

**Cooperative Agreement
Between Peninsula Corridor Joint Powers Board,
City of San José, Metropolitan Transportation Commission,
California High Speed Rail Authority, and Santa Clara Valley Transportation Authority
On the Pre-Environmental and Environmental Phases
of the Diridon Station Redevelopment Project**

This Cooperative Agreement (Agreement) is between the Peninsula Corridor Joint Powers Board, a California joint powers authority (Caltrain), the City of San José (San José), a municipal corporation of California, Metropolitan Transportation Commission (MTC), a regional transportation planning agency established pursuant to California Government Code, California High-Speed Rail Authority (CHSRA), a transportation agency established pursuant to California Public Utilities Code, and Santa Clara Valley Transportation Authority (VTA), a public agency organized as a special district under California law, each a Party and collectively the Parties.

The Agreement is effective as of the last date on the signature lines (Effective Date).

1. Purpose

a. The Agreement sets forth the general provisions governing the Parties' interaction, consultation, and cooperation in advancing the Diridon Station Redevelopment Project (Project) during the term of the Agreement.

b. The Parties commit to mutually cooperate in good faith to carry out the terms of the Agreement and accomplish the following: (1) define the Project's scope; (2) complete a project-level environmental review for the Project under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA); (3) agree on the long-term governance organization for the Project; (4) advocate and obtain necessary funding to advance the Project; (5) assign staff and consultants to the Project; and (6) agree on a schedule for meetings about the Project, as appropriate to advance relevant work.

2. Term

The term of the Agreement begins on the Effective Date and ends on August 31, 2028, unless (1) the Parties agree in writing to extend the term; (2) the Agreement is terminated in accordance with the terms herein; or (3) the parties agree to adopt a successor agreement.

3. Scope

a. The Scope of Work has two phases: (1) the Pre-Environmental Phase, which is anticipated to take place from approximately 2024-2025, and (2) the Environmental Phase, which is anticipated to take place approximately from 2025-2028.

b. During the Pre-Environmental Phase, the Parties will work on the following:

- Complete the business case analysis (benefit cost assessment) for the Project;
- Conduct community outreach on two station design alternatives;

- Advance a minimum of two station design alternatives to 10% design;
 - Complete and publicly circulate an alternatives analysis;
 - Develop an environmental strategy and prepare for a project-level environmental review of the Project;
 - Decide on a viable long-term governance structure for the Project;
 - Prepare a funding plan with a strategy of obtaining federal, state, regional, and local funding as well as the feasibility of private participation and seek funding in accordance therewith; and
 - Prepare and implement advocacy plans.
- c. During the Environmental Phase, the Parties will work on the following:
- Initiate, develop, and complete for the Project any necessary environmental review process under NEPA and CEQA;
 - Evaluate, approve, and implement a long-term governance structure/organization plan; and
 - Continue community outreach, advocacy, and funding pursuits.

For the purposes of this section, necessary environmental review shall mean any environmental reviews and approvals required to be completed before the Project may be adopted or advanced to final design/construction, under CEQA, NEPA, or any reasonably potential federal funding requirements.

4. Budget and Funding

a. The Parties shall work efficiently, minimize duplication of effort, and abide by budget constraints.

b. The budget for the Pre-Environmental Phase shall not exceed \$7.8 million. San José shall contribute Five Hundred Thousand dollars (\$500,000). VTA shall contribute One Million dollars (\$1,000,000) of Measure B funds. MTC shall contribute Six Million Three Hundred Thousand dollars (\$6,300,000) of RM3 funds.

c. The Parties shall prepare an estimated budget for the Environmental Phase before the completion of the Pre-Environmental Phase and present the proposed budget to the Steering Committee for approval and to the Parties as necessary pursuant to section 5(e). Budget modifications and revisions, if such modifications are determined to be necessary during the environmental review process, will also be subject to approval by the Steering Committee and by the Parties as necessary pursuant to section 5(e). The Parties shall consider a variety of funding sources, including state and federal sources, such as the Federal Railroad Administration's Corridor Identification and Development Program.

d. Each Party's funding of the Agreement is subject to annual appropriations. Because the Parties are precluded by the California State Constitution and other laws from entering into

obligations that financially bind future governing bodies, nothing in the Agreement shall constitute an obligation of future legislative bodies of the Parties to appropriate funds for purposes of the Agreement.

5. Steering Committee

a. The Parties agree that VTA's existing Diridon Station Joint Policy Advisory Board shall be restructured into the Diridon Station Steering Committee (Steering Committee).

b. The Steering Committee shall advance the Project and manage the Parties' collective efforts to implement the terms of the Agreement. The Steering Committee shall work on the scope and budget; prepare progress reports; select station design alternatives; decide on a recommendation for a long-term governance structure; and draft plans for community outreach, funding, and advocacy.

c. The Steering Committee shall have eight appointed members: two appointed by Caltrain; two appointed by San José; two appointed by VTA; one appointed by MTC; and one appointed by CHSRA. The Steering Committee shall have two additional members serving ex-officio: an official from BART and Rod Diridon, Sr.

d. The Steering Committee shall have a Chair and Vice Chair. These positions shall rotate every calendar year between Caltrain, San José, and VTA. The Chair and Vice Chair shall not be held by members from the same Party, unless there is unanimous agreement between Caltrain, San José, and VTA. Caltrain, San José, and VTA shall not be left out of the rotation of these offices, unless the Party chooses otherwise.

e. The Steering Committee shall not supersede the authority of each Party. As required by law or the Agreement or as requested by a Party, the Steering Committee shall secure from the appropriate Parties approval for its actions. Actions by the Steering Committee not subject to requested or required approval by the Parties shall be deemed final.

f. Steering Committee meetings shall be public and held quarterly. Members of the Steering Committee are expected to attend all meetings, with the exception of one excused absence per calendar year. The Steering Committee may call for additional meetings.

g. The Steering Committee shall be administered by VTA staff.

6. Lead Agency and Project Director

a. The Steering Committee, with input and support from the Parties, will recruit and select a Project Director, who will be hired by Caltrain, which will serve as Lead Agency. The Steering Committee may direct Caltrain to change the person designated as the Project Director. The Project Director is responsible for advancing the Project and managing the Project's activities, including but not limited to, meeting deadlines, producing deliverables, managing budgets, and negotiating any agreement terms with partner agencies.

b. The Project Director will report directly to the Steering Committee and to Caltrain as the Lead Agency, free from influence or hindrance by any single Party. Caltrain shall be

responsible on a day-to-day basis for directing and overseeing the Project Director's work and holding the Project Director accountable for meeting the Project's goals, particularly in delivering the Project according to budget and schedule; provided, however, if the Parties approve a long-term governance structure for the Project during the term of this Agreement, the Steering Committee shall, as part of its consideration of the long-term governance structure, review and recommend whether Caltrain should continue to serve as the Lead Agency responsible for day-to-day supervision of the Project Director. If the Parties do not approve a long-term governance structure during the term of this Agreement, the Steering Committee shall, within four years of the Effective Date of this Agreement, review and may modify including remove, the designation of Caltrain as Lead Agency.

c. The Project Director is responsible for proposing an organizational structure for the Project, subject to approval by the Steering Committee and by the Parties as necessary pursuant to section 5(e).

7. Principals

a. Each Party shall assign a Principal for the Project, who shall be a senior-level staff member or consultant functioning as a staff member. Principals shall serve as the primary contact person for all matters related to the Agreement. Principals are accountable to the leadership of their respective agencies.

b. Principals shall deliver on the following responsibilities:

- The Principal for Caltrain, as the rail station and right-of-way owner, shall lead the station planning, including design and engineering, and the environmental review of the Project.
- The Principal for San José, as the local agency, shall lead community partnership and outreach, implement the Diridon Station area plan, and make land use development decisions.
- The Principal for VTA, as the transportation authority of Santa Clara County, shall lead the long-term governance and funding strategies, the legislative advocacy plan, and project coordination in the station area.
- The Principal for MTC, as the regional metropolitan planning organization, shall lead regional legislative advocacy, funding, and network coordination.
- The Principal for CHSRA, as a rail partner, shall lead the high-speed rail project interface and efforts to secure the Federal Railroad Administration's support.

8. Working Groups

The Steering Committee may be supported by working groups, as established at the discretion of staff for the Parties.

9. Project Office

The Project office, which may be co-located with a Party or located separately from the Parties, will house key staff for the Project. The office will serve as a meeting space for in-person convenings and Project coordination.

10. Project Advancement by the Parties

a. The Parties shall collaborate to advance two alternative station designs from 5% to 10% of the design completed. The Parties are not precluded from and may also mutually agree to advance more than one design alternative for the Project to the Environmental Phase. The Parties agree that design(s) shall be further advanced, during the Environmental Phase, to a sufficient level of detail to permit an assessment of impacts that is compliant with CEQA/NEPA requirements. Each Party shall have the opportunity to review and comment upon the designs as they progress through the design process. Each Party shall approve any design element that is necessary to the Party's operations before it is recommended to the Steering Committee. If disputes arise among the Parties during the design review phase, they shall be resolved pursuant to section 11.

b. The Parties shall recommend at least one design for the Project (10% of the design completed) to the Steering Committee.

c. The Steering Committee shall select and advance one of the designs to the Environmental Phase. Before Steering Committee consideration, a Party may require that its governing body review and approve those design elements of the selected alternative, including, but not limited to, specifications, responsibilities, design standards and practices, that are necessary to ensure compliance with that Party's applicable standards. VTA will review and may approve such elements with BART through its partnership in delivering BART to Silicon Valley.

d. The design approved by the Steering Committee in section 10(c) shall be provided to the Caltrain Board of Directors, as the lead agency for the Environmental Phase of the Project, to consider authorizing the initiation of the Environmental Phase.

e. Specific operating tenants of Diridon Station (Altamont Corridor Express, Capitol Corridor, Amtrak, and Union Pacific) may review and comment on the design approved by the Steering Committee, but the design shall not be subject to their approval.

11. Conflict Resolution

a. The Parties agree that, as a general principle and if feasible, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes.

b. If a dispute arises, the following escalating dispute resolution process shall apply. Each Party shall diligently, and in good faith, attempt to resolve a dispute before that dispute is elevated to the next level. First, the Principals of the Parties shall immediately meet to resolve the conflict; the Project Director shall convene and facilitate this meeting which shall occur

within fifteen days. If the dispute is not resolved by Principals, the issue(s) shall be presented in writing by the Project Director to the Executive Director/General Manager/Chief Executive of the agencies who shall meet and attempt to resolve the matter within fifteen days. If the dispute is not resolved by the Executive Director/General Manager/Chief Executive, the Agency Chairs (or their designees) and Steering Committee Chair shall meet and attempt to resolve the matter within fifteen days. If the dispute is not resolved by the Chairperson meeting, the Parties (either individually or collectively) may move to terminate the Agreement, renegotiate a new one, or pursue mediation, as appropriate. Although the Parties are committed to working together diligently to avoid litigation as a method of dispute resolution, nothing herein forecloses or limits the ability of a Party to pursue any available remedies.

12. Indemnification

a. Each Party shall indemnify, defend, and hold harmless the other Parties, their governing bodies, representatives, agents, consultants, or employees from and against all claims, injury, suits, demands, liability, losses, and damages, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any negligent act or, negligent failure to act, recklessness, or willful misconduct of the Party, its officers, employees, consultants, or agents, arising out of or relating to the Party's performance or failure to perform under the Agreement, except those arising by reason of the negligence, recklessness, or willful misconduct of the other Parties, its officers, employees and agents.

b. The Parties agree that the indemnifying Party will bear all expenses and costs and will pay all settlements or final judgments arising out of any claim, action or proceeding involving the injury to or death of any person or damages to or any loss of any property arising from any indemnification obligation of the indemnifying Party, including the costs of defense. Should a claim, action or proceeding of any nature be brought at any time against a Party entitled to indemnification for injury, death, damage or loss, the Party entitled to indemnification will promptly provide notice to the indemnifying Party of such claim, and will tender the defense of such claim to the indemnifying Party, who will thereafter provide all such defense, indemnity, and protections as are necessary under the provisions of the Agreement. The Party entitled to indemnification will provide additional information or assistance as is reasonably requested by the indemnifying Party to assist in the defense, prosecution, or settlement of any such claim. The indemnified Party may engage counsel of its choice for its defense, with the consent of the indemnifying Party, which shall not to be unreasonably withheld.

c. The foregoing provisions regarding indemnification are included pursuant to the provisions of section 895.4 of the Government Code and are intended by the Parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

d. The indemnification obligations shall survive termination or expiration of the Agreement.

13. Cooperation with Third Parties

The Parties agree to cooperate on communications and submittals to funding and regulatory agencies related to the subject matter of the Agreement. The Parties also agree to coordinate to review and approve agreements with third parties that impact the Agreement.

14. Records

a. Each Party shall hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or used for the activities under the Agreement in confidence to the extent permitted by law. Where applicable, the provisions of Government Code section 7920.00 et seq. shall protect the confidentiality of such documents if they are shared between the Parties. The Parties will not distribute, release, or share such documents with anyone other than employees, agents, and consultants who require access to complete the activities under the Agreement without the written consent of the Party authorized to release them, unless required by law.

b. If a Party receives a public records request pertaining to activities under the Agreement, the Party will notify the other Parties within ten working days of receipt and make the other Parties aware of any potential obligation to disclose public documents. The Parties will consult with each other before the release of any public documents related to the activities under the Agreement. Nothing in the Agreement constitutes a waiver of any privilege or exemption otherwise available to a Party.

15. Notices

a. All notices required in the Agreement must be given in writing, addressed to the Parties as set forth below, and delivered by (a) certified mail, return receipt required, (b) courier service, or (c) hand (including messenger or recognized delivery, courier, or air express service).

b. Notices will be effective upon receipt at the following addresses:

To Caltrain: Michelle Bouchard
Executive Director, Caltrain
1250 San Carlos Ave
San Carlos, CA, 94070
Phone: (650) 508-6420
Email: bouchardm@caltrain.com

With a copy to:
James C. Harrison, General Counsel
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Phone: (510) 346-6203
Email: jharrison@olsonremcho.com

To San José: Leland Wilcox
Assistant City Manager, City of San José
200 East Santa Clara Street, 17th Floor
San José, CA 95113
Phone: (408) 535-4873
Email: Leland.Wilcox@sanjoseca.gov

With a copy to:
Jessica Zenk
Deputy Director, City of San José
200 East Santa Clara Street, 8th Floor
San José, CA 95113
Phone: (408) 535-3543
Email: Jessica.Zenk@sanjoseca.gov

To MTC: Andrew B. Fremier
Executive Director, MTC
375 Beale Street
San Francisco, CA 94105
Phone: (415) 778-5240
Email: afremier@bayareametro.gov

With a copy to:
Alix Bockelman,
Chief Deputy Executive Director, MTC
375 Beale Street
San Francisco, CA 94105
Phone: (415) 778-5250
Email: abockelman@bayareametro.gov

To CHSRA: California High-Speed Rail Authority
Attention: Chief Executive Officer
770 L Street, Suite 1160
Sacramento, CA 95814

With a copy to:
California High-Speed Rail Authority
Attention: Chief Counsel
770 L Street, Suite 620 MS 1
Sacramento, CA 95814
Telephone: (916) 324-1541
Email: legal@hsr.ca.gov

With a copy to:
California High-Speed Rail Authority
Attention: Regional Director
160 W Santa Clara St, Suite 450
San Jose, CA 95113
Telephone: (408) 877-3182
Email: northern.california@hsr.ca.gov

To VTA: Carolyn Gonot
General Manager/CEO, VTA
3331 North First Street
San Jose, CA, 95134
Phone:
Email: Carolyn.Gonot@vta.org

c. A Party may specify a different or additional recipient and address during the term of the Agreement as long as the Party provides five days' written notice to all other Parties.

d. For convenience, copies of notices may be given by electronic mail, to the addresses listed above; however, a Party shall not give official notice by electronic mail.

16. Amendments

The Parties may amend the Agreement only in a writing executed by all Parties.

17. Termination

The Parties may terminate the Agreement upon mutual written consent. Additionally, a Party may terminate its participation in the Agreement after 60 days' written notice to all other parties. Upon notice of termination of the Agreement, the contracting Parties shall invoice the terminating Party of its share of all contractor costs for services rendered up to the date of termination pursuant to any existing funding agreements between the Parties. The remaining Parties may amend the Agreement to continue or may terminate the Agreement.

18. Severability

If any portion of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties shall negotiate an equitable adjustment in the provisions the Agreement with a view toward effecting the purpose of the Agreement, and all remaining portions of the Agreement will remain in full force and effect.

19. Miscellaneous Provisions

a. Entire Agreement: The Agreement, including any of its attachments and exhibits, constitutes the entire agreement between all Parties pertaining to its subject matter and

supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties about the subject matter.

b. Binding on Successors: The Agreement is binding upon each Party, their legal representatives, and successors for the duration of the Agreement.

c. Interpretation: The Agreement and each of its provisions, terms, and conditions has been reached as a result of negotiations between the Parties. Each Party expressly acknowledges and agrees that (a) the Agreement will not be deemed to have been authored, prepared, or drafted by any particular Party and b) the rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be employed in the interpretation of the Agreement or in the resolution of disputes.

d. No Implied Waiver: The failure of each Party to insist upon the strict performance of any of the terms, covenant, and conditions of the Agreement will not be deemed a waiver of any right or remedy that a Party may have and will not be deemed a waiver of a Party's right to require strict performance of all the Agreement's terms, covenants, and conditions.

e. No Assignments: No Party is permitted to assign, transfer, or otherwise substitute its interests or obligations under the Agreement without the written consent of the other Parties.

f. Applicable Law: The Agreement, as well as any claims that might arise between any of the Parties, will be governed by the laws of the State of California, without regard to conflict of law provisions.

g. Forum Selection: Any lawsuit or legal action arising from the Agreement will be commenced and prosecuted in the courts of Santa Clara County, California. Caltrain agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

h. Compliance with All Applicable Laws: In the performance under the Agreement, all Parties and their agents shall comply with all applicable requirements of state, federal, and local laws and regulations.

i. Relationship Between the Parties: The Agreement does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent parties.

j. No Third-Party Rights: The Agreement is intended solely for the benefit of the Parties and is not intended to confer any benefits on, or create any rights in favor of, any person other than the Parties.

k. Counterparts: The Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. The Parties agree that an electronic copy of this signed contract or an electronically

signed contract has the same force and legal effect as a contract executed with an original ink signature.

1. Warranty of Authority to Execute Agreement: Each Party represents and warrants that the person whose signature appears in the Agreement on the Party's signature line is authorized and has the full authority to execute the Agreement on the Party's behalf.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed the Agreement as of the Effective Date by their duly authorized representatives.

**Santa Clara Valley
Transportation Authority**

Peninsula Corridor Joint Powers Board

Carolyn M. Gonot
General Manager/CEO

Michelle Bouchard
Executive Director

Date

Date

City of San José

**Metropolitan Transportation
Commission**

Leland Wilcox
Assistant City Manager

Andrew B. Fremier
Executive Director

Date

Date

California High Speed Rail Authority

Ian Choudri
Chief Executive Officer

Date