

AGREEMENT REGARDING FUNDING COMMITMENTS TOWARDS PENINSULA CORRIDOR ELECTRIFICATION PROJECT

This Agreement ("Agreement") is entered into as of this 9th day of August, 2016 ("Effective Date") by and between the California High Speed Rail Authority (hereinafter referred to as "CHSRA") and the Peninsula Corridor Joint Powers Board (hereinafter referred to as "PCJPB") (collectively, CHSRA and PCJPB are referred to herein as the "Parties").

RECITALS

WHEREAS, in January, 2004, the CHSRA and the PCJPB entered into a Memorandum of Understanding (the "2004 MOU"), the purpose of which was to establish a framework for future cooperation between the two agencies relative to the proposed development of a high speed train system for California that would share the rail corridor between the City of San Jose and the City and County of San Francisco owned by the PCJPB ("Peninsula Rail Corridor" or "Corridor"); and

WHEREAS, the Legislature in 2008 put on the ballot and the voters passed Proposition 1A, which authorized \$9.95 billion dollars in bond revenue principally for development of CHSRA's project; and

WHEREAS, in April, 2009, the CHSRA and the PCJPB entered into a new agreement, the purpose of which was to establish an initial organizational framework whereby CHSRA and PCJPB would engage as partners in the planning, design and construction of improvements along the Peninsula Rail Corridor to accommodate and serve the respective interests of the two organizations ("the 2009 Agreement"); and

WHEREAS, in April, 2012, the CHSRA adopted a Business Plan which enunciated a new approach to the future development of a high speed rail system along the Peninsula Rail Corridor; and

WHEREAS, more specifically, the 2012 Business Plan establishes a policy to develop the high speed rail system utilizing a blended system approach that will coordinate the development

and operation of high speed trains within the existing PCJPB commuter rail system, based on the premise of a primarily two-track blended system that will accommodate future high-speed rail, existing freight, and modernized PCJPB commuter rail service in the Peninsula Rail Corridor (the "Blended System"); and

WHEREAS, the PCJPB supports the program of investments in its Peninsula Rail Corridor that will serve to upgrade its existing commuter rail system that will also support future high-speed trains, provided it is consistent with the Blended System consisting of primarily a two-track system substantially within the existing PCJPB right-of-way shared by both PCJPB commuter trains and CHSRA trains, as well as other passenger and freight services; and

WHEREAS, in March 2012, the PCJPB completed a Caltrain/California HSR Blended Operations Analysis demonstrating, using at least one operational scenario as an example, that implementation of a Blended System concept in the Corridor is operationally viable; and

WHEREAS, during the spring of 2012, the CHSRA and the PCJPB, together with the Metropolitan Transportation Commission, the San Francisco County Transportation Authority, the Santa Clara Valley Transportation Authority, the City of San Jose, the City and County of San Francisco, the San Mateo County Transportation Authority and the Transbay Joint Powers Authority entered into a Memorandum of Understanding that adopted an early investment strategy pertaining to the Blended System in the San Francisco to San Jose Segment of the Peninsula Rail Corridor (the "2012 Nine-Party MOU"); and

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

WHEREAS, implementation of the Early Investment Projects will create a corridor that is suitable and ready for operation of PCJPB trains and CHSRA trains, and as demonstrated by the Blended Operations Analysis will create capacity in the form of additional train slots in the

Corridor that could be used by CHSRA for its intercity passenger service, making PCEP implementation necessary for Blended System operations in the Corridor and therefore a necessary element for CHSRA to operate in the Corridor; and

WHEREAS, successful implementation by PCJPB of CBOSS is critical for CHSRA to realize the value from PCEP; and

WHEREAS, in July 2012, the Legislature passed and the Governor signed SB 1029, which in Item 2665-104-6043 appropriated \$600 million in Proposition 1A (2008) funds to be available for early improvement projects in the Phase I Blended System, consistent with the 2012 Nine-Party MOU, subject to various requirements including preparation and CHSRA Board approval of a detailed funding plan in accordance with Section 2704.08(d) of the Streets and Highways Code (Provision 5 of Item 2665-104-6043), which detailed funding plan also must be approved by the State Department of Finance (“DOF”); and

WHEREAS, SB 1029, Item 2665-104-6043, Provision 7, requires CHSRA to develop and obtain DOF approval of an accountability plan prior to obligation of the appropriated \$600 million; and

WHEREAS, SB 1029, Item 2665-104-6043, Provision 8, requires CHSRA to enter into a Project Management and Funding Agreement (“PMFA”) with PCJPB, after obtaining prior approval from DOF of the terms of the PMFA, it being understood that this Agreement is not the PMFA but will assist in PMFA preparation; and

WHEREAS, the 2012 Nine-Party MOU assumes that all local sources, Prop 1B PTMISEA, all federal funds, and bridge tolls identified in the funding plan can be used as match to Proposition 1A funds; and

WHEREAS, the Legislature in SB 1029 also appropriated \$106 million in Proposition 1A funds for use towards CBOSS; and

WHEREAS, CHSRA and PCJPB entered into an Agreement, dated May 1, 2013 (the “May 1, 2013 Agreement”) to terminate the 2004 MOU and 2009 Agreement and to address project planning and development in the context of the Blended System; and

WHEREAS, as authorized and provided for by statute enacted by the California Legislature in 2012 (SB 1029 and SB 557), Section 4(B) of the May 1, 2013 Agreement stipulates that the parties “will work cooperatively and collaboratively to secure approval and release of \$600 million of Proposition 1A funds”; and

WHEREAS, since execution of the May 1, 2013 Agreement several milestones pertaining to the PCEP have been accomplished by the PCJPB such that the parties agree it is appropriate to pursue timely release of the appropriated \$600 million in Proposition 1A funds for the PCEP after all necessary funds used as match to the Proposition 1A funds are identified; and

WHEREAS, more specifically, since execution of the May 1, 2013 Agreement, the PCJPB, among other actions, (1) has taken the requisite steps to clear the PCEP environmentally and (2) has engaged in comprehensive competitive procurement processes for PCEP that have led to the receipt of proposals for the electrification design build construction project and for the procurement of new Electrical Multiple Unit (“EMU”) railcars; and

WHEREAS, in addition, in 2016 the PCJPB caused to be prepared an updated cost estimate of the PCEP as a result of which, based upon an assumed revenue service commencement date in the year 2020/2021, the Project now is projected to cost more than the original estimate; and

WHEREAS, \$125 million of Federal Transit Administration (“FTA”) funds identified in the 2012 Nine-Party MOU for application toward the PCEP is being reprogrammed for necessary PCJPB state of good repair projects;

WHEREAS, as a result, additional funding commitments have been obtained by PCJPB from its regional and local funding partners in the form of binding commitments as depicted on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, also as a result, CHSRA also has committed to provide an additional \$113 million from funding sources available to it or the State over and above the \$600 million of Proposition 1A funds; and

WHEREAS, in 2015, the PCJPB filed an application with the FTA for an allocation of Core Capacity grant funds totaling \$647 million and anticipates favorable action on said application by the end of 2016 or early 2017; and

WHEREAS, access to the \$600 million in SB 1029 Proposition 1A funds will depend on FTA approval and award (via full funding agreement execution) of the Core Capacity grant funds, the other funding sources committed in the 2012 Nine Party MOU and other funding partner commitments; and

WHEREAS, as a prerequisite to FTA approval of the Core Capacity grant application, the PCJPB must certify that all other sources of funding, including CHSRA funds, have been committed and are readily available to support PCEP; and

WHEREAS, FTA considers the Legislature's appropriation of \$600 million in SB 1029 by itself to be sufficient to be categorized as being committed and readily available to support PCEP for purposes of evaluating PCJPB's application for \$647 million in Core Capacity grant funds; and

WHEREAS, the parties desire to enter into this Agreement (1) to set forth a collaborative action plan to seek and obtain the aforementioned \$600 million of Proposition 1A funds appropriated and directed by the California Legislature, (2) to memorialize the commitment of CHSRA to provide an additional sum of \$113 million from funds available to it or the State to support the PCEP based upon current project cost estimates, (3) to enumerate the commitments by PCJPB and other funding partners to fully fund PCEP contingent upon the FTA approval and award (via full funding agreement execution) of the Core Capacity grant funds, (4) to enumerate various Core Principles essential to both construction of the PCEP and future operation of Blended System service in the Peninsula Rail Corridor, (5) to affirm the commitment of PCJPB to project oversight by the funding partners, including CHSRA, (6) to identify and provide for PCEP cash flow funding from the State pending availability of Proposition 1A funds, and (7) to put processes and conditions in place to address potential cash flow issues related to anticipated federal funding.

NOW, THEREFORE, in consideration of the foregoing the parties hereby agree as follows:

ARTICLE I. REAFFIRMATION OF PARTNERSHIP PRINCIPLES AND ACTION PLAN

The parties hereby reaffirm and further the Partnership Principles and Action Plan pertinent to implementation of the Early Investment Projects and implementation of Blended System service as stated in the May 1, 2013 Agreement. In addition, as required by the 2012 Nine-Party MOU and the May 1, 2013 Agreement, contemplated by Proposition 1A and applicable legislation enacted pursuant thereto and as assessed in the 2012 Caltrain/California HSR Blended Operations Analysis, the following principles constitute conditions to be attached to the request for release and subsequent expenditure of Proposition 1A funds for the PCEP:

- A. The \$600 million in Proposition 1A funds will be dedicated to PCEP between 4th and King Streets in San Francisco to Tamien Station in San Jose, and will be implemented by PCJPB in a manner consistent with Proposition 1A and applicable legislation enacted pursuant thereto to support Caltrain/High Speed Rail Blended System operations, to make the Corridor suitable and ready to receive CHSRA trains. It is the shared goal of the parties to enable PCEP to be constructed in a manner that obviates the necessity for CHSRA to have to make material changes to the PCEP infrastructure during CHSRA future construction of the Blended System. In the event CHSRA requests incorporation of modifications of the PCEP to accommodate achievement of the goal referenced above, PCJPB will exercise best efforts to implement such modifications by change order(s) issued to the PCEP contractor subject to (1) confirmation by CHSRA of environmental clearance for proposed modifications, (2) CHSRA assumption of responsibility for all associated incremental costs associated with implementation of said modifications, with the understanding the State funding for these purposes shall be over and above the State funding for PCEP identified hereinabove and in Article II of this Agreement and (3) the Parties agree that if there are any refunds or credits to CHSRA as described in Article I(F) the Parties agree that these refunds or credits may be used to pay for modifications of the PCEP to accommodate the shared goal of constructing the PCEP in a

manner that obviates the necessity for CHSRA to make material changes to the PCEP infrastructure during CHSRA future construction of the Blended System;

- B. Blended System operations in the Corridor will consist primarily of a two-track system substantially within the existing PCJPB right-of-way;
- C. PCJPB and CHSRA will collaborate to develop Blended System operations plans that comport with all applicable statutory and regulatory requirements; and
- D. CHSRA and PCJPB will continue to work cooperatively on additional improvements necessary to facilitate their respective operations in accordance with the provisions of SB1029 and CHSRA business plans.
- E. PCJPB recognizes that the commitments CHSRA makes in this Agreement are based on and expressly conditioned upon funding commitments by non-CHSRA parties contained in Exhibit A attached hereto being committed prior to release of CHSRA funding.
- F. PCJPB will make its best efforts to complete the PCEP in amounts less than budgeted. In the event PCEP is completed for less than the amounts budgeted in Exhibit B; in such case, PCJPB will refund or credit the cost savings to CHSRA and to all other funding partners in a proportionate share reflecting the budget in Exhibit B.

ARTICLE II. ACTION PLAN TO SECURE APPROVAL AND RELEASE OF PROPOSITION 1A FUNDS FOR PCEP

As appropriated and directed by the California Legislature, CHSRA shall provide \$600 Million of Proposition 1A funding to the PCJPB to be used to cover eligible costs related to the implementation of the PCEP as contemplated by the 2012 Nine-Party MOU, Proposition 1A and SB 1029, provided the prerequisite requirements and intent of SB 1029 and related governing legislation are satisfied. Following the PCJPB Board and the CHSRA Board approvals of this Agreement, execution of this Agreement, and execution of the contract with the PCEP contractor, in that order, \$600 million in Proposition 1A funding, as well as an additional \$113 million of funds available from other sources, shall be made available to the PCJPB on a reimbursement basis as contemplated by the 2012 Nine-Party MOU and SB 1029 and subject to

prior CHSRA satisfactory compliance with the prerequisites to obtaining said funds prescribed by SB 1029 and Proposition 1A, where applicable. It is further understood in this regard that: (1) January 1, 2013, the date by which the parties executed the 2012 Nine-Party MOU, is deemed the effective date for incurring construction-related capital costs, inclusive of design costs, eligible for reimbursement to PCJPB as well as being deemed eligible as Proposition 1A matching funds, (2) CHSRA will make eligible reimbursement payments to PCJPB within 45 days of the receipt of PCJPB invoices, and (3) EMU rolling stock acquisition costs incurred by PCJPB from non-Proposition 1A funds will be considered as counting toward meeting Proposition 1A matching funding requirements. It is the intention of the parties to enter into a mutually-agreed-upon PMFA required by SB 1029 which, among other issues pertinent to the PCEP, will address the above items in more detail, the amount of CHSRA-provided funding to occur each fiscal year, the types of costs eligible for reimbursement, and specific procedures and requirements related to reimbursement, invoicing, payment and reporting as well as CHSRA project oversight roles and responsibilities.

The parties agree that in recognition of the intent of PCJPB to proceed with the award of the contracts for the construction of the PCEP prior to securing federal funding , it is in the best interest of all parties involved in the funding of the project to understand and agree on cash-flow requirements and to identify all sources of funding, including federal, local and other state sources, that can meet those needs. As part of this process, CHSRA will initiate and then vigorously pursue the actions required to obtain approval for release of the aforementioned funds for PCEP to have funds available for reimbursement. PCJPB hereby pledges to provide such assistance as CHSRA may require to support that effort, including but not limited to PCJPB staff time locating and providing PCEP-related details and documents to CHSRA and meeting with state agencies such as DOF. PCJPB also commits to working with regional and federal funding partners to obtain funding on a timely basis to address cash flow needs to avoid sole reliance on state funding. Pending availability of Proposition 1A funds, funding derived from other sources will be made available to PCJPB through CHSRA to enable the CHSRA's share of PCEP cash flow requirements to be met. PCJPB also is eligible to receive other State funding (not from CHSRA and excluding those State sources PCJPB previously has identified in the funding plan it has secured, including Proposition 1B and Caltrain Low Carbon Transit Operations Program funds) to be counted toward meeting the State's contribution to the cash flow needs of the

PCEP. The estimated cash flow funding required from the State for the 2016-2017 fiscal year is \$117,460,000 as reflected in Exhibit C with the understanding that July 1, 2016 constitutes the effective date for the commencement of the cash flow funding payments from the State. On an annual basis thereafter PCJPB will provide CHSRA with the estimated cash flow funding needed to ensure requisite progress and ultimate completion of PCEP within established schedules and budget. Notwithstanding the foregoing, it is understood and agreed that the parties must enter into the PMFA contemplated by SB 1029 as a condition to the availability of cash flow funding from the State in excess of \$113 million.

In order to prevent PCEP construction outpacing funding certainty, PCJPB agrees to consult and coordinate with CHSRA and other funding partners in advance of authorizing the PCEP contractor to perform work beyond the Limited Notice to Proceed (LNTP), for design and some limited material purchases, to be issued to said contractor following award of that contract; provided, however, that if as of the expiration date of the LNTP, a full funding grant agreement between the PCJPB and FTA for the aforementioned Core Capacity grant funds has not yet been executed, or FTA has approved a grant of funds in less than the entirety of the \$647 million amount requested by the PCJPB, issuance of a Notice to Proceed for construction of the PCEP shall be subject to the approval of the Authority, which concurrence shall not be unreasonably withheld or conditioned.

ARTICLE III. CORE PRINCIPLES

As a prerequisite to CHSRA actions to seek approval and release of the Proposition 1A funds for the PCEP, the following core principles pertinent to anticipated future Blended System design, construction and operation hereby are agreed to by the parties:

- A. In accordance with Section 3(a)(3) of the May 1, 2013 Agreement in which the parties recognized the necessity to negotiate an agreement in the future to facilitate shared use of the Corridor, the PCJPB commits to convey to CHSRA, to the fullest extent of its legal right to do so and at no cost to CHSRA, a permanent and irrevocable possessory property interest in the Corridor to enable future operation of CHSRA Blended System service in the Corridor after completion of PCEP. The property interest to be conveyed will be, at CHSRA's election, in the form of a recordable easement, lease or trackage right contract

(to the extent required, PCJPB will fully support, including in writing and through legal filings as necessary, any regulatory or Surface Transportation Board approvals required for transfer and/or usability of such property interest) and will be conveyed promptly following (1) approval by FTA of the Core Capacity grant referred to hereinabove and execution of a full funding grant agreement memorializing that commitment, (2) allocation by CHSRA and receipt by PCJPB of any portion of the Proposition 1A funds identified in Article II or funds from other sources available to CHSRA or the State in lieu of said Proposition 1A funds, (3) issuance by PCJPB to the PCEP contractor of a Notice to Proceed beyond the Limited Notice to Proceed referred to hereinabove in Article II and (4) execution of the PMFA. In addition, if PCJPB obtains Intercity Passenger rights in the Corridor currently held by Union Pacific Railroad, PCJPB commits to convey to CHSRA, to the fullest extent of its legal right to do so and at no cost to CHSRA, the authority to operate Blended System Intercity Passenger service in the Corridor at service levels and pursuant to schedules to be mutually agreed upon by the parties from time to time and memorialized in agreements contemplated by the terms of Article IV of this Agreement; and

- B. PCJPB reaffirms its understanding that PCEP represents a foundational element of future Blended System construction and operations in the Corridor and hereby reiterates its commitment to work collaboratively with CHSRA to facilitate the implementation of the Blended System at the earliest practicable date. More particularly, with the understanding that (1) CHSRA, with collaboration on the part of the PCJPB, will be serving as lead agency for any further environmental, legal and community engagement activities as may be necessary to fully achieve the benefits contemplated in the 2012 Nine-Party MOU and the May 1, 2013 Agreement, including, but not limited to, those assessed in the 2012 Caltrain/California HSR Blended Operations Analysis and (2) CHSRA will be responsible for securing funding for capital costs to allow CHSRA to operate the Blended System beyond the Early Investment Projects, PCJPB agrees to the sharing of train slots for blended operations consistent with CHSRA's 2014 Business Plan and the simulations deemed feasible in the 2012 Caltrain/CHSRA Blended Operations Analysis. Design options for the Blended System should evaluate both operational and infrastructure options that strive to optimize both CHSRA and PCJPB

services while minimizing community impacts and the cost of necessary improvements. In the case of disagreement about operational decisions or the exact improvements that are necessary, reasonable efforts will be made by both parties to find mutually acceptable solutions.

ARTICLE IV. ADDITIONAL AGREEMENTS

In accordance with the terms of Section 4(I) of the May 1, 2013 Agreement, and in recognition of the requirements of SB 1029 and Proposition 1A, the parties recognize and acknowledge that, separate and apart from the issues to be addressed in the PMFA for the PCEP, there will be a continuing need over time to negotiate additional agreements that will address, among other things, detailed issues pertinent to future shared use and maintenance of the Peninsula Rail Corridor by PCJPB and CHSRA. Among such future issues to be addressed are specific Blended System details including but not limited to corridor safety improvements and state of good repair projects, construction windows, rail system scheduling, location and construction of passing sidings, signal system modification, dispatching, passenger boarding, shared platforms and platform height, maintenance, storage arrangements, and maintenance facilities. The parties recognize they must enter into such agreements on reasonable and equitable terms and on a timely basis to facilitate each party's reasonable implementation schedule reflecting consideration of their respective investments in the Peninsula Rail Corridor, applicable legal obligations and the interests of their respective customers. In this regard, the parties pledge to use their best efforts to reach agreement, each party taking into account not only its own interests and obligations but also the interests and obligations of the other party. Toward that end, it also is agreed that a partnering process, on specific terms to be agreed upon, will be implemented pursuant to which an independent party will be engaged for the purpose of assisting in the development of rules of engagement and assisting the parties in making decisions on the key issues associated with the joint PCJPB/CHSRA program. In the event issues cannot be resolved at the project leadership level, they will be elevated within the management structure of each agency for resolution in a manner determined through the partnering process. Thereafter, if issues remain unresolved either party may invoke a non-binding mediation process before a mutually agreed upon individual who possesses expertise and experience in the planning, construction and operation of rail service in shared rail corridors. The parties agree to request

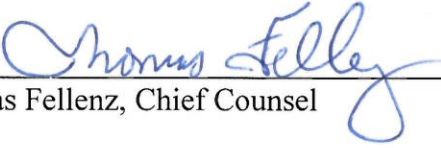
the California Secretary of Transportation to nominate one or more proposed mediators for consideration by the parties and whose selection will be subject to mutual agreement of the parties.

IN WITNESS WHEREOF, CHSRA and PCJPB have executed this Agreement on the day and year first above written.

California High Speed Rail Authority

By: 
Jeff Morales, Chief Executive Officer

Approved as to form:


Thomas Fellenz, Chief Counsel

Peninsula Corridor Joint Powers Board

By: 
Jim Hartnett, Executive Director

Approved as to form:

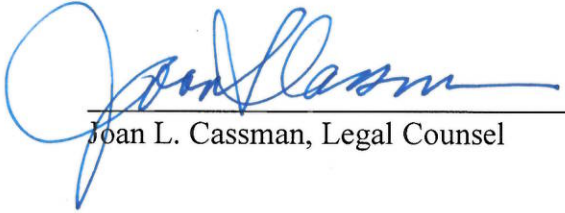

Joan L. Cassman, Legal Counsel

EXHIBIT A – COMMITTED/BUDGETED REGIONAL AND LOCAL FUNDING SOURCES

Funding Sources (in Millions)

JPB Member Contributions ¹	193.0
Prop 1B Caltrain ²	8.0
JPB Local ²	9.0
Subtotal Local	210.0
MTC Bridge Tolls	39.4
BAAQMD Carl Moyer	20.0
Subtotal Regional	59.4
Total	269.4

Notes

1. The JPB Member Contributions are funding sources coming from VTA, San Mateo County Transportation Authority, and San Francisco County Transportation Authority and/or City & County of San Francisco.
2. Caltrain funding, including local and Prop 1B Caltrain, includes funds either that are under the control of Caltrain or are allocated to Caltrain directly. Caltrain then takes action to commit these funds to PCEP.

EXHIBIT B – PROJECT BUDGET AND ANTICIPATED FUNDING SOURCES

Projected Costs (in Millions)

Peninsula Corridor Electrification Program	1,980.4
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Funding Sources (in Millions)

JPB Member Contributions	193.0
JPB Local	9.0
Prop 1A CHSRA	600.0
CHSRA or other State Sources	113.0
Cap & Trade TIRCP [not secured; application only]	20.0
Prop 1B Caltrain	8.0
FTA/FHWA Prior/Current Obligations	16.0
FTA Future Obligations	315.0
FTA Core Capacity [not secured; application only]	647.0
MTC Bridge Tolls	39.4
BAAQMD Carl Moyer	<u>20.0</u>
Total	1,980.4