



City of Palo Alto

City Council Rail Committee Staff Report

(ID # 9582)

Report Type: Action Items

Meeting Date: 9/26/2018

Summary Title: Caltrain Electrification

Title: Proposed Cooperation Agreement with the Peninsula Corridor Joint Powers Board Regarding Caltrain Electrification Project

From: City Manager

Lead Department: Public Works

Authorization for the City Manager to enter into a Comprehensive Agreement with the Peninsula Joint Powers Board on the Caltrain Peninsula Corridor Electrification Project

Recommendation

Staff recommends that the Rail Committee recommend that the City Council authorize the City Manager to enter into a comprehensive agreement with the Peninsula Joint Powers Board on the Caltrain Peninsula Corridor Electrification Project.

Background

The Peninsula Joint Powers Board (“JPB”) currently runs commuter rail service (Caltrain) along the peninsula. The current system utilizes traditional diesel locomotives to run the trains. To improve efficiency and reduce their reliance on fossil fuels, Caltrain has undertaken the Peninsula Corridor Electrification Project (PCEP) to electrify the corridor and run Electric Multiple Units (EMU) for the system. EMUs consist of self-propelled carriages that are powered by electricity. The electrification includes overhead catenary power lines that supply power to the EMUs. The JPB certified the final Environmental Impact Report (EIR) for the PCEP on January 8, 2015.

The JPB has been entering agreements with the different jurisdictions along the corridor to address particular issues related to implementation of the PCEP. Work on the PCEP began in July 2017 on the northern segments of the line; Caltrain currently anticipates completing the project by fiscal year 2020-21.

Discussion

Prior to commencing detailed design specifications for each section of the corridor, Caltrain has been entering into comprehensive agreements with affected jurisdictions to clarify procedures

and processes for project implementation in order to minimize impacts and disruption during construction, and ensure effective communication throughout the project.

Although Caltrain has the authority to proceed with the project without entering these agreements, it desires to work cooperatively with each city to facilitate implementation and lessen disruption to the cities and public. Staff anticipates that a number of issues will arise during the detailed design, site preparation, and construction phases of the project. Execution of a cooperation agreement will facilitate the resolution of issues to the extent possible, by providing a clear and agreed-upon process for the project to proceed.

To that end, staff has worked with Caltrain to develop the proposed comprehensive agreement for Palo Alto, attached hereto as Attachment A. Terms of the agreement include:

- Caltrain will cover all City costs for design review, permit work, inspection, and other related expenses incurred in connection with the project; Caltrain will pay the City's standard permit and processing fees;
- A summary of relevant mitigation measures identified in the EIR, including traffic signal timing modifications, measures to reduce light spillover into residential areas during nighttime construction, aesthetic measures to minimize visual impacts through design and vegetative screening, preparation of a Tree Avoidance, Minimization, and Replacement Plan;
- Provisions related to protection of El Palo Alto, the City's namesake historic redwood;
- Identification, replacement and procedures regarding potential betterment of any City improvements (streets, curbs, gutters, sidewalks, traffic control devices, utilities, etc.);
- Anticipated work hours, construction staging areas, truck routes, and submittal of a logistics plan;
- Notification requirements, community outreach, and construction complaint-resolution process;
- Encroachment permit and design review process, including courtesy review by the Architectural Review Board and Historic Resources Board, and expected timelines for review;
- Provisions to minimize disruption of City utility service;
- Acknowledgement that the City is actively engage in a planning process for future grade separations, and a commitment to take an active role in grade separation planning as funding and local concerns permit; and,
- Dispute resolution process.

While Caltrain is aware of the City's interest and ongoing planning for grade separations, JPB staff have indicated that the Comprehensive Agreement should not specifically address grade separations. As such staff is working with JPB staff on a separate instrument that acknowledges their cooperation with the City on grade separation planning and mutual interest in ensuring coordination between the projects.

Resource Impact

The cost of staff time for the City's review of the PCEP is proposed to be covered by Caltrain as outlined in the proposed agreement along with all standard permit fees. Pending JPB's preparation of a comprehensive list of City Improvement Impacts the City may be responsible for the costs associated with addressing the impacts for facilities located within the JPB right-of-way, as outline in Section 8 of the agreement.

Environmental Review

The Joint Powers Board is the lead agency under the California Environmental Quality Act (CEQA) for the PCEP. On January 8, 2015, the JPB certified compliance with CEQA to the extent it is applicable to the PCEP, certified a final Environmental Impact Report and findings of fact, adopted a Statement of Overriding Considerations, and adopted a Mitigation Monitoring and Reporting Plan (see JPB Resolution Nos. 2015-03 and 2015-04) Entering into this Agreement is not a project as defined in CEQA Guidelines Section 15378 because it has no potential to result in a direct or foreseeable physical change in the environment.

Attachments:

- Attachment A: Peninsula Corridor Electrification Project Agreement

COMPREHENSIVE AGREEMENT
BETWEEN
THE PENINSULA CORRIDOR JOINT POWERS BOARD
AND CITY OF PALO ALTO
RELATING TO THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

This Comprehensive Agreement (“**Agreement**”) between the City of Palo Alto, a California chartered municipal corporation (“**City**”) and the Peninsula Corridor Joint Powers Board, a joint exercise of powers agency (“**JPB**”) is entered into as of this _____ day of _____ 201__ (the “**Effective Date**”), each of which is referred to herein individually as “**Party**” and jointly as “**Parties.**”

RECITALS

- A. City is a duly established chartered municipal corporation organized and existing under the laws of the State of California.
- B. JPB is a joint exercise of powers agency organized and existing under the laws of the State of California.
- C. JPB the owner of the Peninsula Corridor Railroad right-of-way and specifically certain real property and fixtures located in the City of Palo Alto between milepost (MP) 29.7 and 33.6, (the “**JPB Right-of-Way**”), and includes the four (4) at-grade vehicular crossings located at: Alma Avenue, Churchill Avenue, East Meadow Drive, and Charleston Road.
- D. The Peninsula Corridor Electrification Project (“**Project**” or “**PCEP**”) consists of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4th and King Street Station in San Francisco and the Tamien Station in San Jose.
- E. In 2009, the JPB completed a Final Environmental Assessment/Environmental Impact Report (“**EAVEIR**”) for the Project. Based upon that document, the Federal Transit Administration issued a Finding of No Significant Impact (“**FONSI**”) in 2009, which completed the federal environmental review for the Project in accordance with the National Environmental Policy Act (“**NEPA**”).
- F. On January 31, 2013, the JPB issued a Notice of Preparation of an Environmental Impact Report and, in February, 2014, issued a Draft Environmental Impact Report for a 60-day comment period ending on April 29, 2014. A Final Environmental Impact Report was issued in December 2014.
- G. On January 8, 2015, pursuant to Resolution No. 2015-03, the JPB certified conformance with the California Environmental Quality Act (“**CEQA**”) to the extent that it is applicable

to the Project, and certified the Final Environmental Impact Report (“**FEIR**”) for the Project.

- H. On January 8, 2015, pursuant to Resolution No. 2015-04, the JPB adopted CEQA findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting plan (“**MMRP**”).
- I. On February 5, 2015, pursuant to Resolution No. 2015-08 the JPB authorized the issuance of the PCEP Design Build Request for Proposals to engage a Design-Build Contractor to construct the Project and on July 7, 2016, the JPB awarded the Design-Build Contract (“**Contract**”) to Balfour Beatty Infrastructure, Inc. (the “**DB Contractor**”) to construct the Project.
- J. The City and JPB desire to cooperate to facilitate the design and construction of the Project. The JPB and the City desire to memorialize such interagency cooperation and consultation between the Parties in this Agreement.
- K. The Parties acknowledge that the Project is funded in part with funds made available by the Federal Transit Administration. Accordingly, this Agreement and the obligations imposed on the Parties hereby shall be interpreted in a manner consistent with Federal, State and local laws and regulations.
- L. The locations of certain elements of the Project may require the use of certain City streets for hauling operations and staging of construction during construction of the Project.
- M. The JPB and the City acknowledge that it will be necessary to develop procedures to ensure careful and continued cooperation between the Parties and to minimize disruption and costs to the City during design and construction of the Project, including the following: (1) procedures to promote cooperation during the design and construction process; (2) procedures to avoid, or where not possible, to minimize all unnecessary delays to either the contracting, design or construction process; and (3) procedures for minimizing disruption and costs imposed on the City; (4) procedures for recovery of the City’s costs associated with work related to the Project; and (5) procedures for designing and inspecting the construction, modification, relocation, and replacement, as necessary, of City Improvements.
- N. The Parties recognize and agree that this Agreement may not reasonably anticipate all aspects of the Project and changes thereto which may occur due to unforeseen circumstances. Accordingly, the Parties acknowledge their respective obligations to act reasonably and in good faith and to modify the terms hereof when necessary to accomplish their mutual goals.

SECTION 1: AFFIRMATION OF RECITALS.

The JPB and the City affirm that the above Recitals are true and correct.

SECTION 2: DEFINITIONS.

The following definitions relate to such terms found in the entire Agreement, including, without

limitation, all Exhibits hereto.

- A. **“City,”** as referred to in the Preamble to this Agreement, means the City of Palo Alto, its Council Members, officers, employees, agents, consultants and contractors.
- B. **“City Improvements”** means City streets (including curbs, gutters and sidewalks), traffic control devices (excluding advance signal preemption equipment which is currently owned and managed by JPB), storm drains, sanitary sewers, water lines, electric and gas underground utilities, fiber lines, conduit, hydrants, electroliers, landscaping, irrigation systems, and all other public facilities and appurtenances that are constructed, operated, utilized or otherwise maintained by the City.
- C. **“Contract Documents”** means the executed Design-Build Contract, Contract Change Orders and additional documents incorporated by express reference into the Contract.
- D. **“Issued for Construction Plans”** means final approved design documents, including drawings and specifications, used by the DB Contractor for the start of construction.
- E. **“JPB”**, as referenced in the Preamble to this Agreement, means the Peninsula Corridor Joint Powers Board, its employees, agents, consultants, and contractors.
- F. **“JPB Right-of-Way” or “JPB ROW”** has the meaning set forth in Recital C of this Agreement, a map depicting the JPB ROW is attached hereto as Exhibit A, and incorporated herein.
- G. **“Paralleling Station”** means a type of traction power facility that helps boost the Overhead Contact System voltage and reduce running rail return current by means of an autotransformer.
- H. **“Project Improvements”** means all structures, features and fixtures constructed or installed for the Project, including all necessary changes to signal, fiber optic facilities and appurtenances, relocation of all utilities and pipelines of any kind within the Right-of-Way, grading, drainage, access roadways to the Right-of-Way, preliminary and construction engineering, and any and/or all other work of every kind and character necessary to build the Project.
- I. **“Project”**, as referenced in Recital D, means the Peninsula Corridor Electrification Project described in the FEIR, consisting of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4th and King Street Station in San Francisco and the Tamien Station in San Jose, aspects of which are also described with additional specificity in Section 4 and the Exhibits attached to this Agreement.
- J. **“Traction Power Facility” or “TPF”** means facilities (traction power substations, paralleling stations, switching stations) that transform the utility supply voltage for distribution to trains via the Overhead Contact System.

SECTION 3: PURPOSE OF THE AGREEMENT.

The purpose of this Agreement is to memorialize the Parties’ desire for consultation and

cooperation, designate their respective rights and obligations, and facilitate cooperation between the JPB and the City in connection with the design and construction of the Project.

SECTION 4: TERM; TERMINATION.

- A. Term.** The term of this Agreement shall begin on the Effective Date and shall end six months following recordation of the Notice of Completion for the Project.
- B. Termination.**
 - 1. Without Cause. A Party may terminate this Agreement with thirty (30) days prior written notice to the other Party.
 - 2. With Cause. A Party may terminate the Agreement or suspend performance hereunder by giving sixty (60) days prior written notice thereof to the other Party, but only in the event of a substantial failure of performance under the Agreement.

SECTION 5: PROJECT FEATURES AND IMPACTS.

The Project features and impacts set forth below are not intended to constitute a comprehensive list, but are described in this Agreement to provide a general description of the elements of the Project. A comprehensive list of Project features and impacts associated with the Project is set forth in the FEIR.

A. General Project Description.

- 1. The Project will install facility improvements, including overhead catenary wires, support poles, traction power facilities, and other appurtenances necessary to convert service from the existing diesel-locomotive driven trains to Electric Multiple Units (EMUs). EMUs are self-propelled electric trains that do not have a separate locomotive. EMUs can accelerate and decelerate at faster rates than diesel-powered trains, even with longer trains. With EMUs, Caltrain can run longer trains without degrading speeds, thus increasing peak-period capacity. This will support operations of up to 6 Caltrain trains per peak hour per direction (an increase from 5 trains per peak hour per direction at present). Electrification of the rail line is scheduled to be operational by 2020/2021. The Project includes operating 114 trains per day between San Jose and San Francisco and six trains per day between Gilroy and San Jose.
- 2. The Project will include the installation of 130 to 140 single-track miles of Overhead Contact System (“**OCS**”) for the distribution of electrical power to the new electric rolling stock. The OCS would be powered from a 25 kilovolt (kV), 60 Hertz (Hz), single-phase, alternating current (“**AC**”) traction power system consisting of the following Traction Power Facilities (“**TPF**”): two Traction Power Substations, one Switching Station and seven Paralleling Stations. The OCS poles are typically about 180 to 200 feet apart. On curved sections, the span lengths between supports must be reduced. The OCS poles are placed approximately 9 – 11 feet from the centerline of the tracks.

Associated with the OCS, an electric safety zone to adjacent vegetation is needed. This electric safety zone distance is approximately 10 feet from the face of the OCS pole.

B. City-Specific Project Description. Specific to the City, and based on JPB’s preliminary design, the Project elements that JPB anticipates within the City include:

1. OCS poles. Installation of foundations, poles and appurtenances along the 3.9 mile section of JPB Right-of-Way within the City.
2. Stringing wire for OCS. Installation of OCS wires using different support systems (i.e., two-track cantilever brackets, side or center cantilever brackets) depending upon the track segment’s exact configuration and other site-specific requirements and constraints, as determined by the DB Contractor, and consistent with Mitigation Measure AES-2b to provide aesthetic treatment for OCS structures. (Examples of the various structures are depicted in the "Project Description" portion of the FEIR (Section 2.3.1). This activity may necessitate temporary road closures.
3. Paralleling Station. Construction of Paralleling Station 5, located within the JPB ROW south of Page Mill Road. The location of this facility is shown in Exhibit B as “Paralleling Station 5 (PS-5).”
4. Staging areas. During the Project, JPB and its DB Contractor intend to use staging areas within the JPB ROW as identified in the FEIR, which are located along the west side of the JPB ROW both north and south of Alma Street, and between W. Meadow Drive and W. Charleston Drive along the west side of the JPB ROW. The specific locations of these staging areas are shown in Exhibit C. There are no current plans to use areas outside of the JPB ROW for staging areas. Should the DB Contractor desire to use other areas within the City of Palo Alto, they will be responsible for acquiring any required permits from the City.

C. City-Specific Project Impacts. City-specific Project impacts, as identified in the FEIR, include the following:

1. Intersections. The Project may impact the following intersections in the City: Alma/Sand Hill Road (#64), Meadow/Alma (#63), Churchill/Alma (#66), and Charleston/Alma (#68).
2. Historic Resources. The Project may impact the following Historical Resources in the City:
 - (a) San Francisquito Bridge
 - (b) El Palo Alto Tree
 - (c) Palo Alto Station
 - (d) University Avenue Underpass
 - (e) Embarcadero Underpass; and
 - (f) Greenmeadow Neighborhood

The list of City Specific Impacts as contained in this Subsection 5C is intended for information only. Nothing in this subsection serves or has the effect of creating any independent or additional requirements or obligations on the part of the JPB beyond what is contained in the certified environmental record for the Project.

SECTION 6: GENERAL COMMITMENTS.

- A. City Improvements.** The JPB and City will cooperate with respect to City Improvements as set forth in Section 8 of this Agreement.
- B. Building Inspection. Paralleling Station.** JPB agrees to allow the City to perform:
1. A side-by-side review of design documents for the Paralleling Station (PS-5) with JPB's design teams. JPB agrees to include the City in reviews once the design documents are 65% and again prior to Issued for Construction Plans; and
 2. A final courtesy inspection of its PS-5 facility upon completion. The final courtesy inspection does not include any punch list items and is for informational purposes only, as JPB is exempt from local building codes.
- C. Working Hours.** In order to minimize disruption to the Caltrain passenger service during project construction as well as maximize protection of people and property, JPB plans to perform the majority of its Project work outside of the weekday peak commute hours (Monday through Friday, 7AM to 9:30AM and 4PM to 7:30PM). JPB acknowledges that this work schedule will cause noise impacts to the neighborhoods adjacent to the JPB ROW, and along with implementing a Construction Noise Control Plan, as required by Mitigation Measure NOI-1a, JPB will provide City with a Logistics Plan, as further described in Paragraph E. below. JPB agrees that the Construction Noise Control Plan will include a JPB point of contact for noise complaints, and that JPB will timely respond to noise complaints; the contact person may be the "lead representative," as further described in Paragraph I(1) and (2) below.
- D. Staging Areas and Haul Routes.** The JPB will provide the City with plan(s) addressing haul routes along city streets and roadways, and any staging areas or property owned or controlled by the City for City review and approval, which approval shall not be unreasonably withheld. Truck haul routes within City streets shall conform to the Palo Alto Municipal Code, including, without limitation Chapter 10.48, unless otherwise approved in advance and in writing by the City. JPB will also collaborate with the City to document existing conditions by video and photographic record of the proposed and accepted haul routes for comparison at the end of the project. The JPB shall be responsible for damages to City roadways but only to the extent and in the event that use of the roadways for this Project creates damages that exceed ordinary wear and tear of the roadways.
- E. Logistics Plan.** As an accommodation to the City, JPB agrees to submit only applicable elements of the City Logistics Plan for City approval prior to the start of work on the Project. The Logistics Plan with applicable elements only will conform to the City's Logistics Plan Preparation Guidelines, available online at:

<http://www.cityofpaloalto.org/civicax/filebank/documents/2719>. In addition, JPB will provide City with copies of its Project Description [Two page "FAQ's, dated July, 2017], Project Plans, Project Schedule, Tree Avoidance, Mitigation and Replacement Plan, and its Storm Water Pollution Prevention Plan. JPB's cooperation in this regard shall not operate to expand the City's jurisdiction over the JPB beyond that provided for by applicable law.

- F. Emergency Services Access.** The JPB and the City will cooperate to reduce impacts of the Project on local police, fire, and emergency services.
- G. Contact Information.** During construction of the Project, the JPB shall provide the City with a list of JPB personnel to be contacted in the event of an emergency on the Project construction site within the City.
- H. Project Security.** During construction of the Project, the JPB will take responsibility for maintaining the security of the JPB construction areas within the City in consultation with the City's public safety and emergency departments, as necessary.
- I. Community Outreach.**
 - 1. For the duration of Project construction, the JPB shall assign a lead representative to handle Project-related complaints from City residents, City officials, and/or staff. The JPB shall provide written notice to the City and shall publicize the telephone number, and E-mail address of the lead representative.
 - 2. The JPB shall make an initial response to all complaints and inquiries within 24-hours. For emergencies or other urgent matters, the JPB will make initial contact immediately. Follow-up for complaints and inquiries will be completed by JPB within 48-hours following initial contact with the complainant. The JPB shall take all reasonable actions to ensure that its lead representative is authorized to and does, in fact, ensure that corrective actions are implemented within a reasonable period of time following the determination that corrective actions are appropriate.
 - 3. The JPB will provide weekly construction updates via social media, the Caltrain website and by email. JPB will work with City's Communication Department to ensure timely on-line notification to the public of construction activity.
 - 4. The JPB will provide a 60-day advance notice for construction within the City. The JPB will provide an initial notice of road and driveway closures 14 days in advance of the closure and the visual notifications for closures will be posted 72-hours in advance. In addition, JPB shall distribute seven-day and 48-hour advance notice door hangers to all residences and businesses on all properties that border on the JPB ROW, as well as on all streets impacted by the work within the project.
- J. Tree Work.**

1. Tree Pruning and Tree Removal.
 - (a) In General. JPB will comply with any City tree pruning and replacement requirements for tree pruning or removal involving public or private property outside of the JPB ROW.
 - (b) Tree Permits. JPB agrees to secure all applicable tree pruning and removal permits from the City for work located outside of the JPB ROW. A public tree care permit is required for pruning or removal of any protected trees on private property.

2. El Palo Alto.
 - (a) Exceptional caution shall be employed in performing any work near the El Palo Alto redwood tree located adjacent to the San Francisquito Bridge.
 - (b) JPB agrees to design the Project in a manner that limits all construction activities, including off-track construction vehicles, equipment staging, and material laydown areas, for the Project within a 25 foot clearance from the outside edge of El Palo Alto's tree trunk ("**25 Foot Zone**").
 - (c) JPB shall maintain the 25 Foot Zone at all times throughout all phases of PCEP construction.
 - (d) No staging of materials or equipment is allowed within the 25 Foot Zone without exceptional reason and advanced, written approval from the City Manager or his designee.
 - (e) Except within the existing footprint, from embankment to embankment, of the San Francisquito Bridge, JPB shall not place Project elements (e.g. OCS Poles, including support arms for wires) in the 25 Foot Zone during construction of the Project or during the Project's operation. If an exception to this prohibition is needed for technical reasons, the JPB shall obtain advance, written approval from the City.
 - (f) Pruning of El Palo Alto will be compliant with the electrical safety clearance requirements defined in the California Public Utility Commissions (CPUC) Safety and Enforcement Division (SED) Resolution SED-2. All tree trimming will follow pruning specifications including: American National Standards Institute (ANSI) A300 and international Society of Arboriculture (ISA) Best Management Practices.
 - (g) Pruning of El Palo Alto will only be completed by the City's directed certified arborist. The City will complete the necessary pruning to comply with CPUC SED-2 within seven (7) calendar days' notice from JPB. If the pruning is not completed by the City within this timeframe, the JPB will perform the necessary pruning of El Palo Alto. Once the PCEP project has been implemented, the JPB and the City will enter into a separate document agreement to memorialize that the City will continue to perform pruning of El Palo Alto.

- K. Permits.** The City will cooperate with JPB in identifying all City permits applicable to the Project. JPB will obtain and pay for any City permit required for construction of the Project, including, without limitation, Encroachment Permits, Street Work Permits, and Tree Permits, as applicable. The City shall not unreasonably withhold approval of the issuance of any such permit.
- L. Construction Standards.** The JPB is designing and constructing the Project. The design and construction of the Project shall conform with JPB's adopted standards, specifically JPB Standards dated September 30th, 2011 and the Contract documents.
- M. Minimize Disruption of City Utility Service.** To the maximum extent practicable, JPB agrees to perform its work in a manner that minimizes disruption to City utility services. In particular, JPB agrees to work closely with City staff to avoid requests to re-route or shut down City utility service, particularly electrical service, multiple times, or to re-route or shut down City utility services during peak utility service hours when impacts on customers will be most significant.
- N. Design Review.**
1. Architectural Review Board (“ARB”) Courtesy Review. JPB agrees to provide information regarding the following Project elements to the City for ARB review and recommendation to the City Planning Director:
 - (a) OCS Poles, including pole design, color, location, and configuration (e.g. gull-wing versus standard design);
 - (b) Proposals for vegetation removal and plans for Project screening ;and
 - (c) Paralleling Station(s).
 2. Historical Resources Board (“HRB”) Courtesy Review. JPB agrees to provide information to the HRB regarding the final design of any Project elements or features adjacent to, or with the potential to impact the historical resources specifically identified in section (5)(C)(2), any other designated historical resources within the City.
 3. Timeframes for ARB and HRB Courtesy Review. JPB agrees to provide the information described in Sections N.1. and N.2. above when the plans are at the 65% level. City shall have 45 calendar days from the date the information is provided by JPB to conduct the ARB and HRB courtesy review.
 4. 65 % Level Staff Review. The JPB agrees to do a page-turn design review, and/or detailed walkthrough with City staff of the Project elements within the City at the 65% level and the Issued for Construction design level prior to official submittal of the plans for final approval by City. Project elements for the City to review and comment on will include those project elements identified in Section 5(B)) above and/or project elements affecting any City Improvements. All City comments received by JPB during the 65% review will be addressed prior to submittal of Issued for Construction Plans to the

City.

5. Extent of City Review of Issued for Construction Plans. Since JPB is exempt from local planning and building regulation, submittal of information and plans to the City is for the purposes of a courtesy review only, with the exception of any required work that alters or replaces City Improvements, in which case the City shall have 21 business days to review the Issued for Construction Plans.

O. Grade Separation Planning Considerations; Statement of Understanding.

City is actively engaged in a planning process to consider design, construction, and funding of future grade separations along the JPB corridor to improve safety and reduce local traffic congestion; JPB is committed to taking an active role in grade separation planning as funding and local concerns permit.

SECTION 7: MITIGATION MEASURES.

- A. The JPB will require the DB Contractor to perform the work to implement the mitigation measures outlined in the Mitigation, Monitoring and Reporting Plan adopted by the JPB on January 8, 2015, including the following:
 1. Mitigation Measure Aesthetics-2b. Aesthetic treatments for OCS poles, TPFs in sensitive visual locations.
 - (a) The JPB shall coordinate with the City to obtain their input into OCS pole design relative to station aesthetics.
 - (b) Vegetative screening will be provided to visually buffer view of the traction power facility in the City (PS-5 Option 2 in the PCEP FEIR). Acceptable screening that may be used includes: tree planting, fencing with creeping vines, landscape buffer planting or vegetative wall fence. The JPB will maintain the Right-of-Way screening on an on-going basis.
 2. Mitigation Measure Aesthetics-4a. Minimize spillover light during nighttime construction adjacent to residential neighborhoods. The JPB will direct any artificial lighting onto the worksite and away from adjacent residential areas at all times.
 3. Mitigation Measure Biology-5. A Tree Avoidance, Minimization, and Replacement Plan will be developed in consultation with a certified arborist and in consultation with cities, counties, and affected property owners along the Project. A complete field survey of the entire Project area will be completed to support the plan development by preparing a tree inventory for all affected areas.
 4. Mitigation Measure Traffic-1a. Implement Construction Road Traffic Control Plan.
 5. Mitigation Measure Traffic-1c. Implement Signal optimization and, if feasible,

roadway geometry improvements will be implemented at impacted intersections for the 2020 Project condition per FEIR. The feasibility of signal optimization and/or roadway geometry improvements will be evaluated at a later date. The impacted intersection with feasible mitigation for the City is:

(a) El Camino Real and Alma Street and Sand Hill Road.

- B. Nothing in this section shall otherwise limit JPB's obligations to implement all applicable aspects of the Mitigation, Monitoring and Reporting Plan adopted by the JPB on January 8, 2015 in Palo Alto, or to comply with all applicable federal, state or local laws, regulations and permit conditions, or to satisfy other JPB obligations under this Agreement.

SECTION 8: CITY IMPROVEMENTS.

- A. Avoidance of Impact on City Improvements. The JPB will make its best efforts to avoid damage to, interference with operations, maintenance or construction, or otherwise affecting City Improvements (collectively, "**City Improvement Impacts**"), to the extent feasible.

- B. Addressing City Improvement Impacts.

1. Identification of City Improvement Impacts. JPB agrees to prepare a comprehensive list of City Improvement Impacts, if any ("**City Improvement List**"), as part of JPB's final design documents for the Project. JPB will provide the City Improvement List to the City for City's review. City and JPB will mutually agree on a final list of City Improvement Impacts. The City agrees to cooperate with JPB to identify all City Improvement Impacts.
2. Costs. Subject to existing agreements, JPB will be responsible for the costs associated with construction, modification, relocation and/or related mitigation associated with addressing the City Improvement Impacts for facilities located within City property. City will be responsible for the costs associated with construction, modification, relocation and/or related mitigation associated with addressing the City Improvement Impacts for facilities located within the JPB ROW. Any replacement City Improvements will be of a similar kind and capacity to the existing City Improvement, subject to applicable federal, state and local requirements (including existing City codes). If City desires to increase or upgrade a City Improvement beyond its existing codes, it shall be responsible for any additional costs for that change.
3. Responsibility for Work to Address City Improvement Impacts.
 - (a) JPB and City shall mutually agree on whether City or JPB shall be responsible for the design and construction, modification, relocation and/or related mitigation to address the City Improvement Impacts.
 - (b) The Parties shall agree in writing with regards to which Party will be obligated to perform the work necessary for the new, modified, replacement City Improvements and/or other mitigation to address the

City Improvement Impacts, and such writing shall be incorporated as Exhibit D to this Agreement. Such writing shall also establish a protocol for the review of plans and the inspection of the construction, modification, relocation and/or related mitigation for the City Improvement. Any changes to the design, construction, protocols or other aspect of such obligations must be in writing and approved by both Parties.

- (c) Regardless of which Party performs the design and/or construction, the work shall conform to City codes, requirements, standards, standard details and specifications. If no City standards exist for such work, it shall be designed to applicable Caltrans standard details and specifications with City approval, or if no Caltrans standard details and specifications apply, it shall be designed to such standards as JPB shall reasonably determine to apply, with City approval.
- (d) With respect to work related to City Improvements, JPB shall not accept any work related to City Improvements until the City has had the opportunity to inspect the work, DB Contractor has made any necessary corrections requested by City, and City has accepted the work.
- (e) Upon acceptance of any Project work related to City Improvements, City will have the responsibility for any maintenance, repairs, alterations or future upgrades or replacements.

- C. Coordination.** During construction of the Project, the City shall provide the JPB with a list of City personnel to be contacted in the event of an emergency on the Project construction site within the City.
- D. Real Property Rights.** At, or shortly following the completion of the Project, the Parties agree to execute updated real property documents to accurately reflect all new or relocated or modified City Improvements crossing the JPB ROW in the City at nominal cost to the City.
- E. Costs Associated with Overhead Work.** JPB agrees to compensate City for any costs associated with work City must perform on overhead City infrastructure to the extent such work is caused by JPB requirements that exceed those set forth in the California Public Utilities Commission Resolution SED-2, adopted on November 10, 2016.

SECTION 9: CITY COST RECOVERY.

- A. Initial Deposit, Payment of Permit Fees.** JPB agrees to make an initial deposit of \$25,000 to the City for costs incurred by the City for design review, permit work, inspection costs and other related expenses the City incurs in connection with the Project. In addition, JPB agrees to pay the City's standard permit and processing fees, as applicable to the Project.
- B. Replenishment of Initial Deposit, Additional Funds.** The City agrees to notify the JPB when 75% of the initial deposit has been spent, at which time the JPB and the

City agree to review the Project status, anticipated costs, and remaining budgets to determine the need for additional deposits or other payments beyond the initial deposit. Any changes to the deposit amount at this stage shall be agreed upon by the JPB and the City. JPB acknowledges and agrees that City may, in its sole discretion, cease to process the Project in the event that JPB fails to comply with its obligations under this section or elsewhere under the Agreement.

- C. Return of Deposit.** Upon Project completion, or in the event the Term of this Agreement expires or the Agreement is otherwise terminated, the City agrees to return any portion of the deposit that has not been expended or otherwise committed by the City in connection with the Project to JPB.
- D. City Control of Consultants, Contractors.** Any consultants, contractors or other third parties hired by the City under this Agreement shall be directed solely by the City. JPB shall not direct or control their work or conclusions.

SECTION 10: TRAFFIC MAINTENANCE AND DETOURS.

- A.** The JPB will assume full responsibility for maintaining in service, or causing to be maintained in service, all traffic detours during JPB construction of the Project in a manner satisfactory to the City, subject to and consistent with all applicable California Department of Transportation requirements. All traffic control, lane closure, and detour plans shall be submitted to the City for approval prior to commencement of any phase of construction requiring either traffic control or detour(s), which approval shall not be unreasonably withheld. The traffic control, lane closure, and detour plans shall specify the length of time that portions of City streets will likely be closed. As many of the at-grade crossings in the City serve large numbers of school children walking and bicycling to school, the JPB will ensure that advanced notification of any work at the grade crossings is provided to the nearby schools and that all required temporary bicycle and pedestrian traffic control requirements are met during construction.
- B.** Although certain City streets will, of necessity, be partially closed for some period during construction of the Project, the JPB will, to the greatest extent practicable, maintain in service, or cause to be maintained in service, all City streets and related City Improvements within the limits of the Project area in a manner reasonably satisfactory to the City. At a minimum, two-way service will be maintained on all City streets affected by the Project, unless otherwise agreed to by the JPB and the City. All travel lanes will be maintained, if possible, on Alma Street during peak hours. Stringing OCS wire may require temporary street closures when work occurs at an existing at-grade crossing. Specificity about the closures will be included in JPBs Traffic Control Plan.
- C.** In its Contract Documents, the JPB will require the DB Contractor to submit plans showing haul routes, temporary traffic control plans, employee parking areas, and staging areas to the City for approval, which approval shall not be unreasonably withheld. The City shall approve or disapprove the plans no later than twenty-one (21) calendar days following the City's receipt of such plans.

- D. In its Contract Documents, the JPB will, prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, require that its contractor(s) provide at least fourteen (14) calendar days' notice of such closure to the City. Deviation from this fourteen (14) calendar day requirement may be permitted in emergency situations as determined and agreed upon in advance and in writing by the JPB and the City.
- E. At least seventy two (72) hours prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, the JPB will post notice of such closure. Such notice of any road closure shall include, at minimum, use of an electronic sign. The JPB will also provide closure-information fliers to residents, schools, and businesses within a one hundred (100) foot radius of any such closure.

SECTION 11: EROSION CONTROL PLAN.

The JPB shall provide an erosion control plan to retain sediments on site in accordance with the JPB's Storm Water Pollution Prevention Program and Contract Documents. This plan should be submitted with the Issued for Construction plans. All stockpiled earthwork shall be protected from wind and water erosion. Dust control shall be undertaken in accordance with the JPB Contract Documents and the Contract Documents shall provide for dust, erosion and pollution control seven days a week, 24 hours a day for the duration of construction activities

SECTION 12: INDEMNIFICATION.

A. City's Indemnity.

1. City shall fully release, indemnify, hold harmless and defend the JPB, as well as the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, and the City and County of San Francisco, Transit Services America, the Union Pacific Railroad Company and/or their respective officers, directors, employees, contractors and agents (collectively, "JPB Indemnitees") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, the passengers, employees and contractors of City and JPB), and damage to or loss of property arising out of or resulting from any act or omission by City, its agents, employees, contractors or subcontractors in the performance of its obligations under this Agreement.
2. City's obligation to defend shall include the payment of all reasonable attorney's fees and all other costs and expenses of suit, and if any judgment is rendered against any JPB Indemnatee, City shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the City without prejudice to City's rights and/or abilities to undertake a defense of said claim.

B. JPB's Indemnity.

1. JPB shall fully release, indemnify, hold harmless and defend the City and its respective Council Members, officers, directors, employees, contractors and agents (collectively, "City Indemnitees") from and against all liability, claims,

suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, passengers, employees and contractors of City and JPB) and damage to or loss of property arising out of or resulting from any act or omission by the JPB, its agents, employees, contractors or subcontractors in performance of its obligations under this Agreement.

2. JPB's obligation to defend shall include the payment of all reasonable attorney's fees and all other costs and expenses of suit, and if any judgment is rendered against City Indemnitee's or any one of them, JPB shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the JPB without prejudice to JPB's rights and/or abilities to undertake a defense of said claim.

C. Severability. It is the intention of the Parties that should any term of this indemnity provision be found to be void or unenforceable; the remainder of the provision shall remain in full force and effect.

D. Survival. This indemnification shall survive termination or expiration of this Agreement.

SECTION 13: INSURANCE.

The JPB shall include in its Contract Documents a requirement that the City be named an additional insured on all policies of insurance required of its contractors. JPB and DB Contractor shall provide a copy of evidence of insurance to City Risk Manager prior to any work under the Agreement going forward.

SECTION 14: RESOLUTION OF DISPUTES.

Prior to commencement of any formal litigation arising out of this Agreement, the Parties agree to submit the matters in controversy to a neutral mediator jointly selected by the Parties. The costs of said mediator shall be borne evenly by the Parties involved in said dispute.

SECTION 15: NOTICES.

The City day-to-day contact person for all matters related to this Agreement will be the City Manager or his or her designee. The JPB's day-to-day contact person for all matters related to this Agreement will be Lin Guan (650-508-7976; guan@samtrans.com) or his designee.

All notices required hereunder may be given by personal delivery, US Mail, or courier service (e.g. federal express) transmission. Notices shall be effective upon receipt at the following addresses.

PCJPB: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: Executive Director

City: City of Palo Alto
250 Hamilton Avenue

Palo Alto, CA 94301
Attn: City Manager

With copies to: City Clerk

SECTION 16: PARTIES NOT CO-VENTURERS.

Nothing in this Agreement is intended to nor does it establish the Parties as partners, co-ventures or principal and agent with one another.

SECTION 17: FURTHER ASSURANCES, TIME PERIODS AND RECORDS.

- A.** Each Party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.
- B.** Should unforeseen circumstances occur, the JPB and the City shall negotiate in good faith to reach agreement on any amendment(s) that may be necessary to fully effectuate the Parties' respective intentions in entering into this Agreement.
- C.** Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of the JPB or as part of any audit of the JPB by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

SECTION 18: NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.

No director, member, official, employee or agent of the City or the JPB shall be personally liable to any Party to this Agreement or any successor in interest in the event of any default or breach of this Agreement or for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 19: HEADING AND TITLES.

Any titles of the Sections of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any part of its provisions.

SECTION 20: APPLICABLE LAW.

This Agreement shall be interpreted under and pursuant to the laws of the State of California. The Parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of San Mateo County.

SECTION 21: SEVERABILITY.

If any term, provision, covenant or condition of this Agreement is held by a court of competent

jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

SECTION 22: BINDING UPON SUCCESSORS.

This Agreement shall be binding upon and inure to the benefit of the transferees, successors and assigns of each of the Parties to it, except that there shall be no transfer of any interest by any of the Parties to this Agreement except pursuant to the terms of the Agreement.

SECTION 23: REMEDIES NOT EXCLUSIVE.

No right or remedy conferred upon or reserved to the JPB or the City under this Agreement is intended to be exclusive of any other right or remedy, except as expressly stated in this Agreement, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited in this Agreement.

SECTION 24: FORCE MAJEURE.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, casualties, acts of God, acts of the public enemy, epidemic, government restrictions on priorities, freight embargoes, shortage of labor or materials, unusually inclement weather, lack of transportation, court order, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause and such extension is not rejected in writing by the other Party within thirty (30) days of receipt of the notice. Time of performance under this Agreement may also be extended by mutual written agreement, signed by both Parties.

SECTION 25: INTEGRATION.

This Agreement represents the full, complete and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings or agreements, whether written or oral, between the Parties hereto with respect to such subject matter.

SECTION 26: COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute a single Agreement.

SECTION 27: AMENDMENTS.

This Agreement may be amended only in a writing that is executed by the Parties hereto.

SECTION 28: THIRD PARTY RIGHTS.

Nothing herein shall be considered as creating any rights and/or obligations by any of the Parties to this Agreement to any third parties. Specifically, none of the duties to inspect or maintain shall in any way be construed as creating or expanding any additional obligations to any third Party beyond those required and established under the applicable statutes, regulations, ordinances or law.

SECTION 29: SUCCESSORS.

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Parties hereto.

SECTION 30: WAIVER.

The wavier by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provision, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 31: BONDING.

JPB will require the DB Contractor for this Project to provide performance and payment bonds in the full amount of the contract and will require a two-year warranty period. The bond shall be maintained in full force and effect during the entire period that work is performed by the DB Contractor until such work is accepted by JPB.

SECTION 32: EXHIBITS

The Agreement includes the following Exhibits, which are incorporated into the Agreement as if fully set forth herein:

- A. **EXHIBIT A** – Depiction of JPB ROW within City
- B. **EXHIBIT B** – Location and Specifications for Paralleling Station 5 (“PS-5”)
- C. **EXHIBIT C** – Location of Staging Areas
- D. **EXHIBIT D** – JPB and City Agreements RE: City Improvements (*as developed*)

This Agreement is made and entered into as of the Effective Date.

**PENINSULA CORRIDOR JOINT POWERS
BOARD**

CITY OF PALO ALTO

By: _____

Jim Hartnett

James Keene
City Manager

General Manager

APPROVED AS TO FORM:

JPB Attorney

By: _____

APPROVED AS TO FORM:

Palo Alto City Attorney

By: _____