

LICENSE AGREEMENT

This License Agreement (“Agreement” or “License”) is entered into as of _____, 2021 (“Effective Date”), by and between the by and between the SAN MATEO COUNTY TRANSPORTATION AUTHORITY, a public agency (“TA” or “Authority”) and CITY OF SAN MATEO, a public agency (“Licensee”).

RECITALS:

A. Authority is the owner of that certain real property which is located in the City of San Mateo, CA, identified as APN 039-351-200 and APN 039-351-210, as depicted on Exhibit A, which is attached to this Agreement and incorporated into it by this reference (the “Property”).

B. Licensee desires to utilize the Property, as shown on Exhibit A, (the “License Area”) in conjunction with the 25th Avenue Grade Separation Project for public right-of-way purposes for 28th Street (the "Roadway"), which has been constructed on the Property in accordance with the plans shown on Exhibit B, which is attached to this Agreement and incorporated into it by this reference. Authority plans to convey a portion of the Property to Licensee at some point in the future, but wishes to provide a license to Licensee so that it may use the Roadway immediate for public right-of-way purposes. Licensee desires to receive a license for the purpose of constructing, installing, maintaining, operating, using and repairing the Roadway (collectively “the Work”).

C. Following execution of this License, Licensee will maintain and repair the Roadway.

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

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, Authority grants to Licensee a personal, revocable license for the purposes of installing and maintaining the Roadway and performing the Work in the License Area, together with necessary rights of ingress and egress over the Property for these purposes in the location described in Exhibit A.

2. Maintenance of Improvements. Following completion of the Roadway, Licensee will own, maintain and repair the Roadway at its sole cost. Licensee agrees to keep the Property

and the Roadway in good and safe condition, free from waste, so far as affected by Licensee's operations to the reasonable satisfaction of Authority. If, after installation of the Roadway, Licensee fails to keep the Property and the Roadway in good and safe condition, free from waste, then Authority may perform the necessary work at the expense of Licensee, which expense Licensee agrees to pay to Authority upon demand.

3. License Fee. Licensee fee to Authority has been waived.

4. Service Agreement. This Agreement does not require the Licensee to enter into a Service Agreement with Authority. In the event subsequent to the initial installation of the Roadway, Licensee performs work that cause Authority to perform additional services or furnish additional materials to Licensee, Authority may require Licensee to enter into a new Service Agreement.

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 Authority's Work Procedures described in the attached Exhibit C and Authority'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. Authority, in its absolute discretion, may waive compliance with these requirements.

6. Condition to Effectiveness. As a condition precedent to the effectiveness of this Agreement, Licensee shall have made any deposit, if necessary, as indicated in Section 4 above and provided to Authority 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 Authority, its successors and assigns, to use the Right-of-Way in the performance of its transportation operations. 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) Authority may immediately terminate the License by notice to Licensee upon Licensee's discontinuance of the use of the Roadway for one continuous year or the abandonment of any Roadway installed on the Property.

(c) Authority 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 Authority to do so.

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 Authority. Upon termination of the License for any reason established in this Section 9, Authority may, at its sole election, at any time thereafter either complete the Work or remove the Roadway 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 Roadway on the Property pursuant to this Agreement shall not in any way whatsoever limit Authority's right to terminate this License pursuant to the terms hereof or any of Authority'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 Authority (or anyone acting with the permission of Authority) 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 Authority and/or the owner of the systems for all 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 Authority incident to the performance of the Work, caused by or contributed to in any way by the construction, operation, maintenance or presence of Authority's operations at the Property and Authority shall not be liable therefor. Licensee hereby releases Authority from any liability, including any claims for damages or extra compensation (i) arising from construction delays due to work by Authority forces or Authority operations, (ii) as the result of the failure or inability of Authority to provide necessary flaggers or inspectors, (iii) due to the presence of Hazardous Materials on the Property, (iv) any failure by Authority to investigate or identify the presence of such materials, (v) for work done by Authority forces, or (vi) for Authority operations.

(a) Neither Authority 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.

(b) Licensee acknowledges that this License is freely revocable by Authority 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 Authority 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 Authority 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 Authority for any consequential or incidental damages including, but not limited to, lost profits and arising out of disruption to the Roadway or Licensee's uses hereunder. Authority 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 Authority 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 Authority 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 Authority Indemnitees, except for the gross negligence and willful misconduct of Authority.

(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, Authority, 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.

(f) In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

Licensee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee realizes and acknowledges that it has agreed upon this License in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this License.

12. Indemnity. Licensee shall release, defend (with counsel reasonably satisfactory to Authority) and indemnify the by and between the San Mateo County Transportation Authority, 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority new or additional liability, which the Authority 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 Authority (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 Authority. 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 Authority 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 Authority 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 West 20th Avenue
San Mateo, CA 94403

ATTN: Jay Yu

To Authority: San Mateo County Transportation Authority
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.

Day-to-day communications shall be directed to JPB's Project Manager, Joy Sharma (Tel: (650) 508-6410; Email: SharmaJ@samtrans.com and to Licensee's Senior Engineer, Jay Yu (Tel: (650) 522-7323; Email: JYu@cityofsanmateo.org).

16. Relocation of License. In the event Authority shall at any time so require, Licensee, at Licensee's expense, shall reconstruct, alter, make changes in the location of its Roadway on the Property, within 30 calendar days of receipt of written notice from Authority to do so or such

longer period as approved by Authority. The Authority shall designate the location for the Licensee to relocate its permit, if on property owned by Authority. Any necessary property interests shall be obtained at Licensee's sole cost and expense. Authority shall not be responsible for costs or expenses involved in relocating the Roadway, in the event the Roadway 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 Authority. If Licensee fails to perform such work, Authority 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 Authority.

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 Roadway. Any compensation for damages for taking the Property or Licensee's permit interest thereon awarded to Licensee shall be assigned to Authority.

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.

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

SAN MATEO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Title: Chief Officer, Planning, Grants, Real
Estate and Transportation Authority

CITY OF SAN MATEO

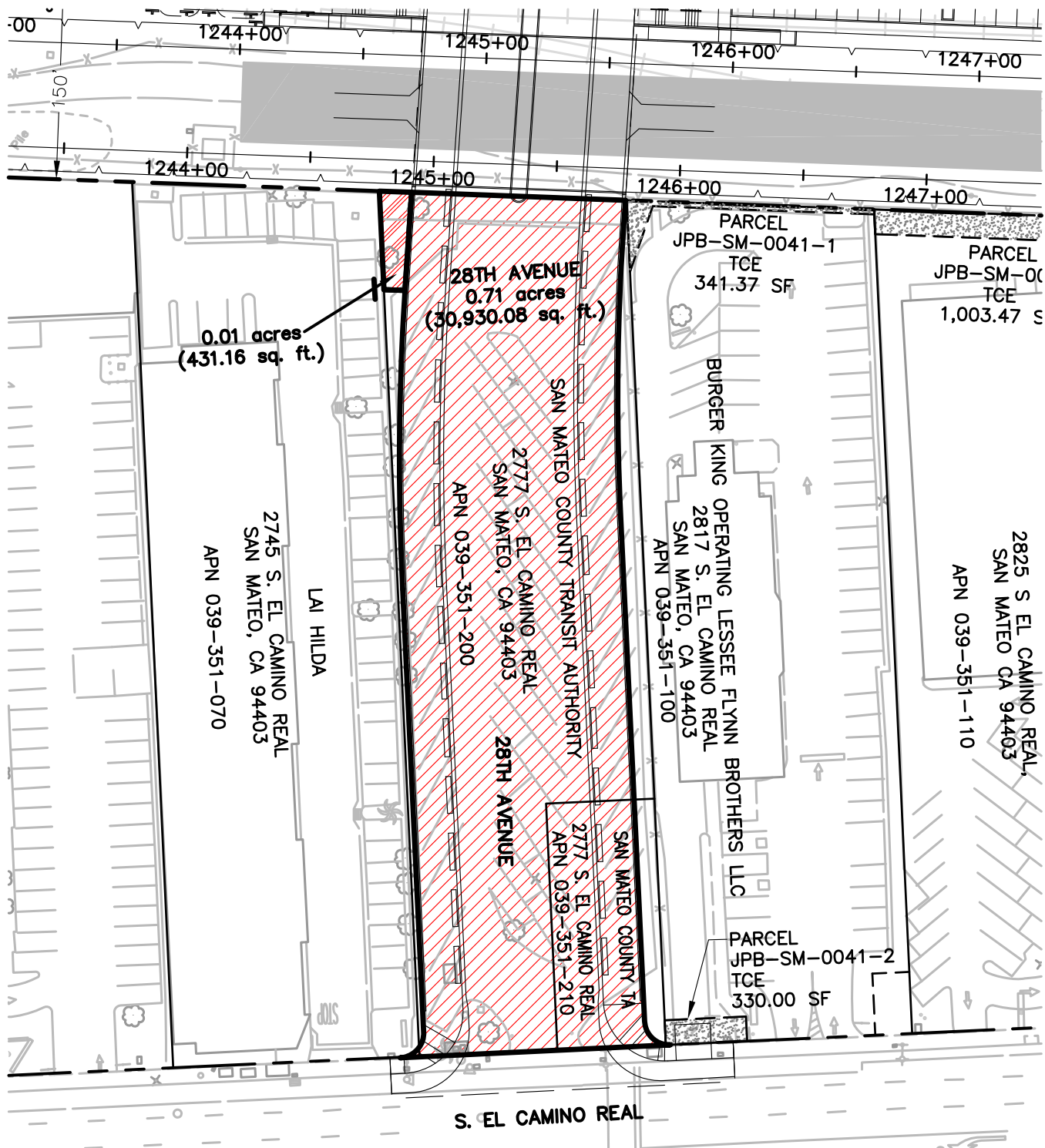
*By: _____
Title:

APPROVED AS TO FORM:

*By: _____
Title:

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.



LEGEND

- INDICATES TA PROPERTY
- INDICATES JPB PROPERTY

CITY OF SAN MATEO
COUNTY OF SAN MATEO, CALIFORNIA



RAIL SURVEYORS &
ENGINEERS, INC.

1075 Old County Road
Belmont, CA 94002

25TH AVENUE
GRADE SEPARATION
FOR
28TH AVENUE EXHIBIT

Date:	02/22/2021
Scale:	1"=60'
Drawn By:	JD
Checked By:	JD
Revision:	

LEGEND:

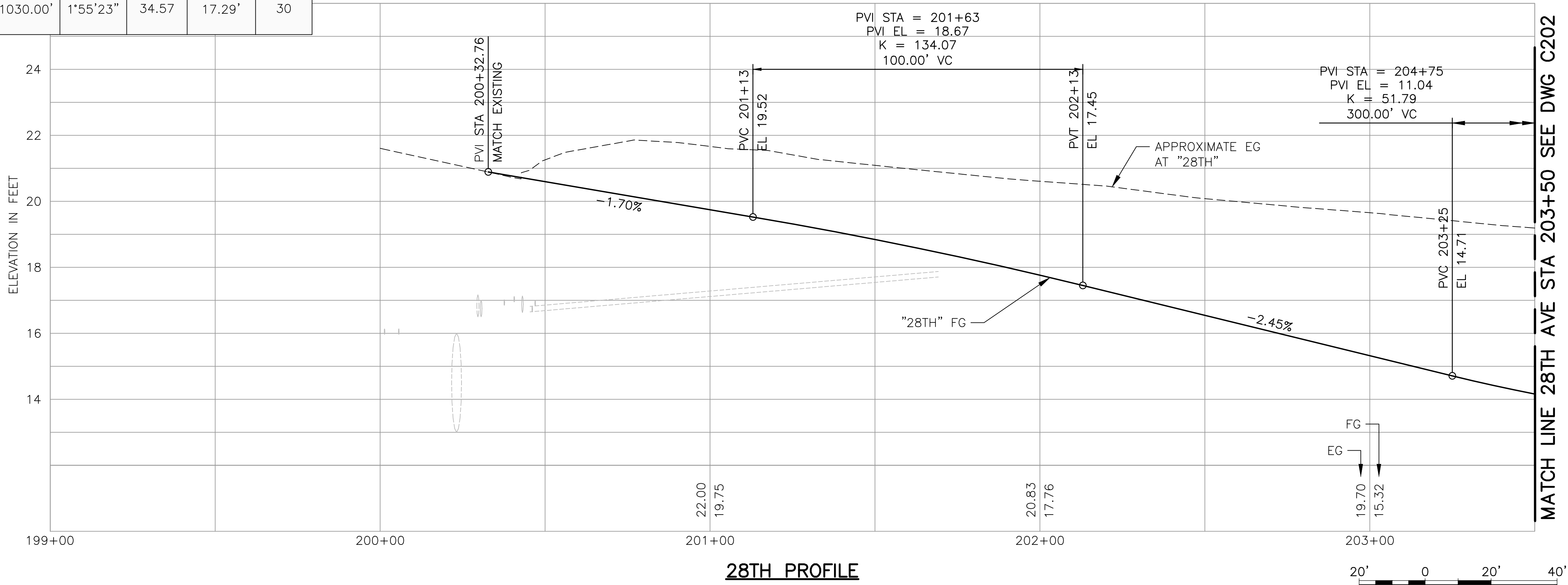
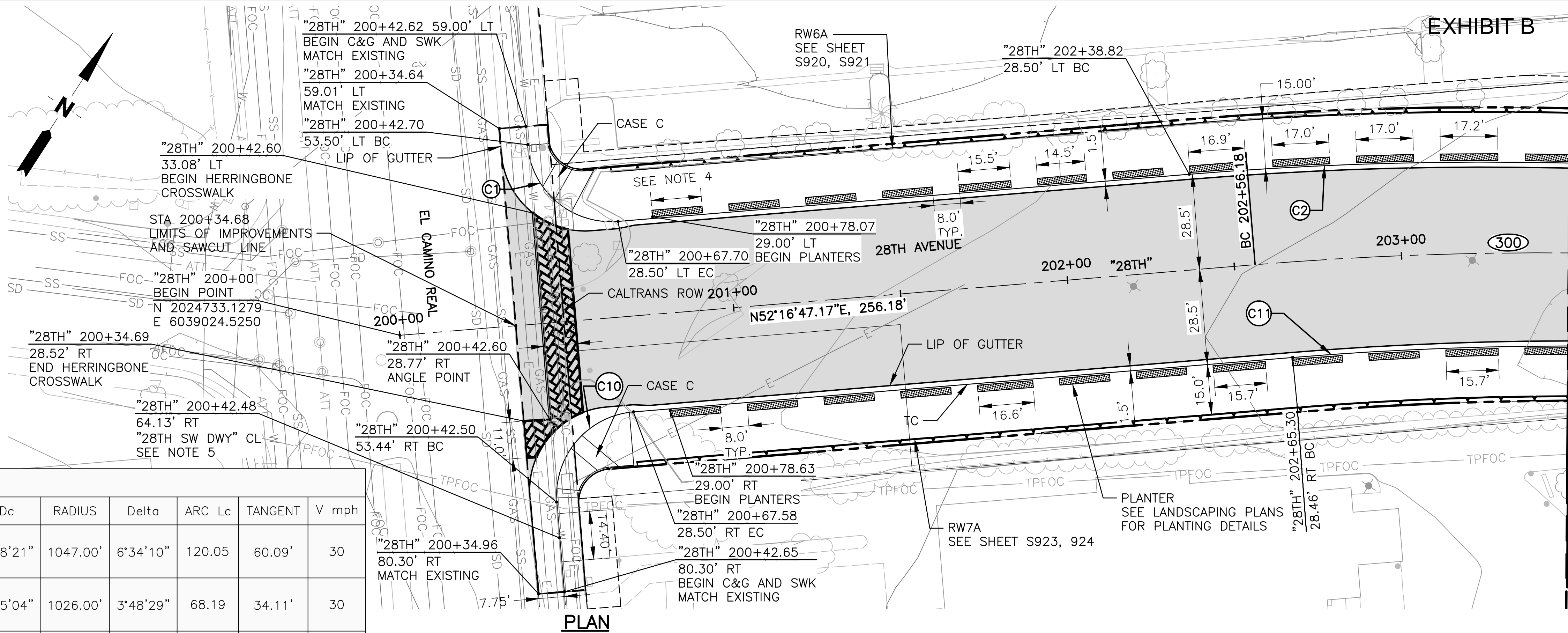
PLANTER

NOTES:

- ALL CURB RAMPS SHALL FOLLOW 2010 CALTRANS STANDARD PLAN DETAILS AS SHOWN ON SHEET RSP A88A.
- FOR CURB RETURN DETAILS, SEE SHEET C224.
- FOR HERRINGBONE CROSSWALK DETAILS SEE DETAIL 2 SHEET C231.
- PLANTERS SHALL BE 15 FEET LONG UNLESS NOTED OTHERWISE.
- FOR DRIVEWAY DETAILS SEE SHEET C227.

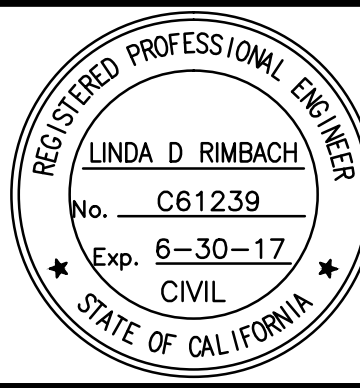
CURVE NO.	DESCRIPTION	STATION	NORTHING	EASTING	Dc	RADIUS	Delta	ARC Lc	TANGENT	V mph
300	PC PI PT	202+56.18 203+76.23	2024889.86 2024926.63 2024957.71	6039227.17 6039274.70 6039326.12	5°28'21"	1047.00'	6°34'10"	120.05	60.09'	30
301	PC PI PT	205+09.93 205+78.12	2025026.87 2025044.52 2025064.06	6039440.55 6039469.74 6039497.69	5°35'04"	1026.00'	3°48'29"	68.19	34.11'	30
302	PC PI PT	206+56.41 206+90.98	2025108.92 2025118.82 2025128.24	6039561.85 6039576.02 6039590.51	5°33'46"	1030.00'	1°55'23"	34.57	17.29'	30

CURVE TABLE			
NO	RADIUS	Δ	LENGTH
C1	25.00'	89°59'30"	39.27
C2	1073.50'	6°34'10"	123.08
C3	1000.00'	3°42'06"	64.60
C4	1055.50'	1°50'43"	33.99
C5	25.00'	99°53'56"	43.59
C6	3.50'	180°00'04"	11.00
C7	1030.50'	2°00'50"	36.22
C8	1045.45'	1°58'13"	35.95
C9	3.50'	180°05'51"	10.99
C10	25.00'	89°52'10"	39.21
C11	1016.35'	6°34'10"	116.53
C12	1054.00'	2°12'31"	40.63
C13	1000.00'	0°21'08"	6.15
C14	25.00'	90°32'10"	39.50



REV	DATE	BY	SUB	APP	DESCRIPTION	REV	DATE	BY	SUB	APP	DESCRIPTION
D	102116				100% SUBMITTAL						
C	072516				95% SUBMITTAL						
B	012816				65% SUBMITTAL						
A	072015				35% SUBMITTAL						

DESIGNED
M. SIEGEL
DRAWN
A. CROSS
CHECKED
M. SHIPPEN
IN CHARGE
L. RIMBACH
DATE



DEPUTY DIRECTOR
S. CHAO
PROJECT MANAGEMENT
R. BOLON
STRUCTURES
TRACK/CIVIL

PENINSULA CORRIDOR JOINT POWERS BOARD				CADD FILE NAME	CADD DATE
SAN MATEO 25TH AVENUE GRADE SEPARATION 28TH AVENUE PLAN AND PROFILE STA 200+00 TO 203+50				07252016	
SCALE H 1"=20' V 1"=2'				MILEPOST 13-PCJPB-P-003	19.0-20.3
DWG NO C201				REV	PAGE NO

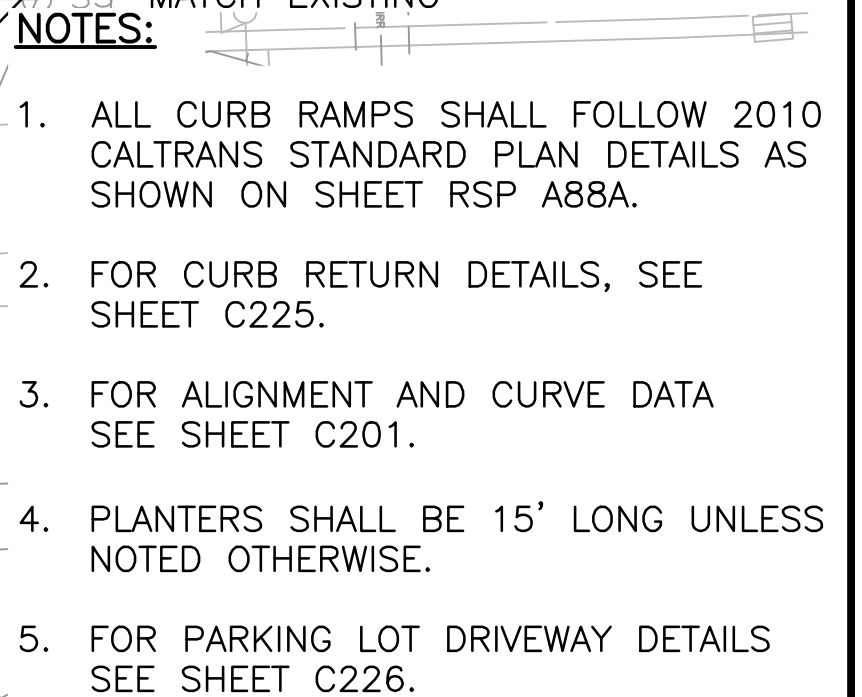
[illegible]

Exhibit C

Working Procedures

Licensee shall at all times abide by the Peninsula Corridor Joint Powers Board's (Railroad's) Operating Systems Interface, a copy of which is attached to this Exhibit B, 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). Licensee's Work on the Property shall be subject to Railroad's approval. Without limiting the foregoing, Licensee 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, Licensee will adhere to the following specific requirements:

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

(b) Plans Approved Prior to Commencing Work. Licensee'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. Licensee 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 Licensee 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 Licensee 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. Licensee 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. Licensee 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 Licensee so that the Work may be handled in an efficient manner, Licensee 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. Licensee 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. Licensee 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 Licensee's operations will be repaired or replaced by Railroad at Licensee's sole cost and expense, which Licensee shall pay to Railroad promptly upon demand therefor.

(f) Underground Facilities. Licensee 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 Licensee's Work. Licensee 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 Licensee'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 Licensee's responsibility to determine the existence of any underground facilities and Licensee 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 Licensee should excavate or drill, then Licensee'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 Licensee's option, use suitable detection equipment, prior to drilling or excavating with mechanized equipment.

(g) Storage. Licensee 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 Licensee 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 Licensee'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. Licensee 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 Licensee'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. Licensee 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, Licensee's access shall be by use only of designated public streets or crossings.

(j) Payments and Liens. With respect to the Work, Licensee 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, Licensee shall immediately remove them at Licensee's own expense, and shall pay any judgment which may be entered. Should Licensee fail, neglect, or refuse so to do, Railroad, after 48 hours prior notice to Licensee, 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. Licensee 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. Licensee 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 Licensee.

(l) Completion. Licensee shall notify Railroad the date said work is completed, and also the date the Licensee's Work is accepted by the Licensee. Upon completion of the work to be done upon Railroad's Property, Licensee shall promptly remove from the Property all tools, equipment and materials placed thereon by Licensee or its agents. Licensee shall restore said property to the same state and condition as when Licensee entered thereon and shall leave said Property in a clean and presentable condition.

(m) 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 to Railroad upon request.

(n) Condition of Property. Licensee agrees to keep the Property and the Work in good and safe condition, free from waste, so far as affected by Licensee's operations, to the reasonable satisfaction of Railroad. If, during the term of this Agreement, Licensee 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 Licensee which expense Licensee agrees to pay to Railroad upon demand, and/or (2) immediately terminate this Permit without limiting its remedies. Licensee 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 Licensee 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 Licensee's sole cost and expense.

(q) Reimbursement. Licensee 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 Licensee'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

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

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

(t) Workplace Safety. Licensee 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 Licensee or any of Licensee'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.

Licensee 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 Licensee. The reasonable cost to Licensee 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 Licensee to give notice prior to commencing work, Licensee 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, Licensee 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 core of conducting the Work, Licensee shall have a Site Specific Work Plan approved by the Licensee. If such a plan is not approved by Railroad, or not available on site, Licensee may cancel this Agreement.

(y) Traffic. Licensee 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.
- 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 Authority. Prior to beginning work under this Agreement, Licensee shall provide the Authority'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 Authority, 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.

5. Railroad Protective Liability Insurance.

Prior to commencing demolition, construction or remodeling within 50 feet of railroad tracks, Licensee shall contact the Authority. The Authority 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 San Mateo County Transportation Authority, 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 Authority'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 San Mateo County Transportation Authority, 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 San Mateo County Transportation Authority, 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 Authority.

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 San Mateo County Transportation Authority, 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 Authority'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 Authority 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 Authority'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 agreement number (#800926) 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
 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 Authority 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 Authority'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
OR
Fax: (562) 435-2999

2. Acceptable Insurers.

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

3. Self-insurance.

Upon evidence of financial capacity satisfactory to the Authority and Licensee's agreement to waive subrogation against the Authority 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 Authority 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 Authority. 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 Authority 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.

GL1-7961

CO

CERTIFICATE OF COVERAGE

11/16/2020

**Public Risk Innovation,
Solutions and Management**

C/O ALLIANT INSURANCE SERVICES, INC.
PO BOX 6450
NEWPORT BEACH, CA 92658-6450

PHONE (949) 756-0271 / FAX (619) 699-0901
 LICENSE #0C36861

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED and/or requesting a WAIVER OF SUBROGATION, the Memorandums of Coverage must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

COVERAGE
AFFORDED

A- Public Risk Innovation, Solutions and Management

Member:

CITY OF SAN MATEO
 330 WEST 20TH AVENUE
 SAN MATEO, CA 94403

COVERAGE
AFFORDED

B

COVERAGE
AFFORDED

C

COVERAGE
AFFORDED

D

Coverages

THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE MEMORANDUMS DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUMS. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF COVERAGE	MEMORANDUM NUMBER	COVERAGE EFFECTIVE DATE	COVERAGE EXPIRATION DATE	LIABILITY LIMITS
A	<input checked="" type="checkbox"/> Excess General Liability	PRISM-PE 20 EL-129	07/01/2020	07/01/2021	\$2,000,000 Limits inclusive of the Member's Self-Insured Retention of \$1,000,000

Description of Operations/Locations/Vehicles/Special Items:

AS RESPECTS EVIDENCE OF COVERAGE ONLY.

Certificate Holder

FOR THE PURPOSE OF EVIDENCE ONLY
 C/O CITY OF SAN MATEO
 330 WEST 20TH AVE
 SAN MATEO, CA 94403

Cancellation

SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUMS OF COVERAGE PROVISIONS.

AUTHORIZED REPRESENTATIVE


 Gina Dear
 Public Risk Innovation, Solutions and Management