



Item No. 18 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: ROBERT OVADIA, PUBLIC WORKS DIRECTOR

DATE: OCTOBER 21, 2020

**SUBJECT: MEMORANDUM OF UNDERSTANDING WITH THE JOINT
POWERS BOARD (JPB) REGARDING CLOSURE OF THE
ATHERTON CALTRAIN STATION AND ASSOCIATED
MAINTENANCE AND USE AGREEMENT FOR THE ATHERTON
CALTRAIN STATION PROPERTY**

RECOMMENDATION

Approve the Memorandum of Understanding with the Joint Powers Board (JPB) regarding the closure of the Atherton Caltrain Station and the Maintenance and Use Agreement for the Atherton Caltrain Station Property; and authorize the City Manager to Execute the Memorandum of Understanding and the Maintenance and Use Agreement.

BACKGROUND

The Town received a proposal from Caltrain dated January 8, 2020, requesting Town support for the closure of the Atherton Caltrain Station in consideration of various community benefits including:

The City Council discussed the proposal at its meeting on January 15, 2020 and directed staff to work with Caltrain to develop a Memorandum of Understanding (MOU) inclusive of the proposal and concerns expressed by the Council. An ad-hoc Council Committee consisting of Mayor DeGolia and Council Member Wiest was established to negotiate with Caltrain on the terms of the MOU.

Since the proposal was received, COVID-19 reached global pandemic status and has significantly impacted the world, country, local municipalities and transit operations. Caltrain ridership hit a low of approximately 5% of pre-pandemic levels and has significantly changed Caltrain's operations, revenues and balance sheet from the time the proposal was presented to the Town. Caltrain recently received approval to place a 1/8 cent sales tax measure on the ballots of San Mateo, San Francisco and Santa Clara County. The funds from the measure, if approved, will assist in funding the electrification and other improvements to the Caltrain system as well as towards

operations to keep Caltrain running. There is a strong possibility that Caltrain may cease operations if the measure does not pass and additional revenue is not provided.

Staff and the ad-hoc Council Committee met with Caltrain staff on several occasions to discuss terms of the Memorandum of Understanding regarding station closure as well as a Maintenance and Use Agreement (MAU) that would allow the Town to utilize the Caltrain Station property, post closure, and integrate it with the Town Center properties.

Caltrain has initiated its process to potentially close the Atherton Station, including environmental review, Title VI Equity Analysis, a public outreach meeting and, most recently, a public hearing on September 3, 2020, to receive input on the potential closure of the station.

The City Council Reviewed the draft MOU with the JPB regarding station closure and the Maintenance and Use Agreement for the Caltrain Station Property at its October 7, 2020 Study Session and provided direction to staff to further coordinate with the JPB to tighten provisions of the MOU to better guarantee the implementation of the Public Benefits incorporated into the MOU and to address language changes by the City Attorney.

ANALYSIS

Following the Study Session on October 7, 2020, Town staff met with Caltrain Staff met to discuss and refine various provisions of the MOU and the Maintenance and Use Agreement. The major revisions to the agreements are summarized below:

Memorandum of Understanding:

- Recitals have been revised to state that the JPB will fund and undertake Station Closure, Temporary Safety Fencing, and Platform/Crossing Removal through its FY 20/21 Budget. And that the JPB will seek approval from the San Mateo County Transportation Authority for at least 50% local match funding for the installation of Permanent Safety Fencing and Watkins Avenue Crossing Safety Improvements and 100% of the Atherton Station Property Site Improvements and Access Improvements.
- The effective date of the agreement has been revised to be upon the approval of the allocation of funds by the San Mateo County Transportation Authority and upon receipt of required environmental approvals to effect station closure.
- Responsibilities section have been revised for clarity.
- Relationship between the parties has been clarified.
- Exhibit D – Funding and Implementation Schedule has been revised such that the trigger event for Station Closure is the MOU Effective Date and Regulatory Compliance, and that JPB funding of Atherton Station Property Site Improvements and Access Improvements is within 60 days of the MOU Effective Date.

Maintenance and Use Agreement:

- Railroad's right of revocation is clarified to be related to Transit Activities.
- The Railroad shall not enter into any legal obligations that grant new rights, licenses, leases, easements or other obligations that would interfere with the Town's use of the Property during the term of the agreement.

- Refinement of the Assumption of Risk/Waiver of Claims section.

POLICY FOCUS

The Rail Policy adopted by the Council places a high priority for safety improvements along the corridor including the installation of four-quadrant gates at the Watkins Avenue Crossing. This Memorandum of Understanding provides a timeline and financial commitment by the JPB to provide the desired safety improvements along with additional safety enhancements and the opportunity for the Town to integrate the Atherton Station building into the Town Center as a public amenity. The Town's Rail Policy may require updating consistent with the terms of the Memorandum of Understanding and direction received.

FISCAL IMPACT

The Town would receive funding for the improvement of the Atherton Station Property Site and Access Improvements within 60 days of the Effective Date of the MOU. Such funding may be subject to the Town entering into a separate grant funding agreement. The Town would assume maintenance responsibility for the Station Property pursuant to the terms of the Maintenance and Use Agreement and will be required to obtain requisite insurance for work within the Station Property.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or ___X___ has not been before a Town Committee or Commission.

- ___ Audit/Finance Committee (meets every other month)
- ___ Bicycle/Pedestrian Committee (meets as needed)
- ___ Civic Center Advisory Committee (meets as needed)
- ___ Environmental Programs Committee (meets every other month)
- ___ Park and Recreation Committee (meets each month)
- ___ Planning Commission (meets each month)
- ___ Rail Committee (meets every other month)
- ___ Transportation Committee (meets every other month)
- ___ Tree Committee (meets each month)

ATTACHMENT

1. MOU with JPB

2. Maintenance and Use Agreement

MEMORANDUM OF UNDERSTANDING
between
THE PENINSULA CORRIDOR JOINT POWERS BOARD
And
THE TOWN OF ATHERTON

This Memorandum of Understanding (“MOU”) is made and entered by and between the Peninsula Corridor Joint Powers Board (“JPB or “RAILROAD”), and the TOWN OF ATHERTON (“TOWN”).

RECITALS

- A. In the 1860’s the San Francisco and San Jose Railroad opened the Fair Oaks (now Atherton) stop.
- B. In 1913, the railroad (then owned by the Southern Pacific Railroad) erected a shelter depot to replace the existing structure at the Fair Oaks (now Atherton) stop, located at what is now designated as 1 Dinkelspiel Station Lane, Atherton.
- C. In 1991 the JPB purchased the railroad right-of-way and has been responsible for the operations and maintenance of the Atherton station property and building ever since.
- D. In 2005, the JPB suspended weekday train service to the Atherton station due to low ridership and the fact that Atherton Station has an older, “center-boarding” configuration that requires pedestrians to cross the tracks to access the boarding platform, which requires trains operating in the other direction to “hold out” while a train is boarding.
- E. Caltrain is seeking to rebuild this type of station to eliminate the "hold out" rule.
- F. As part of its effort towards electrification of the JPB’s passenger rail service, the JPB committed to restoration of weekday service to the Caltrain station.
- G. The JPB estimates capital expenditures in excess of \$30 million may be required to remove the hold-out station designation and to provide for other modernization improvements at the Atherton station.
- H. The Town of Atherton has long supported rail service in the Town and along the peninsula corridor.
- I. The Town of Atherton has sought safety improvements along the rail corridor within the Town.
- J. The Town is in the process of constructing its new Town Center and Library adjacent to the Atherton train station and seeks to use a portion of the station property to support that project.
- K. The JPB has estimated that closure of the Atherton station would result in average trip time reductions of 3 minutes for passing trains and system ridership increases of approximately 300-500 daily riders.
- L. The JPB has requested the Town’s concurrence with closing the Atherton train station.
- M. The station closure would result in significant benefits to the JPB’s passenger rail service system and its riders, including significant capital and operational cost savings to the JPB, and will also provide significant safety improvements and noise reductions sought by the Town.

ATTACHMENT 1

- N. In an effort to be a good public partner, Town has agreed to provide its concurrence to the closure of the Atherton Station in exchange for the use of a portion of the station property, certain actions to promote public safety improvements along the corridor through the Town of Atherton, as well as other public benefits.
- O. JPB is committing to seek funding to support station closing costs and other related community benefits in the Town in support of the closure, as more particularly described in this Agreement.

JPB will fund and undertake Station Closure, Temporary Safety Fencing, and Platform/Crossing Removal through its FY 20/21 Budget. JPB will seek approval from the San Mateo County Transportation Authority for at least 50% local match funding for the installation of Permanent Safety Fencing and Watkins Avenue Crossing Safety Improvements and 100% of the Atherton Station Property Site Improvements and Access Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and conditions and recitals herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Effective Date: This Agreement shall become effective upon the approval and allocation of funds by the San Mateo County Transportation Authority as set forth in Recital P and upon receipt of required environmental approvals to effect station closure.

2. Public Benefits:

JPB and Town shall work cooperatively to complete the following corridor and public benefits:

- A. Installation of safety fencing along the Atherton rail station area commensurate with the design aesthetic approved by the Town, in the location shown in Exhibit A.
- B. Removal of the Atherton station center boarding platform and access crossings as generally shown in Exhibit C.
- C. Re-purposing of the Atherton Station non-operating property, including the existing station building, parking area, site landscaping and other related improvements along the rail corridor allowing for integration of the station building into the Town Center complex and aesthetic and safety separation from the active rail corridor.
- D. Implementation of four-quadrant gates, and related safety improvements, at the Watkins Avenue rail crossing.
- E. Study and implementation of access improvements connecting the Atherton Town Center to the Menlo Park Caltrain Station.
- F. Cooperation with the Town should the Town elect to expand a Quiet Zone within the Town limits.

3. Responsibilities:

- A. Station Closure: JPB shall obtain and resolve all legal and environmental compliance issues related to its closure of the Atherton Station.

ATTACHMENT 1

- B. Safety Fencing: JPB shall install the of safety fencing along the Atherton rail station area, separating the active rail corridor from public access spaces, commensurate with the design aesthetic approved by the Town, in the location shown in Exhibit A.
 - C. Station Area Maintenance and Use Agreement: Town of Atherton shall enter into a Maintenance and Use Agreement with JPB regarding the station property located outside the active rail corridor. The Town will assume maintenance responsibility for the Maintenance and Use Area shown in Exhibit B and JPB shall permit construction and maintenance of the improvements outlined in this MOU. JPB acknowledges that, under current law, private use of the station property that is unrelated to rail operations is subject to local zoning review.
 - D. Platform Removal: JPB shall remove of the Atherton station center boarding platform and access crossings as generally shown in Exhibit C.
 - E. Atherton Station Building and Site Improvements: JPB shall provide funding toward the development and implementation of an initial plan by the Town to provide site improvements in the Maintenance and Use Area shown in Exhibit B, including landscaping and screening improvements and potential modifications to the Station Building to integrate the station building into the Town Center. Funding shown in Exhibit D for the Station Improvements and Access Improvements may be utilized by the Town for either the purpose described above or the active transportation improvements described below in section 2.G.
 - F. Watkins Avenue Safety Improvements: JPB shall conduct all studies, engineering, environmental analysis, regulatory compliance required for the installation of four-quadrant gates at the Watkins Avenue rail crossing and complete the construction of the four-quadrant gates. Town shall cooperate with JPB with regard to making any regulatory filings needed due to modifications at the Watkins Avenue crossing.
 - G. Access Improvements: JPB will provide funding toward the study and implementation of an active transportation route from the Atherton Town Center to the Menlo Park Caltrain Station and will evaluate available JPB right-of-way that can be used to support the active transportation route, in a manner consistent with JPB's existing property use policies. Funding shown in Exhibit D for the Station Property Site Improvements and Access Improvements may be utilized by the Town for either the purpose described above or the active transportation improvements described above in section 2.E. Such funding may require the Town to enter into to a separate grant agreement that is consistent with the terms of this agreement.
4. FUNDING AND IMPLEMENTATION SCHEDULE:
- A. JPB and Town shall work cooperatively to complete the station closure, public access and safety improvements as quickly as possible.
 - B. The estimated Funding and Implementation Schedule for the various improvements is outlined in Exhibit D.
 - C. Schedule and funding adjustments may be mutually agreed upon in writing by both parties.
5. COORDINATION WITH CALTRAIN RAIL – WORK ALONG TOWN'S RIGHT OF WAY: Construction activities within Town's right of way must be coordinated with Town staff. All communications and/or correspondence relating to inspection and coordination between the

TOWN and Caltrain must be given as set out for Notices, unless otherwise specifically authorized by Town.

6. INDEMNIFICATION: Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, employees and agents, harmless from any damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other parties under this Agreement.
7. RELATIONSHIP BETWEEN PARTIES: Nothing in this MOU is intended to, or will be construed to create, whether expressed or implied, any joint power, joint venture, partnership, principal-agent, independent contractor relationship, or master-servant relationship. Each party is independent from the other party and that no relationship of employer-employee exists between the Parties hereto for any purpose whatsoever.
8. WORKERS COMPENSATION: Neither party to this MOU will be responsible for providing payments or benefits to the other party's employees, including without limitation, workers compensation insurance or any other protective insurance coverage that is based upon the relationship of employer and employee.
9. MISCELLANEOUS:

8.1 Governing Law. This MOU shall be construed in accordance with and governed by the laws of the State of California, and venue shall be in San Mateo County.

8.2 Notices. All notices and demands of any kind which either party may be required or desires to serve upon the other party shall be in writing and must be served upon such other party by personal service, facsimile transmission or by mailing a copy thereof, certified or registered mail, postage prepaid, addressed as follows:

To TOWN:

Attn: George Rodericks
City Manager
150 Watkins Avenue
Atherton, CA 94027
Email: grodericks@ci.atherton.ca.us
Phone: 650-572-0504

To JPB:

Attn: Jim Hartnett
Executive Director
1250 San Carlos Avenue
San Carlos, CA 94070-1306

Email: hartnettj@samtrans.com
Phone: 650-508-6221

Service will be deemed complete on the date of personal service, facsimile transmission or the actual delivery as shown on the addressee's return receipt, whichever is earlier. The addresses to which notices and demands must be delivered or sent may be changed from time to time by notice to the other party.

8.3 Counterparts. This MOU may be executed in any number of counterparts, each of which will be deemed an original, but all of which when taken together will constitute one and the same agreement.

8.4 Waivers. A waiver or breach of covenant or provision in this MOU will not be deemed a waiver of any other covenant or provision in this MOU, and no waiver will be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

8.5 Modification. No waiver, alteration, modification, or termination of this MOU will be valid unless made in writing and signed by the authorized representative of the party.

8.6 Integration. This MOU embodies the entire agreement between the Parties with respect to the subject matter hereunder and no other understanding, whether verbal, written or otherwise, exists between the Parties.

8.7 Time of the Essence. Time is of the essence for completion of the obligations set forth in this MOU.

8.8 Entire Agreement. This MOU contains the entire agreement between the Parties.

8.9 Authority. Each of the signatories to this MOU represent that he/she is authorized to sign the MOU on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained that no further approvals, acts or consents are required to bind such party to this MOU.

8.10 Third Parties: Nothing set forth in this MOU is intended to benefit or create any legal rights to any person not a party to this MOU.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto executed this MOU on the date first above written.

TOWN OF ATHERTON
a municipal corporation

By: _____

Approved as to Form:

By: _____
Attorney for Town

THE PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____

Approved as to Form:

By: _____
JPB Attorney

Exhibit A
Safety Fencing

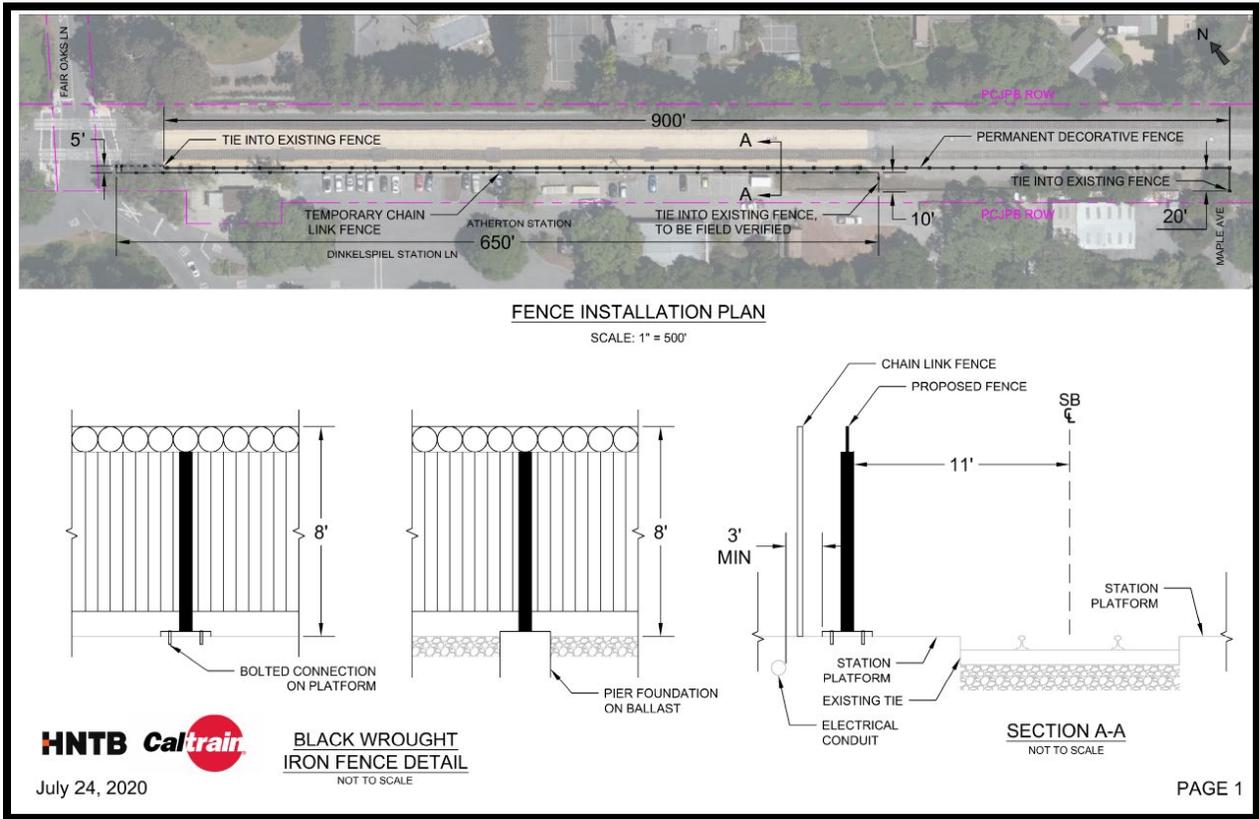


Exhibit B
Maintenance and Use Area

THE ATHERTON STATION:

That certain parcel of land situated in the Town of Atherton, County of San Mateo, conveyed to the State of California by said State Deed No. 47224, more particularly described as PARCEL 21 (47224-1) as follows:

PARCEL 21 (47224-1):

COMMENCING at the southwesterly terminus of the course described in that parcel of land with a length of 25.00 feet in the deed to the Town of Atherton recorded May 3, 1968 in Volume 5469, Page 293, Official Records of San Mateo County; thence along said course and the northeasterly line of said parcel North 39°26'58" East, 25.00 feet and North 50°33'02" West, 56.52 feet; thence North 25 °00'00" East, 13.94 feet to a line parallel with, distant southwesterly, at right angles, 18.50 feet from the center line of the former Southern Pacific Transportation Company eastbound main track (San Francisco-San Jose); thence along said parallel line South 50°33'02" East, 907.58 feet to the northeasterly prolongation of the northwesterly line of Maple Avenue; thence along said prolongation South 33°04'04" West, 23.65 feet to the southeasterly extension of the northeasterly line of the parcel of land described in said deed to the Town of Atherton (5469 OR 293); thence along said extension and said northeasterly line North 50°33 '02" West, 765 .18 feet, South 39°26'58" West, 15 .00 feet and North 50°33 '02" West, 85 .00 feet to the point of commencement.

CONTAINING 0.505 of an acre, more or less.

Together with that portion of land underlying Fair Oak Lane, described as follows:

Bounded northeasterly by said parallel line, southwesterly by the northeasterly line of said parcel to Town of Atherton, northwesterly by the center line of said Fair Oak Lane and southeasterly by the northwesterly line of the above described 0.505 of an acre parcel of land.

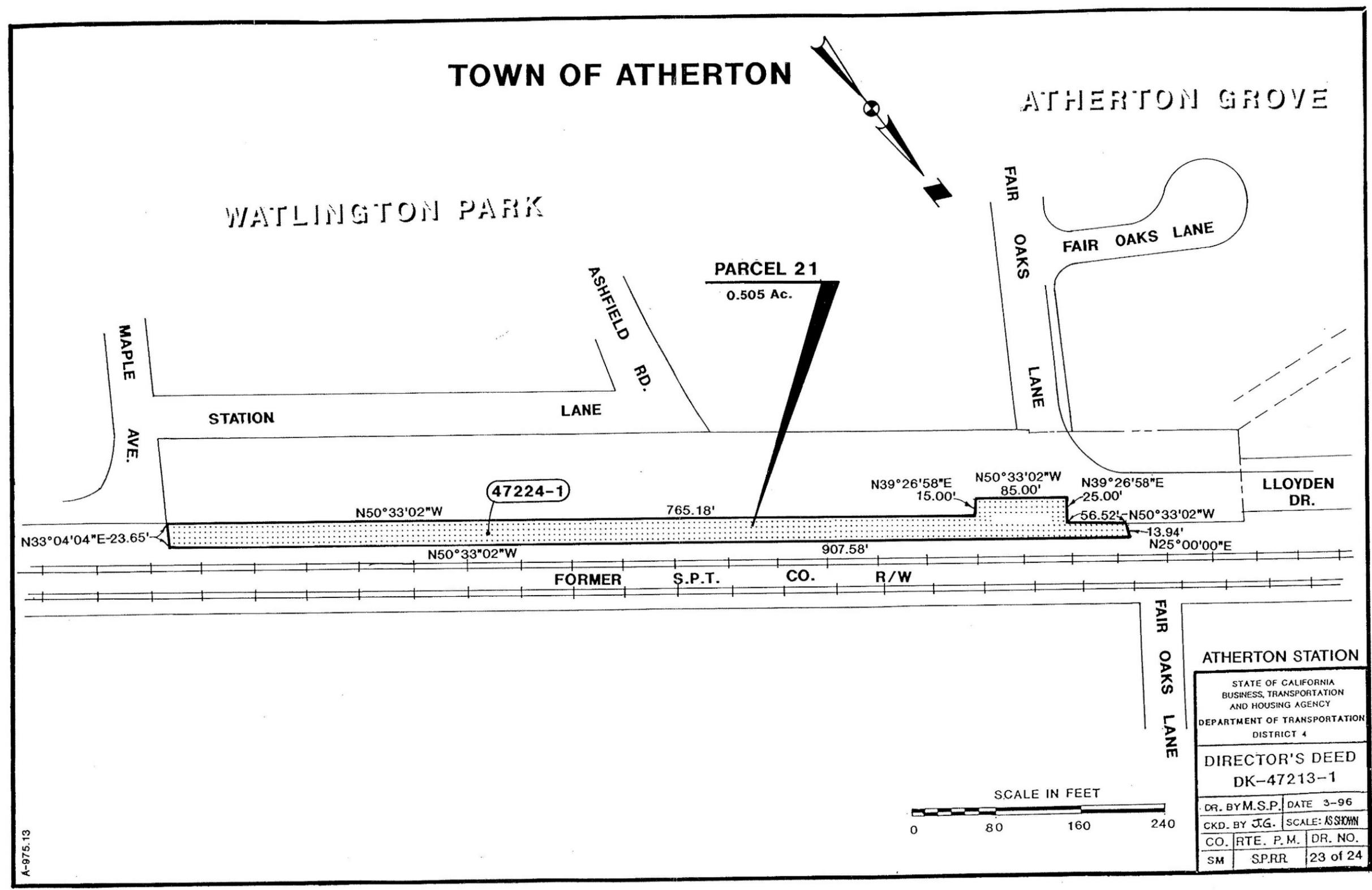


Exhibit C
Center Boarding Platform and Access Crossings

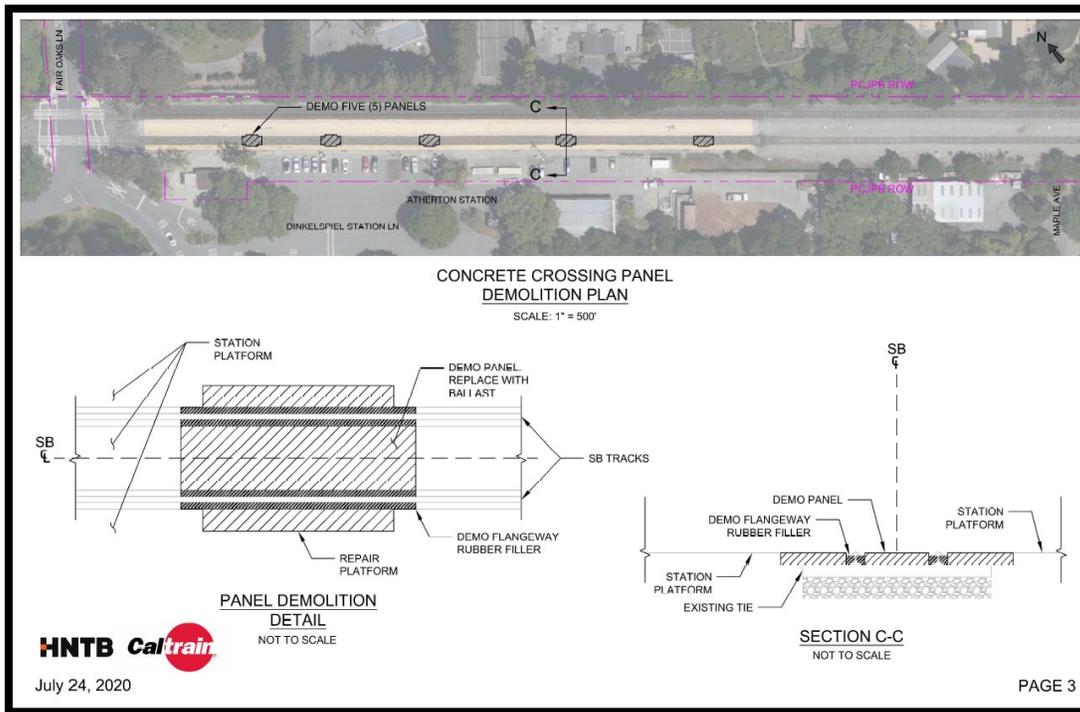
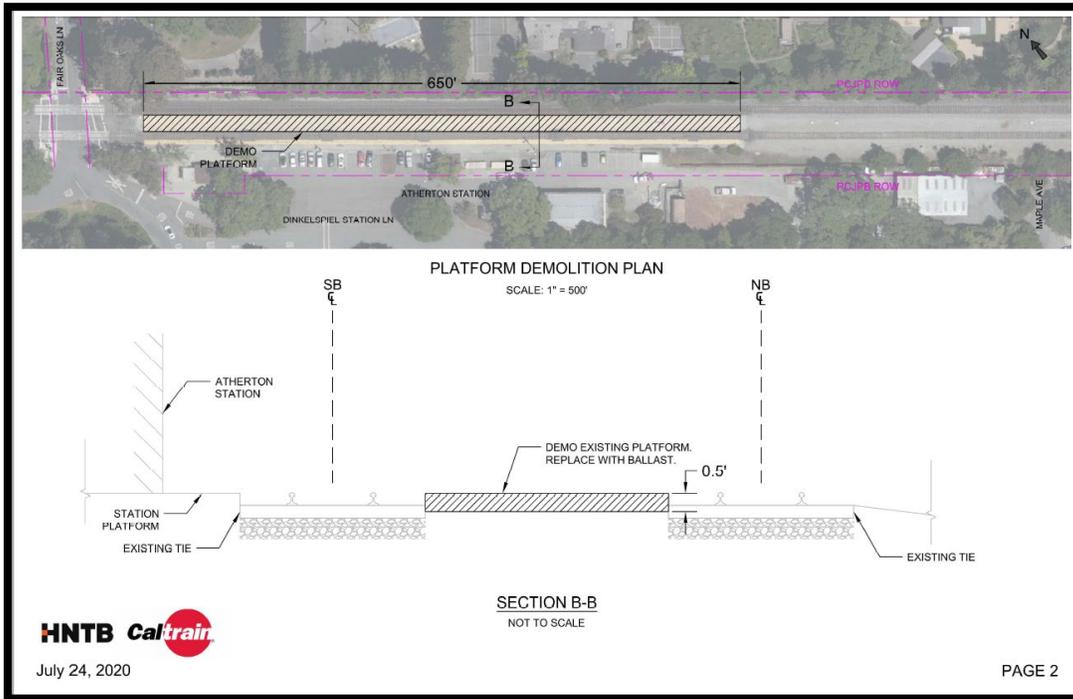


Exhibit D
Funding and Implementation Schedule

Description	Implementing Agency	Agency Responsible to Secure Funding	Funding Estimate	Trigger Event	Estimated Start Date	Estimated Completion Date
Station Closure	JPB	JPB	N/A	MOU Effective Date and Regulatory Compliance	December 1, 2020	February 1, 2021
Safety Fencing (Temporary)	JPB	JPB	\$200,000	Closure Date (1 week)	December 1, 2020	February 1, 2021
Safety Fencing (Permanent)	JPB	JPB	\$800,000	Closure Date (12 months)	December 1, 2020	December 1, 2021
Platform/Crossing Removal	JPB	JPB	\$400,000	Closure Date (6 months)	December 1, 2020	June 1, 2021
Station Area Maintenance and Use Agreement	Town/JPB	Town for area maintenance	N/A	Completion of Safety Fencing	December 8, 2020	December 8, 2040
Watkins Avenue Crossing Safety Improvements	JPB	JPB	\$5,000,000	Design completion w/in 6 months of closure Construction w/in 3 years of closure	December 1, 2020	December 1, 2023
JPB Contribution toward Atherton Station Property Site Improvements and Access Improvements	Town	JPB and Grants	\$400,000	Funding w/in 60 days of MOU Effective Date Completion w/in 5 years of funding	February 28, 2021	February 28, 2026

MAINTENANCE AND USE AGREEMENT

This Maintenance and Use Agreement (“**Agreement**”) is entered into as of this _____ day of October, 2020 (“**Effective Date**”), by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a public agency (“**JPB**”), referred to herein as “Railroad,” or “Railroad” and the TOWN OF ATHERTON, a municipal corporation (“**Town**”).

RECITALS:

A. Railroad is the owner of the peninsula corridor right-of-way (“**Right-of-Way**”), and specifically that certain real property which is located at what is now designated as 1 Dinkelspiel Station Lane, in the Town of Atherton, County of San Mateo, State of California, in the vicinity of MP 27.7, generally known as APN 060 321 180 and 060 321 190, more specifically described in Exhibit A which is attached to this Agreement and incorporated into it by this reference (the “**Property**”). TransitAmerica Services, Inc. (“**Operator**”), under Agreement with Railroad, operates the Peninsula Commute Service on the Right-of-Way, of which the Property is a part, and oversees maintenance of the Right-of-Way, including the Property.

B. Town wishes to utilize the Property for public access and use purposes and to construct certain structural and landscaping improvements (the “**Improvements**”) and to use and maintain the Improvements through at least June 30, 2040 (collectively, the “**Work**”).

C. Town desires to obtain rights from Railroad that will permit Town to enter onto and access Railroad’s Property in connection with the Improvements and the Work.

D. Railroad desires to delegate maintenance responsibility of the Property to the Town.

E. Railroad is willing to enter into the Agreement with Town on the terms and conditions hereinafter set forth for the purposes of performing said Improvements and 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, Railroad grants to Town a personal, revocable license to enter the Property for the purposes of conducting general municipal activities on the Property, including civic events, and to allow the Town and its contractors to construct and maintain the Improvements on the Property. Railroad further grants to the Town, a revocable license to access the Improvements and Work for vehicular and pedestrian access, including ingress and egress, and for parking purposes for the Term of this Agreement. Railroad's right of revocation is subject to section 7(e) of this Agreement.

2. Permanent Improvements. Upon completion of the Improvements shall become

property of Railroad; however, the Town shall be responsible for all maintenance of the Improvements during the Term of the Agreement.

3. Work Procedures. The parties intend that any construction or maintenance activities that have the potential to foul the railroad tracks or impair the safety of rail operations will be conducted in accordance with the Railroad's Work Procedures described in Exhibit B and its Operating Systems Interface, Exhibit C, both of which are attached hereto and by this reference made a part hereof.

(a) Construction Activities: Town shall advise Railroad at least 30 days in advance of the start of work to construct the Improvements on the Property. The parties shall discuss which activities involved in constructing the Improvements will need to follow the Work Procedures. The parties will follow a similar process with regard to any future construction on the Property.

(b) Maintenance Operations: Town may engage in maintenance operations outside of the barrier fence, including access, general maintenance activities, parking, and landscape maintenance, provided they do not involve the use of equipment or machinery that has the potential to foul the tracks, as that term is defined in 49 CFR 220.5. Property maintenance operations that has the potential to foul the tracks shall be coordinated with Railroad to determine if safety measures need to be followed. Otherwise, ordinary maintenance activities will not need to follow the Work Procedures and need not be coordinated with Railroad.

4. Condition to Effectiveness. As a condition precedent to the effectiveness of this Agreement, Town shall have provided to Railroad insurance certificates that certify that Town has insurance comparable to those described in Exhibit D, attached hereto and by this reference made a part hereof.

5. Non-exclusiveness of Agreement. Railroad's grant of license to Town is nonexclusive and nonpossessory in that Town must allow access to the Property by other parties possessing prior rights, unless separate arrangements are made with such parties. As a condition precedent to the effectiveness of this Agreement, Railroad shall provide Town with a list and contact information for all parties having rights over the Property of which Railroad is aware. During the term of this Maintenance and Use Agreement, Railroad shall not enter into any legal obligations that grant new rights, licenses, leases, easements or other obligations that would interfere with the Town's use of the Property.

6. Prior Rights. This Agreement 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.

7. Term of Agreement. The term ("**Term**") of this Agreement shall commence upon the start of the Work upon the Property and shall continue for a period of twenty (20) years from the Effective Date unless the Agreement is terminated or suspended as set forth herein. The term shall be automatically extended for additional five-year terms unless Railroad notifies Town of its intent to have the Agreement terminate at least 180 days prior to the expiration of the then-current five-year term.

(a) Town may terminate this Agreement without cause by giving thirty (30) calendar days' written notice.

(b) Railroad may immediately terminate Town's license by written notice to Town upon Town's discontinuance of the Work for one continuous year or the abandonment of any facilities installed on the Property.

(c) Railroad may immediately suspend the license by written notice to Town if Town defaults with respect to any covenant or condition of this Agreement; Railroad may immediately terminate this Agreement by written notice to Town if Town fails to correct the default within ninety (90) days after receipt of notice from Railroad to do so.

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

(e) Town acknowledges that it will use the Property pursuant to the Agreement with the express knowledge that Railroad may conduct Transit Activities on, around, under or over the Property. Transit Activities include, but are not limited to, any activities relating to the study, design, development, construction, maintenance, operation, mapping, testing, or surveying of transportation systems (collectively "**Transit Activities**"). In the event Railroad determines that it needs to obtain possession of all or a portion of the Property, or needs to place restrictions on Town's use of the Property for Transit Activities, Railroad will give Town ninety (90) days' notice prior to the date Town must vacate the Property, a portion of the Property or restrict the Town's use of the Property ("**Surrender Date**"). If Railroad requires the entire Property or its Transit Activities substantially impairs Town's Use, on or before the Surrender Date, Town must peaceably surrender possession of the Property and this Agreement will be deemed terminated except for those terms intended to survive termination. TOWN HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE BENEFITS UNDER FEDERAL AND STATE UNIFORM RELOCATION ACTS (UNITED STATES CODE TITLE 42, SECTION 4601 ET SEQ.; CALIFORNIA GOVERNMENT CODE SECTION 7260 ET SEQ.) AS A RESULT OF RAILROAD'S USE OR POSSESSION OF ANY PORTION OF THE PROPERTY.

(f) Upon suspension of the Agreement, Town shall immediately vacate the Property and refrain from entering onto it until the Agreement is reinstated in writing by Railroad. Upon termination of the Agreement for any reason established in this Section 7, Railroad shall accept the property in an “as is where is” condition and may, at its sole election, at any time thereafter either complete the Work or remove the Improvements placed on the Property or any portion thereof. Town acknowledges and agrees that the performance of the Work or the installation of any Improvements on the Property pursuant to this Agreement shall not in any way whatsoever limit Railroad’s right to terminate this Agreement pursuant to the terms hereof or any of Railroad’s rights hereunder. Town’s indemnity obligations set forth in Sections 10, 11, and 12 shall survive termination of this Agreement for any reason.

8. 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.

9. Assumption of Risk/Waiver of Claims. Town shall assume all risk of damage to any and all Improvements constructed as part of the Work and appurtenances and to any other personal property of Town 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 the Improvements on the Property and Railroad shall not be liable therefor.

(a) Railroad shall be responsible and liable for any damage or claim as a result of any of Railroad's activities on the Property; however, neither Railroad nor any of its directors, officers, agents or employees shall be liable for any damage to the property of Town, 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 as a result of Town's Work, Improvements, or its use.

(b) Town acknowledges that this Agreement is freely revocable by Railroad subject to the terms set forth in Section 7(e); and, in view of such fact, Town expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial. Without limiting any indemnification obligations of Town or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Town 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 10 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 Agreement.

(c) Town acknowledges that it will not be a displaced person at the time this Agreement is terminated or revoked or expires by its own terms, and Town 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) As part of Town's agreement to accept the Agreement Area in its existing condition, and without limiting such agreement, Town on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, Railroad Indemnitees, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, 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 Agreement Area for Town's intended use.

10. Indemnity. Town 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 Town, its agents, employees, contractors, subcontractors, or invitees or Town's breach of the provisions of this Agreement. The duty of Town 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 Town 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, Town, 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. Town 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.

11. Hazardous Materials. 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 Agreement. In conducting its operations on the Property, and in arranging for the handling, transport and disposal of any materials known (whether or not hazardous), Town 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. Town shall immediately notify Railroad when Town learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Property. The term “release” or “threatened release” when used with respect to Hazardous Material 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. Town 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 Town or its Agents or Invitees cause a release of Hazardous Material, Town 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, Town 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 Material.

Any Hazardous Materials introduced onto the Property by Town, its agents, employees, contractors, subcontractors or invitees, shall remain the property of Town, 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 Town 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 Agreement. This indemnity shall not extend to Liability arising from the presence of any Hazardous Materials on the Property, unless (i) such Hazardous Materials were introduced onto the Property by Town, its agents, employees, contractors, subcontractors or invitees, in which case this indemnity shall apply, or (ii) Hazardous Materials are present on the Property, and Town’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 Town’s activities or project. (In such event, Town shall pay for and defend and indemnify Indemnitees from and against such additional liability to the extent it exceeds that liability which the Railroad would have incurred in the absence of Town’s activities or project.)

Any Hazardous Materials not introduced onto the Property by Town, 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 Town.

For purposes of this Agreement, “**Hazardous Material**” 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 Material includes,

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 Engineer, Bin Zhang (Tel: (650) 508-7999; Email: zhangb@samtrans.com) and to Town's Director of Public Works, Robert Ovadia (Tel: (650)752-0541; Email: rovia@ci.atherton.ca.us)

14. Successors and Assigns. Town 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.

15. 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.

16. 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.

17. 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.

18. Condemnation. In the event all or any portion of the Property is condemned for public use, Town shall receive compensation only in the amount awarded for the taking and damaging of Town's facilities related to the Work and Improvements, including replacement of facilities and improvements in-kind. Any additional compensation for damages for taking the Property or Town's license interest thereon awarded to Town shall be assigned to Railroad.

19. 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, San Mateo County, as

applied to contracts that are made and performed entirely in California.

20. 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

21. Integration. This Agreement, along with the Memorandum of Understanding dated _____ between Railroad and Town, 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.

22. 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 Agreement as of the day and year first above written by their duly authorized representatives.

Peninsula Corridor Joint Powers Board

Town of Atherton

By: _____
Michelle Bouchard
Title: Chief Operating Officer, Rail

By: _____
Name: George Rodericks
Title: City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Attorney

Attorney

Exhibit A

Maintenance and Use Area

THE ATHERTON STATION:

That certain parcel of land situated in the Town of Atherton, County of San Mateo, conveyed to the State of California by said State Deed No. 47224, more particularly described as PARCEL 21 (47224-1) as follows:

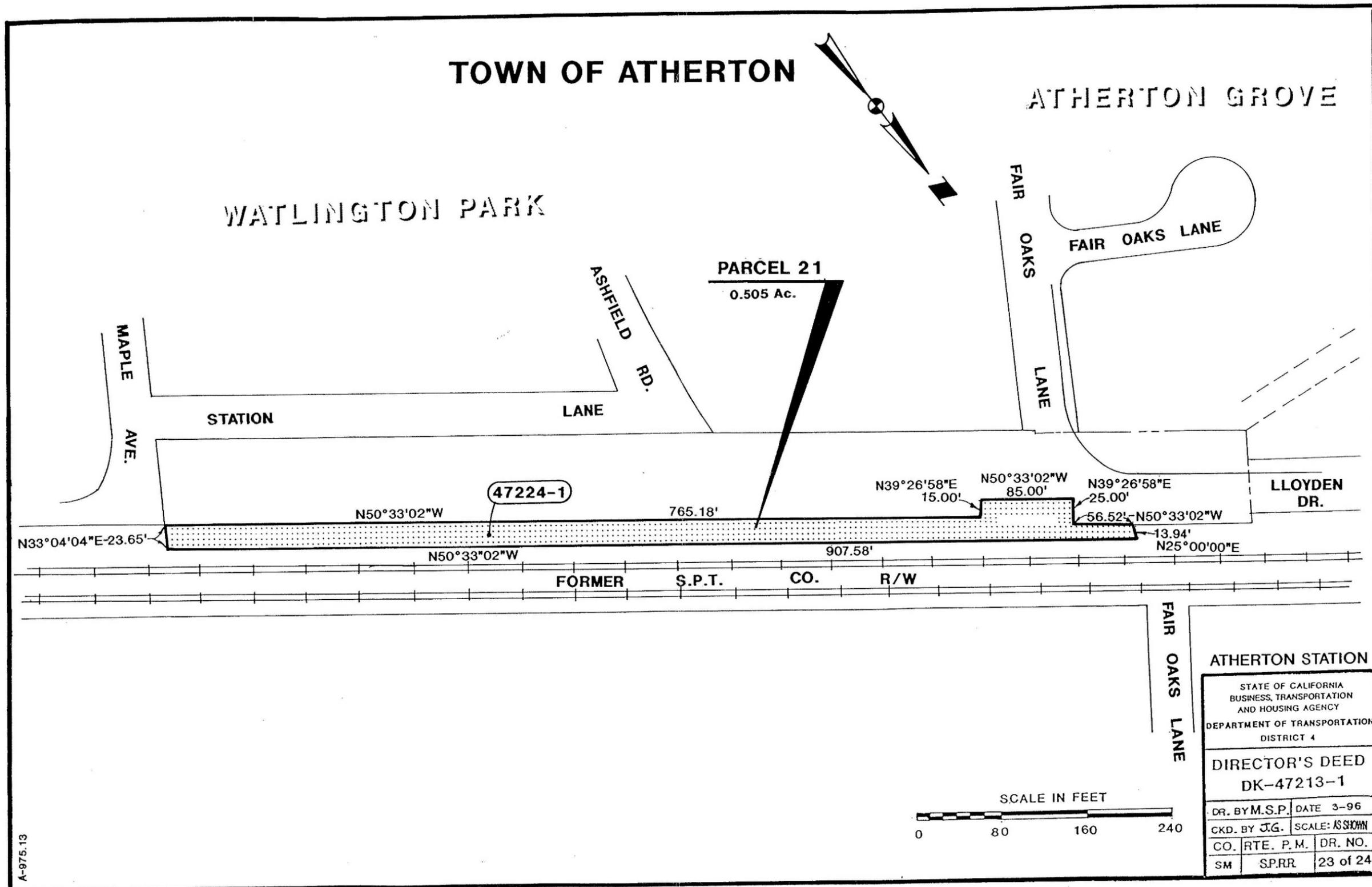
PARCEL 21 (47224-1):

COMMENCING at the southwesterly terminus of the course described in that parcel of land with a length of 25.00 feet in the deed to the Town of Atherton recorded May 3, 1968 in Volume 5469, Page 293, Official Records of San Mateo County; thence along said course and the northeasterly line of said parcel North 39°26'58" East, 25.00 feet and North 50°33'02" West, 56.52 feet; thence North 25 °00'00" East, 13.94 feet to a line parallel with, distant southwesterly, at right angles, 18.50 feet from the center line of the former Southern Pacific Transportation Company eastbound main track (San Francisco-San Jose); thence along said parallel line South 50°33'02" East, 907.58 feet to the northeasterly prolongation of the northwesterly line of Maple Avenue; thence along said prolongation South 33°04'04" West, 23.65 feet to the southeasterly extension of the northeasterly line of the parcel of land described in said deed to the Town of Atherton (5469 OR 293); thence along said extension and said northeasterly line North 50°33 '02" West, 765 .18 feet, South 39°26'58" West, 15 .00 feet and North 50°33 '02" West, 85 .00 feet to the point of commencement.

CONTAINING 0.505 of an acre, more or less.

Together with that portion of land underlying Fair Oak Lane, described as follows:

Bounded northeasterly by said parallel line, southwesterly by the northeasterly line of said parcel to Town of Atherton, northwesterly by the center line of said Fair Oak Lane and southeasterly by the northwesterly line of the above described 0.505 of an acre parcel of land.



A-975.13

Exhibit B Working Procedures

While working within the Railroads Operating Envelope, 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

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the Operating Envelope, 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 within the Operating Envelope. 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 within the Operating Envelope 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 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 within the Operating Envelope, 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 within the Operating Envelope, 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) 11-0" 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 within the Operating Envelope 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 within the Operating Envelope 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 within the Operating Envelope 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 within the Operating Envelope, 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 within the Operating Envelope, 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. For work within the Operating Envelope 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

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representatives, conductors, inspectors, flagmen or watchmen may be required when Permittee or any of Permittee's forces or contractors are working within the Operating Envelope 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 11 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 within the Operating Envelope, and each week during the core 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 C
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

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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.

ATTACHMENT 4

- 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 Permittor (Licensor) On-Track Safety Program.
- C. Zero Tolerance:** The Caltrain Zero Tolerance Policy is attached and made a part hereof.

APPENDIX – D



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 D

Insurance Terms

INSURANCE

The insurance requirements specified in this Section shall cover Town'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 Town authorizes to work under this Agreement. Town 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. Town 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, Town shall assume any and all costs and expenses that may be incurred in fulfilling Town's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Town 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 Town's insurance be primary without any right of contribution from the JPB. Prior to beginning work under this Agreement, Town 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 Town 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 Town'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:
 - Town'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.

5. Railroad Protective Liability Insurance.

Prior to commencing demolition, construction or remodeling within 50 feet of railroad tracks, Town shall contact the JPB. The JPB shall obtain Town'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 Town'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 Town. The purpose of this coverage is to protect Town 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, Town 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 Town 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

OR

Fax: (562) 435-2999

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

D. GENERAL PROVISIONS

1. Notice of Cancellation.

Each insurance policy supplied by the Town shall provide at least 30 days' written notice to Town of cancellation or non-renewal. Town 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

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 Town's agreement to waive subrogation against the JPB respecting any and all claims that may arise, Town'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 Town'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 Town's start of work (including subsequent policies purchased as renewals or replacements).
- b. Town 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, Town 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.

Town shall be responsible for payment of any deductible or retention on Town'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 Town 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, Town 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 Town, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Town or subcontractor is not a named defendant in the lawsuit.