

JOINT POWERS AGREEMENT
PENINSULA CORRIDOR PROJECT

This Agreement is made and entered into this 3rd day of October, 1996, by and between the Santa Clara County Transit District, dba Santa Clara Valley Transportation Authority ("SCCTD" or "SCVTA"), the City and County of San Francisco ("CCSF"), and the San Mateo County Transit District ("SamTrans") (collectively referred to herein as "Member Agencies").

RECITALS

WHEREAS, in 1988, SCCTD, CCSF and SamTrans entered into a Joint Powers Agreement (the "1988 Agreement") creating the Peninsula Corridor Study Joint Powers Board ("JPB") pursuant to Title 1, Division 7, Chapter 5, Article I (§6500 et seq.) of the California Government Code, for the purpose of conducting planning studies related to the Peninsula Commute Service ("PCS"); and

WHEREAS, based upon the planning studies and other activities conducted by the JPB, including, among other things, the negotiation of an agreement to acquire the full corridor right-of-way owned by Southern Pacific Transportation needed for operation and future expansion of the PCS, the parties determined that it would be beneficial to residents of their respective counties that the purposes and powers of the JPB be expanded to enable the JPB to plan, oversee and operate the PCS following

transfer of the system assets from the State of California to local control; and

WHEREAS, such planning, oversight, and operation of the PCS required the maintenance and improvement of the Southern Pacific Right of Way and related system assets, as well as the application for and obtainment of State and federal funding; and

WHEREAS, in 1991 SCCTD, CCSF and SamTrans amended and restated in its entirety the 1988 Joint Powers Agreement to reflect their expanded objectives and executed a Joint Powers Agreement dated August 18, 1991 ("1991 Agreement"); and

WHEREAS, the 1991 Agreement provided for the allocation among the parties of the administrative, capital and operating expenses attendant to ownership of the Peninsula Corridor right-of-way ("ROW") and operation of the PCS; and

WHEREAS, pursuant to an Amendment adopted on November 3, 1994, the JPB amended the 1991 Agreement to modify the basis for allocation of administrative and capital costs among the parties and to effect certain other related changes to the 1991 Agreement ("1994 Amendment"); and

WHEREAS, SCTVA has proposed further revisions to the 1991 Agreement pertaining to SCTVA's powers to appoint representatives to the JPB; and

WHEREAS, the parties now desire to restate the 1991 Agreement as amended by the 1994 Amendment to include SCTVA's proposed revisions.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Section 1. DEFINITIONS

The terms defined in this section shall for all purposes of this Agreement have the meanings specified herein.

"Agreement" means this Joint Powers Agreement as it now exists or as it may hereafter be amended.

"Gilroy Service" means the PCS Service between the Tamien Station in San Jose and Gilroy.

"Local Funds" means funds generated by a Member Agency or allocated to a Member Agency by another agency on a non-discretionary basis.

"Main Line Service" means the PCS service between the City and County of San Francisco and the Tamien Station in San Jose.

"Project" means (a) the maintenance and improvement of the ROW, (b) the planning, administration, operation and expansion of the PCS, including the Gilroy Service that will be run on the ROW, and (c) the application for and obtainment of State and federal funding to achieve the aforesaid Project objectives.

Section 2. PURPOSE

The purpose of the Agreement is to establish an organization that shall be responsible for implementing the objectives of the Project and related actions pertaining to the PCS.

Section 3. TERM

This Agreement shall be effective upon execution of this Agreement by all parties.

Upon becoming effective, this Agreement shall continue in full force and effect for ten (10) years from the October 18, 1991 execution of the Joint Powers Agreement, subject, however, to each party's right to withdraw upon one (1) year's prior written notice given to the other parties at the end of any fiscal year in the manner prescribed in Section 19 below. At the end of ten (10) years, this Agreement shall continue in full force and effect on a year-to-year basis until such time as two or more parties withdraw pursuant to the terms of Section 12 below.

Section 4. JOINT POWERS BOARD

There is hereby created the JPB as a public entity separate and apart from CCSF, SCVTA and SamTrans, or any current combination thereof. This new entity shall be known as the Peninsula Corridor Joint Powers Board. The Board shall consist of nine (9) members representing their respective Member Agencies as follows:

A. Representing SamTrans

1. Member of SamTrans Board designated by Board;
2. Member of SamTrans Board appointed by San Mateo County Board of Supervisors; and

3. Member of SamTrans Board appointed by the Cities Selection Committee of the Council of Mayors of San Mateo County.

B. Representing the Santa Clara Valley Transportation Authority

1. Member of SCVTA Board of Directors representing the City of San Jose or the County of Santa Clara, as appointed by the SCVTA Board;

2. Member of SCVTA Board of Directors representing the County of Santa Clara or a city in Santa Clara County other than the City of San Jose, as appointed by the SCVTA Board; and

3. The County of Santa Clara's representative to the Metropolitan Transportation Commission ("MTC"), or if this person declines to serve, then the MTC appointee of the Cities Selection Committee, or if this person also declines to serve, then a member of the SCVTA Board of Directors as appointed by the SCVTA Board.

No more than two members of the County of Santa Clara Board of Supervisors may serve on the JPB Board at the same time.

C. Representing the City and County of San Francisco

1. An appointment of the Mayor;
2. An appointment of the Board of Supervisors;
and

3. An appointment of the San Francisco Public Transportation Commission.

Each of the nine (9) members shall serve in his or her individual capacity, but at the pleasure of the party appointing him or her.

Section 5. POWERS OF THE JPB

The JPB shall be the policy-making body for the Project and shall have all such powers to implement the Project as may be exercised under applicable laws by joint powers agencies. The JPB hereby is authorized, in its own name, to do all acts deemed necessary or convenient for the exercise of said power, including, but not limited to, any or all of the following: to make and enter into contracts; to acquire, own, and maintain real and personal property; to employ agents and employees; to incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of the State, CCSF, SamTrans, or SCVTA; to sue and be sued in its own name; and to apply for, receive, and utilize State, local, and Federal funding and funds from all other sources given to it for the purpose of accomplishing the Project. Without limiting the generality of the foregoing, the JPB shall:

- A. Approve short-range plans for PCS.
- B. Approve by March 31 of each year the annual PCS operating budget, subject to the approval of the governing board of each Member Agency.
- C. Approve the annual capital budget by March 31 of each year, and approve other proposed actions pertaining to the level of service, changes in service schedules that add or delete

service to or from a station, fares, and capital improvement programs.

D. Commit Proposition 116 Funds earmarked for the JPB to specific capital projects approved in the capital budget without the approval of the Member Agency governing boards. Approve all other specific capital projects requiring use of Local Funds, subject to the approval of the Member Agency governing boards.

E. Concur in the award by the Managing Agency of the operating contract for the PCS.

F. Advise, review and make recommendations to the Managing Agency regarding the following:

1. marketing programs;
2. financial reports;
3. other reports for public distribution;
4. interagency cooperation; and
5. management plan.

G. Award a contract to perform an independent audit of the financial condition of the JPB.

Pursuant to Government Code Section 6509, the power of the JPB is subject to the restrictions upon the manner of exercising the power of SamTrans.

Section 6. MANAGING AGENCY; DELEGATION OF AUTHORITY

A. The JPB shall appoint a managing agency ("Managing Agency") to implement the objectives of the Project.

B. SamTrans hereby is appointed as Managing Agency for the duration of the term, provided, however, that the JPB may replace SamTrans as the Managing Agency upon one (1) year's prior written notice given at the end of any fiscal year after SamTrans has been fully repaid monies advanced by it to cover the ROW purchase price.

C. The Managing Agency shall be delegated the following authority and required to perform the following responsibilities:

(i) Award the operating contract for the PCS, subject to the concurrence of the JPB as provided in Section 5 above, and administer and modify said contract consistent with the JPB's operating budget;

(ii) Maintain and manage the ROW and other system assets unless the administration of particular station sites is delegated by the JPB to an individual Member Agency.

(iii) Implement capital programs contained in the approved PCS capital budget unless the administration of particular capital projects is delegated by the JPB to an individual Member Agency;

(iv) Seek, obtain and administer grants;

(v) Develop and implement marketing programs;

(vi) Prepare and submit financial reports;

(vii) Recommend changes in fare structure to the

JPB;

(viii) Recommend changes in scheduling and levels of service to the JPB;

(ix) Prepare and implement changes in scheduling other than those requiring the approval of the JPB as provided in Section 5(C) above.

(x) Prepare capital and operating budgets for presentation to the JPB;

(xi) Keep staff of Member Agencies advised on PCS matters; and

(xii) Report regularly to the JPB regarding PCS issues.

Section 7. FINANCIAL COMMITMENTS

A. Operations

Each Member Agency agrees to share in the operating costs associated with the PCS. Member Agency subsidies for the Main Line Service shall be based on the existing passenger boarding formula which is predicated upon county of origin a.m. peak hour boardings of passengers as adjusted annually prior to the JPB's adoption of the operating budget. SCVTA shall be responsible for all net operating costs of the Gilroy Service based upon the fully allocated cost methodology.

B. Capital Projects

The JPB and the Member Agencies shall use their best efforts to fully fund from state, Federal and JPB Proposition 116 resources, capital projects contained in the approved capital budget. If approved by Member Agencies pursuant to Section 5(D),

Member Agencies shall share in the remaining costs of capital projects according to the following guidelines: Proposed capital projects shall be categorized in the capital-program process as being designed to replace, enhance or expand PCS assets. Costs of capital replacement and enhancement projects that are not covered by outside funding sources shall be shared equally by the Member Agencies. Furthermore, Member Agencies shall support the equal sharing of Federal funding for replacement and enhancement projects with the understanding that the method for allocating the Federal funds will be reviewed by the Metropolitan Transportation Commission Regional Transit Coordinating Council Finance Committee. Cost allocation among the JPB members for expansion projects such as the downtown terminal relocation, the Gilroy Service and the Bayshore Corridor Service shall be determined on a case-by-case basis. SCVTA shall assume full responsibility for obtaining funding for all Gilroy Service capital projects.

In addition to the costs for capital projects to be shared by the Member Agencies as provided in this Section 7.B, on an annual basis the JPB shall determine an amount to be contributed by the Member Agencies into a capital contingency fund to cover unanticipated, necessary capital improvements. Each Member Agency shall contribute an equal share of this capital contingency fund.

C. JPB Administrative Costs

Expenses for personnel and resources of the Managing Agency to administer the affairs of the JPB, including the administration of the operating contract, shall be shared by the Member Agencies based on the a.m. boarding formula as provided in Section 7.A above.

D. Procedures for Making Monthly Contributions.

(i) Operational Subsidies. Operational subsidies shall be paid monthly in advance by each Member Agency to the Managing Agency in accordance with procedures to be enacted by the JPB.

(ii) Capital Contributions. Commitments by Member Agency governing boards to provide Local Funds for a particular capital project shall be obtained prior to the filing of grant applications for each said project. Actual contributions shall be paid as and when they are due and owing. All contributions to the capital contingency fund provided in Section 7.B above shall be delivered to the Managing Agency within sixty (60) days of the JPB's determination of the amount to be funded.

(iii) JPB Administrative Costs. Administrative costs of the JPB shall be billed by the Managing Agency and paid by the Member Agencies on a monthly basis.

(iv) Late Payments. Member Agencies who fail to pay or who are delinquent in any financial commitment hereunder shall be assessed interest charges based on the Managing Agency's average rate of return on its investment portfolio.

E. Duration.

All allocations of expenses and costs established in this Section 7 shall be subject to re-evaluation during the JPB's 1998-1999 fiscal year. Any changes made as a result of this re-evaluation shall become effective during the fiscal year 1999-2000. In the event any allocation method is hereafter revised, any capital projects in progress at the time of the revision shall be carried to completion using the allocation methods in place at the time of the award of the construction/procurement contract for the capital project.

F. Covenant.

Each Member Agency hereby affirmatively covenants to the other Member Agencies henceforth to pay any and all financial obligations to the JPB promptly as and when such obligations become due and owing to the JPB as provided in Section 7 or otherwise in this Agreement.

G. Obligations of the City and County of San Francisco.

CCSF shall pay to the Managing Agency CCSF's portion of the JPB start-up costs in the amount of \$557,485.00, plus interest at the rate of seven percent (7%) per annum in accordance with the schedule of payments contained in Exhibit "A" attached hereto and incorporated herein by this reference. CCSF shall have the right to prepay its outstanding obligation, including accrued interest, at any time. In consideration for the foregoing, and provided that CCSF makes the payments provided

for in Schedule A on a timely basis, the JPB shall waive its right to receive from CCSF interest on late payments made by CCSF for fiscal year 1993-94 financial obligations, The CCSF Board of Supervisors' representative on the JPB shall introduce legislation to approve CCSF's payment of the amounts referenced in this Paragraph 4, as well as to approve all other revisions of the 1991 Agreement contained in this Agreement, within sixty (60) days following JPB's action approving the 1994 Amendment to the 1991 Agreement. This Agreement is subject to the budget and fiscal provisions of the Charter of CCSF. Charges will accrue only after appropriation of funds by CCSF's Board of Supervisors and after prior written authorization certified by CCSF's Controller, and the amount of CCSF's obligation hereunder shall not at any time exceed the amount appropriated and certified for the purpose and period stated in such advance authorization.

Section 8. MEETINGS OF THE JPB

A. Regular and Special Meetings.

The JPB shall hold at least one (1) regular meeting each month. The date, hour and place of said regular meetings shall be fixed by resolution of the JPB. The Managing Agency may call a special meeting of the JPB by providing written or telephone notice to each member of the JPB at least 72 hours prior to the date of said special meeting, which said notice shall specify the purpose for said meeting.

B. Conduct of Meetings

All meetings of the JPB shall be held subject to the provisions of Section 54950 et seq. of the Government Code of the State of California.

C. Minutes

The Secretary shall cause minutes of all meetings of the JPB to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Member of the JPB.

D. Quorum

A majority of the members of the JPB shall constitute a quorum for the transaction of business. No action may be taken by the JPB except upon the affirmative vote of five or more of its members.

Section 9. BYLAWS

The JPB shall have the power to adopt such bylaws that it, in its sole discretion, may deem necessary or desirable for the conduct of its business.

Section 10. OFFICERS AND EMPLOYEES

A. The JPB shall elect annually a chairperson and a vice-chairperson from among its members. The JPB also shall appoint a secretary who may, but need not be, a member of the JPB.

B. The JPB shall designate its legal counsel.

C. The Managing Agency's General Manager shall be the Executive Director of the JPB.

D. The Finance Director of the Managing Agency shall be the treasurer of the JPB and shall have custody of all the moneys of the JPB from whatever source and shall perform the function of treasurer and have all the powers, duties, and responsibilities of said office as set forth in Government Code Section 6505.5.

E. The Finance Director of the Managing Agency shall act as controller of the JPB and shall perform the functions and have the powers, duties, and responsibilities of said office set forth in Government Code Section 6505.5. The controller shall draw warrants to pay demands against the Managing Agency or the JPB pursuant to authorization of the JPB.

F. The JPB shall designate such independent auditors as it deems appropriate for the purpose of reporting on the JPB's operations and its financial condition.

Section 12. WITHDRAWAL FROM AGENCY

Any party may withdraw from this Agreement upon one (1) year's prior written notice to the other parties given at the end of any fiscal year. Upon delivery of such a notice, the Member Agencies shall jointly request the Metropolitan Transportation Commission ("MTC") to mediate the issues giving rise to the withdrawal notice, and shall participate in such mediation if undertaken by the MTC. In addition, should a withdrawal result despite such mediation efforts, each Member Agency, including the withdrawing party, shall participate with MTC in a further mediated negotiation relative to disbursement of regional funds

to assure the remaining Member Agencies are not subject to undue financial hardship. In the event of such a withdrawal by a single party, the JPB shall continue to exist, with the membership adjusted to reflect the withdrawal. Withdrawal by a single party shall not entitle that party to reimbursement for past capital contributions or to distribution of any assets or funds of the JPB. If two or more of the parties to this Agreement withdraw, then this Agreement shall terminate at the end of the fiscal year following expiration of the one-year's notice given by the second party to withdraw from the Agreement, at which time the property and funds of the JPB shall be distributed to the Member Agencies pursuant to the terms of Section 13.

Section 13. DISPOSITION OF PROPERTY AND FUNDS

At such time as this Agreement is terminated, any property interest remaining in the JPB, following discharge of all obligations due by the Board, shall be disposed of and the proceeds or property shall be allocated in accordance with a separate agreement to be entered into between the parties.

Section 14. ACCOUNTS AND REPORTS

The JPB shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the JPB shall be open to inspection at all reasonable times to the parties to this Agreement and their representatives. The JPB, within one hundred twenty (120) days after the close of each fiscal year (which shall be the period

from July 1 of each year to and including the following June 30), shall give a complete written report of all financial activities for such fiscal year to the parties. The Controller shall prepare and maintain such accounts and reports.

Section 15. OBLIGATIONS OF THE JPB

The debts, liabilities and obligations of the JPB shall not be debts, liabilities and obligations of any of the parties to this Agreement unless and to the extent specifically provided by agreement in writing with any of such parties.

Section 16. INDEMNIFICATION

The JPB shall acquire such insurance protection as it deems necessary to protect the interests of the JPB, the parties to this Agreement and the public. The JPB shall assume the defense of and indemnify and save harmless each party to this Agreement and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the JPB not delegated to the Managing Agency or the activities of the JPB undertaken pursuant to this Agreement.

Section 17. AMENDMENTS

This Agreement may be amended at any time by agreement of all of the parties.

Section 18. ENTIRE AGREEMENT

This Agreement constitutes the entire Joint Powers Agreement among the parties, and supersedes any prior oral or

written understandings between them pertaining to the same subject matter, including, but not limited to, the 1988 Agreement, the 1991 Agreement and all amendments to these agreements.

Section 19. NOTICES

All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the second day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

CCSF:	Public Transportation Commission 949 Presidio Avenue San Francisco, CA 94115 Attn: Director of Public Transportation
SamTrans:	San Mateo County Transit District 1245 San Carlos Drive San Carlos, California Attn: General Manager
SCCTD:	Santa Clara Valley Transportation Authority 3331 North First Street Bldg. C, 2nd Floor San Jose, California 95134-1906 Attn: Assistant Executive Officer

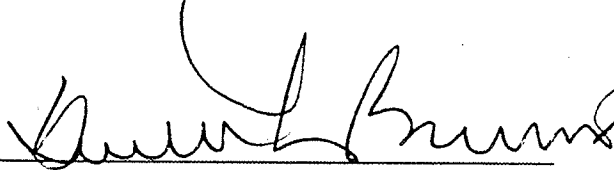
Any party may change its address for purposes of this Section by giving the other parties written notice thereof in the manner set forth above.

Section 20. COUNTERPARTS

This Agreement may be entered into in counterparts each of which shall be deemed an original, but all of which together shall be deemed an entire Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.


CITY AND COUNTY OF SAN FRANCISCO

By 
MAYOR

APPROVED
PUBLIC TRANSPORTATION
COMMISSION
Resolution No. 96-136
Dated: Nov. 26, 1996

Approved as to Form and Legality
Louise H. Renne, City Attorney

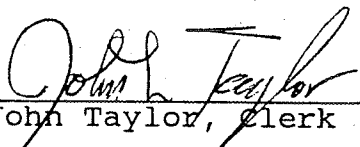
ATTEST:

By 
Deputy City Attorney


Secretary, PUBLIC
TRANSPORTATION COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
Ordinance No. 22-97

ATTEST:


John Taylor, Clerk

SANTA CLARA COUNTY TRANSIT DISTRICT

By *Paul M. Cipolla*

Approved as to Form and Legality

By *Suzanne Gifford* 2-25-97

SAN MATEO COUNTY TRANSIT DISTRICT

By *[Signature]*

Approved as to Form and Legality

By *Davey Miller*