

**RAILROAD CONSTRUCTION AND MAINTENANCE AGREEMENT**  
**CALTRAIN GRADE CROSSING IMPROVEMENTS IN THE CITY OF SAN MATEO**

This Railroad Construction and Maintenance Agreement (the “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and between the Peninsula Corridor Joint Powers Board, a public agency (“**JPB**” or “**Railroad**”), and the City of San Mateo, a municipal corporation (“**City**”).

**RECITALS**

**A.** City is a duly established municipal corporation organized and existing under the laws of the State of California. JPB is a public agency organized and existing under the laws of the State of California.

**B.** JPB is the owner of the railroad right-of-way, and specifically that certain real property, fixtures and facilities located in the City between Railroad Mile Posts 16.56 and 21.0 (the “**Right-of-Way**”). City owns and maintains certain streets and related improvements in the vicinity of the Right-of-Way.

**C.** City wishes to cooperate with Railroad in the design, construction and maintenance of improvements to existing grade crossings in the City located at 1<sup>st</sup> Ave (CPUC No. 105E-17.66; U.S. DOT No.754900Y), 2<sup>nd</sup> Ave (CPUC No. 105E-17.73; U.S. DOT No.754901F) and 3<sup>rd</sup> Ave (CPUC No. 105E-17.80; U.S. DOT No.754902M), (the “**Crossings**”). These safety improvements are specified in JPB Construction Contract 21-J-C-003 *Caltrain Grade Crossings Improvements* and all attachments, exhibits and addenda thereto (“**Construction Contract**”), and plans submitted to and approved by the California Public Utilities Commission under its General Order 88-B (the “**Project**”). The safety improvements include installation of new:

1. Pavement markings and markers at 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Ave grade crossings;
2. Medians on the west side of the tracks at 1<sup>st</sup> Ave and 2<sup>nd</sup> Ave. Medians on the west and east side of the tracks at 3<sup>rd</sup> Ave;
3. One way sign on the median at 2<sup>nd</sup> Ave at the exit of the parking garage.

**D.** For purposes of this Agreement, the term “**Improvements**” shall include the Project as defined above and all ancillary work, including without limitation: changes to telecommunications, signal, and electrical lines and appurtenances thereto; relocation of all utilities and pipelines of any kind; construction of grading; drainage; and access roadways to the Right-of-Way; preliminary and design engineering; and all other work of every kind and character necessary to complete the Project.

E. The parties now desire to set forth herein their understandings and agreements relating to construction and maintenance of the Project and Improvements.

## **AGREEMENT**

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

1. **Costs.** JPB shall furnish, or cause to be furnished, at its sole cost and expense, all labor, materials, tools, and equipment needed to complete the Improvements, including all costs for the design, construction, construction management and indirect costs incurred. Provided, however, City shall bear its own costs related to the time that its staff or consultants spend on design review, inspections of Improvements in the City's right-of-way and coordination effort relevant to the Project. City shall waive all permit or other fees for this Project. City shall be responsible for the cost of any additional work requested by the City.

2. **Construction Standards/Design.** JPB shall design and construct the Project. The design and construction of the Improvements shall conform to JPB Standards of September 30, 2011 or the latest adopted standard at the time of design. The design and construction of Improvements in the City's right-of-way shall conform to the most recent applicable City standards and specifications. If no City or County standards and specifications exist for particular Improvement items, they shall be designed to applicable Caltrans standards; or, if no Caltrans standards apply, to such reasonable standards as JPB shall deem applicable with approval from the City. JPB shall consult with City and shall reasonably accommodate City comments and suggestions regarding changes that affect work in areas that City will be responsible to maintain. JPB shall have the right to make changes during construction subject to the terms of this Agreement.

3. **Schedule.** JPB plans to award the Construction Contract by February 1, 2021; the work is scheduled to be completed by December 1, 2021. It is acknowledged, however, that the Construction Contract contains provisions providing contractors with time extensions for excusable delays including those resulting from unanticipated site conditions.

4. **Real Property Conveyances.** No real property acquisitions are anticipated to be required from private parties for the construction of the Project or Improvements.

5. **City Improvements/Access to Right-of-Way.** For the purpose of maintaining and operating City-owned facilities located on the Right-of-Way, no later than 90 days following its final acceptance of the Project, Railroad shall grant to City a standard-form License, if such license is not already in place. The License Agreement shall contain provisions granting the City, its employees and contractors entry to the Right-of-Way, with adequate notification to JPB. The License Agreement shall require the City to follow JPB Roadway Worker Protection (RWP) and other safety protocols when working on the Right-of-Way and shall require JPB to provide annual RWP training to City public works and engineering personnel at no cost to the City.

6. **Utility Relocations.** The Project is being designed to avoid utility relocations. However, in the event that a utility relocation is found to be necessary, JPB shall be responsible, at its sole cost and expense, to locate all pipelines (including, without limitation, high pressure petrol pipelines, gas and water pipelines), fiber optic lines and all other utilities of any nature (“Facilities”) on the Right-of-Way in the vicinity of the Project, which must be relocated. JPB shall be responsible for relocating or arranging for the relocation of all such Facilities that would interfere with construction or operation of the Project or Improvements. JPB shall contact and work with the owners of these Facilities to identify their exact location and arrange for relocation as needed. Nothing herein shall preclude JPB from seeking reimbursement from the owners or other third parties for costs of Facilities relocation. Unless otherwise prohibited by contract or law and if any such rights exist, JPB shall be assigned the rights to reimbursement of relocation costs from the party on whose property the utilities are located. However, JPB must request and be granted reimbursement of relocation costs prior to relocating the utilities in question. JPB shall not be entitled to reimbursement of relocation costs for Facilities owned by City. The parties to this Agreement shall work cooperatively to minimize the cost of utility relocations.

7. **Permitting, Approvals and Contract Requirements.**

a. **Environmental Review.** JPB is the lead agency under CEQA and has obtained environmental clearance for the Project. The Project qualifies as Categorical Exempt under Section 15301 of the CEQA Guidelines. JPB’s contractor will be subject to all applicable Storm Water Pollution Prevention Plan (SWPPP) requirements, under current standard best management practices, including control of run-off, dust, mud, and the like.

b. **Inspections and Reporting.** JPB or its contractor shall provide all flagging and signal inspection required in connection with construction of the Project and Improvements. JPB will allow City to inspect Improvements that will be maintained and operated by the City. JPB Resident Engineer and/or inspector shall coordinate with City on inspection schedule. The City Inspector or Engineer will provide JPB daily inspection forms after it has inspected any work. JPB will keep City informed of progress of construction and will coordinate public outreach with City. City will designate their point of contact for construction coordination. The City shall not direct the JPB contractor to perform any work for this project. JPB will consult with City on any changes to the contract plans that affect City maintained and operated facilities, or in areas where the City has had substantial input (including, but not limited to, traffic control plans and public outreach). JPB’s contractor shall be responsible to maintain proper traffic control at all times.

c. **City Permits and Approvals.** City confirms that it has the authority to issue and enforce encroachment permits in its right-of-way to construct items necessary to the Project and Improvements. Prior to construction, City will provide JPB with applications for encroachment permits and other permits necessary for the Project and Improvements. City agrees to issue encroachment permits to JPB or its contractors prior to construction. The encroachment permit will contain standard and special conditions including, but not limited to, specific work hours that are consistent with the Project Construction Contract and mutually agreed upon by the City and JPB. If required, City will issue a Haul Route Permit for routes along City streets between work areas and State highways. State highway permits, as

required, shall be from Caltrans. Upon completion and acceptance of the Project, JPB shall provide record drawings in a format acceptable to the City.

e. **Maintenance.** Upon completion of construction, the parties shall be responsible to maintain the following Improvements:

(i) City shall maintain at its expense and be responsible for: City streets and pavement up to the crossing panels, but not between the crossing panels; pavement markings outside the crossing gate arms and stop bars; street curbs; traffic signals, conduits, conductors, traffic signal cabinet, loops as well as all associated traffic signal related infrastructure; gutters; medians; sidewalks within its easement area; as well as guardrails/handrails; fencing on City property; signage; and tactile warning tiles ("**City Improvements**").

(ii) Railroad shall maintain at its expense and be responsible for: the crossings, including but not limited to all track, grade crossing panels, pavement between the panels, railroad signals, crossing gates and fencing on Railroad property; pedestrian grade crossings, including gates, emergency exit gates, and signalized crossing arms; and pavement markings inside the crossing arms including the stop bar ("**JPB Improvements**").

f. **Indemnity.** The following indemnity provisions shall be applicable and binding upon the parties only for incidents occurring prior to the notice of completion being filed. Once the notice of completion for this Project is filed or the Project is completed (as defined in the Public Contract Code), the indemnity provisions set forth below shall terminate.

g. **City Indemnity.** City shall fully release, indemnify, hold harmless and defend the JPB, its member agencies (the San Mateo County Transit District, the City and County of San Francisco, and the Santa Clara Valley Transportation Authority), TransitAmerica Service Inc. ("**TASI**"), 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 Railroad), and damage to or loss of property arising out of or resulting from any negligent act or omission by City, its agents, employees, contractors or subcontractors in the maintenance of the City Improvements or in the performance of any other obligation in this Agreement. City's obligation to defend shall include the payment of all reasonable attorneys fees and all other costs and expenses of suit. 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.

h. **JPB Indemnity.** JPB shall fully release, indemnify, hold harmless and defend the City, including their respective 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 Railroad) and damage to or loss of property arising out of or resulting from any negligent act or omission by the JPB, its agents, employees, contractors or

subcontractors in the maintenance of the JPB Improvements or in the performance of its obligations or any other obligation under this Agreement. JPB's obligation to defend shall include the payment of all reasonable attorneys fees and all other costs and expenses of suit. If any judgment is rendered against City Indemnitees, 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.

i. **Severability.** It is the intention of the parties that should any term of this Agreement be found to be void or unenforceable for any reason, the remainder of the provision shall remain in full force and effect.

8. **Control of Alcohol and Drug Use.** JPB shall ensure contractor compliance with the provisions of the Code of Federal Regulations, Title 49 (Transportation), Part 219 (49 CFR Part 219).

9. **Insurance.** JPB will require its contractor to provide insurance in the amount specified in the contract documents and will require its contractor to name City and JPB as additional insured's. Such endorsements must provide that the insurance required to be furnished by JPB and its contractors will be primary as regards the City, and that the City's insurance will be in excess of and not contribute to the insurance required to be furnished by JPB and/or its contractors; that the City will receive 30 day written notice of any reduction or cancellation or alteration of coverage of such insurance required to be furnished by JPB and/or its contractors; and include a severability of interest clause acceptable to the City.

10. **Performance and Payment Bond.** JPB will require its contractor to provide performance and payment bonds in the full amount of the contract, including Improvements in the City's right-of-way, and will require a one-year warranty period after Project acceptance. City agrees to not require additional bonds of JPB's contractor if JPB is the permittee. The bonds shall be maintained in full force and effect during the entire period of Project construction, until such work is accepted. With respect to City-owned facilities, Railroad shall not accept the work related to such facilities for purposes of this section until it has received notice from City that such work is acceptable.

11. **Dispute Resolution.** Prior to commencement of any formal litigation arising out of this Agreement, the parties shall submit the matters in dispute 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. To the extent the disputes remain outstanding following completion of mediation, any claim, controversy, action or proceeding arising out of or relating to this Agreement or to any document, instrument or exhibit executed pursuant to this Agreement shall be tried by a judge pro tem appointed pursuant to Article VI, Section 21 of the California Constitution and Rule 2.830, *et seq.* of the California Rules of Court. Said judge is to be selected by counsel for the parties from a list of retired judges furnished by the Presiding Judge of the Superior Court of the County of San Mateo. If counsel is unable to select a judge pro tem, the judge will be selected by the Presiding Judge from the list provided.

a. Each party shall pay its pro rata share of the fee for the judge pro tem. Each party shall bear its own fees and expenses in such proceedings and the prevailing party shall not be entitled to reimbursement from the losing party for any such fees or expenses.

b. The judge pro tem shall have the authority to try and decide any or all of the issues in the claim, controversy, action or proceeding, whether of fact or of law, and to report a statement of decision thereon. In any proceedings before the judge pro tem, the issues are to be determined under the statutory and decisional law of the State of California. All local and California Rules of Court shall be applicable to any proceeding before the judge pro tem. All proceedings shall be conducted on consecutive dates without postponement or adjournments.

12. **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:

CITY: City of San Mateo  
330 W. 20<sup>th</sup> Ave  
San Mateo, CA 94403  
Attn: Brad Underwood, Director of Public Works  
Department of Public Works

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

13. **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

14. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

15. **No Third Party Beneficiaries:** 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.

16. **Amendments.** This Agreement may be amended only in a writing that is executed by all the parties hereto.

17. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous oral or

written understandings on the same subject. The parties intend this Agreement to be an integrated agreement.

18. **Counterparts.** This Agreement may be executed in counterparts or counterpart signature pages, each of which shall be deemed an original but all of which together shall constitute a single Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above with the intent to be intentionally bound.

**PENINSULA CORRIDOR JOINT POWERS BOARD**

By: \_\_\_\_\_  
Jim Hartnett  
Executive Director

Attest:

By: \_\_\_\_\_  
Dora Seamans  
JPB Secretary

Approved as to Form:

\_\_\_\_\_  
Attorney for the JPB

**CITY OF SAN MATEO**

By: \_\_\_\_\_  
Drew Corbett  
City Manager

Approved as to Form:

\_\_\_\_\_  
City Attorney

