

## LICENSE AGREEMENT

This License Agreement (“Agreement” or “License”) is entered into as of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a public agency (“JPB”), and the SAN MATEO COUNTY TRANSIT DISTRICT, a public agency (“SamTrans”), collectively referred to herein as “Railroad” and CITY OF SAN MATEO (“Licensee”).

### RECITALS:

A. Railroad is the owner of the Peninsula Corridor railroad right-of-way (“Right-of-Way”) and, more particularly, of that certain real property which is located between 25<sup>th</sup> Avenue and five-hundred feet south of 31<sup>st</sup> Avenue near the Hillsdale Station located in San Mateo, CA as referenced in Exhibit A, which is attached to this Agreement and incorporated into it by this reference (the “Property”). JPB contracts with an operator (“Operator”), currently the TransitAmerica Services Inc., to operate the commuter rail service on the Right-of-Way. The Operator also oversees maintenance of the Right-of-Way, including the Property.

B. Licensee desires to perform work at the Property. Licensee shall perform all necessary work in a satisfactory manner and shall furnish and install all materials, equipment, tools, labor, and incidentals necessary to complete the work under this Agreement which shall include, but not limited to, the following: mobilization, traffic control, utility locating, removal and replacement of surface improvements, provision of trench shoring, launching and receiving pit, installation of a new sanitary sewer system, installation of new sanitary sewer manholes, and site restoration and cleanup (collectively, the “Facilities”) upon the Property which will be in accordance with the plans shown on Exhibit B, which is attached to this Agreement and incorporated into it by this reference. The Facilities will be installed on the Property within the area (the “License Area”) shown on Exhibit A, which is attached to this Agreement and incorporated into it by this reference. Licensee desires to receive a license for the purpose of constructing, installing, maintaining, operating, using and repairing the Facilities (collectively “the Work”).

C. Following completion of the Facilities, Licensee will maintain and repair the Facilities.

D. Railroad is willing to grant a License to Licensee on the terms and conditions hereinafter set forth for the purposes of performing the Work.

E. Licensee and Railroad parties are aware that the 25th Avenue Grade Separation Project ("Project") was design to enable the construction of additional tracks within the Property, including, but not limited to, the potential construction of facilities by the California High-Speed Rail Authority. If the site is not eventually required for such construction, JPB may consider

development of the site. In both instances, Licensee will be required to relocate its improvements at its own costs, as detailed in this agreement.

F. Licensee, following the installation of the Facilities and pursuant to a separate agreement, has agreed to construct certain improvements, consisting of a sidewalk, retaining wall and bio swale, related to the Project (the "Improvements"). This License will allow Licensee access to construct the Facilities and the Improvements.

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the parties agree as follows:

1. Grant of License. Subject to the conditions, covenants and restrictions of this Agreement, Railroad grants to Licensee a personal, revocable license for the purposes of installing the Improvements, installing and maintaining the Facilities, and performing the Work in the License Area, together with necessary rights of ingress and egress, in, upon, under, along, across and over the Property for these purposes in the location described in Exhibit A.

2. Maintenance of Facilities and Improvements. Following completion of the Facilities, Licensee will own, maintain and repair the Facilities at its sole cost. Licensee agrees to keep the Property and the Facilities in good and safe condition, free from waste, so far as affected by Licensee's operations to the reasonable satisfaction of Railroad. If, after installation of the Facilities, Licensee fails to keep the License Area and the Facilities in good and safe condition, free from waste, then Railroad may perform the necessary work at the expense of Licensee, which expense Licensee agrees to pay to Railroad upon demand. Following completion of the Improvements, JPB shall own, maintain, and repair the Improvements at its sole cost.

3. License Fee. Licensee shall pay to Railroad a license processing fee of \$1,500. In addition, Licensee shall pay a one-time license fee of \$15,000.

4. Service Agreement. Licensee shall enter into a Service Agreement with Railroad. Such agreement shall provide for payment by Licensee for services provided by Railroad necessary for the Licensee to conduct the Work. As a condition precedent to the effectiveness of this Agreement, Licensee shall enter into a Service Agreement and shall have paid all fees associated with said Service Agreement. In the event subsequent to the initial installation of the Facilities, Licensee performs work that causes Railroad to perform additional services or furnish additional materials to Licensee, Railroad may require Licensee to enter into a separate agreement regarding additional services to the License Area. Any costs incurred under this Section shall be in addition to those due under Section 3.

5. Work Procedures. All Work performed by Licensee shall be performed in accordance with, and in the manner required of the "Contractor", in both the Railroad's Work Procedures described in the attached Exhibit C and Railroad's Operating Systems Interface, as described in the attached Exhibit D, both of which are attached to this Agreement and incorporated into it by this reference.

6. Condition to Effectiveness. As a condition precedent to the effectiveness of this Agreement, Licensee shall have paid any license processing fee indicated in Section 3 above and

provided to Railroad insurance certificates that provide evidence that Licensee has the kinds of insurance described in Exhibit E, which is attached to this Agreement and incorporated into it by this reference.

7. Nonexclusiveness of License. This License is nonexclusive and nonpossessory. Licensee must allow access to the Property by other parties possessing prior rights, unless separate arrangements are made with such parties.

8. Prior Rights. This License is made subject and subordinate to the prior and continuing right and obligation of Railroad, its successors and assigns, to use the Right-of-Way in the performance of its transportation operations. There is reserved unto Railroad, its successors and assigns, the right to construct, reconstruct, maintain and use existing and future facilities and appurtenances, including, without limitation, existing and future transportation, communication, railroad tracks and pipeline facilities and appurtenances in, upon, over, under, across and along the Right-of-Way. This grant is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Right-of-Way. The word “grant” shall not be construed as a covenant against the existence of any of these or establish any ownership interest in the Right-of-Way.

9. Term of License. The term of this License shall commence upon the start of the Work upon the Property and shall continue until this License is terminated or suspended as set forth herein:

(a) Either party may terminate this Agreement without cause by giving 90 calendar days written notice.

(b) Railroad may immediately terminate the License by notice to Licensee upon Licensee’s discontinuance of the use of the Facilities for one continuous year or the abandonment of any Facilities installed on the Property.

(c) Railroad may immediately suspend the License by notice to Licensee if Licensee defaults with respect to any covenant or condition of this Agreement and Licensee fails to correct the default within 30 days after receipt of notice from Railroad to do so.

(d) Railroad may immediately terminate or suspend this License by notice to Licensee upon any failure of Licensee to reimburse Railroad for any amount owing as and when due as provided any agreement with Railroad.

(e) The License shall lapse and become void if the Work is not commenced within one year of the date of this Agreement.

Upon suspension of the License, Licensee shall immediately vacate the Property and refrain from entering onto it until the License is reinstated in writing by Railroad. Upon termination of the License for any reason established in this Section 9, Railroad may, at its sole election, at any time thereafter either complete the Work or remove the Facilities from the Property or any portion thereof and restore the Property to its original condition, at Licensee’s sole cost and expense. Licensee acknowledges and agrees that the performance of the Work or the installation of the Facilities on the Property pursuant to this Agreement shall not in any way whatsoever limit

Railroad's right to terminate this License pursuant to the terms hereof or any of Railroad's rights hereunder. Licensee's indemnity obligations set forth in Sections 11, 12 and 13 shall survive termination of this License for any reason.

10. Fiber Optics Systems. The rights granted by this Agreement are subject to the rights of Railroad (or anyone acting with the permission of Railroad) to construct, reconstruct, maintain and operate fiber optic and other telecommunications systems ("Systems") in, upon, along, across and beneath the Right-of-Way, including the Property upon which the Work shall be conducted. Licensee agrees to reimburse Railroad and/or the owner of the systems for all reasonable expenses which would not have been incurred except by reason of the use of the Property by Licensee, its agents, employees or invitees, including relocation costs or any damages incurred by such owner due to injury to the Systems.

11. Assumption of Risk/Waiver of Claims. Licensee shall assume all risk of damage to any and all improvements constructed as part of the Work and appurtenances and to any other property of Licensee, or any property under the control or custody of Licensee while upon or near the Property of Railroad incident to the performance of the Work, caused by or contributed to in any way by the construction, operation, maintenance or presence of Railroad's operations at the Property and Railroad shall not be liable therefor. Licensee hereby releases Railroad from any liability, including any claims for damages or extra compensation (i) arising from construction delays due to work by Railroad forces or Railroad operations, (ii) as the result of the failure or inability of Railroad to provide necessary flaggers or inspectors, (iii) due to the presence of Hazardous Materials on the Property, (iv) any failure by Railroad to investigate or identify the presence of such materials, (v) for work done by Railroad forces, or (vi) for Railroad operations.

(a) Neither Railroad nor any of its directors, officers, agents or employees shall be liable for any damage to the property of Licensee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by Licensee, except where any damage, bodily injury or death are caused by the sole negligence or willful misconduct of Railroad, its directors, officers, agents, or employees.

(b) Licensee acknowledges that this License is freely revocable by Railroad and in view of such fact, Licensee expressly assumes the risk of making any expenditure in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Indemnitees (as defined in Section 12 below) under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that Railroad exercises its right to revoke or terminate this License.

(c) Licensee acknowledges that it will not be a displaced person at the time this License is terminated or revoked or expires by its own terms, and Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Indemnitees under any present or future laws, statutes, or

regulations, including, without limitation, any and all claims for relocation benefits or assistance from Railroad under federal and state relocation assistance laws.

(d) Licensee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of Railroad for any consequential or incidental damages including, but not limited to, lost profits and arising out of disruption to the facilities or Licensee's uses hereunder. Railroad would not be willing to give this License in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of Railroad or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against Railroad for consequential and incidental damages (including without limitation, lost profits and covenants not to sue Indemnitees for such damages arising out of this License or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Licensee pursuant to this License, regardless of the cause, and whether or not due to the negligence of Railroad Indemnitees, except for the gross negligence and willful misconduct of Railroad.

(e) As part of Licensee's agreement to accept the License Area in its existing condition, and without limiting such agreement, Licensee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, Railroad, the Indemnitees, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Property and any related improvements or any law or regulation applicable thereto or the suitability of the License Area for Licensee's intended use.

12. Indemnity. Licensee shall release, defend (with counsel reasonably satisfactory to Railroad) and indemnify the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority and the San Mateo County Transit District, the Union Pacific Railroad Company and TransitAmerica Services, Inc., and all of their respective officers, directors, employees, volunteers and agents, the successors and assigns of any of them, (all of the above hereinafter collectively known as "Indemnitees"), from and against all claims, causes of action, proceedings, losses, damages, liability, cost, and expense (including, without limit, any fines, penalties, judgments, litigation costs, attorneys' fees and consulting, engineering and construction costs) for damage to natural resources or other loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") when arising or resulting from the use of the Property or performance of the Work by Licensee, its agents, employees, contractors, subcontractors, or invitees or Licensee's breach of the provisions of this Agreement. The duty of Licensee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Licensee will indemnify and hold harmless Indemnitees from any and all claims, suits or actions arising from any cause whatsoever as set forth above regardless of the existence or degree of fault or negligence on the part of Indemnitees, Licensee, or any subcontractor or employee of any of these, except to the extent the Liability was attributable to the gross negligence, willful misconduct or criminal acts of a particular Indemnitee,

it being understood and agreed that any Indemnitee not acting in such a manner shall still be entitled to the benefits of this indemnity. Licensee waives any and all rights to any type of express or implied indemnity against Indemnitees. This indemnity shall survive termination of this Agreement. 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.

13. Hazardous Materials.

(a) No Hazardous Materials (as defined below) shall be created, stored, used, disposed of, brought to or handled at any time upon the Property, except Hazardous Materials contained in or used in connection with construction equipment necessary for the operation of such equipment or vehicle being used for work which is authorized on the Property under this License. In conducting its operations on the Property, and in arranging for the handling, transport and disposal of any materials known (whether or not hazardous), Licensee shall at all times comply with all applicable laws, statutes, ordinances, rules, regulations or orders of whatever kind or nature and pay all costs of such compliance. Licensee shall immediately notify Railroad when Licensee learns of, or has reason to believe that, a release of Hazardous Materials has occurred in, on or about the Property. The term “release” or “threatened release” when used with respect to Hazardous Materials shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property. Licensee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that a Licensee or its Agents or Invitees cause a release of Hazardous Materials, Licensee shall, without cost to Railroad and in accordance with all laws and regulations, return the Property to the condition immediately prior to the release. In connection therewith, Licensee shall afford Railroad a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Materials.

(b) Any Hazardous Materials introduced onto the Property by Licensee, its agents, employees, contractors, subcontractors or invitees, shall remain the property of Licensee, its agents, employees, contractors, subcontractors or invitees, which shall be responsible for disposing of these materials at no cost to Railroad or any Indemnitee, and Licensee shall be obligated to defend, indemnify and hold Indemnitees harmless from any and all Liability arising from it, regardless of whether such Liability arises during or after the term of this License. This indemnity shall not extend to Liability arising from the presence of any Hazardous Materials on the Property as of the Effective Date, unless (i) such Hazardous Materials were introduced onto the Property by Licensee, its agents, employees, contractors, subcontractors or invitees, in which case this indemnity shall apply, or (ii) Hazardous Materials are present on the Property, and Licensee’s handling, excavation, relocation, investigation, disposal or other exercise of control over the Property imposes on the Railroad new or additional liability, which the Railroad would not otherwise have incurred in the absence of Licensee’s activities or project. (In the latter event, Licensee shall pay for and defend and indemnify Indemnitees from and against such additional liability to the extent of such new or additional liability.).

(c) Any Hazardous Materials not introduced onto the Property by Licensee, its agents, employees, contractors, subcontractors or invitees shall remain the property of the Railroad (or other responsible third parties) and shall not be deemed property of Licensee.

(d) For purposes of this Agreement, "Hazardous Materials" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Materials includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) or pursuant to Section 25316 of the California Health and Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property or are naturally occurring substances on the Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids.

(e) 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.

(f) This indemnity shall survive termination of this Agreement.

14. Compliance with Laws. Licensee shall comply, at Licensee's expense, with all applicable laws, regulations, rules and orders with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, hazardous materials, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance upon request of Railroad. Before beginning work on the Property, Licensee shall also obtain, at Licensee's expense, any and all permits, licenses and approvals required for construction and operation of the Work and shall provide Railroad with copies of such approvals. Under no circumstances shall Licensee damage, harm or take any rare, threatened or endangered species on or about the Property.

15. Notices. All notices required or permitted to be given under this Agreement shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or by overnight courier, to the appropriate address indicated below or at such other place or places as either Railroad or Licensee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served four (4) days after the date of mailing, one (1) day after mailing by overnight courier, or immediately upon personal delivery.

To Licensee: City of San Mateo  
330 W. 20th Ave.  
San Mateo, CA 94403  
ATTN: Deryk Daquigan

To Railroad: Peninsula Corridor Joint Powers Board  
San Mateo County Transit District  
1250 San Carlos Avenue  
P.O. Box 3006  
San Carlos, CA 94070-1306  
Attn: General Manager/Executive Director

With a copy to: Hanson Bridgett LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105-2173  
Attn: Joan Cassman, Esq.

To Operator: TransitAmerica Services, Inc.  
93 Cahill Street  
San Jose, CA 95110  
Attn: General Manager

Day-to-day communications shall be directed to JPB's Senior Engineer, Lou Tolentino (Tel: (650) 508-7796; Email: [TolentinoL@samtrans.com](mailto:TolentinoL@samtrans.com)) and to Licensee's Project Manager Deryk Daquigan, (Tel: (650)522-7287; Email: [ddaquigan@cityofsanmateo.org](mailto:ddaquigan@cityofsanmateo.org)).

16. Relocation of License. In the event Railroad shall at any time so require, Licensee, at Licensee's expense, shall reconstruct, alter, make changes in the location of its Facilities on the Property, within 30 calendar days of receipt of written notice from Railroad to do so or such longer period as approved by Railroad. The Railroad shall designate the location for the Licensee to relocate its permit, if on property owned by Railroad. Any necessary property interests shall be obtained at Licensee's sole cost and expense. Railroad shall not be responsible for costs or expenses involved in relocating the Facilities, in the event the Facilities must be relocated or for any other cost or inconvenience to Licensee. Licensee shall perform the relocation work in a manner and at times satisfactory to Railroad. If Licensee fails to perform such work, Railroad may perform the work at the expense of Licensee, which expense shall, upon demand, be paid by the Licensee. The provisions of this Agreement shall apply to all work Permittee performs under this Section.

17. Successors and Assigns. Licensee shall not assign nor sublet, in whole or in part, any rights covered by this Agreement, or permit any other person, firm or corporation to use, in whole or in part, any of the rights or privileges granted pursuant to this Agreement, without first obtaining the written consent of the Railroad.

18. No Waiver. No waiver of any default or breach of any covenant of this Agreement by either party shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The



consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

19. Severability. Each provision of this Agreement is intended to be severable. If any term of provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

20. Attorneys' Fees. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.

21. Condemnation. In the event all or any portion of the Property is condemned for public use, Licensee shall receive compensation only in the amount awarded for the taking and damaging of Licensee's Facilities. Any compensation for damages for taking the Property or Licensee's permit interest thereon awarded to Licensee shall be assigned to Railroad.

22. Governing Law. The rights and obligations of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

23. Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

24. Integration. This Agreement constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement, which are not fully expressed in this Agreement. The parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be in writing signed by both parties.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this License as of the day and year first above written by their duly authorized representatives.

PENINSULA CORRIDOR JOINT  
POWERS BOARD

By: \_\_\_\_\_  
Title: Chief Operating Officer, Rail

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

SAN MATEO COUNTY TRANSIT  
DISTRICT

By: \_\_\_\_\_  
Title: Chief Operating Officer, Rail

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

CITY OF SAN MATEO

\*By: \_\_\_\_\_  
Title:

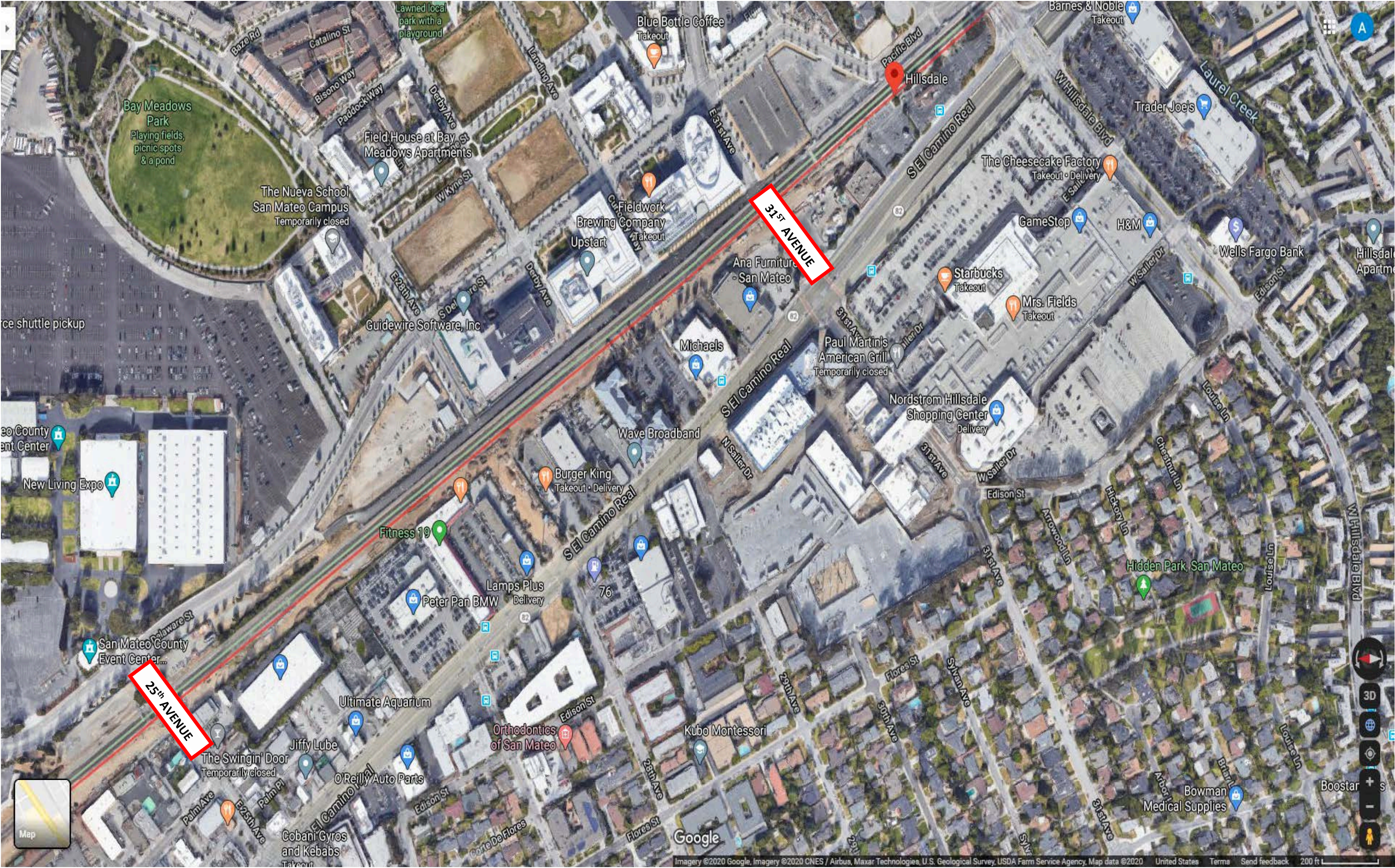
\*By: \_\_\_\_\_  
Title:

APPROVED AS TO FORM:

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

\* NOTE: If Licensee is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the President, Vice President or Chair of the Board, and (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, or by any person authorized by the corporation to execute written contracts.





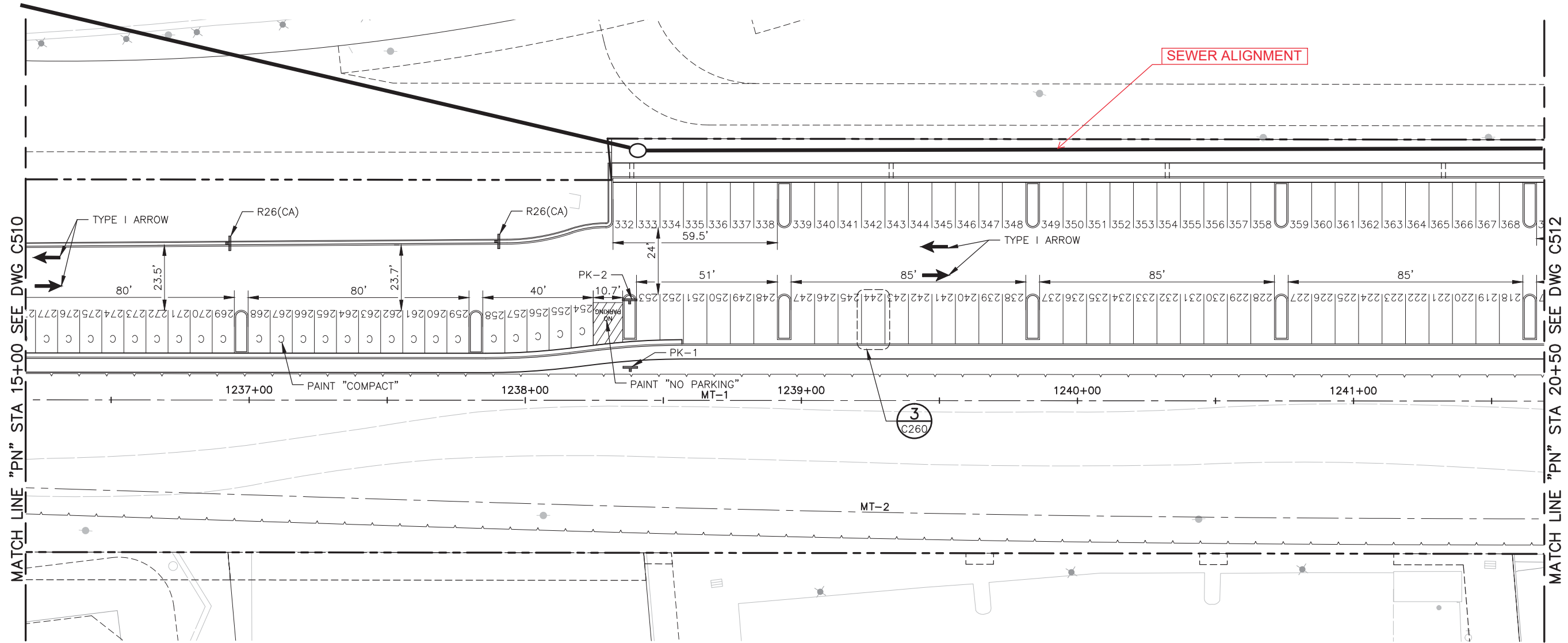


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CONTROL POINT:



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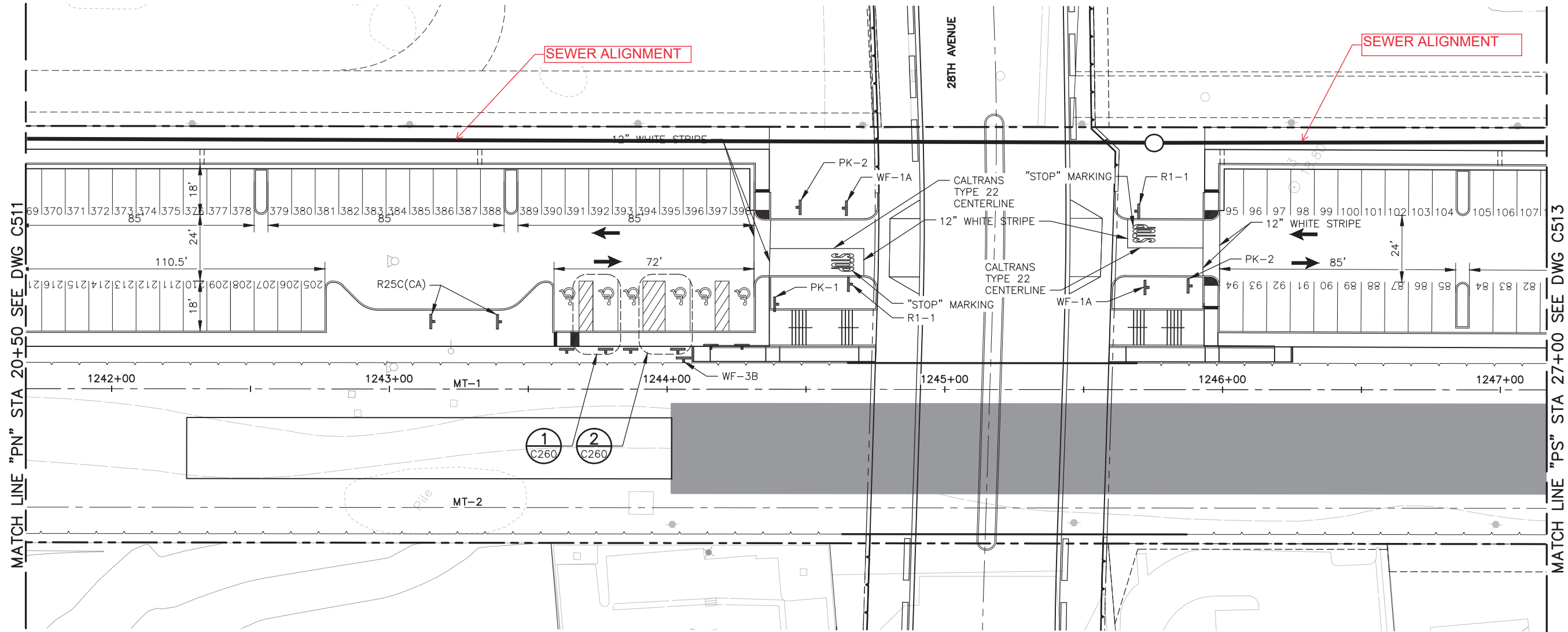
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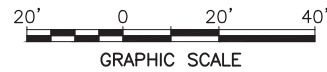
CITY OF SAN MATEO

DELAWARE RELIEF SEWER

ALIGNMENT EXHIBIT B



- NOTES:
1. FOR PARKING STALL NUMBER DETAILS SEE CALTRAIN STANDARD DETAIL SD-3503.



**CITY OF SAN MATEO**

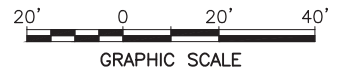
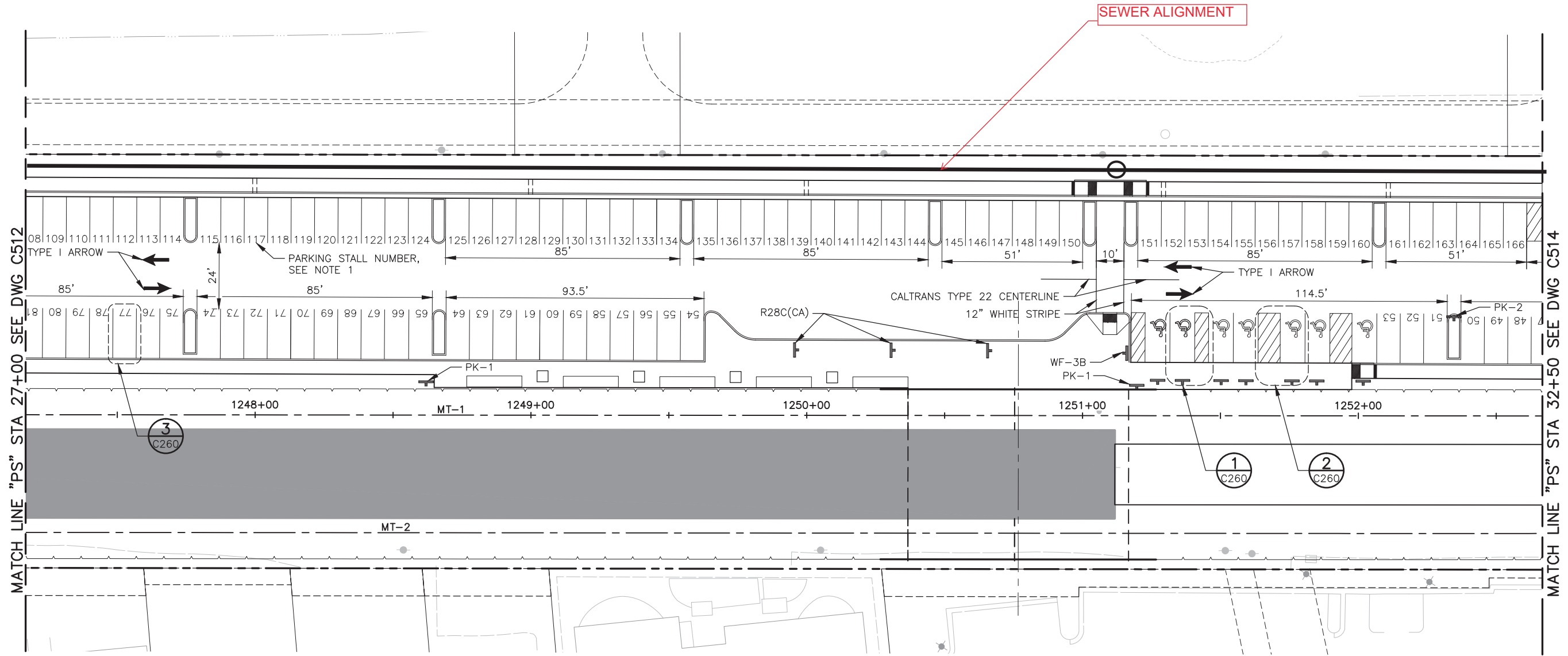
**DELAWARE RELIEF SEWER**

**ALIGNMENT EXHIBIT B**

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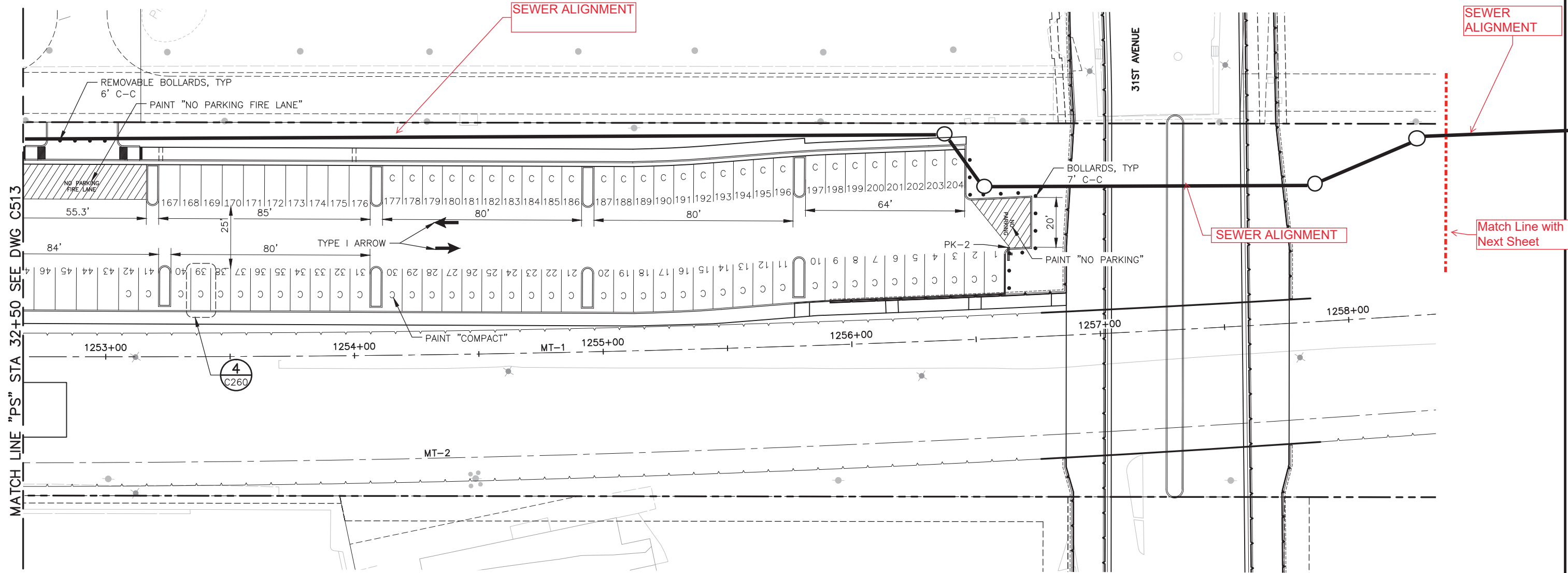
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CITY OF SAN MATEO

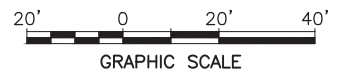
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CITY OF SAN MATEO

DELAWARE RELIEF SEWER

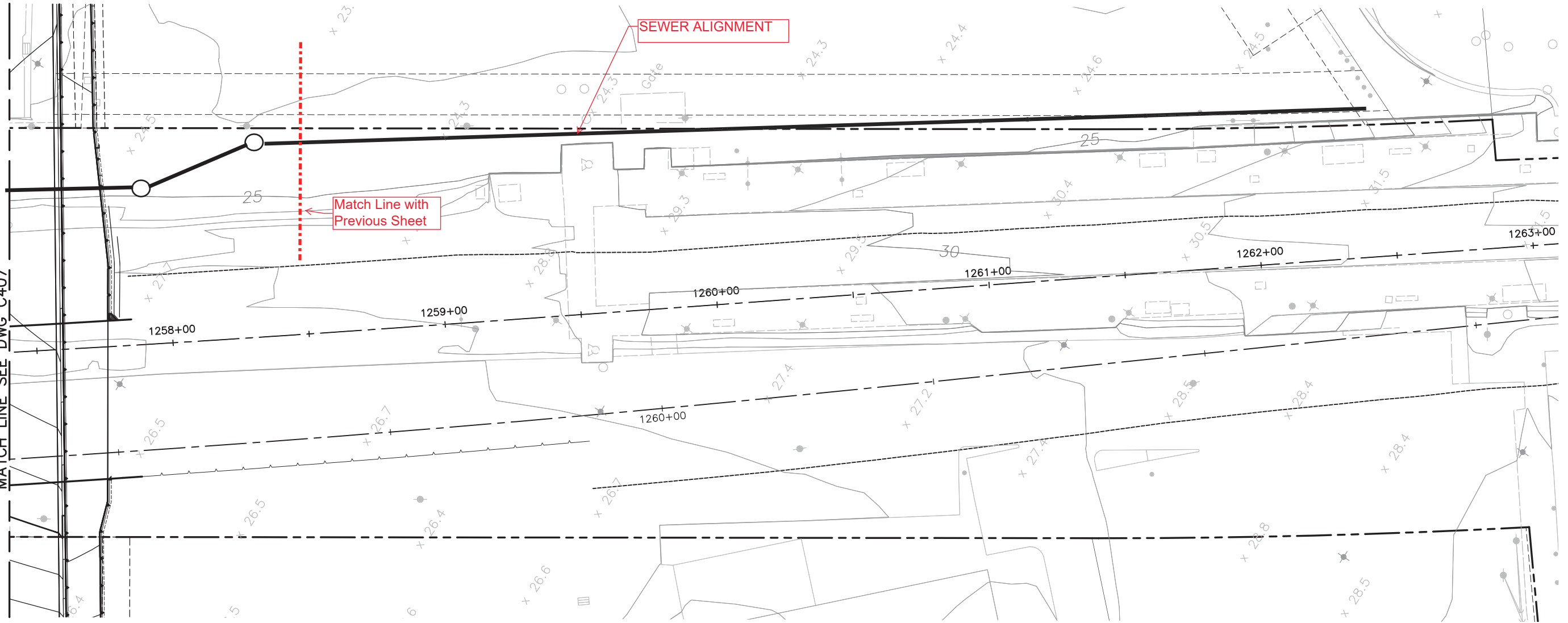
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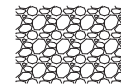
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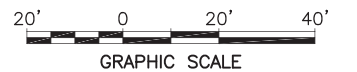
MATCH LINE SEE DWG C407



**LEGEND:**



COBBLE OUTFALL PROTECTION



**CITY OF SAN MATEO**

**DELAWARE RELIEF SEWER**

**ALIGNMENT EXHIBIT B**



## **Exhibit C**

### **Working Procedures**

Licensee (Permittee) shall at all times abide by Railroad's Operating Systems Interface, a copy of which is attached to this Agreement as Exhibit D, as well as with the regulations of Railroad (including, but limited to, Railroad's Track Specifications and Design Guidelines for Grade Separations and Any Other Encroachments, dated July, 1994, as amended, and Railroad's Right of Way Standards for Longitudinal and Transverse Utility Encroachments, dated July, 1994, as amended). Permittee's Work on the Property shall be subject to Railroad's approval. Without limiting the foregoing, Permittee shall at all times comply with the regulations of Railroad and the Operator and the instructions of either of their representatives relating to the proper manner of protecting the tracks, pipelines, wire lines, signals and all other property at said location, the traffic moving on such tracks and the removal of tools, equipment and materials. In addition, Permittee will adhere to the following specific requirements:

(a) Repair and Maintenance. After installation, Permittee shall bear the entire cost of maintaining and operating facilities installed by Permittee on the Property.

(b) Plans Approved Prior to Commencing Work. Permittee's work on the Property shall be performed in accordance with plans and specifications approved in advance and in writing by Railroad as to overall layout, clearances established by the California Public Utilities Commission (including, but not limited to, PUC General Order 26-D), shoring, temporary supports, false work, railroad bridges and any other works on Railroad's Right-of-Way and in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and other railroad facilities on or adjacent to the Right-of-Way. Any waiver of these standards must be in writing and must be issued by Railroad's Chief Engineer. Any revisions and amendments to the approved plans and specifications pertaining to the Work on the Property must be approved in writing by Railroad. The details of construction affecting the Railroad tracks and property not included in the contract plans shall be submitted to the Railroad for approval before such work is undertaken. All plans and designs related to track rearrangement shall be subject to the prior approval of Railroad. Permittee shall submit to Railroad three (3) sets of working drawings showing details of construction affecting Railroad's tracks and the Property, including those for false work over and/or adjacent to the tracks or shoring of excavations near tracks, not included in the contract plans, and Permittee shall not begin such work until notified by Railroad that such plans have been approved. Railroad's approval for these limited purposes shall not relieve Permittee from liability arising out of performance of the Work or lead to an assumption of design or construction responsibility on the part of Railroad or its Operator. Approval by Railroad shall not constitute a warranty by Railroad that such plans conform to applicable federal, state, and/or local codes and regulations.

(c) Notice Prior to Commencing Work. Permittee shall cooperate with the Railroad and Operator where work is over or under the tracks, or within the limits of the Property, in order to expedite the work and to avoid interference with the operation of Railroad's equipment. Permittee shall notify the Railroad's Chief Engineer at least ten (10) working days (or such additional notice as may be provided herein) before commencing any

work on the Property. Although Railroad will reasonably cooperate with Permittee so that the Work may be handled in an efficient manner, Permittee hereby waives and releases Railroad from any claim for damages against Railroad in the event the Work is delayed for any reason whatsoever.

(d) No Interference With Railroad Operations. Permittee shall perform its work in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and property of Railroad and traffic moving on such tracks, as well as wires, signals, pipelines, utilities and other property of Railroad, its tenants or licensees, at or in the vicinity of the work. All work contemplated in this Agreement shall be performed in a good and worker-like manner to the satisfaction of the parties, and each portion shall be promptly commenced by the party obligated to do the same and thereafter diligently prosecuted to completion in its logical order and sequence.

(e) Repair of Damage. Permittee shall take protective measures necessary to keep Railroad's facilities, including track ballast, free of sand or debris resulting from its operations. Any damage to Railroad's facilities resulting from Permittee's operations will be repaired or replaced by Railroad at Permittee's sole cost and expense, which Permittee shall pay to Railroad promptly upon demand therefor.

(f) Underground Facilities. Permittee shall be solely responsible at its own cost for identifying the location of all pipelines (including, but not limited to, high pressure petroleum, gas and water pipelines), fiber optic lines and all other utilities of whatever nature on the Property, and for relocating all said pipelines and utilities which would interfere with Permittee's Work. Permittee shall also be solely responsible at its own cost for identifying the location of structures not owned by Railroad on the Property, including but not limited to tie-backs owned by Bay Meadows Main Track Investors LLC as outlined in Exhibit F, and for relocating all said structures which would interfere with Permittee's Work. Permittee shall relocate, or arrange for the relocation by a third-party contractor approved by Railroad, any and all Railroad signal lines and Railroad communication facilities, the existing location of which would interfere with the Work, at Permittee's sole cost and expense, unless other arrangements are made by separate agreement. Absence of markers does not constitute a warranty by Railroad of the absence of subsurface installations. It shall be Permittee's responsibility to determine the existence of any underground facilities and Permittee shall call Underground Service Alert at 1-800-642-2444 prior to beginning any work on the Property. Since there is the possibility of the existence of pipelines or other structures beneath the Property, if Permittee should excavate or drill, then Permittee's forces shall explore such structures with hand tools to a depth of at least eight feet (8') below the surface of the ground or, at Permittee's option, use suitable detection equipment, prior to drilling or excavating with mechanized equipment.

(g) Storage. Permittee shall not pile or store any tools or other materials or park any equipment, when not in use, closer to the center of nearest railroad track than permitted by the following permanent clearances:

- (i) 25'-0" horizontally from center line of track; and
- (ii) 22'-6" vertically above top of rail.

The placement of piles, forms, braces, shoring, false work, or other construction

supports shall be in accordance with Appendix H of the most current Caltrans Trenching and Shoring manual.

Walkways with railings shall be constructed by Permittee over open excavation areas when in close proximity of tracks, and railings shall not be closer than 8'-6" horizontally from centerline of the nearest track, if tangent, or 9'-6" if curved. Any infringement on the above temporary construction clearances due to the Permittee's operations shall be submitted to Railroad for approval, and shall not be undertaken until approved by Railroad. When the temporary vertical clearance is less than 22'-6" above top of rail, Railroad shall have the option of installing tell-tales or other protective devices Railroad deems necessary for protection of Railroad trainmen or traffic. Permittee shall notify the Railroad in writing, at least twenty-five (25) calendar days, but no more than forty (40) calendar days, in advance of the starting date of installing temporary work with less than permanent clearances established above for approval as provided herein.

(h) Open Holes. Any open holes shall be satisfactorily covered at all times when Permittee's forces are not physically working in the vicinity. Upon completion of work, all holes will be filled in to meet the surrounding ground level with clean, compacted, earthen material and the property left in a neat and safe condition reasonably satisfactory to Railroad.

(i) No Crossing of Tracks. Permittee shall not be permitted to cross Railroad's tracks located on or adjacent to the Property without Railroad's prior written approval, which may be conditioned on such terms as Railroad deems appropriate. Absent such approval, Permittee's access shall be by use only of designated public streets or crossings.

(j) Payments and Liens. With respect to the Work, Permittee shall fully pay for all materials joined or affixed to the Property, and shall pay in full all persons who perform labor on or deliver materials to the Property. As Railroad is a public entity, its property is not subject to mechanics' or materialmen's liens, and nothing in this Permit shall be construed to make its property subject to such liens. Nevertheless, if any stop notice claims, mechanics' or materialmen's liens of any kind are filed, Permittee shall immediately remove them at Permittee's own expense, and shall pay any judgment which may be entered. Should Permittee fail, neglect, or refuse so to do, Railroad, after 48 hours prior notice to Permittee, shall have the right to pay any amount required to release any such liens, or to defend any action brought, and to pay any judgment entered. Permittee shall be liable to Railroad for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment. Railroad may post and maintain upon the Property notices of nonresponsibility as provided by law.

(k) Tests. Permittee shall cooperate with Railroad in making any tests Railroad requires of any installation or condition that in Railroad's reasonable judgment may have an adverse effect on any of the facilities of Railroad. All costs incurred by the tests, or any corrections, shall be borne by Permittee.

(l) Completion. Permittee shall notify Railroad the date said work is completed, and also the date the Permittee's Work is accepted by the Permittee. Upon completion of the work to be done upon Railroad's Property, Permittee shall promptly remove from the Property all tools, equipment and materials placed thereon by Permittee or its agents.

Permittee shall restore said property to the same state and condition as when Permittee entered thereon and shall leave said Property in a clean and presentable condition.

(m) Compliance with Laws. Permittee shall comply, at Permittee's expense, with all applicable laws, regulations, rules and orders with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, hazardous materials, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance to Railroad upon request.

(n) Condition of Property. Permittee agrees to keep the Property and the Work in good and safe condition, free from waste, so far as affected by Permittee's operations, to the reasonable satisfaction of Railroad. If, during the term of this Agreement, Permittee fails to keep the Property and the Work in good and safe condition, free from debris, then Railroad may, at Railroad's option (1) perform the necessary work at the expense of Permittee which expense Permittee agrees to pay to Railroad upon demand, and/or (2) immediately terminate this Permit without limiting its remedies. Permittee shall not conduct any activities on or about the Property that constitute a nuisance or unreasonable annoyance (including without limitation, emission of objectionable odors, noises or lights) to Railroad, to the owners or occupants of neighboring property or to the public.

(o) Project Markers. Project markers in a form and size satisfactory to Railroad, identifying the facility and its owner, shall be installed and constantly maintained by and at the expense of Permittee at Railroad's property lines or such locations as Railroad shall approve. Such markers shall be relocated or removed upon request of Railroad without expense to Railroad. The absence of markers does not constitute a warranty by Railroad that there are no subsurface installations.

(p) Engineering Review. Railroad (or its contractor) shall provide all engineering review, marketing and scheduling, detouring, flagging and engineering inspection required in connection with said Work, as determined by Railroad in its reasonable discretion, at Permittee's sole cost and expense.

(q) Reimbursement. Permittee agrees to reimburse Railroad for the actual cost and expense to Railroad of furnishing any materials or performing any labor in connection with the Work, including, but not limited to, the review of plans and specifications, the installation and removal of any falsework or other protection beneath or along railroad tracks, and the furnishing of such security persons, flaggers and inspectors as Railroad deems necessary. Flaggers and/or inspectors are required when work is performed in proximity to the tracks and are furnished at the cost of approximately \$1600 per day for inspectors and \$1000 per day for flaggers.

(r) Delay Damages. In the event that Permittee's acts or omissions cause delays to Railroad's commuter train operations, the Railroad will sustain damages, and it is agreed by the parties that it is impracticable and extremely difficult to ascertain and determine the actual damages which Railroad will incur in the event of and by reason of such delay. The charges cover such costs as: 1) Additional train crew labor costs; 2) Additional Railroad inspector costs; 3) Costs of establishing any bus bridges; 4) Lost passenger revenues; and 5) Customer

rebate costs.

#### **Minor Train Delay Liquidated Damages**

<u>Maximum Delay Per Train Per Day (minutes/seconds)</u>	<u>Charge per Train</u>
1'01" to 2'00"	\$ 2,500
2'01" to 5'00"	\$ 6,500
5'01" to 10'00"	\$13,000
10'01" to 15'00"	\$20,000

#### **Major Train Delay Liquidated Damages**

<u>No. of Trains Delayed More Than 15 Minutes in Any Calendar Month</u>	<u>Charge per Train</u>
1 to 2	\$20,000
3 to 4	\$40,000
5 to 6	\$60,000
7 or More	\$80,000

Permittee shall pay to Railroad the sums set forth above within 45 days of receipt of invoice from Railroad.

(s) No Blasting. Permittee shall not conduct any blasting on the Property without the prior written authorization of Railroad.

(t) Workplace Safety. Permittee shall at all times comply with the provisions of the Federal Railroad Administration regulations, including 49 CFR Part 214, pertaining to Railroad Workplace Safety, and Railroad's On-Track Safety Program.

(u) Conflict with Operating Systems Interface. To the extent any of the foregoing specific requirements of this exhibit conflict with provisions set forth in the Operating Systems Interface and Track Specifications and Design Guidelines for Grade Separations, the provisions of Operating Systems Interface and Track Specifications and Design Guidelines for Grade Separations shall control.

(v) Protection of Railroad Facilities. The presence of Railroad's representatives, conductors, inspectors, flagmen or watchmen may be required when Permittee or any of Permittee's forces or contractors are working on or near the Property and will be provided by Railroad to protect its facilities, property and movements of its trains or engines. In general, Railroad will furnish such personnel or other protective devices:

(1) When any part of any equipment is standing or being operated within 15 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.

(2) For any excavation below elevation or track subgrade if, in the

opinion of Railroad's representative, track or other Railroad facilities may be subject to settlement or movement.

(3) For any clearing, grubbing, grading, or blasting which, in the opinion of Railroad's representative, may endanger Railroad facilities or operations.

Permittee specifically agrees that the need for and staffing of Railroad personnel or those of its Operator as provided in this Section shall be within Railroad's sole discretion, and the attendant costs shall be borne entirely by the Permittee. The reasonable cost to Permittee of such inspector shall be payable to Licensor within 30 days after presentation of a bill.

(w) Fiberoptics. In addition to other provisions of this Agreement requiring Permittee to give notice prior to commencing work, Permittee shall telephone Underground Service Alert at 1-800-642-2444 (a 24-hour number) to determine if a telecommunications system is buried anywhere on or about the Property. If there is, Permittee will telephone the owner of any system identified, arrange for a cable locator and make arrangements for relocation or other protection for the system prior to beginning any work on the Property.

(x) Site Specific Work Plan. Prior to commencing the Work, and each week during the course of conducting the Work, Permittee shall have a Site Specific Work Plan approved by the Permittee. If such a plan is not approved by Railroad, or not available on site, Permittee may cancel this Agreement.

(y) Traffic. Permittee shall provide all barriers, directions, signage and other form of notice to the public to assure the smooth and uninterrupted flow of traffic around the Property.



## EXHIBIT D OPERATING SYSTEM INTERFACE (OSI)

### PART 1 - GENERAL

#### 1.01 DESCRIPTION

Outline for Contractor's interface with Caltrain's operating system, including track work, train control, and communications.

#### 1.02 DEFINITIONS

- A. **Caltrain:** AKA, The Peninsula Corridor Joint Powers Board (PCJPB) is a public agency comprised of three counties; San Francisco, San Mateo and Santa Clara, and is otherwise known as Caltrain.
- B. **Railroad Contract Operator:** Under contract with the PCJPB to operate and maintain the Caltrain system.
- C. **Operating System:** Includes, but is not limited to, the tracks on which trains and on-track equipment operate or may potentially operate, and in addition any facilities closely related to the operation of the railroad system including signal and communication masts, bridges, poles, cables, signal houses, tunnels, culverts, grade crossings and station platforms and facilities.
- D. **Operating Envelope:** Anywhere within Caltrain property including any area that is an essential component of the operating system.
- E. **Work Window:** A designated period of time with a specific beginning and ending time for which the track, signals, bridges and other Operating System elements within the Operating Envelope are modified or temporarily removed from service to allow construction or maintenance work to occur. Written authority from Caltrain, and an approved Weekly Site Specific Work Plan (SSWP), is required before a Contractor is granted a Work Window. The Contractor's Work Window shall have specific geographic limits, which are defined in the approved SSWP. Modifications or suspension of train and on-track equipment movements resulting from a Work Window involves written changes to the Railroad's Rules of Train and On-Track Equipment Operations. These written changes are known as Track Bulletins and are categorized as follows.
  - (a) **Multiple Track Window:** An approved Work window in which passenger/commuter and freight train service on two or more adjacent main tracks is suspended or halted. However, trains and on-track equipment associated with construction and maintenance activities may still operate on the tracks with suspended service but subject to the control of the Employee-in-Charge/ Flagman.

Within rail corridors with three or more main tracks passenger/ commuter and freight train service may operate on the remaining main tracks subject to “Form B” restrictions. A “Form C” Track Bulletin will be issued by the Owner’s Railroad Contract Operator/ Operating Railroad of Record to suspend or modify the train service on the two or more adjacent main tracks.

- (b) Single Track Window: An approved Work Window in which passenger/ commuter and freight service on a single main track is suspended or halted. However, trains and on-track equipment associated with construction and maintenance activities may still operate on the single main track with suspended service subject to the control of the Employee-in-Charge/ Flagman. Additionally, passenger/ commuter and freight train service will operate on the single main track or main tracks remaining in service subject to “Form B” restrictions. A “Form C” Track Bulletin will be issued by the Owner’s Railroad Contract Operator/ Operating Railroad of Record to suspend or modify the train service on the single main track removed from service. The limits of Single Track Windows will be a segment of track situated between the two nearest crossovers (universal or single). Single Track Windows within a track segment will not be allowed to extend beyond the limits of the two nearest crossovers, and in the case of more than one Single Track Window construction work will not be allowed on two adjacent track segments.
- (c) “Form B” Work Window: An approved Work Window in which passenger/ commuter, freight and all other trains and on-track equipment movements can be prohibited from entering the defined limits of a segment of track. The “Form B” Work Window does not allow the Contractor to remove from service or modify the tracks, signals, bridges, stations or other elements of the Operating System in a manner which will delay or in any way affect the safe operation of the trains. The “Form B” Work Window allows the Contractor the ability to enter the Operating Envelope and perform construction activities subject to the conditions above. An Employee-in-Charge/ Flagman from the Contract Operator will exercise strict control over the Contractor’s construction activities in conjunction with Roadway Worker Protection requirement to assure that the Contractor’s activities do not delay or impact train service.
- (d) “Track and Time”: A period of time on a particular segment of track for which the Control Operator (Train Dispatcher) grants exclusive usage to a qualified employee of the Railroad.
- (e) Track and Time will be granted by the Control Operator specifying the authority number, track limits and time. An employee (Flagman) granted Track and Time may occupy a track or tracks within the specified limits for the time period authorized. The limits of Track and Time are normally designated by Control Points (CPs). Track and Time is not normally used to protect work or trains for extended periods of time unless there are no other means readily available to do so.



- (f) **Exclusive Track Occupancy:** This refers to a method, such as those above, of establishing working limits on controlled track in which movement authority of trains and other equipment is withheld by the Control Operator or Train Dispatcher or restricted by a Flagman.
- F. Work Plan (WP):** A document submitted by the Contractor, detailing the activities associated with a particular element of work. The Work Plan must include a description of the activity as well as the number of men and a list of the equipment required in the performance of the activity.
- G. Site Specific Work Plan (SSWP):** A program, plan, and schedule prepared and submitted by the Contractor three weeks prior to the proposed work and approved by the Engineer that accurately describes and illustrates the manner in which Work within the Operating Envelope will be accomplished, the impacts on any elements of the Operating System and the manner in which Work will be accomplished with the allotted Work Windows or protected period.
- H. Engineer/Project Manager:** Caltrain Engineer/Project Manager or other authorized representative.

### **1.03 WORK PLAN (WP)**

- A.** The Contractor will prepare a detailed Work Plan for each and every task associated with the work that is required by the Contract or any associated Field Instructions or Change Notices. The Caltrain Project Manager will provide directions and assistance to the Contractor in the preparation and submittal of the Work Plan.
- B.** WP's shall include all activities necessary to perform construction tasks within the PCJPB Right of Way, including use of stations, sidings, temporary construction easements and proposed storage areas.
- C.** WP's shall include a description of any proposed changes to the Operating System between start and finish of the work, including any requested Work Windows.
- D.** The WP shall conform to all other requirements applicable to the Contract Documents.
- E.** The WP must contain a basic schedule of the work showing each activity and where and how it affects normal operation of the Operating System. Each activity in the plan shall include all labor, materials and equipment required to complete the activity within the PCJPB allotted time period.

- F. The WP must include Contingency Plans for putting the Operating System back in operation in case of an emergency or in case the Contractor fails to complete the work within the Work Window. The Contingency Plans shall address the various stages of activities to restore the System.
- G. The WP's must be of sufficient detail, clarity and organization to permit efficient review by the Engineer and approval at least 10 calendar days before the proposed work is performed. The WP shall be submitted to the Engineer as follows.
  - a) At least 21 calendar days prior to start of the subject work within the PCJPB Right of Way for work other than signal and overhead wire installation.
  - b) At least 30 calendar days prior of the start of the work for work involving signal and overhead wire installation, such as signal system cutover, overhead wire involving third parties, etc.
- H. The Engineer may request explanations and changes to the WP to ensure that it conforms to the requirements of the Contract Documents. If the WP is not acceptable, Contractor shall revise the WP to make it acceptable. The Contractor is responsible for submitting a revised WP that can be reviewed and approved by the Engineer at least seven (7) days in advance of any work within PCJPB Right of Way.
- I. The Contractor will be informed if the WP is acceptable not less than seven (7) calendar days prior to the scheduled start of work within the PCJPB Right of Way. Once the plan is accepted, Contractor shall muster the resources necessary to perform the work represented by the SSWP, so that necessary resources are available and ready for use, in general on the day which begins the week in which the work is to be accomplished. At this time, the Engineer will make a final decision as to whether or not the work is to proceed as planned or will be canceled. The prime consideration will be the stage of readiness of the Contractor, which the Contractor shall demonstrate to the Engineer.

#### **1.04 WEEKLY SITE SPECIFIC WORK PLAN (SSWP)**

- A. In addition to Work Plans, the Contractor shall submit a Site Specific Work Plan (SSWP) on a weekly basis three weeks in advance of the proposed work. All SSWPs shall detail the proposed weekly events and activities, and include the Contractor's request for Work Windows. Approval of a WP or SSWP by the Engineer may require the placement of an appropriate protective divider (k-rail, snow fence, etc.) between construction operations and the operating system. Contractor shall furnish and install protective dividers as specified by the Engineer. The Caltrain Project Manager will provide directions and assistance to the Contractor in the preparation and submittal of the Site Specific Work Plan.

- B. The Contractor shall furnish all labor, materials, and equipment as required to perform and complete the work within the approved work window. The Contractor shall maintain the approved schedule in the SSWP.
- C. All work outlined in the SSWP with a potential to impact normal functioning of any part of the operating system shall include a detailed schedule of events indicating the expected hourly progress of each activity that has a duration of one hour or longer. The schedule shall include a time at which all activities planned under the SSWP will be completed. The SSWP shall also include the mobile phone numbers of individuals responsible for compliance with the approved SSWP. Failure of the Contractor to complete the scheduled activities by the planned time or to put in place an approved contingency plan may adversely impact the operations of Caltrain. In the event that Caltrain service is delayed by Contractor's actions, damage will be incurred and liquidated damages will be assessed.
- D. The SSWP shall be a plan that describes the activities necessary to perform the work within the Operating Envelope and indicates which Work Plans will be utilized. The plan shall explain each activity along with the proposed schedule to complete each item. Each activity in the plan shall include all material and equipment required to complete the activity within the scheduled time period.
- E. The SSWP shall also include contingency plans for putting the system back in operation in case of an emergency or in case the Contractor fails to perform and complete the work on time. Contingency plans shall address the various stages of construction.
- F. The contractor shall have a copy of the current Caltrain schedule. Schedules are available at Caltrain Stations or on the Internet at [www.caltrain.com](http://www.caltrain.com).
- G. The SSWP will be submitted to the Engineer for review no later than the opening of the business day on the Monday three (3) weeks before the proposed start of work within the Caltrain property. The Engineer may request explanations and changes to the SSWP, if the plan is not acceptable, the Contractor shall revise the plan accordingly.
- H. The Contractor will be informed if the SSWP is acceptable not less than three (3) calendar days prior to the scheduled start of work. Once the plan is accepted, the Contractor will be prepared to perform the work represented by the SSWP.
- I. References herein to weeks mean the week starting with Monday, and the next six (6) days of the proposed work schedule.
- J. All work within Caltrain's property requires an SSWP approval by Caltrain.
- K. No work will be permitted during weekday commute hours less than fifteen (15) feet horizontally from of the nearest rail until after 9:00 AM and prior to 3:00 PM. Work closer than fifteen (15) feet from the nearest rail may require a night or weekend schedule. Some work performed more than fifteen (15) feet horizontally from the nearest rail may be restricted to night and weekends when so required by the approved SSWP.

- L. Materials and equipment shall not be piled, stored or parked when not in use closer than twenty-five (25) feet horizontally from the centerline of the nearest operating track.
- M. The placement of piles, forms, braces, shoring, falsework or other construction supports shall be in accordance with the current State of California, Department of Transportation (Caltrans) Falsework Manual, PCJPB Standards Volumes 1 and 2, PCJPB Engineering Standards for Excavation Support Systems, and PUC General Orders 26-D and 118 as applicable.
  - i. Temporary overhead structures shall have a minimum vertical clearance of twenty-two (22) feet, six (6) inches above top of rail for all tracks and at any location under the structure. Temporary overhead structures with proposed vertical clearance less than twenty-two (22) feet, six (6) inches above top of rail must have an exemption from the California Public Utilities Commission (CPUC) and approval of Caltrain.
- N. In general, open excavation areas shall be protected per OSHA regulations. Open excavation areas adjacent to operating tracks shall be protected by walkways with handrails no closer than eight (8) feet, six (6) inches horizontally from the nearest operating track, if tangent, and nine (9) feet, six (6) inches if track is curved.

#### **1.05 AVAILABILITY OF ACTIVE TRACKS:**

- A. Active main line tracks and sidings are only available during Work Windows as approved by the Engineer.
- B. The Contractor does not have exclusive rights to the Work Windows. The Contractor must share these Work Windows with other Contractors and current Owner's Contract Operator.

#### **1.06 CURRENT AND FUTURE CORRIDOR TRAFFIC**

The following is a general summary of train traffic in the rail corridor:

- A. Mainline - Current Owner Commuter Operations and UPRR freight traffic
  - 1. Weekday train service, both directions
    - Caltrain commute service per current timetable
    - 4 to 6 UPRR freight trains between 9 PM to 4 AM
  - 2. Saturday train service, both directions
    - Caltrain commute service per current timetable
    - 2 to 3 UPRR freight trains
  - 3. Sunday train service, both directions
    - Caltrain commute service per current timetable
    - 2 to 3 UPRR freight trains

4. Special Event Service
  - 3 to 4 trains each direction on days of San Francisco Giants Baseball home games
  - 3 to 4 trains each direction on days of Stanford Football home games
  - 3 to 4 trains each direction for other special events.
5. Other passenger rail carriers in accordance with their published timetables, including but not limited to Amtrak Intercity, Altamont Commuter Express (ACE), and Capital Corridor all of which operates in Santa Clara County segment.

**B. Mainline - Future Owner Commuter Operations and UPRR freight traffic**

1. Owner's and other operator's commuter train traffic may vary in time and frequency over the course of the contract per published revisions to timetables.
2. UPRR freight traffic is subject to change without notice at the discretion of UPRR.

**1.07 SAFETY**

- A.** Employees of the Contractor scheduled or expected to perform work within Caltrain Property are required to have successfully completed, within the last twelve (12) months, Caltrain's Roadway Worker Protection training program. The Contractor shall forward to Caltrain records of those successfully completing the course.
- B. Roadway Worker Protection Act:** Contractor shall at all times comply with provisions of the Federal Rail Administration Regulation 49CFR214 (Roadway Worker Protection) as well as to the Permitter (Licensor) On-Track Safety Program.
- C. Zero Tolerance:** The Caltrain Zero Tolerance Policy is attached and made a part hereof.



## ***Zero Tolerance Procedure OTS Rules Enforcement***

Amended 6/5/11

Every individual performing work on the Peninsula Corridor Joint Powers Board (PCJPB) right-of-way is both entitled to and responsible for a safe working environment. The objective of this “Zero Tolerance Procedure” statement is to establish clear and concise standards for Roadway Worker Protection (RWP) compliance on the Caltrain system.

This is a minimum requirement and any supervisor or manager of any group or organization working on the PCJPB right of way may set more stringent standards for their own employees.

### **A. General**

1. The Zero Tolerance Procedure applies to all employees and contractors of the PCJPB and its contract operator or any other entity entering upon the Caltrain right-of-way for the purpose of performing work as a Roadway Worker, as defined in the Caltrain On-Track Safety Rules.
2. The EIC will be responsible for overseeing the enforcement of Caltrain RWP requirements and all other applicable right-of-entry requirements for workers in his group. The EIC will not allow anyone to work within his/her workgroup until all RWP requirements are met.

### **B. Roadway Worker Protection Infractions**

Individual who are determined to be non-compliant with Caltrain’s RWP requirements will be subject to the following procedures:

- First infraction – A written notice will be delivered to the non-compliant individual, the individual’s supervisor and the Caltrain Supervising Safety Officer – Rail. A copy will be forwarded to the appropriate JPB manager. The individual or work group must leave the right-of-way until the reason for the infraction is corrected.
- Second infraction – The individual or work group will be banned for 5 days from the Caltrain right-of-way with re-training within 7 days of infraction. Notification procedures will be the same as with the first infraction.

- **Third infraction – The individual or work group will be banned for 1 year from the Caltrain right-of-way. Notification procedures will be the same as with the first infraction**
- **Fourth infraction – The individual or work group will be permanently banned from Caltrain right-of-way. Notification procedures will be the same as with the first infraction.**

**In addition, any persons in a position of RWP responsibility (EIC, Watchman, etc.) will forfeit their Advanced RWP certification and will be required to re-train at the next scheduled Advanced RWP class following an infraction.**

**Any infraction in which the individual cannot provide evidence of training will result in immediate removal from PCJPB right-of-way.**

**Each infraction will be automatically removed from Caltrain records 3 years from the date of occurrence.**

### **C. Accountability**

**Infractions to this procedure will be referred to and handled by Caltrain Department of Safety and Risk Management. Refer by phone immediately, and then written follow up within 24 hours to the Project Manager and Rail Safety Officer – Construction/Engineering.**

**Corrective actions or other follow up resulting from infractions covered by this procedure are the responsibility of the Resident Engineer, reporting back to the Rail Safety Officer – Construction/Engineering and the Project Manager.**

## EXHIBIT E

### Insurance Terms

#### INSURANCE

All entities entering into License Agreements and Right of Entry Permits shall follow the below requirements. All Permittees and Licensee's shall be referred to as Licensee's for the purposes of this section.

The insurance requirements specified in this Section shall cover Licensee's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that Licensee authorizes to work under this Agreement. Licensee is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. Licensee is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, Licensee shall assume any and all costs and expenses that may be incurred in fulfilling Licensee's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Licensee or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Licensee's insurance be primary without any right of contribution from the JPB. Prior to beginning work under this Agreement, Licensee shall provide the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), with satisfactory evidence of compliance with the insurance requirements of this Section, by submitting such evidence of compliance to the address indicated in C.1. below.

#### **A. MINIMUM TYPES AND SCOPE OF INSURANCE**

##### **1. Workers' Compensation and Employer's Liability Insurance.**

- a. Workers' Compensation with Statutory Limits and/or Federal Employer's Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
- b. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.
- c. If the California Labor Code requiring Workers' Compensation applies, the Licensee shall also maintain Employer's Liability coverage with minimum limits of **\$2 million**.
- d. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
  - Waiver of Subrogation.



**2. Commercial General Liability Insurance.**

Commercial General Liability insurance for bodily injury and property damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of Licensee's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

- a. This insurance shall include coverage for, but not be limited to:
  - Premises and operations.
  - Products and completed operations.
  - Personal injury.
  - Advertising injury.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Separation of Insureds Clause.
  - Primary and Non-Contributory wording.
  - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

**3. Business Automobile Liability Insurance.**

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

- a. This insurance shall include coverage for, but not be limited to:
  - All owned vehicles.
  - Non-owned vehicles.
  - Hired or rental vehicles.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Primary and Non-Contributory wording.
  - Waiver of Subrogation.

**4. Property Insurance.**

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

- a. This insurance shall include coverage for, but not be limited to:
  - Licensee's own business personal property and equipment to be used in performance of this Agreement.
  - Materials or property to be purchased and/or installed on behalf of the JPB, if any.
  - Builders risk for property in the course of construction.
- b. Such insurance shall include the following endorsement as further detailed in the

Endorsements Section below:

- Waiver of Subrogation.

**6. Railroad Protective Liability Insurance.**

Prior to commencing demolition, construction or remodeling within 50 feet of railroad tracks, Licensee shall contact the JPB. The JPB shall obtain Licensee's Railroad Protective Liability insurance with limits of liability of **\$2 million** per occurrence and **\$6 million** in the aggregate. The named insureds shall be the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company.

Coverage shall be on the RIMA policy form and include, but not be limited to:

- Claims arising out of injury to or death of any person.
- Physical loss or damage to or destruction of property including the JPB's rolling stock and any resulting loss of use thereof.
- Coverage for supervisory acts of railroad employees.
- FELA coverage for railroad employees.
- All other railroads operating on the right-of-way.
- Pollution extension for fuels and lubricants brought onto the job location.

On the Licensee's commercial general liability insurance policy, the contractual liability exclusion for liability assumed shall be deleted.

**B.**

**ENDORSEMENTS**

**1. Additional Insured.**

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**2. Waiver of Subrogation.**

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**3. Primary Insurance.**

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the JPB.

**4. Separation of Insureds.**

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the Peninsula Corridor Joint Powers Board, the San

Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company as Additional Insureds shall not in any way affect the JPB's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Licensee. The purpose of this coverage is to protect Licensee and the JPB in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

**C.**

**EVIDENCE OF INSURANCE**

**1. All Coverages except Railroad Protective.**

Prior to commencing work or entering onto the Property, Licensee shall provide to Insurance Tracking Services, Inc. (ITS), the JPB's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Licensee under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The JPB Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:  
Peninsula Corridor Joint Powers Board  
C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 198  
Long Beach, CA 90801

OR

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

In addition, the Licensee shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after to the expiration date of any policy.

**2. Railroad Protective.**

Prior to Licensee commencing work or entering onto the Property, the JPB will obtain the Railroad Protective Liability insurance. However, Licensee's Certificate of Insurance should state that the contractual liability exclusion for liability assumed has been deleted on the Licensee's commercial general liability insurance policy,

**D.**

**GENERAL PROVISIONS**

**1. Notice of Cancellation.**

Each insurance policy supplied by the Licensee shall provide at least 30 days' written notice to Licensee of cancellation or non-renewal. Licensee must then provide at least 30 days' prior written notice to the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:  
Peninsula Corridor Joint Powers Board  
C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 198  
Long Beach, CA 90801  
OR  
Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)  
OR  
Fax: (562) 435-2999

**2. Acceptable Insurers.**

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A- 10 or better).

**3. Self-insurance.**

Upon evidence of financial capacity satisfactory to the JPB and Licensee's agreement to waive subrogation against the JPB respecting any and all claims that may arise, Licensee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

**4. Failure to Maintain Insurance.**

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Licensee's personnel and equipment have been removed from the JPB property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

**5. Claims Made Coverage.**

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Licensee's start of work (including subsequent policies purchased as renewals or replacements).
- b. Licensee shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, Licensee agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

**6. Deductibles and Retentions.**

Licensee shall be responsible for payment of any deductible or retention on Licensee's policies without right of contribution from the JPB. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the Licensee or any subcontractor contains a deductible or self-insured retention, and in the event that the JPB seeks coverage under such policy as an additional insured, Licensee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of Licensee, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Licensee or subcontractor is not a named defendant in the lawsuit.