



Item No. 13 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

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

FROM: ROBERT OVDAIA, PUBLIC WORKS DIRECTOR

DATE: JUNE 16, 2021

**SUBJECT: MEASURE A FUNDING AGREEMENT WITH THE SAN MATEO
COUNTY TRANSPORTATION AUTHORITY AND THE JOINT
POWERS BOARD (JPB) RELATING TO THE CLOSURE OF THE
ATHERTON CALTRAIN STATION AND ASSOCIATED
IMPROVEMENTS**

RECOMMENDATION

Approve the Measure A funding agreement with the San Mateo County Transportation Authority (TA) and the Joint Powers Board (JPB) relating to the closure of the Atherton Caltrain Station and associated improvements; and authorize the City Manager to execute the 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. The Caltrain station in Atherton had infrequent users, and other stations are available for Atherton residents within one mile. Additionally, the closure of the Atherton station would result in faster routes for all users. For all of those reasons, in October 2020, the City Council approved a Memorandum of Understanding (MOU) with the JPB regarding the closure of the Atherton Caltrain Station. Additionally, the Council approved a Maintenance and Use Agreement with the JPB to allow the Town to use the station area property outside of the active rail corridor. The MOU outlined the JPB's responsibilities to fully fund the station closure, including the installation of safety fencing separating the active rail corridor from Maintenance and Use area, removal of the center boarding platform, and design and installation of Watkins Avenue crossing safety improvements, including four-quadrant gates. The JPB is also required to provide \$400,000 to the Town towards Atherton Station area property improvements and access improvements. The JPB was able to secure approval of funding associated with the various closure activities, including the \$400,000 obligated to the Town from the San Mateo County Transportation Authority with the granting of Measure A funds.

ANALYSIS

The San Mateo County Transportation Authority requires a funding agreement to provide the funding associated with the station closure to confirm that expenditures are consistent with the Measure A grant scope and to outline reporting and reimbursement requirements. The Measure A funding agreement requires quarterly reporting to the TA regarding project activities, project schedule and expenditures. Funding in the amount of \$400,000 is provided to the JPB, which in turn reimburses the Town for expenditures consistent with the improvements and studies outlined in the Station Closure MOU. For example, the Town's improvements to the station building and site and the study of access improvements to the Menlo Park Caltrain station would be reimbursed, up to \$400,000. The funds may be used for either or both of these activities. However, the Town cannot use this funding to offset programs or improvements that it has already earmarked funding for and committed to in its capital improvement plan.

The Town will be required to report activities quarterly, submit invoicing for reimbursement of qualifying activities, maintain records and submit to audits as required by the TA.

The City Attorney has reviewed the funding agreement and has approved as to form.

ENVIRONMENTAL CONSIDERATIONS

This funding agreement is exempt from the California Environmental Quality Act (CEQA) because it is limited to pre-construction or pre-study/feasibility costs, so there is no possibility of any potential impacts to the environment. Any construction activities, to the extent they are planned, will be analyzed pursuant to CEQA.

POLICY FOCUS

This Agreement provides the funding obligated by the JPB in the Memorandum of Understanding related to closure of the Atherton Caltrain station. This funding will assist the Town in improving the station building and site to better integrate it into the Civic Center, as well as to study access improvements to the Menlo Park station.

FISCAL IMPACT

The Town would receive funding in the amount of \$400,000, on a reimbursement basis, for the improvement of the Atherton Station Property Site and Access Improvements.

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. Measure A Funding Agreement

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FUNDING AGREEMENT SAN MATEO COUNTY TRANSPORTATION AUTHORITY MEASURE A FUNDS (CALTRAIN PROGRAM CATEGORY)

ATHERTON CALTRAIN STATION CLOSURE PROJECT

This Funding Agreement (Agreement) is made this ___ day of _____, 2021 (Execution Date) by and between the San Mateo County Transportation Authority (TA), the Peninsula Corridor Joint Powers Board (JPB), and the Town of Atherton (Town), referred to herein individually as “Party” and jointly as “Parties.”

RECITALS

WHEREAS, on June 7, 1988, the voters of San Mateo County approved a ballot measure to allow the collection and distribution by the TA of a half-cent transactions and use tax in San Mateo County for 20 years with the tax revenues to be used for highway and transit improvements pursuant to the Transportation Expenditure Plan presented to the voters (Original Measure A); and

WHEREAS, on November 2, 2004, the voters of San Mateo County approved the continuation of the collection and distribution by the TA of the Measure A half-cent transactions and use tax for an additional 25 years to implement the 2004 Transportation Expenditure Plan, beginning January 1, 2009 (New Measure A); and

WHEREAS, Caltrain improvements are qualified expenditures and designated the number one priority under the 1988 Transportation Expenditure Plan, and the 2004 Transportation Expenditure Plan designates 16 percent of the New Measure A revenues to fund Caltrain projects; and

WHEREAS, the JPB and the Town have agreed to close the Atherton Caltrain station in exchange for improvements in the station area, including removal of the center boarding platform, installation of fencing that separates the rail right-of-way from the rest of the station property, and installation of a new four-quadrant gate at the grade crossing at Watkins Avenue pursuant to a memorandum of understanding executed on November 11, 2020 (MOU), which is attached and incorporated hereto as Exhibit D; and

WHEREAS, nothing in this Funding Agreement modifies the terms or conditions set forth in the MOU; and

WHEREAS, the JPB submitted a request to the TA in the amount of \$4,125,000 to help fund the Atherton Caltrain Station Closure Project (Scope of Work), which includes a \$400,000 pass through to the Town for station property site improvements and/or an access improvement study (Town Improvements, a portion of the Scope of Work); and

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WHEREAS, on November 5, 2020, the TA programmed and allocated up to \$4,125,000 in Measure A funds for the Scope of Work of the Project through Resolution 2020-27 (Measure A Funds); and

WHEREAS, the JPB intends to pass-through \$400,000 of the programmed and allocated Measure A Funds to the Town for Town Improvements, pursuant to the MOU; and

WHEREAS, the Town and the JPB have agreed that the JPB will be the lead implementing agency for the Scope of Work as described in Exhibit A; and

WHEREAS, the Town will be the responsible Party to implement the station property site improvements and/or access improvement study; and

WHEREAS, the TA, JPB and the Town desire to enter into this funding agreement with guidelines established by the TA regarding the process and terms and conditions governing the allocation and expenditure of Measure A Funds for the Scope of Work and Project.

Now, therefore, the Parties agree as follows:

SECTION 1: Scope of Work Oversight and Reporting

1.1 Oversight; Work Plan. JPB is responsible for the completion of the Scope of Work as described in Exhibit A, "Scope of Work Information," which is attached to this Agreement and incorporated herein by this reference. JPB assumes responsibility for procuring and administering any professional service and/or other contracts entered into in connection with the Scope of Work. JPB will oversee completion of the Scope of Work, including ensuring that the Town utilizes the funds for the Town Improvements as defined in the Scope of Work. JPB may appoint a designee or engage contractor(s) to perform work necessary for Scope of Work completion, but JPB remains responsible to the TA for the completion of the Scope of Work.

1.2 Required Approvals. Prior to commencement of the Scope of Work, JPB or its designee (e.g., a consultant) will obtain all applicable local, state and federal approvals and permits for the Scope of Work as set forth in the MOU. In addition, JPB must comply with all applicable federal, state and local laws and regulations applicable to the Project. All appraisals must comply with Uniform Standards of Professional Appraisal Practice. Any right-of-way activities involving property on the Caltrans right-of-way must be conducted in accordance with the then-current version of the Caltrans Right-of-Way manual. Prior to commencement of any construction by the Town, the Town or its designee (e.g., a consultant) will obtain all applicable local, state and federal approvals and permits for the Town Improvements.

1.3 Contract Award and Change Orders. JPB and Town must comply with state and local agency requirements for the award of any contract(s) for the performance of the Scope of Work and any change orders. As the Scope of Work proceeds, JPB and Town must

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advise the TA of any contracts awarded and change orders as part of the regular progress reporting requirements (Section 1.4). Notice of any contracts and change orders provided to the TA will not constitute approval by the TA of the contracts and change orders nor obligate the TA to provide funds in excess of its maximum contribution stated in Section 2.1 of this Agreement. This Section in no way obliges the Town to seek approval of TA or JPB prior to awarding a contract or change order related to the Project, provided the contract or change order is within the Scope of Work described in Exhibit A.

1.4 Progress Reports. JPB will, on behalf of the JPB and Town, prepare and submit to the TA quarterly progress reports by January 31, April 30, July 31 and October 31 of each year during the entire term of the Scope of Work and covering all Scope of Work activities for work completed during the previous quarter using the template in Exhibit B. The reports must describe:

- a) The current status of, and any changes in, scope, schedule, budget, and funding plans of the Scope of Work and the Project;
- b) Any risk factors;
- c) The work performed during the previous quarter and projected for the next quarter;
- d) Scope of Work Costs (as defined in Section 2.1, below) projected to be expended during the next quarter; and
- e) Any other information requested by the TA.

1.5 Final Report. Within ninety (90) days of JPB's final acceptance of the Scope of Work and all incidental work, JPB, on behalf of the JPB and Town, must prepare and submit to the TA a final report detailing the following and all other relevant information:

- a) A description of the Project, including a statement detailing the overall progress and success of the Scope of Work and the Project, a compilation of any data collected during the active phase(s) of the Project, and changes/additions to the scope of the Project;
- b) Total costs for the Scope of Work, including an accounting of all Measure A Funds expended in connection with the Scope of Work, and reflecting any unexpended Measure A Funds;
- c) An explanation and the status of any outstanding obligations or potential obligations related to the Scope of Work;
- d) A discussion of any pertinent issues or problems that arose during the implementation of the Scope of Work;
- e) Any copies of press articles, press releases, newsletter articles and any other publicity materials regarding the Project;

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- f) Written confirmation that no further reimbursements associated with the Scope of Work are anticipated and that all draw-down requests have been made; and
- g) Photographs for all construction projects that satisfactorily demonstrate: 1) site conditions before the project was implemented; 2) work in progress; and 3) completed improvements.

1.6 Access to Records and Record Retention. At all reasonable times, JPB and Town will permit the TA access to all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the Scope of Work by JPB, the Town or any contractor or consultant.

JPB and Town will also make available to the TA upon request any professional service agreements, change orders and any other agreements that are related to the Scope of Work. JPB and Town will provide copies of any documents described in this Section to the TA upon request. JPB and Town will retain all records pertaining to the Scope of Work for at least three years after completion of the Project.

1.7 Audits.

- a) The TA, or its authorized agents, may, at any reasonable time during business hours, conduct an audit of JPB's or Town's performance under this Agreement. The JPB and the Town will permit the TA, or its authorized agents, to examine, inspect, make excerpts from, transcribe or photocopy books, documents, papers and other records of JPB's or the Town's which the TA reasonably determines to be relevant to this Agreement.
- b) JPB will transmit to the TA the Independent Auditor's Report prepared for JPB's and Town's Comprehensive Annual Financial Report within thirty (30) days of receipt by JPB and Town, respectively, and highlight the section that pertains to the Measure A funding.

SECTION 2: Funding and Payment

2.1 Funding Commitment. The TA allocates to JPB up to \$4,125,000 for reimbursement of expenditures related to the Scope of Work (Scope of Work Costs) as provided in this Section 2. JPB will contribute, or provide for the contribution of, the entire amount in excess of \$4,125,000 needed to complete the Scope of Work. The TA's funding commitment under this Agreement in no way establishes a right for JPB to receive additional funding from the TA. All funding obligations of the TA under this Agreement are subject to downward adjustment based on actual sales tax receipts for the fiscal years indicated, or if the JPB receives funding for Scope of Work Costs from other sources.

The JPB will assess and confirm its ability to complete the Scope of Work within budget as part of the quarterly reporting requirements established in Section 1.4, above. JPB must further notify the TA between reporting cycles if JPB determines that the budget will not be sufficient to complete the Scope of Work. The TA retains authority to suspend its funding obligation as set forth in Section 3.4 of this Agreement upon such

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notice, and until JPB develops a credible funding plan acceptable to the TA to fund and complete the Scope of Work.

2.2 Use of Measure A Funds. JPB and Town will use Measure A Funds only for direct eligible costs to complete the Scope of Work. JPB and Town agree to use Measure A Funds to supplement existing revenue. JPB and Town will not use Measure A Funds to replace other local taxes or revenues already programmed and available for use for the same purpose.

If the TA determines that JPB or Town have used Measure A Funds other than for the approved Scope of Work, the TA will notify JPB of its determination. Within thirty (30) days of receipt of notification, JPB will either (a) repay such funds to the TA, or (b) explain in writing how the funds in question were spent for the approved Scope of Work. The TA will respond to JPB's written explanation within thirty (30) days of receipt. Unless otherwise stated in the response, the TA's response will be final, and JPB will repay any funds used other than for the approved Scope of Work within thirty (30) days.

2.3 Reimbursement Basis. JPB may seek reimbursement for Scope of Work Costs incurred on or after the Execution Date. Scope of Work Costs must be incurred and paid by JPB prior to requesting reimbursement from the TA, including costs incurred by the JPB for providing of Project review and oversight. Sufficient documentation must accompany all requests for reimbursement, including the submittal of all due quarterly progress reports.

2.4 Accounting and Request for Reimbursement Procedures. JPB, in coordination with and to the satisfaction of the TA, will establish procedures for Scope of Work accounting and requests for reimbursement. These procedures will reflect the accumulation of the TA's pro rata share of costs for all work within the Scope of Work. JPB will detail the TA's pro rata share of Scope of Work costs for all work funded under this Agreement with each Reimbursement Claim Form, which is attached to this Agreement as Exhibit C and incorporated herein. JPB and Town will maintain all necessary books and records in accordance with generally accepted accounting principles.

2.5 Invoices; Payments.

- a) JPB must, on behalf of the JPB and Town, prepare and submit billing statements consistent with the Reimbursement Claim Form, with all required supporting documentation. Supporting documentation may include, but is not limited to, copies of vendor invoices, timesheets, backup documentation, checks, and payment advice, and must include an accounting of the TA's pro rata share of costs for the Scope of Work as contemplated by this Agreement.
- b) For any property acquisitions for which JPB seeks reimbursement from the TA, JPB must provide the following supporting documentation for each property:
 - i. Copies of the final real estate appraisal and any appraisal review conducted on behalf of JPB;

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- ii. For any right-of-way activities involving property on the Caltrans right-of-way, written confirmation that the acquisition process was conducted in accordance with the then-current version of the Caltrans Right-of-Way manual;
 - iii. A Phase One Environmental Assessment and any recommended additional testing (unless waived by the TA);
 - iv. Copy of the offer package provided to the property owner(s);
 - v. Copy of the Notice of Exemption or other required documents for environmental clearance under CEQA/NEPA for the purchase of the property, and evidence of the date of filing such Notice; and
 - vi. Written justification acceptable to the TA of any settlement at an amount higher than the offer.
- c) For each voluntary real property transaction, JPB must also provide:
- i. Copy of the fully executed purchase and sale agreement;
 - ii. Copy of an executed and recorded deed, in a form consistent with the requirements set forth in the then-current Caltrans Right-of-Way manual;
 - iii. Copy of the Policy of Title Insurance; and
 - iv. Copy of the final closing statement from the escrow.
- d) For each real property acquisition undertaken through condemnation, JPB must also provide:
- i. Copy of the recorded Final Order of Condemnation; and
 - ii. Copy of the litigation guarantee issued by a title insurer.
- e) JPB must detail the tasks performed, and associated costs, by JPB and the Town – including pro rata share of Scope of Work Costs to be borne by the TA – with each reimbursement request.
- f) The TA will endeavor to disburse reimbursements for approved Scope of Work Costs within thirty (30) days after the TA's approval of each claim, subject to the limits on the TA's maximum contribution as established in Section 2.1. The TA's obligation to reimburse Scope of Work Costs to JPB as provided in this section is conditioned upon the TA's prompt receipt of quarterly progress reports from JPB pursuant to Section 1.4 above.

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- g) The TA will reimburse JPB directly for its invoiced eligible costs incurred for performance of the Scope of Work and its invoiced eligible costs incurred for review and oversight of the Scope of Work.

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h) Invoices may be submitted, no more frequently than once a quarter, by mail to:

Accounts Payable
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

Or by e-mail to: accountspayable@samtrans.com

2.6 Return of Project Cost Savings. Upon submission of the Final Report detailed in Section 1.5 of this Agreement, if the total Scope of Work Costs are less than \$4,125,000, the JPB will return to the TA that proportion of the Project cost savings that is equal to the percentage of the original Scope of Work budget that consisted of Measure A Funds.

2.7 Pass-Through Requirements.

- a) The JPB will pass-through \$400,000 in Measure A Funds to the Town on a reimbursement basis for the work specified in the MOU. The Town will expend funds towards the Town Improvements specified in Exhibit D.
- b) The JPB has no obligation to provide funds in excess of the \$400,000 amount provided to the Town, unless additional funding is approved for the Project and the Parties execute a written amendment to this Agreement to reflect any additional funding.
- c) The JPB agrees to make payments to the Town on a quarterly basis in arrears of the Town's incurring of expenses related to the Project.
 - i. On a quarterly basis, the Town shall prepare and submit billing statements to the JPB consistent with the Reimbursement Claim Form, with all required supporting documentation. Supporting documentation may include, but is not limited to, copies of vendor invoices, timesheets, backup documentation, checks, and payment advice, and must include an accounting of the TA's pro rata share of costs for the Scope of Work as contemplated by this Agreement as well as any information the JPB requires in order to fulfill its obligations set forth in this Agreement.
 - ii. The JPB will endeavor to reimburse the Town within thirty (30) days following approval by the JPB of a Town invoice.
- d) Auditing: The Town agrees to grant the JPB, TA, and/or their authorized representatives, access to the Town's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this agreement. All documents shall be available for inspection at any time while the Project is underway and for the retention period specified in below.

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- e) If, as a result of any audit, it is determined that reimbursement of any costs was in excess of that represented as a basis for payment, Town agrees to reimburse the JPB for those costs within 60 days of written notification by the JPB. The Town will also be responsible for any other costs resulting from such overpayment, as specified in subsection (g) below.
- f) The Town will be solely responsible for maintaining all applicable records for a minimum of three (3) years following final payment to the Town or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles. For capital assets, applicable records shall be maintained for three years from the date of the asset's disposition, replacement, or transfer. Copies of the Town's audits, if any, performed during the course of the Project and at Project completion shall be forwarded to the JPB no later than one hundred eighty (180) days after the close of the fiscal year.
- g) The Town agrees to use funds received pursuant to this Agreement only for the Project. In the event the Town fails to comply with the terms and conditions of this Agreement or any requirements of the JPB and TA, the Town shall be wholly responsible for any consequences associated with non-compliance, including but not limited to, repayment of funds.

SECTION 3: Term

3.1 Term. The term of this Agreement will commence upon the Execution Date and conclude upon the earliest of: (a) the TA's final reimbursement to JPB for work performed hereunder, (b) termination by JPB or the TA pursuant to this Section 3, or (c) five years and six months from the Execution Date.

3.2 JPB's Right to Terminate; Repayment upon Termination. JPB may at any time terminate the Scope of Work by giving ten (10) days' written notice to the TA of its election to do so. Upon such termination, JPB will not be reimbursed for any further Scope of Work Costs and will reimburse the TA for all monies paid by the TA and costs incurred by the TA in connection with the Scope of Work within ninety (90) days of the TA's submission to JPB of a detailed statement of such payments and costs.

3.3 Termination by the TA. The TA may terminate this Agreement, with or without cause, by giving ten (10) days' written notice of such termination. If the TA terminates the Agreement for JPB's default, JPB will reimburse the TA for all funds paid to JPB in connection with the Scope of Work, and for all costs incurred by the TA in connection with the Scope of Work, within ninety (90) days of the TA's submission to JPB of a detailed statement of such payments and costs. If the TA terminates the Agreement for convenience, the TA is obligated to pay to JPB all costs and expenses incurred by JPB up to the date of notice of termination, as well as all reasonable costs and expenses incurred to effect such termination.

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3.4 Expiration/Suspension of TA's Financial Obligations. Any and all financial obligations of the TA pursuant to this Agreement shall expire upon the expenditure of TA's maximum contribution to the Scope of Work as established in Section 2.1 above, or the conclusion of the Term as defined in Section 3.1, whichever occurs first. The TA reserves the right to suspend its financial obligation, with ten (10) days' advance notice, if JPB identifies a risk of not being able to complete the Scope of Work within budget. If JPB cannot provide a credible funding plan acceptable to the TA to fund and complete Scope of Work, the TA may terminate this Agreement. If JPB identifies a risk of not being able to complete the Scope of Work within budget, failure to report such risk to the TA is cause for termination under Section 3.3.

3.5 Time of Performance. The Scope of Work must be completed no later than five years from the date of execution of this funding agreement.

3.6 Time Extension. If the Scope of Work cannot be completed within the Time of Performance as defined in Section 3.5, JPB must submit a request in writing to the TA no later than six (6) months before the Time of Performance for an extension for the Time of Performance. The TA will review the request, and grant the extension if it is justified in TA's sole and complete discretion. Costs incurred for the Scope of Work after the Time of Performance are at risk of denial for reimbursement by the TA. The unreimbursed portion of the Measure A allocation will be retained by the TA for the Measure A Caltrain Program.

SECTION 4: Indemnification and Insurance

4.1 Indemnity by JPB and Town.

JPB and Town shall indemnify, keep and save harmless the TA and related agencies named in Section 4.3 (b), below, and each of their directors, officers, agents and employees against any and all suits, claims or actions related to the performance of the Scope of Work or the Project including, but not limited to, those arising out of any of the following:

- a) Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of the Project or implementation of this Agreement; or
- b) Any allegation that materials or services developed, provided or used for the Project infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

JPB and Town further agree to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the TA or any of the other agencies or individuals enumerated in this section in any such action, JPB and Town shall, at their expense, satisfy and discharge the same.

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This indemnification shall survive termination or expiration of the Agreement.

4.2 Indemnity by the Town. With the exception of claims arising from the JPB's sole negligence or wrongful conduct, the Town shall defend, indemnify, and hold harmless the JPB, its officers, directors, representatives, agents and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or failure to act of the Town, its officers, directors, employees, agents, or contractors or any of them in connection with this Agreement or Town's administration of the Project. In the event of early termination, the Town shall also defend, indemnify, and hold harmless the JPB, its officers, directors, representatives, agents and employees from and against all claims, suits, or demands from the TA for reimbursement of Measure A Funds attributable to Project costs incurred subsequent to termination. This indemnification shall survive termination or expiration of this Agreement.

4.3 Insurance. For the purposes of this Insurance section, "Entity" is defined as any entity designing, approving designs and/or performing the Scope of Work funded by this Agreement. Entities include JPB or Town, a contractor of JPB or Town, another body on behalf of which JPB or Town submitted its funding application, and/or a contractor of such other body. The Town's responsibility to obtain insurance under this Section 4.3 shall only apply to the Town Improvements.

All Entities will provide the appropriate insurance covering the work that they will be performing. The insurance requirements specified in this section will cover each Entity's own liability and any liability arising out of work or services of Entity subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as Agents) working on the Project.

- a) Minimum Types and Scope of Insurance. Each Entity is required to procure and maintain at its sole cost and expense insurance subject to the requirements set forth below. Such insurance will remain in full force and effect throughout performance of the Scope of Work. All policies will be issued by insurers acceptable to the TA (generally with a Best's Rating of A-10 or better). Each Entity is also required to assess the risks associated with work to be performed by Agents and to require that Agents maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that its Agent does not procure and maintain such insurance coverage, an Entity is responsible for and assumes any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Entity's indemnity obligations as to itself or any of its Agents in the absence of coverage. Entities may self-insure against the risks associated with the Scope of Work, but in such case, waive subrogation in favor of the TA respecting any and all claims that may arise.
 - i. Workers' Compensation and Employer's Liability Insurance. Worker's

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- Compensation coverage must meet statutory limits and Employer's Liability Insurance must have minimum limits of \$1 (one) million. Insurance must include a Waiver of Subrogation in favor of the TA.
- ii. Commercial General Liability Insurance. The limit for Commercial General Liability Insurance in each contract and subcontract cannot be less than \$1 (one) million. Commercial General Liability Insurance must be primary to any other insurance.
 - iii. Business Automobile Liability Insurance. The limit for Business Automobile Liability Insurance in each contract and subcontract cannot be less than \$1 (one) million. Insurance must cover all owned, non-owned and hired autos, and include a Waiver of Subrogation in favor of the TA.
 - iv. Property Insurance. Property Insurance must cover an Entity's and/or Agent's own equipment as well as any materials to be installed. Property Insurance must include a Waiver of Subrogation in favor of the TA.
 - v. Contractors' Pollution Liability Insurance and/or Environmental Liability Insurance. If deemed appropriate by JPB or an Entity in consideration of the work required for the Project, insurance should cover potential pollution or environmental contamination or accidents. The limit for Pollution and/or Environmental Liability Insurance in each appropriate contract and subcontract should not be less than \$1 million. Such insurance must name the TA as an Additional Insured and include a Waiver of Subrogation in favor of the TA.
 - vi. Railroad Protective Liability Insurance. Insurance shall be in accordance with the Maintenance and Use Agreement between the Town and JPB dated November 11, 2020.
- b) Additional Insured Requirement. In addition to the requirement that the TA be named as additional insured on the Commercial General Liability insurance and Pollution and/or Environmental Liability (if applicable) insurance, the policies must name 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.
- c) Excess or Umbrella Coverage. JPB and/or any other Entity may opt to procure excess or umbrella coverage to meet the above requirements, but in such case, these policies must also satisfy all specified endorsements and stipulations for the underlying coverages and include provisions that the policy holder's insurance is to be primary without any right of contribution from the TA.

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- d) Deductibles and Retentions. JPB must ensure that deductibles or retentions on any of the above insurance policies are paid without right of contribution from the TA. Deductible and retention provisions cannot 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 any policy contains a deductible or self-insured retention, and in the event that the TA seeks coverage under such policy as an additional insured, JPB will ensure that the policy holder satisfies such deductible to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Entity or Agents, even if neither the Entity nor Agents are named defendants in the lawsuit.

- e) Claims Made Coverage. If any insurance specified above is provided on a claims-made basis, then in addition to coverage requirements above, such policy must provide that:
- i. Policy retroactive date coincides with or precedes the Entity's start of work (including subsequent policies purchased as renewals or replacements).
 - ii. Entity will make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
 - iii. If insurance is terminated for any reason, each Entity 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.
 - iv. Policy allows for reporting of circumstances or incidents that might give rise to future claims.
- f) Failure to Procure Adequate Insurance. Failure by any Entity to procure sufficient insurance to financially support Section 4.1, Indemnity by JPB and Town, of this Agreement does not excuse JPB from meeting all obligations of Section 4.1 and the remainder of this Agreement, generally.

Prior to beginning work under this Agreement, JPB must obtain, and produce upon request of the TA, satisfactory evidence of compliance with the insurance requirements of this section.

SECTION 5: Miscellaneous

ATTACHMENT 1

5.1 Notices. All notices required or permitted to be given under this Agreement, excluding progress reports, the final report, and invoices, must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one (1) day after mailing if delivered via overnight courier, or two (2) days after the mailing date if mailed as provided above.

To TA: San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attn: Executive Director

To JPB: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Executive Director

To Town: Town of Atherton
150 Watkins Avenue
Atherton, CA 94027
Attn: Town Manager

5.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by any Party will be implied from any omission by any Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

5.3 Assignment. Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties.

5.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

5.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable federal, state and local laws, regulations and ordinances.

5.6 Modifications. This Agreement may only be modified in a writing executed by all Parties.

5.7 Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this Agreement, the prevailing Party in said proceedings is entitled to its costs, including reasonable attorneys' fees.

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ATTACHMENT 1

5.8 Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractors and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of Independent Contractor.

5.9 Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to JPB and Town under this Agreement are the joint property of the TA, JPB and Town, and will not be destroyed without the prior written consent of the TA. The TA is entitled to copies and access to these materials during the progress of the Project and upon completion or termination of the Project or this Agreement. JPB and Town may retain a copy of all material produced under this Agreement for its use in its general activities. This Section does not preclude additional shared ownership of work with other entities under contract with JPB for funding of the Project.

5.10 Non-discrimination. JPB, Town and any contractors performing services on behalf of JPB or Town will not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.

5.11 Accessibility of Services to Persons with Disabilities. The Project implementation must comply with, and not subject the TA, JPB or Town to liability under, the Americans with Disabilities Act, the California Disabled Persons Act, or any other state or federal laws protecting the rights of persons with disabilities.

5.12 Warranty of Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

5.13 Severability. If any portion of this Agreement, or the application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, all remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

5.14 Counterparts. This Agreement may be executed in counterparts.

5.15 Attribution to the TA. JPB must include attribution that indicates work was funded with Measure A Funding from the TA. This provision applies to any project, or publication, that was funded in part or in whole by Measure A Funds. Acceptable forms of attribution include TA branding on Project-related documents, construction signs, public information materials, and any other applicable documents.

ATTACHMENT 1

5.16 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

[Signatures appear on following page]

ATTACHMENT 1

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Name: Michelle Bouchard
Its: Acting Executive Director

Approved as to Form:

Legal Counsel for the Peninsula Corridor Joint Powers Board

TOWN OF ATHERTON

By: _____
Name: George Rodericks
Its: Town Manager
Approved as to Form:

Legal Counsel for Town of Atherton

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

By: _____
Name: Carter Mau
Its: Acting Executive Director

Approved as to Form:

Legal Counsel for the TA

- Exhibit A: Scope of Work Information**
- Exhibit B: Progress Reporting Template**
- Exhibit C: Reimbursement Claim Form**

ATTACHMENT 1

Exhibit D: 11-11-2020 Town-JPB Memorandum of Understanding

EXHIBIT A: SCOPE OF WORK INFORMATION

Atherton Station Closure

Sponsoring Agency: JPB

Lead/Implementing Agency: JPB

Contact: **Alvin Piano, Project Manager, Capital Project Delivery**
650-508-6447, PianoA@samtrans.com,
1250 San Carlos Ave, San Carlos CA, 94070

Project Description and Scope of Work:

The JPB and the Town have agreed to close the Atherton Station in accordance with Exhibit D. The JPB will undertake the closure of the station and the following activities:

- Station demobilization including the installation of temporary safety fencing along the station right-of-way (ROW) and removal of the center boarding platform and other station facilities.
- Installation of permanent safety fencing along the station ROW.
- Implementation of four-quadrant gates and related safety improvements at the Watkins Avenue grade crossing.
- The JPB shall pass through \$400,000 of Measure A Funds for the Town to
 - develop and implement an initial plan to provide site improvements in the Maintenance and Use Area, including landscaping and screening improvements and potential modifications to the station building to integrate the station building into the Town Center.
 - study and implement an active transportation route from the Atherton Town Center to the Menlo Park Caltrain Station and evaluate available JPB ROW that can be used to support the active transportation route, in a manner consistent with the JPB's existing property use policies.

The JPB will utilize Measure A Funds to construct the permanent safety fencing along the station ROW and to perform all the necessary work required to install four-quadrant gates at Watkins Avenue (i.e., design, engineering, environmental analysis, regulatory compliance) including construction. Measure A funds will also be used for the funding contribution toward the active transportation study and site improvements to be undertaken by the Town.

Project Schedule:

<i>Station Demobilization</i>	<u>Begin</u>	<u>End</u>
Pre-Project Planning	01/20	11/20
PE/Environmental	05/20	12/20
PS&E	01/20	11/20
Right-of-Way	12/20	12/21
Construction	12/20	06/21

ATTACHMENT 1

Permanent Fencing & Four-Quadrant Gates

	<u>Begin</u>	<u>End</u>
Pre-Project Planning	12/20	06/21
PE/Environmental	07/21	12/21
PS&E	01/22	06/22
Right-of-Way	07/22	12/22
Construction	01/23	12/23

*Funding Contribution**

<u>Begin</u>	<u>End</u>
12/20	02/21

* JPB funding contribution toward Atherton station property site improvements and access improvement study. The Town of Atherton is responsible for the development and implementation of the property site improvements and access improvement study.

Project Budget/ Source of Funding:

Include funding plan for project defined above.

Phase	Measure A Funding Amount	Other Sources*		Total**
		List Fund Source	Amount	
Four-quadrant Gates & Permanent Fencing				
Pre-Project Planning	\$1,050,000	JPB and/or Grant Funds		\$1,050,000
PE/Environmental	\$750,000	JPB and/or Grant Funds		\$750,000
PS&E	\$1,000,000	JPB and/or Grant Funds		\$1,000,000
Right of Way				
Construction	\$925,000	JPB and/or Grant Funds	\$2,075,000	\$3,000,000
Funding Contribution	\$400,000			\$400,000
Total:	\$4,125,000		\$2,075,000	\$6,200,000

* The other fund sources are provided for informational purposes.

**Total costs listed by each task/activity are best estimates and may be subject to change within the overall total amount for the awarded phase of the Project Scope of Work during the course of the Project.

ATTACHMENT 1

Measure A Project Cash Flow Projection

The cash flow projection is provided for informational purposes only.

Phase/Activity (e.g. Planning, PSE, Construction)	FY21				Subtotal FY21	FY22				Subtotal FY22
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
Permanent Fencing & Four-quadrant Gates										
Pre-Project Planning			\$262,500	\$525,000	\$787,500	\$262,500				\$262,500
PE/Environmental					\$0	\$375,000	\$375,000			\$750,000
PS&E					\$0			\$500,000	\$500,000	\$1,000,000
Right-of-Way					\$0					\$0
Construction					\$0					\$0
Funding Contribution			\$400,000		\$400,000					\$0
Total	\$0	\$0	\$662,500	\$525,000	\$1,187,500	\$637,500	\$375,000	\$500,000	\$500,000	\$2,012,500
Cumulative to Date	\$0	\$0	\$662,500	\$1,187,500		\$1,825,000	\$2,200,000	\$2,700,000	\$3,200,000	
Phase/Activity (e.g. Planning, PSE, Construction)	FY23				Subtotal FY23	FY24				Subtotal FY24
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
Permanent Fencing & Four-quadrant Gates										
Pre-Project Planning					\$0					\$0
PE/Environmental					\$0					\$0
PS&E					\$0					\$0
Right-of-Way					\$0					\$0
Construction			\$231,250	\$231,250	\$462,500	\$231,250	\$231,250			\$462,500
Funding Contribution					\$0					\$0
Total	\$0	\$0	\$231,250	\$231,250	\$462,500	\$231,250	\$231,250	\$0	\$0	\$462,500
Cumulative to Date	\$3,200,000	\$3,200,000	\$3,431,250	\$3,662,500		\$3,893,750	\$4,125,000	\$4,125,000	\$4,125,000	
Phase/Activity (e.g. Planning, PSE, Construction)	FY21	FY22	FY23	FY24	Subtotal for FY21-FY24	Project Total				
Permanent Fencing & Four-quadrant Gates										
Pre-Project Planning	\$787,500	\$262,500	\$0	\$0	\$1,050,000	\$1,050,000				
PE/Environmental	\$0	\$750,000	\$0	\$0	\$750,000	\$750,000				
PS&E	\$0	\$1,000,000	\$0	\$0	\$1,000,000	\$1,000,000				
Right-of-Way	\$0	\$0	\$0	\$0	\$0	\$0				
Construction	\$0	\$0	\$462,500	\$462,500	\$925,000	\$925,000				
Funding Contribution	\$400,000	\$0	\$0	\$0	\$400,000	\$400,000				
Total	\$1,187,500	\$2,012,500	\$462,500	\$462,500	\$4,125,000	\$4,125,000				

Operating Responsibility: JPB

Maintenance Responsibility: JPB

Project Implementation Responsibility: JPB

Project Oversight Responsibility: JPB

ATTACHMENT 1

EXHIBIT B: PROGRESS REPORTING TEMPLATE

REPORTING PERIOD: FROM mm/dd/yyyy TO mm/dd/yyyy

SMCTA Project # 00XXX – [Project Title/Phases]
[Carryover to additional pages as necessary]

Contact: [Name, Title, Phone, email, address]

1) Scope:

[Describe scope of work here, specify project limits, phases of project. Identify the Measure A funded components]

Status Summary: [Provide Status]

Issues: [List any issues, i.e., potential scope changes]

2) Schedule:	Original Baseline		Current Baseline	
Current Forecast				
Major Milestones:	<u>Start</u>	<u>Finish</u>	<u>Start</u>	<u>Finish</u>
<u>Start</u> <u>Finish</u>				
[Activity] MM/DD/YY MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity] MM/DD/YY MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity] MM/DD/YY MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity] MM/DD/YY MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY

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Progress This Period:

[Describe progress and activities]

Measure A Funds Expended This Period: \$

Future Activities, Next Period:

[Describe planned future activities]

Projected Measure A Funds Expenditure Next Period: \$

Issues: *[List any issues, such as impacts to schedule]*

3) Scope of Work Total Budget:

	A	B	C	D	E	F
Phase/Activity	Original Budget (per Funding Agreement)	Updated Cost Estimate	Total Change from Approved (B-A)	Total Expended to Date	% of Revised Budget Expended (D/B)	% of Work Completed
			-		0.00%	0.00%
			-		0.00%	0.00%
			-		0.00%	0.00%
Total Project	-	-	-	-	#DIV/0!	

4) Scope of Work Measure A Budget:

	A	B	C	D	E	F
Phase/Activity	Original Measure	Current Measure	Change in Measure A	Total Measure	% of current	% of Work

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	A allocation (per Funding Agreement)	A allocation	allocation from Approved/Funding Agmt (B-A)	A Expended to date	Measure A allocation expended (D/B)	Completed
					#DIV/0!	
					#DIV/0!	
					#DIV/0!	
<i>Total Scope of Work</i>	\$0	\$0	\$0	\$0	\$0	#DIV/0!

Issues: *[List any issues, i.e., potential cost increases]*

5) Funding: *[List additional sources as needed, Fill out the following matrix for each phase for the Scope of Work, i.e., environmental, design, etc.]*

	Original	Original %	Current	Current %	Estimated at Completion	EAC %
	Contribution		Contribution		Contribution	
SMCTA		#DIV/0!		#DIV/0!		#DIV/0!
Others:						
Federal (specify)		#DIV/0!		#DIV/0!		#DIV/0!
State (specify)						#DIV/0!
Other (specify)						
Total	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!

Issues: *[List any issues such as changes in non-Measure A funding]*

Submit Progress Reports To:
williamsj@samtrans.com

ATTACHMENT 1

EXHIBIT D:

11-11-2020 TOWN-JPB MEMORANDUM OF UNDERSTANDING

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"), (sometimes collectively referred to herein as the "Parties").

RECITALS

A. In the 1860s the San Francisco and San Jose Railroad opened the Fair Oaks (now Atherton) rail stop; and

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 (the "Atherton Station"); and

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; and

D. In 2005, the JPB suspended weekday train service to the Atherton Station due to low ridership and the fact that the 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; and

E. Caltrain is seeking to rebuild this type of station to eliminate the "hold out" rule; and

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 Atherton Caltrain station; and

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; and

H. The Town has long supported rail service in the Town and along the peninsula corridor; and

I. The Town has sought safety improvements along the rail corridor within the Town; and

J. The Town is in the process of constructing its new Town Center and Library adjacent to the Atherton Station and seeks to use a portion of the station property to support that project; and

ATTACHMENT 1

K. The JPB has estimated that closure of the Atherton Station would result in average trip time reductions of three (3) minutes for passing trains and system ridership would thereby increase by approximately 300-500 daily riders; and

L. The JPB has requested the Town's concurrence with closing the Atherton Station; and

M. The Atherton 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; and

N. In an effort to be a good public partner, the 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, as well as other public benefits; and

O. The JPB is committing to seek funding to support the station closure costs and other related community benefits in the Town in support of the closure, as more particularly described in this MOU; and

P. The JPB will fund and undertake Station Closure, Temporary Safety Fencing, and Platform/Crossing Removal through its FY 20/21 Budget. JPB intends to seek approval from the San Mateo County Transportation Authority for at least 50% 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, 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 MOU shall become effective upon the date this agreement is signed by both Parties (the "Effective Date").

2. PUBLIC BENEFITS. The JPB and the Town shall work cooperatively to complete the following corridor and public benefits:

A. Installation of safety fencing along the Atherton 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 Atherton Town Center complex and aesthetic and safety separation from the active rail corridor.

ATTACHMENT 1

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. The JPB shall be responsible for seeking funding for (except where noted that JPB will fully fund), and shall take all other actions necessary to undertake and complete the following actions, and as illustrated in Exhibit D attached hereto and incorporated herein by reference, without any cost to the Town:

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

B. Safety Fencing. The JPB shall install safety fencing along the Atherton 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. The Town shall enter into a Maintenance and Use Agreement with the 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 the JPB shall permit construction and maintenance of the improvements outlined in this MOU. The 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. The 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. The 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 3.G.

F. Watkins Avenue Safety Improvements. The JPB shall conduct all studies, engineering, environmental analysis, and 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. The Town shall cooperate with the JPB with regard to making any regulatory filings needed due to modifications at the Watkins Avenue crossing.

G. Access Improvements. The 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 the JPB's existing property use policies. Funding shown in Exhibit D for the Station Property Site Improvements and Access Improvements may be

ATTACHMENT 1

utilized by the Town for either the purpose described above, or the active transportation improvements described above in section 3.E. Such funding may require the Town to enter into to a separate grant agreement that is consistent with the terms of this MOU.

4. FUNDING AND IMPLEMENTATION SCHEDULE.

A. The JPB and the 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 the Parties.

5. COORDINATION WITH CALTRAIN RAIL – WORK ALONG THE TOWN'S RIGHT OF WAY. Construction activities within the 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 pursuant to Section 9.2, unless otherwise specifically authorized by the 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 MOU. 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 MOU.

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.

9.1 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.

ATTACHMENT 1

9.2 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.

9.3 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 MOU.

9.4 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.

9.5 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.

9.6 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.

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

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

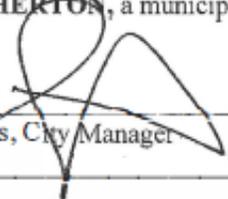
ATTACHMENT 1

9.9 Authority. Each of the signatories to this MOU represent that he/she is authorized to sign this 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.

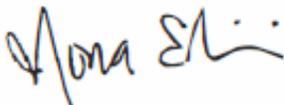
9.10 Third Parties. Nothing set forth in this MOU is intended to benefit or create any legal rights to any person not a party to this MOU.

IN WITNESS WHEREOF, the Parties hereto executed this MOU as of the Effective Date.

TOWN OF ATHERTON, a municipal corporation

By: 
George Rodericks, City Manager
Date signed: _____

Approved as to Form:


By: _____
Attorney for Town

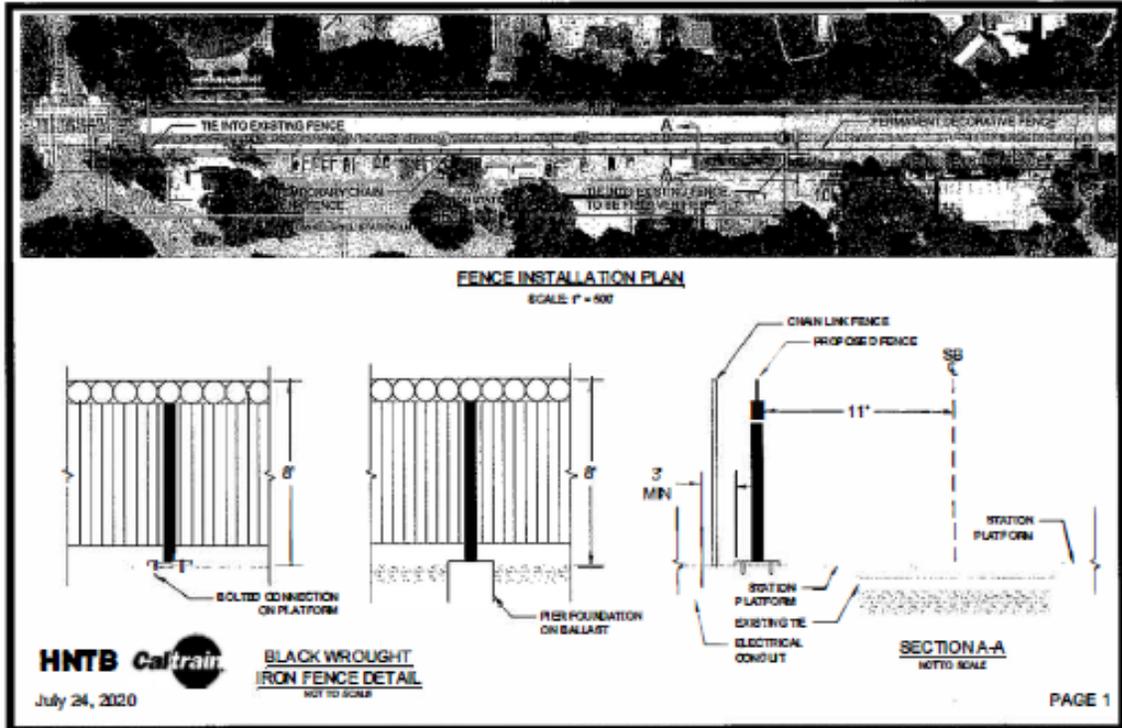
THE PENINSULA CORRIDOR JOINT POWERS BOARD

By: 
Date signed: November 11, 2020

Approved as to Form:

By: 
JPB Attorney

Exhibit A
Safety Fencing



ATTACHMENT 1

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.

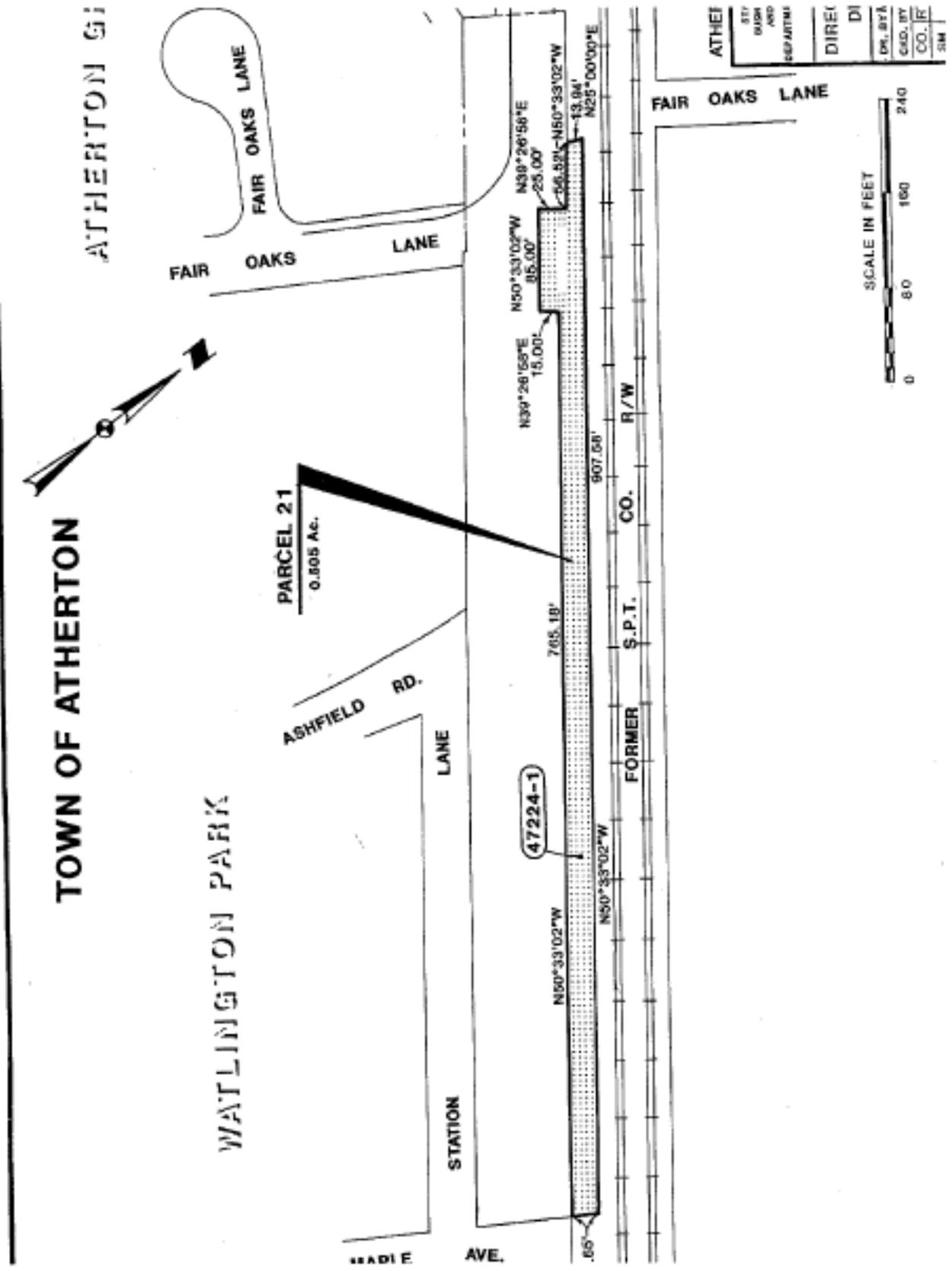


Exhibit C
Center Boarding Platform and Access Crossings

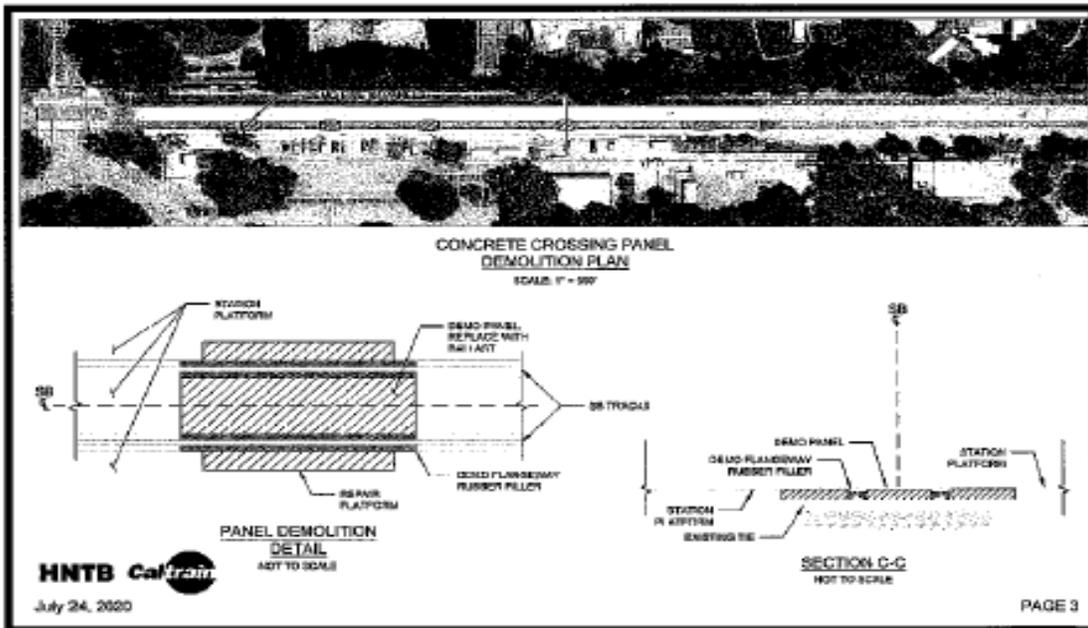
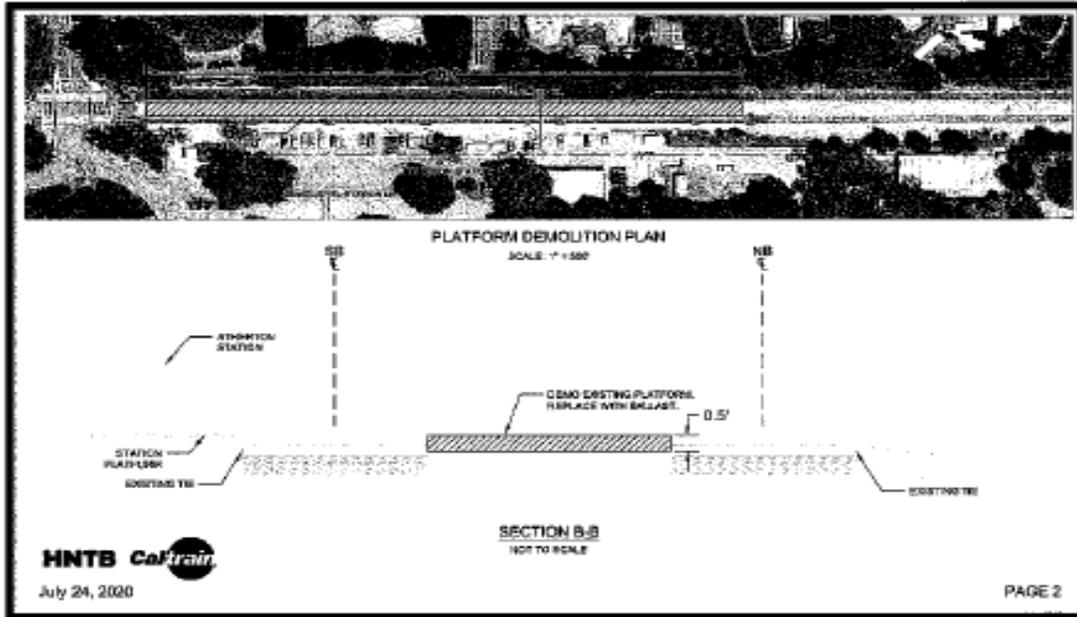


Exhibit D
Funding and Implementation Schedule

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