

- Subject:** A request for approval to enter into a cooperative agreement with the City of San Jose, Peninsula Corridor Joint Powers Board (Caltrain), Santa Clara Valley Transportation Authority (VTA), and the California High Speed Rail Authority to support the development of the San Jose Diridon Station Program.
- Background:** Planned electrified Caltrain, BART, commuter rail, high-speed rail, light rail, and bus services are all envisioned to meet at and serve the San Jose Diridon Station. The City of San Jose has also adopted plans for substantial transit-oriented development near the station, which would bring thousands of new jobs and residents to the area. With these changes, Diridon Station is poised to become an important intermodal station (see Attachment A). In order to plan for the substantial growth of Diridon Station, the City of San Jose, the Peninsula Corridor Joint Powers Board (Caltrain), Santa Clara Valley Transportation Authority (VTA), and the California High-Speed Rail Authority, (the “Partner Agencies”) formed a public agency partnership via a Cooperative Agreement (Co-op) in July 2018. The Partner Agencies have been working together on a plan to expand and redesign Diridon Station to provide smooth connections between modes and integration with the surrounding neighborhoods.

Conceptual Design Approved and Next Steps

In Spring 2020, four Partner Agencies approved a conceptual station design and achieved an important milestone for the project. As a next step in the project development, the agencies are currently proceeding with limited, necessary technical work to inform near-term adjacent private development decisions and an organizational structure and governance assessment. In July 2020, the Partner Agencies plan to amend the Co-op to add MTC as a 5th Partner Agency and make minor technical revisions.

Regional Role

The San Jose Diridon Station project is one of several major rail infrastructure projects currently in development. MTC has a significant role to play in major projects to ensure regional coordination in planning and funding and in the delivery of the region’s long range transportation plan. Attachment B summarizes MTC’s role in a number of major regional projects. This attachment was also included in the May 2020 Operations Committee item authorizing staff to enter into a Memorandum of Understanding (MOU) on the Downtown Rail Extension (DTX). The Diridon Co-op request is consistent with the DTX MOU request, although the projects are at different stages of development.

Over the past year, MTC staff has been working with the Partner Agencies’ staff to support the project development and governance structure discussions. The original Co-op (Attachment C) establishes an integrated, multi-agency team composed of the partner agencies. The team includes an Executive Steering Committee and supporting Leadership Teams to guide the policy and technical work plan, resolve conflicts, and make recommendations.

Funding

MTC is a major funding partner through the Regional Measure 3 program and has an endorsement role in various state and federal discretionary programs. In 2018, MTC provided \$1.3 million to the Diridon Integrated Station Concept Plan and Regional Measure 3 includes \$100 million for the project. The Diridon project partners have preliminarily requested consideration for additional MTC planning funds for the project. The project scope and project funding request will be finalized in the coming months and staff anticipates bringing the Diridon Station 2020-2021 work scope and funding request to the Commission for consideration.

MTC staff recommends the Commission authorize the Executive Director to enter into an 18-month Co-op with the Partner Agencies with a focus on supporting and advancing the planning of the San Jose Diridon Integrated Station. The City of San Jose, Caltrain, VTA and the California High Speed Rail Authority are expected to approve the agreement in June and July.

Issues:


The economic impact of COVID-19 appears likely to impact transportation revenue significantly. While restoring transit operations to stable levels is top priority, there is value in continuing to plan for a future transit system that is connected and integrated, as is envisioned in the planning for the San Jose Diridon Station. The work plan under the Co-op is an opportunity for MTC to participate actively in considering the new economic landscape.

Recommendation:

Refer the cooperative agreement with the City of San Jose, Peninsula Corridor Joint Powers Board (Caltrain), Santa Clara Valley Transportation Authority (VTA), and the California High Speed Rail Authority in development of the San Jose Diridon Station to the Commission for approval and authorize the Executive Director to negotiate and enter into an agreement that is substantially in the same form as Attachment C.

Attachments:

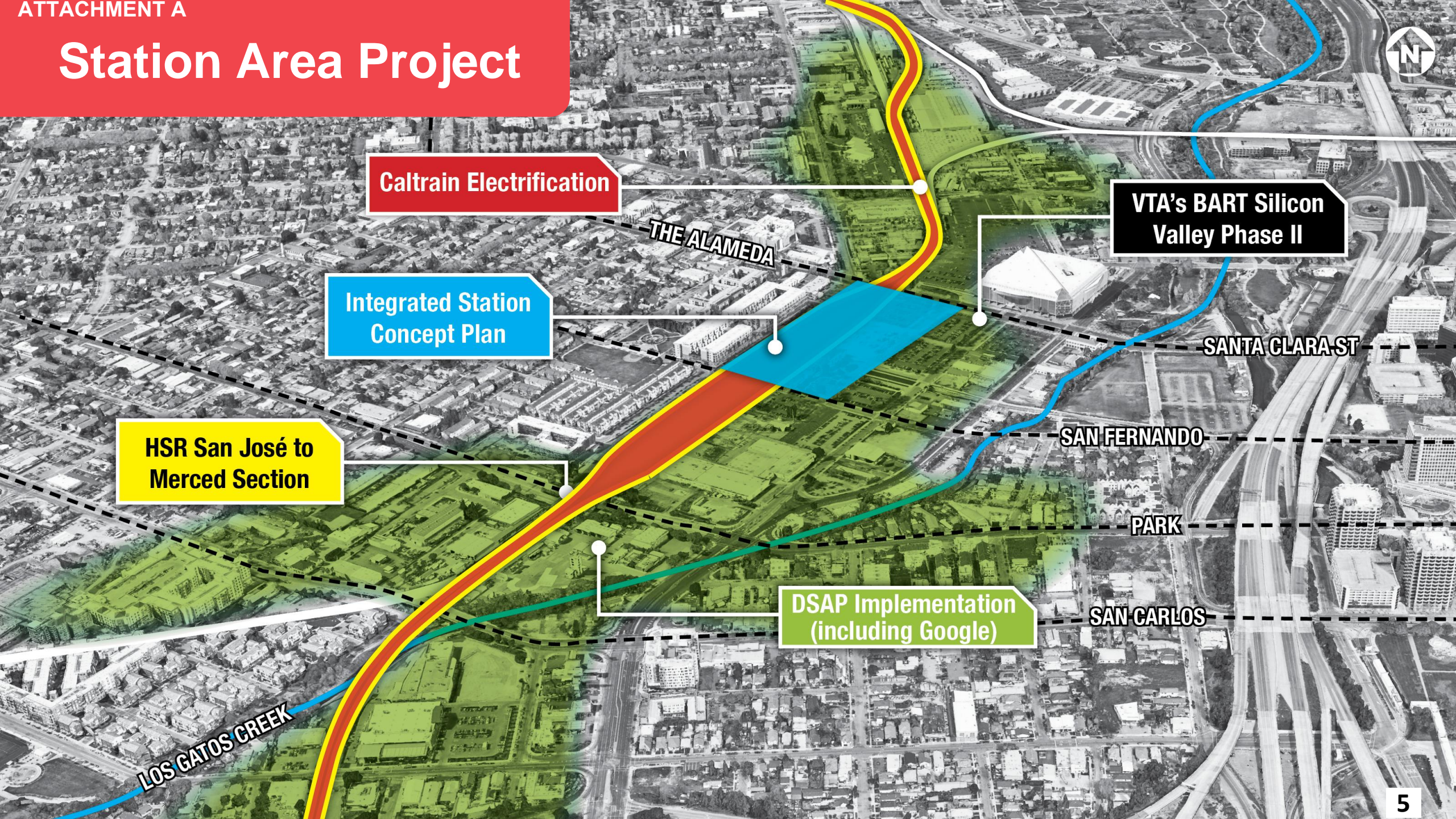
Attachment A – San Jose Diridon Station Program Map
Attachment B – Large Projects with MTC/BATA Participation
Attachment C – Original Cooperative Agreement for San Jose Diridon Station
Attachment D – Draft Amended and Restated Cooperative Agreement for San Jose Diridon Station


Therese W. McMillan

REQUEST FOR COMMISSION APPROVAL

Summary of Proposed Memorandum of Understanding

Work Item No.:	1122
Parties:	City of San Jose, Peninsula Corridor Joint Powers Board (Caltrain), Santa Clara Valley Transportation Authority (VTA), and the California High Speed Rail Authority (“Partner Agencies”)
Work Project Title:	San Jose Diridon Station
Purpose of Project:	Support the Partner Agencies in development of the San Jose Diridon Station Program
Brief Scope of Work:	Participate in an integrated, multi-agency team that will support the initial planning of a San Jose Diridon Integrated Station Concept Plan, project development, and reviewing options for governance.
Motion by Committee:	That the Executive Director or designee is authorized to negotiate and enter into a cooperative agreement with the City of San Jose, Peninsula Corridor Joint Powers Board (Caltrain), Santa Clara Valley Transportation Authority (VTA), and the California High Speed Rail Authority in development of the San Jose Diridon Station as described above and in the Programming and Allocations Committee Summary Sheet dated July 8, 2020.
Commission :	<hr/> Scott Haggerty, Chair
Approved:	July 22, 2020



VTA's BART Silicon Valley Phase II



-THE ALAMEDA

SANTA CLARA ST

HSR San José to Merced Section

SAN FERNANDO

PARK

SAN CARLOS

DSAP Implementation (including Google)

Large Projects with MTC/BATA Participation in Governance, Risk Management and Delivery

Project	Cost	Current Phase	MTC Roles (in addition to Funding Partner)	Start of MTC's Involvement	Agreements
Regional Rail Projects					
Transbay Terminal Phase 1	\$2 B	Construction Complete	1. Independent cost review 2. Cost Review Committee 3. Peer review of fractured girder	1-2. Cost increase 3. Girder fracture	1. Cost Review conducted by MTC in coordination with TJPA 2. Transbay Project Cost Oversight Agreement 3. Cooperative Agreement
Caltrans Electrification	\$2 B	Under Construction	Change Management Committee	Cost increase	MOU, executed
Peninsula Corridor Rail Program – Downtown Extension	\$4 B	Design	Executive Steering Committee Regional rail planning and funding	Start of design	MOU (subject to MTC approval)
Valley Link	\$2–\$3 B	Environmental	Executive Steering Committee Project Policy Committee	Start of environmental	Funding Agreements (subject to MTC approval)
Diridon Station	TBD	Planning	Executive Committee Policy Director Committee Organizational Subcommittee	Initial studies	TBD
Transbay Rail Crossing	\$30 - \$50 B	Initial Studies	TBD	Initial studies	TBD
Roadway/Bridge Projects					
Toll Bridge Seismic Retrofit Program	\$7 B	Construction Complete	Toll Bridge Program Oversight Committee Project Management Team Risk Management Independent cost and technical reviews	Cost increase	Cooperative Agreement, executed MOU, executed
State Route 37	\$4 B	Environmental	Lead for initial studies Executive Steering Committee Hire project director Lead interim project	Initial studies	MOU, executed

COOPERATIVE AGREEMENT FOR
SAN JOSE DIRIDON STATION

This Cooperative Agreement (AGREEMENT) dated July 12th of 2018, is entered into by and between the Santa Clara Valley Transportation Authority (VTA), Peninsula Corridor Joint Powers Board (PCJPB), California High Speed Rail Authority (HSR), and the City of San Jose (City) (collectively referred to as the "Agencies," and individually as "Agency").

SECTION I – RECITALS

- A. WHEREAS, the San Jose Diridon Station is a major transit hub serving Amtrak, Altamont Commuter Express (ACE), PCJPB, and VTA light rail and bus located in the City of San Jose, on property owned and controlled by Caltrain. With the addition of Bay Area Rapid Transit (BART) and HSR service, and expanded Caltrain, ACE and Amtrak Capitol Corridor and Amtrak service, San Jose Diridon Station will become one of the busiest intermodal stations in North America.
- B. WHEREAS, major employers are planning to build space for tens of thousands of new workers adjacent to the station, which will transform the station district into a preeminent employment center in the Bay Area.
- C. WHEREAS, to effectively accommodate this planned activity and future capacity needs, the station must be completely reconfigured in an integrated fashion that connects all these transit services with each other and with the development surrounding the station.
- D. WHEREAS, the Agencies desire to cooperatively work together to prepare a San Jose Diridon Integrated Station Concept Plan ("Plan"), which will be a plan of a reconfigured San Jose Diridon Station that meets the goals expressed in Recital C. The Plan is a critical building block to achieving the potential of this station, the track envelope, and the surrounding area. Coordination between Agencies is essential to establish an agreed upon plan for the station and to maximize funding to deliver a world-class destination and transportation hub that provides seamless customer experience for movement between transit modes within the station and into the surrounding neighborhoods and Downtown.
- E. WHEREAS, VTA is a special district responsible for public transit services, congestion management, specific highway improvement projects, and countywide transportation planning for Santa Clara County, California.
- F. WHEREAS, PCJPB is a joint powers authority with three member agencies: the City and County of San Francisco, the San Mateo County Transit District, and the Santa Clara Valley Transportation Authority. The PCJPB owns, manages and operates the commuter rail line, and passenger stations, connecting three counties: San Francisco, San Mateo and Santa Clara. It is responsible for the railroad operations, engineering, planning, and maintenance of the rail corridor and stations, including the San Jose Diridon Station, from San Francisco to Tamien, and for rail services from Tamien to Gilroy.

- G. WHEREAS, HSR is responsible for planning, designing, building, and operating the first high-speed rail system in the nation. The system will run from San Francisco to the Los Angeles basin.
- H. WHEREAS, City is a Municipal Corporation and a Charter City in the State of California. The City is responsible for land use regulations and the operation and maintenance of public utilities, such as water, sewer, storm, and streets, within its corporate boundaries.
- I. WHEREAS, the purpose of this AGREEMENT is to establish the framework for the coordination between the four Agencies for the preparation and implementation of the Plan, including defining roles and responsibilities, funding requirements, and schedule. Guiding principles of this AGREEMENT and Plan process are included in Section 2.
- J. WHEREAS, the delivery of the Plan will be performed in two phases. During the first phase, the Contractor will develop a single preferred option (“Phase I”). In Phase II, the Contractor will develop a concept plan for the Station. The estimated cost for the completion of Phases I and II is approximately \$6.5 million, with Phase I estimated at \$3.4 million and Phase II at \$2.5 million.
- K. WHEREAS, VTA intends to issue a Master Services Agreement to Arcadis U.S., Inc. in the amount of \$6.5 million (including a 10 percent contingency) for performing Phase I and Phase II of the Plan.
- L. WHEREAS, the Agencies wish to set forth in this Agreement their commitment and respective obligations in connection with the preparation and implementation of the Plan.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

SECTION II – SCOPE OF AGREEMENT

1. GUIDING PRINCIPLES.

The Agencies shall be guided by the following principles, which shall be applied in the preparation of the Plan:

- Follow the communication and organizational models and decision making process that will be agreed upon in the Plan process.
- Treat the San Jose Diridon Station (“Intermodal Station” or “Station”) area as a singular, urban transit project rather than an overlap of several capital projects, but mutually support each Agency’s endeavor to complete their individual capital projects.
- Plan and design transit and station infrastructure for future capacity needs.

- Delineate the spatial needs of the Station to support the rail and transit operations while focusing on the experience of the transit and station user.
- Focus on the interaction and cohesiveness between transit systems, public space, and private development.
- Emphasize regional interconnectivity to expand and enhance the service provided to customers and its ability to relieve regional traffic congestion.
- Be respectful of the fact that each agency has its own projects, policies, procedures, constraints, opportunities, funding availability and sources, and schedules.
- Develop an integrated community engagement by all Agencies for work related directly to the Intermodal Station.
- Commit to the Plan through the final construction stages once a plan is completed.

Guiding Principles is not intended to pre-commit any of the Agency's discretion to approve its individual projects prior to completing its environmental review process, whether related to the Station or otherwise. In addition, the Agencies recognize and acknowledge that HSR has a grant agreement obligation to the federal government to accomplish, by the end of 2022, environmental clearances for two sections of its statewide project that each will utilize Diridon Station in some capacity/configuration, and these Guiding Principles will be interpreted not to interfere with that obligation.

2. INTEGRATED STATION CONCEPT PLAN WORK PRODUCT.

VTA leads the solicitation process of selecting a contractor that will prepare and deliver the Plan (the "Contractor") under a task order contract, which is a contract for services that does not specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of specific tasks during the period of the contract. Services by the Contractor shall only commence upon the issuance of a specific task-order for the services requested in the specific task order. Once VTA, in collaboration with the Agencies has selected a Contractor, the Agencies, through the working committee as set forth in Section 4, will mutually agree upon the scope of the task orders to be issued to the Contractor for work to be performed. The scope of the task order(s) will generally include, in whole or in part, managing the process of Agencies' decision making, coordinating the short and long term plans and needs of the Agencies for efficient rail and transit service, reviewing intermodal access to the Station, assessing Agencies funding capabilities, strategizing on the environmental clearance process, and providing organization models. The deliverable will include a final Plan that will finalize and visually present Agency commitments, environmental and funding strategies, architectural renderings, cost estimates, and project phasing for the San Jose Diridon Station.

3. ROLES AND RESPONSIBILITIES.

- A. **VTA:** VTA will solicit, contract with, and manage the Contractor that will deliver the Plan on behalf of the Agencies. VTA will be responsible for providing information related to VTA design standards and operational requirements for the BART, lightrail, and bus systems within the Diridon Station Area and to actively participate in meetings, document review, and public outreach. VTA will be the signatory to the agreement with the Contractor and shall act as the project manager in connection with the preparation of the Plan. Upon the agreement of the Agencies on the scope of the task order and upon execution of any funding agreements whereby the Agencies contribute toward the cost of the Contractor services, VTA may issue the task order to the Contractor. VTA will have the discretion to not issue any task order to the Contractor if there is insufficient funding to pay for the services in the task order. VTA will endeavor to share in the cost of the Contractor, as set forth in Section 5, Funding.
- B. **PCJPB:** PCJPB is the owner of the current San Jose Diridon Station. The PCJPB operates the Caltrain commuter rail service and is responsible for providing Caltrain design standards and operational requirements within the San Jose Diridon Station Area, including on behalf of its tenants, as well as actively participating in meetings, document review, and public outreach. PCJPB will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.
- C. **HSR:** HSR will be responsible for providing High Speed Rail design standards and operational requirements within the Station Area, and to actively participate in meetings, document review, and public outreach. HSR will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.
- D. **CITY:** City is responsible for providing design standards and operational requirements related to City infrastructure, urban guidelines, within the Station Area, specifically transportation-related infrastructure, and to actively participate in meetings, document review, and public outreach. Infrastructure information includes existing capital projects either programmed or anticipated, as required to support station and other development with the Diridon Station Area. City will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.

4. ORGANIZATION.

In order to facilitate the technical analysis and communication, the Agencies shall establish two committees, as follows:

- i. A steering committee, consisting of one executive-level member from each Agency, shall be responsible to set executive level direction for the Plan effort. Participation in regular meetings (e.g., quarterly) will be required for each member of the steering committee member to ensure the Plan continues to move forward.

- ii. A working committee consisting of one manager-level member from each agency will serve as project level technical management committee for the Plan. The working committee will be available to the VTA project manager upon execution of this agreement, provide direction to the Contractor regarding contractual and performance issues, such as changes in scope and schedule. The working committee is also authorized by each Agency, to review all administrative and final drafts prepared by Contractor and to recommend modifications or acceptance as appropriate.

The Agencies may establish other committees based on the recommendations of the selected Contractor.

5. FUNDING.

- A. The Agencies will endeavor to contribute financially toward the cost of Contractor contracts to prepare the Plan. The goal is for each of the Agencies to equally share in the Contractor cost. The Agencies agree to jointly pursue funding opportunities where applicable. When joint funds are secured, the applicable funds will be utilized to fund the Plan beyond the individual agency shares. Joint funds are not meant to supplement an individual agency's share. Specific funding commitments and funding arrangement will be subject to separate funding agreements between VTA and each Agency. Any and all costs (direct, indirect, or staff time) incurred by the Agencies, with the exception of the costs for Contractor's services, are the responsibility of each respective Agency.
- B. Upon execution of this Agreement, each Agency will endeavor to identify the source of funds to be contributed to the preparation of the Plan and management of the planning and organization process. Any restricted funds must be identified prior to execution of any agreement with the Contractor so the agreement with the Contractor can accommodate all reporting forms and language as may be required. Each Agency is responsible for submission of necessary paperwork and reports to meet contributed funding source requirements. VTA will provide copies of Contractor invoices to each of the Agencies.
- C. Upon execution of this Agreement by the Agencies, each Agency and VTA will endeavor to execute funding agreements for each Agency's funding commitment. Contributions shall be made pursuant to the terms of the Funding Agreement.
- D. VTA may issue task orders to the Contractor for the Contractor to proceed with services upon execution of the Funding Agreements and upon the mutual agreement of the Agencies relating to the scope of the task order. However, VTA may, in its sole discretion, wait for sufficient funding commitments from the Agencies before issuing a task order to ensure that there will be sufficient funds to pay Contractor for services rendered under the task order.

6. TERM.

This Agreement shall become effective upon full execution of the Agreement and shall remain in effect for 24 months, or through June 30, 2020, whichever is later.

7. **TERMINATION.**

Any Agency may terminate this Agreement at any time, for any reason, upon giving thirty (30) calendar days written notice to the other Agencies in compliance with the Notice provision of this Agreement. Upon notice of termination of this Agreement, VTA shall invoice the terminating agency for its pro-rata share of all unpaid Contractor costs for Contractor services rendered up to the date of termination. The remaining Agencies may amend this Agreement to continue with the Preparation of the Plan or to terminate this Agreement.

8. **GENERAL CONDITIONS.**

- A. **Audit and Record Retention.** The representative of each Agency may audit the expenses incurred in the performance of this Agreement. Each Agency shall retain all records related to the performance of this Agreement and the preparation of the Plan for three (3) years after the completion of this endeavor. During this period, Each Agency shall make these records available within a reasonable time to any of the Agencies for inspection upon request.
- B. **Parties' Representatives.** The General Manager of VTA or he designee is hereby made the representative of VTA for all purposes under this Agreement. The City Manager for CITY or the Director's designee is hereby made the representative of CITY for all purposes under this Agreement. The Acting Northern California Director for HSR or his/her designee is made a representative of HSR for all purposes under this Agreement. The Director of Planning for PCJPB or his/her designee is hereby made the representative of CITY for all purposes under this Agreement.
- C. **Indemnification.** Pursuant to Government Code Section 895.4, each of the Agencies hereto shall fully indemnify, defend and hold the other Agencies, their officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Agency, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such Agency under this Agreement. No Agency, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Agencies hereto, their officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other Agency under this Agreement.
- D. **No Waiver.** The failure of any Agency to insist upon the strict performance of any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any right or remedy that any Agency may have, and shall not be deemed a waiver of its right to require strict performance of all of the terms, covenants, and conditions thereafter.

E. **Notice.** Any notice required to be given by any of the Agency, or which any Agency may wish to give, shall be in writing and sent by U.S. Mail or personal delivery, along with a courtesy copy by email as follows:

To VTA: Santa Clara Valley Transportation Authority
Attention: Chris Augenstein, Director of Planning & Programming
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906
Email: Chris.Augenstein@vta.org
Telephone: (408) 321-7093

To CITY: City of San Jose
Attention: Dave Sykes, City Manager
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113
Email: Dave.Sykes@sanjoseca.gov
Telephone: (408) 535-8190

To HSR: California High Speed Rail Authority
Attention: Boris Lipkin, Acting Northern California Director
100 Paseo De San Antonio, Suite 206 San
Jose, CA 95113
Email: Boris.Lipkin@HSR.ca.gov
Telephone: 408-277-1085

To PCJPB: Peninsula Corridor Joint Powers Board
Attn: Elizabeth Scanlon, Director of Planning
1250 San Carlos Avenue
San Carlos, CA 94070
Email: ScanlonE@samtrans.com
Telephone: 650-295-6867

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

F. **Dispute Resolution.** If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of an Agency to perform, the Agency raising the question or making the allegation shall give written notice thereof to the other Agencies. The Agencies shall promptly meet in an effort to resolve the issues raised. If the Agencies

fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the Agencies, to the extent possible, that litigation be avoided as a method of dispute resolution.

- G. Entire Agreement.** This Agreement constitutes the entire Agreement between the Agencies pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the Agencies relative thereto.
- H. Amendments.** This Agreement may be amended only by mutual written agreement signed by each of the Agencies.
- I. Warranty of Authority to Execute Agreement.** Each Agency to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.
- J. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- K. Governing Law.** This Agreement shall be construed and its performance enforced under California law.
- L. Venue.** Except for suits involving HSR, if a suit is brought by any party to this Agreement, the Agencies agree that venue shall be exclusively vested in the State courts of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, in San José, California. For suits involving HSR, venue shall be governed by Public Utilities Code Section 185038.


WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

Santa Clara Valley Transportation Authority

“VTA”

Santa Clara Valley Transportation Authority

a public agency

By: 
General Manager and CEO
Nuria I. Fernandez

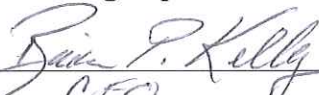
Date: 7/12/18

APPROVED AS TO FORM:

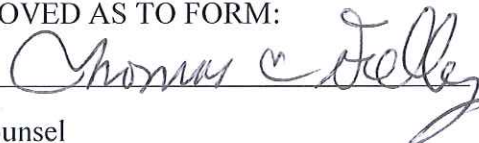
By: 
Counsel

Date: 7/12/18

California High Speed Rail Authority

By: 
Title: CEO
Date: July 6, 2018

APPROVED AS TO FORM:

By: 
Counsel

Date: 6/25/18

City of San Jose

By: [Signature]

Title: Leland Wilcox

Date: Chief of Staff

Office of the City Manager

7/10/18

APPROVED AS TO FORM:

By: [Signature]

Counsel

Date: 7/10/18

Peninsula Corridor Joint Powers Board (Caltrain)

By: [Signature]

Title: JIM HARTNETT, EXECUTIVE DIRECTOR

Date: 6/29/18

APPROVED AS TO FORM:

By: [Signature]

Counsel

Date: 6/19/18

MEMORANDUM

TO: Board Chairperson Sam Liccardo
Board Vice Chairperson Teresa O'Neill

FROM: Nuria I. Fernandez *Nuria I. Fernandez*
General Manager/CEO

DATE: July 9, 2018

SUBJECT: Out of Office Notification - Delegation of Authority

I will be away from the area from Monday, July 9 through Monday, July 16, 2018. During my absence, I am delegating my authority to Angelique M. Gaeta, Chief of Staff. Angelique may be reached on her desk phone at (408) 321-7042 or cell phone at (408) 816-6659.

If you need to reach me directly, I will be available by cell phone (408-707-4771) and email.

cc: Executive Team

**AMENDED AND RESTATED COOPERATIVE AGREEMENT FOR
SAN JOSÉ DIRIDON STATION**

DRAFT – June 5, 2020

This Amended and Restated Cooperative Agreement (AGREEMENT) dated _____ of 2020, is entered into by and between the Santa Clara Valley Transportation Authority (VTA), Peninsula Corridor Joint Powers Board (PCJPB), California High Speed Rail Authority (HSR), the City of San José (City), and the Metropolitan Transportation Commission (MTC), (collectively referred to as the "Agencies," and individually as "Agency").

SECTION I- RECITALS

- A.** WHEREAS, the San José Diridon Station is a major transit hub serving Amtrak, Altamont Commuter Express (ACE), PCJPB, and VTA light rail and bus located in the City of San José, on property owned and controlled by Caltrain. With the addition of Bay Area Rapid Transit (BART) and HSR service, and expanded Caltrain, ACE and Amtrak Capitol Corridor and Amtrak service, San José Diridon Station will become one of the busiest intermodal stations in North America.
- B.** WHEREAS, major employers are planning to build space for tens of thousands of new workers adjacent to the station, which will transform the station district into a preminent employment center in the Bay Area.
- C.** WHEREAS, to effectively accommodate this planned activity and future capacity needs, the station must be completely reconfigured in an integrated fashion that connects all these transit services with each other and with the development surrounding the station.
- D.** WHEREAS, the Agencies desire to cooperatively work together to participate in the initial planning for a San José Diridon Integrated Station Concept ("DISC") Plan ("Plan"), which will be a plan for a reconfigured San José Diridon Station that meets the goals expressed in Recital C, and projects that are related to the Plan (hereinafter "Program of Projects"). The Plan is a critical building block to achieving the potential of this station, the track envelope, and the surrounding area. Coordination between Agencies is essential to establish an agreed upon plan for the station and to maximize funding to deliver a world-class destination and transportation hub that provides seamless customer experience for movement between transit modes within the station and into the surrounding neighborhoods and Downtown.
- E.** WHEREAS, VTA is a special district responsible for public transit services, congestion management, specific highway improvement projects, and countywide transportation planning for Santa Clara County, California.
- F.** WHEREAS, PCJPB is a joint powers authority with three member agencies: the City and County of San Francisco, the San Mateo County Transit District, and the Santa Clara Valley Transportation Authority. The PCJPB owns, manages and operates the commuter rail line, and passenger stations, connecting three counties: San Francisco, San Mateo and Santa Clara. It is responsible for the railroad operations, engineering, planning, and maintenance of the rail corridor and stations, including the San José Diridon Station, from San Francisco to Tamien, and for rail services from Tamien to Gilroy.
- G.** WHEREAS, HSR is responsible for planning, designing, building, and operating the first high-speed rail system in the nation. The system will run from San Francisco to the Los Angeles basin.

**AMENDED AND RESTATED COOPERATIVE AGREEMENT FOR
SAN JOSÉ DIRIDON STATION**

DRAFT – June 5, 2020

- H.** WHEREAS, City is a Municipal Corporation and a Charter City in the State of California. The City is responsible for land use regulations and the operation and maintenance of public utilities, such as water, sewer, storm, and streets, within its corporate boundaries.
- I.** WHEREAS MTC is the federally designated Metropolitan Planning Organization for the nine-county San Francisco Bay Area and is also the state designated regional transportation planning agency for the Bay Area. MTC conducts initiatives that ensure the regional transportation network operates smoothly and efficiently. Every four years, MTC is responsible for adopting a long-range plan to guide transportation and housing for the next twenty-five (25) years for the Bay Area. MTC also endeavors to secure funding required to make the regional plan a reality by helping to shape national and statewide transportation funding programs, as well as bringing regional funding measures before voters.
- J.** WHEREAS on July 12, 2018 VTA PCJPB, HSR, and CSJ entered into a Cooperative Agreement (“Original Agreement”) to establish the framework for the coordination between these four agencies for the preparation and implementation of the Plan, including defining roles and responsibilities, funding requirements, and schedule.
- K.** WHEREAS VTA PCJPB, HSR, CSJ, and MTC now desire to amend and restate the Original Agreement to include MTC as a participating agency and to make additional provisions for the continued advancement of the planning for a San José Diridon Integrated Station Concept Plan and related Program of Projects.
- L.** WHEREAS, the purpose of this AGREEMENT is to establish the framework for the coordination between the five Agencies for the preparation and implementation of the Plan, including defining roles and responsibilities, funding requirements, and schedule. Guiding principles of this AGREEMENT and Plan process are included in Section 2.
- M.** WHEREAS the estimated costs to be shared among the Agencies under the Original Agreement was \$6,500,000.00, and the estimated costs under this Amended and Restated Cooperative Agreement will increase that total estimate to \$11,800,000.00 to further advance and develop the Plan.
- N.** WHEREAS, the Agencies wish to set forth in this Agreement their commitment and respective obligations in connection with the preparation and implementation of the Plan.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

SECTION II- SCOPE OF AGREEMENT

1. GUIDING PRINCIPLES.

The Agencies shall be guided by the following principles, which shall be applied in the preparation of the Plan:

- Follow the communication and organizational models and decision-making process that will be agreed upon in the Plan process.

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- Treat the San José Diridon Station ("Intermodal Station" or "Station") area as a singular, urban transit project rather than an overlap of several capital projects, but mutually support each Agency's endeavor to complete their individual capital projects.
- Plan and design transit and station infrastructure for future capacity needs.
- Delineate the spatial needs of the Station to support the rail and transit operations while focusing on the experience of the transit and station user.
- Focus on the interaction and cohesiveness between transit systems, public space, and private development.
- Emphasize regional interconnectivity to expand and enhance the service provided to customers and its ability to relieve regional traffic congestion.
- Be respectful of the fact that each agency has its own projects, policies, procedures, constraints, opportunities, funding availability and sources, and schedules.
- Develop an integrated community engagement by all Agencies for work related directly to the Intermodal Station.
- Commit to the Plan through the final construction stages once a plan is completed.

Guiding Principles is not intended to pre-commit any of the Agency's discretion to approve its individual projects prior to completing its environmental review process, whether related to the Station or otherwise. In addition, the Agencies recognize and acknowledge that HSR has a grant agreement obligation to the federal government to accomplish, by the end of 2022, environmental clearances for two sections of its statewide project that each will utilize Diridon Station in some capacity/configuration, and these Guiding Principles will be interpreted not to interfere with that obligation.

2. INTEGRATED STATION CONCEPT PLAN WORK PRODUCT.

As provided by the Original Agreement, the Agencies are concluding the development of a Concept Layout for the Plan. This Amended and Restated Cooperative Agreement enables the Agencies to further develop the Concept Layout, and the Agencies intend to solicit and engage with one or more professional and technical services providers ("Contractors") to advance and develop the Plan in phases. The Agencies will endeavor to share in the cost for services provided by the Contractors as set forth in Section 5, Funding.

The Agencies anticipate that the range of services from Contractors will generally include, in whole or in part, managing the process of Agencies' decision making, coordinating the short and long term plans and needs of the Agencies for efficient rail and transit service, reviewing intermodal access to the Station, assessing Agencies funding capabilities, strategizing on the environmental clearance process, providing organization models, and related technical services. The specific scope of services to be provided and work products to be delivered by Contractors will be determined by Agencies as mutually agreed among the members of the Executive Steering Committee as set forth in Section 4.

3. **ROLES AND RESPONSIBILITIES.**

- A. **GENERAL:** Any Agency may solicit, contract with, and manage the Contractors to further develop and advance the Plan. The Agencies will share the costs of Costs sharing such contracting only as provided in section 5 below.
- B. **VTa:** VTA will be responsible for providing information related to VTA design standards and operational requirements for the BART, light rail, and bus systems within the Diridon Station Area and to actively participate in meetings, document review, and public outreach. VTA will endeavor to share in the cost of the Contractor, as set forth in Section 5, Funding.
- C. **PCJPB:** PCJPB is the owner of the current San José Diridon Station. The PCJPB operates the Caltrain commuter rail service and is responsible for providing Caltrain design standards and operational requirements within the San José Diridon Station Area, including on behalf of its tenants, as well as actively participating in meetings, document review, and public outreach. PCJPB will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.
- D. **HSR:** HSR will be responsible for providing High Speed Rail design standards and operational requirements within the Station Area, and to actively participate in meetings, document review, and public outreach. HSR will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.
- E. **CITY:** City is responsible for providing design standards and operational requirements related to City infrastructure, urban guidelines, within the Station Area, specifically transportation-related infrastructure, and to actively participate in meetings, document review, and public outreach. Infrastructure information includes existing capital projects either programmed or anticipated, as required to support station and other development with the Diridon Station Area. City will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.
- F. **MTC:** MTC is responsible for providing coordination, guidance, and assistance to assure the integration of the DISC Plan into regional transportation network, achieve and appropriate organization governance structure, and to attract scarce regional, state and federal funds into the DISC Program. MTC will endeavor to share in the cost to prepare the Plan, as set forth in Section 5, Funding.

4. **ORGANIZATION.**

In order to facilitate the technical analysis and communication, the Agencies shall establish two committees, as follows:

- i. An Executive Steering committee, consisting of one executive-level and one Senior management-level member from each Agency, shall be responsible to set executive level direction for the Plan effort. Participation in regular meetings (e.g., quarterly) will be required for each member of the Executive Steering committee member to ensure the Plan continues to move forward.

- ii. A Leadership Team consisting of one director-level or manager-level member from each Agency who will serve as Policy Director and one manager-level member from each Agency who will serve as a Technical Director. The Leadership Team will be available to provide direction to the Contractors regarding contractual and performance issues, such as changes in scope and schedule. The Leadership Team is also authorized by each Agency, to review all administrative and final drafts prepared by Contractors and to recommend modifications or acceptance as appropriate. The Leadership Team will also be responsible for the formation and the member nomination for functional subcommittees (e.g., organization/governance, outreach), competency working groups, and peer agencies committee, as appropriate.

The Agencies may modify this organizational structure and/or add other committees or working groups by mutual agreement of the Leadership Team.

5. FUNDING.

- A. The Agencies will endeavor to contribute financially toward the cost of Contractors services to further develop and advance the Plan. The goal is for each of the Agencies to equally share in costs for Contractors services for the Plan. The Agencies agree to jointly pursue funding opportunities where applicable. When joint funds are secured, the applicable funds will be utilized to fund the Plan beyond the individual Agency shares. Joint funds are not meant to supplement an individual Agency's share. Specific funding commitments and funding arrangements will be subject to separate funding agreements between VTA and each Agency. Any and all costs (direct, indirect, or staff time) incurred by the Agencies, with the exception of the costs for Contractors services, are the responsibility of each respective Agency.
- B. Upon execution of this Agreement, each Agency will endeavor to identify the source of funds to be contributed to the preparation of the Plan and management of the planning and organization process. Any restricted funds must be identified prior to execution of any agreement with the Contractors so the agreement with the Contractors can accommodate all reporting forms and language as may be required. Each Agency is responsible for submission of necessary paperwork and reports to meet contributed funding source requirements. The contracting Agencies will provide copies of Contractors invoices to each of the other Agencies.
- C. Upon execution of this Agreement by the Agencies, each Agency will endeavor to execute funding agreements with the other Agencies as needed to fund their respective cost sharing commitments. Contributions shall be made pursuant to the terms of the Funding Agreements.
- D. The contracting Agency may issue task orders to the Contractors to proceed with services upon execution of the Funding Agreements and upon the mutual agreement of the Agencies relating to the Contractors services.

6. **TERM.**

This Agreement shall become effective upon full execution of the Agreement and shall remain in effect through December 2021 unless otherwise agreed to in writing by the Agencies.

7. **TERMINATION.**

Any Agency may terminate this Agreement at any time, for any reason, upon giving thirty (30) calendar days written notice to the other Agencies in compliance with the Notice provision of this Agreement. Upon notice of termination of this Agreement, the contracting Agencies shall invoice the terminating agency for its pro-rata share of all unpaid Contractors costs for Contractors services rendered up to the date of termination. The remaining Agencies may amend this Agreement to continue with the preparation of the Plan or to terminate this Agreement.

8. **GENERAL CONDITIONS.**

- A. **Audit and Record Retention.** The representative of each Agency may audit the expenses incurred in the performance of this Agreement. Each Agency shall retain all records related to the performance of this Agreement and the preparation of the Plan for three (3) years after the completion of this endeavor. During this period, each Agency will make these records available within a reasonable time to any of the Agencies for inspection upon request.
- B. **Parties' Representatives.** The General Manager of VTA or her designee is hereby made the representative of VTA for all purposes under this Agreement. The City Manager for CITY or the Director's designee is hereby made the representative of CITY for all purposes under this Agreement. The Northern California Regional Director for HSR or his/her designee is made a representative of HSR for all purposes under this Agreement. The Director of Planning for PCJPB or his/her designee is hereby made the representative of CITY for all purposes under this Agreement.
- C. **Indemnification.** Pursuant to Government Code Section 895.4, each of the Agencies hereto shall fully indemnify, defend and hold the other Agencies, their officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Agency, its officers, commissioners, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such Agency under this Agreement. No Agency, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Agencies hereto, their officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other Agency under this Agreement.
- D. **No Waiver.** The failure of any Agency to insist upon the strict performance of any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any right or remedy that any Agency may have, and shall not be deemed a waiver of its right to require strict performance of all of the terms, covenants, and conditions thereafter.

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- E. Notice.** Any notice required to be given by any of the Agency, or which any Agency may wish to give, shall be in writing and sent by U.S. Mail or personal delivery, along with a courtesy copy by email as follows:

To VTA: Santa Clara Valley Transportation Authority
Attention: Deborah Dagang, Director of Planning & Programming
3331 North First Street, Bldg. B-2
San José, CA. 95134-1906
Email: Deborah.Dagang@vta.org
Telephone: (408) 321-7093

To CITY: City of San José
Attention: Dave Sykes, City Manager
200 East Santa Clara Street, 17th Floor
San José, CA. 95113
Email: Dave.Sykes@sanJoseca.gov
Telephone: (408) 535-8190

To HSR: California High Speed Rail Authority
Attention: Boris Lipkin, Northern California Regional Director
100 Paseo De San Antonio, Suite 300
San José, CA 95113
Email: Boris.Lipkin@HSR.ca.gov
Telephone: (408) 277-1085

To PCJPB: Peninsula Corridor Joint Powers Board
Attn: Michelle Bouchard, Chief Operating Officer, Rail
1250 San Carlos Avenue
San Carlos, CA 94070
Email: BouchardM@samtrans.com
Telephone: (650) 508-6420

To MTC: Metropolitan Transportation Commission
Attn: Alix Bockelman, Deputy Executive Director, Policy
Bay Area Metro Center, 375 Beale Street, Suite 800
San Francisco, CA 94105
abockelman@bayareametro.gov
Telephone: (415) 778-5250

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

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- F. Dispute Resolution.** If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of an Agency to perform, the Agency raising or making the allegation shall give written notice thereof to the other Agencies. The Agencies shall promptly meet in an effort to resolve the issues raised. If the Agencies fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the Agencies, to the extent possible, that litigation be avoided as a method of dispute resolution.
- G. Entire Agreement.** This Agreement constitutes the entire Agreement between the Agencies pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the Agencies relative thereto.
- H. Amendments.** This Agreement may be amended only by mutual written agreement signed by each of the Agencies.
- I. Warranty of Authority to Execute Agreement.** Each Agency to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.
- J. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- K. Governing Law.** This Agreement shall be construed, and its performance enforced under California law.
- L. Venue.** Except for suits involving HSR, if a suit is brought by any party to this Agreement, the Agencies agree that venue shall be exclusively vested in the State courts of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, in San José, California. For suits involving HSR, venue shall be governed by Public Utilities Code Section 185038.

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WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

Santa Clara Valley Transportation Authority

By: _____ Date _____
Nuria I. Fernandez
General Manager and CEO

APPROVED AS TO FORM:

By: _____ Date _____
Counsel

California High Speed Rail Authority

By: _____ Date _____
Brian Kelly
CEO

APPROVED AS TO FORM:

By: _____ Date _____
Counsel

City of San José

By: _____ Date _____
Dave Sykes
City Manager

APPROVED AS TO FORM:

By: _____ Date _____
Counsel

**Peninsula Corridor Joint Powers Board
(Caltrain)**

By: _____ Date _____
Jim Hartnett
Executive Director

APPROVED AS TO FORM:

By: _____ Date _____
Counsel

Metropolitan Transportation Commission

By: _____ Date _____
[—Therese W. McMillan]
[Executive Director]

APPROVED AS TO FORM:

By: _____ Date _____
Counsel