

**AGREEMENT BETWEEN**

**CAPITOL CORRIDOR JOINT POWERS AUTHORITY**

**AND**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**FOR**

**ADMINISTRATIVE SUPPORT**

**February 20, 2005**

## ADMINISTRATIVE SUPPORT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this 20th day of February, 2005, by and between the CAPITOL CORRIDOR JOINT POWERS AUTHORITY and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT.

### RECITALS

THIS AGREEMENT is made with reference to the following facts:

- A. Effective December 31, 1996, the following parties entered into a "Joint Exercise of Powers Agreement to Establish the Capitol Corridor Joint Powers Authority" (such agreement being referred to herein as the "JEPA", and the Joint Powers Authority so formed as the "CCJPA"):
- (i) Placer County Transportation Planning Agency ("PCTPA");
  - (ii) Sacramento Regional Transit District ("SRTD");
  - (iii) San Francisco Bay Area Rapid Transit District ("BART");
  - (iv) Santa Clara Valley Transportation Authority ("VTA");
  - (v) Solano Transportation Authority ("STA"); and
  - (vi) Yolo County Transportation District ("YCTD"),

all of whom collectively are sometimes hereinafter referred to as the "Agencies", and BART sometimes hereinafter referred to as the "Managing Agency".

- B. Effective August 28, 1997, the Agencies amended the JEPA (such amended JEPA being referred to herein as the "Amended JEPA").
- C. Pursuant to the provisions of Senate Bill No. 457, Chapter 263, California Stats. 1996, adding Articles 5, 5.2, 5.4 and 5.6 to Chapter 1, Part 5, Divisions 3, Title 2 of the California Government Code, the "Intercity Passenger Rail Act of 1996", hereinafter referred to as the "Act"; the Capitol Corridor Joint Powers Board ("CCJPB") was created to serve as the governing Board of the CCJPA.
- D. The Act further provided, in Section 14076.4 of the California Government Code, that, for an initial period beginning with the transfer of responsibilities for the Capitol Corridor Service from the California Department of Transportation to the CCJPB and continuing for a three-year period subsequent to the completion of the track and signal improvements between Sacramento and Emeryville, the Managing Agency's General Manager and its administrative staff were to furnish all necessary administrative support to the CCJPB to perform its duties and responsibilities, and that these parties were to perform for the CCJPB any and all activities that they were authorized to perform for BART.
- E. Effective July 1, 1998, the CCJPA and the State of California entered into an Interagency Transfer Agreement ("ITA"), along with other related documents, whereby the CCJPA assumed responsibility from the State for the Capitol Corridor intercity rail service, all in accordance with the provisions of the Act.

- F. At the conclusion of the initial period, the Act in Section 14076.4 authorized the CCJPB to select BART or another existing public transit agency for a three-year term to provide all necessary administrative support staff to the CCJPB to perform its duties and responsibilities.
- G. The parties hereto then renewed, for the period February 20, 2002 through February 19, 2005, upon the same terms and conditions, the Agreement to provide administrative support services, and the compensation therefor, which the Managing Agency provided to the CCJPA pursuant to the provisions of the Act, the Amended JEPa, the ITA, and other documents relating to the operation of the Capitol Corridor Service.
- H. Government Code Section 14076.4 was amended by Stats.2003, Ch. 525, Section 4 (A.B. 1717) to provide that from the year 2003 onward the term of the agreement by which the public transit agency would provide such administrative services would subsequently be increased from a three-year term to a five-year term.
- I. The parties hereto now desire to renew this Agreement for a five-year term, upon the same terms and conditions, compensation and the like as are set forth in Section G. of these Recitals and in other parts of this Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### **1. MANAGING AGENCY:**

The Managing Agency shall provide the following administrative support to the CCJPB for the benefit of the CCJPA during the term hereof:

- (i) Negotiate and recommend the award of all necessary agreements for operation of the business of the CCJPA, including but not limited to agreements for the provision of passenger rail services, and use of tracks and other facilities, subject to approval by the CCJPB;
- (ii) Manage all agreements entered into by the CCJPA;
- (iii) Implement projects contained in the Capital Improvement Program approved by the CCJPA unless the administration of particular capital projects is more appropriately managed in another manner, such as by an individual Agency or a local government, as determined by the CCJPB;
- (iv) Provide for the maintenance and management of such property as may be owned or controlled by the CCJPA unless the administration of that property is more appropriately managed in another manner, such as by an individual Agency or a local government, as determined by the CCJPB;

- (v) Provide a risk management program to cover the CCJPA, the CCJPB, and each of the Agencies in the performance of their duties and seek appropriate insurance coverage to implement such risk management program;
- (vi) Seek, obtain, and administer grants, subject to the provisions of Section 2., below;
- (vii) Develop and implement marketing programs;
- (viii) Prepare and submit financial reports;
- (ix) Prepare the Business Plan for approval by the CCJPB;
- (x) Report regularly to the CCJPA regarding Capitol Corridor issues;
- (xi) Recommend changes in fares and the collection of fares to the CCJPA;
- (xii) Recommend changes in scheduling and levels of service to the CCJPA;
- (xiii) Prepare and implement changes in scheduling and fares, subject to appropriate public involvement;
- (xiv) Prepare capital and operating budgets for presentation to the CCJPA;
- (xv) Prepare any necessary conflict of interest code for the CCJPA;
- (xvi) Provide for an appropriate procurement procedure and appropriate documentation therefor for the CCJPA;
- (xvii) Facilitate interaction with other entities involved in operation, construction and renovation of the Capitol Corridor Service;
- (xviii) Negotiate with any other public or private transportation providers as necessary to ensure coordinated service with the Capitol Corridor Service; and
- (xix) Provide such other ordinary and necessary administrative support to the CCJPA as the CCJPB shall direct and carry out such other administrative duties as are imposed upon the CCJPA by contract or by applicable law.

## 2. SOLICITATION OF GRANTS:

The Managing Agency shall pursue any and all sources of funding for the CCJPA; provided, however, that neither the Managing Agency, on behalf of the CCJPA and/or the CCJPB, nor the CCJPA nor the CCJPB shall apply for Transportation Development Act funds as defined in Chapter 4, Part 11, Division 10 of the California Public Utilities Code or for any funding for which any Agency is also an applicant or approving Agency without the express consent of that Agency.

**3. STAFF OF MANAGING AGENCY/CCJPA:**

The following staff members of the Managing Agency shall serve in the positions indicated for the CCJPA during the term of this Agreement:

- (i) The General Manager of the Managing Agency shall serve as the Executive Director of the CCJPA;
- (ii) The General Counsel of the Managing Agency shall serve as the General Counsel of the CCJPA;
- (iii) The Controller-Treasurer of the Managing Agency shall serve as the Controller-Treasurer of the CCJPA; and
- (iv) The District Secretary of the Managing Agency shall serve as the Secretary of the CCJPA.

**4. CUSTODIAN OF PROPERTY:**

- (i) Pursuant to the requirements of California Government Code Section 6505.1, the Managing Agency's Controller-Treasurer shall have charge of, handle, and have access to any property of the CCJPA, and shall amend the official bond with the Managing Agency to provide for coverage, in the same amount, for the duties of the Controller/Treasurer set forth in the ITA and in this Agreement.
- (ii) Subject to the applicable provisions of any indenture, trust agreement or resolution providing for a trustee or other fiscal agent, the Controller-Treasurer is designated as the depository of the CCJPA to have custody of all the funds of the CCJPA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the California Government Code.
- (iii) The Controller-Treasurer as Controller of the CCJPA shall have the power, duties and responsibilities specified in Sections 6500 and 6505.5 of the California Government Code. The Controller-Treasurer shall draw checks to pay demands against the CCJPA when the demands have been approved by the CCJPB.
- (iv) Upon providing reasonable notice, any Agency shall have the right to review any records maintained by the Managing Agency or the Managing Agency's Controller/Treasurer relating to the performance of their duties pursuant to this Agreement.

**5. COMPENSATION OF MANAGING AGENCY:**

Unless expressly supplemented by the CCJPB, the Managing Agency's sole compensation for its duties and responsibilities hereunder (including compensation of any employee of the Managing Agency who provides service to the CCJPA pursuant to the terms of this Agreement) shall be that portion of the budget allocated to the CCJPA by the State of California which is applicable to the Managing Agency's services hereunder.

**6. INVOICES:**

Pursuant to Fund Transfer Agreement No. 75RCCJPA-1 between the State of California, Department of Transportation, and the CCJPA, the Managing Agency shall prepare and submit invoices to the State for the CCJPA's actual costs for administration, marketing, and operations. These invoices shall include all of the Managing Agency's charges relating to its services to the CCJPA. Such invoices shall indicate the Managing Agency's rates, costs, and reimbursable expenses for services performed and shall be available for inspection and review by any of the Agencies during normal business hours.

**7. AUDIT:**

The Managing Agency's Controller-Treasurer shall provide for an annual independent audit of the accounts of the Managing Agency, as they relate to its administrative support of the CCJPA pursuant to the terms of this Agreement, within six months of the close of each fiscal year of the CCJPA. The results of any such audit shall be supplied to any of the Agencies upon request. The Managing Agency shall retain records relating to such audits for a commercially reasonable period of time after any such audit, and said records may be inspected by any of the Agencies pursuant to the provisions of Section 4.(iv) hereof.

**8. ALLOCATED LOSSES:**

Any liability, loss, damage, expense or costs incurred by or sought to be imposed upon the Managing Agency, its members, officers, directors, employees and agents, arising out of any act or omission related to the Managing Agency's and the CCJPA's activities and obligations provided for in this Agreement, shall be allocated among the Managing Agency, the CCJPA and other parties in accordance with applicable laws and the provisions of the Amended JEP A.

**9. TERM:**

This Agreement shall commence upon the date hereof, and shall continue until February 19, 2010. Notwithstanding the foregoing either party hereto may terminate this Agreement upon thirty (30) days prior written notice.

**10. AMENDMENTS:**

Amendments or modifications of this Agreement may be approved at any time by the written consent of all of the parties hereto.

**11. ARBITRATION:**

- (i) In the event of a dispute between the Managing Agency and the CCJPB or the CCJPA, which cannot be satisfactorily resolved by those parties, said dispute shall be submitted to arbitration by a panel of three arbitrators who shall conduct the arbitration pursuant to the rules of the American Arbitration Association. The panel of arbitrators shall consist of one arbitrator appointed by the CCJPB or CCJPA, and one arbitrator by the Managing Agency, the third arbitrator to be appointed by mutual consent of the other two arbitrators. The arbitration panel shall resolve the dispute in accordance with the terms of this Agreement, and such resolution shall be final and binding upon the parties. Each of the parties shall

bear its own costs of arbitration, including reasonable attorneys fees. The cost of the third arbitrator shall be divided equally between the disputants.

- (ii) Unless otherwise agreed by the disputants, only disputes regarding a disputant's rights and obligations arising under the terms of this Agreement shall be subject to arbitration pursuant to Subsection (i), above.

**12. SUCCESSOR STATUTES:**

All statutes cited herein shall be deemed to include amendments and/or successor statutes to the cited statutes as they presently exist.

**13. CONSTRUCTION: NUMBER, GENDER AND CAPTIONS:**

This Agreement has been executed in the State of California and shall be construed according to the law of said State, without regard to rules regarding conflict of laws. Number and gender as used herein shall be construed to include that number and/or gender which is appropriate in the context of the text which is included. Captions are included herein for the purposes of ease of reading and identification. Neither gender, number nor captions used herein shall be construed to alter the plain meaning of the text in which any or all of them appear.

**14. AGREEMENT COMPLETE:**

This Agreement constitute the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement.

**15. COUNTERPARTS:**

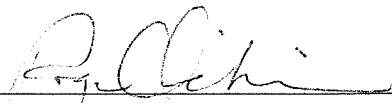
This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

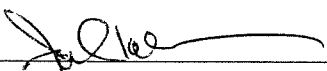
**16. EFFECTIVE DATE:**

This Agreement shall be effective upon execution by both parties hereto.

**CAPITOL CORRIDOR  
JOINT POWERS AUTHORITY**

**SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT**

By:   
Title: Chin

By:   
Title: President