RAILROAD CONSTRUCTION AND MAINTENANCE AGREEMENT
CALTRAIN GRADE CROSSING IMPROVEMENTS IN THE CITY OF MENLO PARK

This Railroad Construction and Maintenance Agreement (the “Agreement”) is entered into this ______ day of 7/31/2020 2020, by and between the Peninsula Corridor Joint Powers Board, a public agency (“JPB” or “Railroad”), and the City of Menlo Park, a municipal corporation (“City”).

RECITALS

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

B. JPB is the owner of the railroad right-of-way, and specifically that certain real property, fixtures and facilities located in the City between Railroad Mile Posts 27.95 and 29.58 (the “Right-of-Way”). City owns and maintains certain streets and related improvements in the vicinity of the Right-of-Way.

C. City wishes to cooperate with Railroad in the design, construction and maintenance of improvements to the existing grade crossings in the City located at Glenwood Ave (CPUC No. 105E-28.45; U.S. DOT No.754989F) and Oak Grove Ave (CPUC No. 105E-28.65; U.S. DOT No.754990A) (the “Crossing”). These safety improvements are specified in JPB Construction Contract 21-J-C-003 Caltrain Grade Crossings Improvements and all attachments, exhibits and addenda thereto (“Construction Contract”), and plans submitted to and approved by the California Public Utilities Commission under its General Order 88-B (the “Project”). The safety improvements include installation of new:

1. Pavement markings and markers;
2. Medians

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

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

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

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

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

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

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

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

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

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

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

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

   c. **City Permits and Approvals.** City confirms that it has the authority to issue and enforce encroachment permits in its right-of-way to construct items necessary to the Project and Improvements. Prior to construction, City will provide JPB with applications for encroachment permits and other permits necessary for the Project and Improvements. City agrees to issue encroachment permits to JPB or its contractors prior to construction. The encroachment permit will contain standard and special conditions including, but not limited to, specific work hours that are consistent with the Project Construction Contract and mutually agreed upon by the City and JPB. If required, City will issue a Haul Route Permit for routes along City streets between work areas and State highways as provided in its Municipal Code. State highway permits, as required, shall be from Caltrans. Upon completion and acceptance of the Project, JPB shall provide record drawings in a format acceptable to the City.
e. **Maintenance.** Upon completion of construction, the parties shall be responsible to maintain the following Improvements:

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

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

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

g. **City Indemnity.** City shall fully release, indemnify, hold harmless and defend the JPB, its member agencies (the San Mateo County Transit District, the City and County of San Francisco, and the Santa Clara Valley Transportation Authority), TransitAmerica Service Inc. ("TASI"), Union Pacific Railroad Company, and/or their respective officers, directors, employees, contractors and agents (collectively, “JPB Indemnitees”) from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, the passengers, employees and contractors of Railroad), and damage to or loss of property arising out of or resulting from any negligent act or omission by City, its agents, employees, contractors or subcontractors in the maintenance of the City Improvements or in the performance of any other obligation in this Agreement. City’s obligation to defend shall include the payment of all reasonable attorneys fees and all other costs and expenses of suit. If any judgment is rendered against any JPB Indemnitee, City shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the City without prejudice to City’s rights and/or abilities to undertake a defense of said claim.

h. **JPB Indemnity.** JPB shall fully release, indemnify, hold harmless and defend the City, including their respective officers, directors, employees, contractors and agents (collectively, “City Indemnites”) from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, passengers, employees and contractors of City) and damage to or loss of property arising out of or resulting from any negligent act or omission by the JPB, its agents, employees, contractors or subcontractors in the maintenance of the JPB Improvements or in the performance of its obligations or any other obligation under this Agreement. JPB’s obligation to defend shall include the payment of all reasonable attorneys fees and all other costs and expenses of suit. If
any judgment is rendered against City Indemnitees, or any one of them, JPB shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the JPB without prejudice to JPB’s rights and/or abilities to undertake a defense of said claim.

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

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

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

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

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

a. Each party shall pay its pro rata share of the fee for the judge pro tem. Each party shall bear its own fees and expenses in such proceedings and the prevailing party shall not be entitled to reimbursement from the losing party for any such fees or expenses.
b. The judge pro tem shall have the authority to try and decide any or all of the issues in the claim, controversy, action or proceeding, whether of fact or of law, and to report a statement of decision thereon. In any proceedings before the judge pro tem, the issues are to be determined under the statutory and decisional law of the State of California. All local and California Rules of Court shall be applicable to any proceeding before the judge pro tem. All proceedings shall be conducted on consecutive dates without postponement or adjournments.

12. Notices. All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

CITY: City of Menlo Park
701 Laurel St
Menlo Park, CA 94025
Attn: Nicole Nagaya
Transportation Division

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

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

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

15. No Third Party Beneficiaries: Nothing herein shall be considered as creating any rights and/or obligations by any of the parties to this Agreement to any third parties. Specifically, none of the duties to inspect or maintain shall in any way be construed as creating or expanding any additional obligations to any third party beyond those required and established under the applicable statues, regulations, ordinances or law.

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

17. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous oral or written understandings on the same subject. The parties intend this Agreement to be an integrated agreement.
18. **Counterparts.** This Agreement may be executed in counterparts or counterpart signature pages, each of which shall be deemed an original but all of which together shall constitute a single Agreement.

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

**PENINSULA CORRIDOR JOINT POWERS BOARD**

By: ________________________________
Jim Hartnett
Executive Director

Attest:

By: ________________________________
Dora Seamans
JPB Secretary

Approved as to Form:

_______________________________
Attorney for the JPB

**CITY OF MENLO PARK**

By: ________________________________ 7/31/2020
Starla Jerome-Robinson
City Manager

Approved as to Form:

_______________________________
City Attorney
REQUEST TO CPUC STAFF FOR AUTHORIZATION TO
ALTER HIGHWAY-RAIL CROSSING
PURSUANT TO GENERAL ORDER 88-B

1. Date Submitted:

2. Applicant Info

<table>
<thead>
<tr>
<th>Organization Name:</th>
<th>Peninsula Corridor Joint Powers Board [PCJX]</th>
</tr>
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<tbody>
<tr>
<td>Contact Person:</td>
<td>Matt Scanlon</td>
</tr>
<tr>
<td>Title:</td>
<td>Deputy Director, Railroad Systems Engineering</td>
</tr>
<tr>
<td>Street Address:</td>
<td>1250 San Carlos Ave.</td>
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<tr>
<td>City:</td>
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</tr>
<tr>
<td>Zip:</td>
<td>94070-1306</td>
</tr>
<tr>
<td>Phone:</td>
<td>650.622.7819</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:scanlonma@samtrans.com">scanlonma@samtrans.com</a></td>
</tr>
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3. Crossing proposed to be altered

<table>
<thead>
<tr>
<th>PUC Crossing Number:</th>
<th>105E-28.65</th>
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<tbody>
<tr>
<td>U.S. DOT Crossing Number:</td>
<td>754990A</td>
</tr>
<tr>
<td>Street Name:</td>
<td>Oak Grove Avenue</td>
</tr>
<tr>
<td>City:</td>
<td>Menlo Park</td>
</tr>
<tr>
<td>County:</td>
<td>San Mateo</td>
</tr>
<tr>
<td>Average Daily Vehicle Traffic (ADT) on roadway crossing tracks</td>
<td>9,892</td>
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<tr>
<td>Year ADT count taken (should be within last 5 years):</td>
<td>1/23/2014</td>
</tr>
<tr>
<td>Railroad Responsible for Crossing:</td>
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<td>Other Railroads Operating on Tracks:</td>
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<tr>
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<th>Train Volume</th>
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<tbody>
<tr>
<td>Passenger</td>
<td>92</td>
<td>79</td>
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<tr>
<td>Freight</td>
<td>4</td>
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4. Describe Proposed Alterations (including any temporary reduced clearance variance requests):

- Install median on the west and east side of the tracks.
- Paint “STOP HERE” before the warning tactile on all quadrants.
- Paint “KEEP CLEAR” markings in the roadway pavement between the tracks.
- Install Raised Pavement Markers and Road Safety Rubber Bumpers along the sides of the crossings.

5. Describe the public benefits to be achieved by the proposed alterations:
The public will benefit from the proposed project through improvements to public safety. The new medians will deter motorist from driving around a down gate. The KEEP CLEAR markings will clearing delineate the danger zone in the crossing.

6. Explain why a separation of grades is not practicable:
There are no funds available for a grade separation project.

7. Describe crossing warning devices

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8. Temporary Traffic Controls - Include a statement of temporary traffic controls to be provided during construction: The railroad will provide flaggers for the trains and roadway workers.

9. CEQA (Applicable only to grade-separation projects). If the project involves grade separation of an existing at grade crossing, then either a copy of the Notice of Exemption from CEQA or other factual evidence that the project is exempt from Public Resources Code Section 21080.13 must be provided.

10. Signature

I, Matt Scanlon, am an employee of Peninsula Corridor Joint Powers Board (Caltrain) and authorized to sign this GO 88-B authorization request letter on its behalf.

Matt Scanlon, Deputy Director Railroad
Systems Engineering, Caltrain

Request for Authorization to Alter Highway-Rail Crossing
Pursuant to Commission General Order 88-B

Rev: 10-08-2015
Page 2 of 4
Attachments:

1. Vicinity Map - Map of Immediate Vicinity on a scale of 50 to 200 ft/inch
2. Proposed improvements design drawing
11. Evidence of Agreement:

I. Nikki Nagaya, am an employee of the City of Menlo Park and authorized to sign this letter of agreement on its behalf, hereby declare that the City of Menlo Park concurs with the proposed project described above.

Nikki Nagaya, Public Works Director  
Signature and Date

701 Laurel Street  
Menlo Park CA 94025

1. [name of representative of organization concurring to project], am an employee of [name of organization concurring to project] and authorized to sign this letter of agreement on its behalf, hereby declare that [name of organization concurring to project] concurs with the proposed project described above.

Typed Name and Title  
Signature and Date

Address

Note: If there are additional interested parties, make additional copies of this page.
NOTES:
1. MOUNTABLE CENTERLINE MEDIAN SHALL BE YELLOW MODULAR CHANNELIZATION DEVICES SUCH AS Perno F8-300 INTERSTATE GRADE CURB SYSTEM OR APPROVED EQUIPMENT. THE WIDTH OF MOUNTABLE MEDIAN SHALL BE LESS THAN 11", THE HEIGHT OF THE MEDIAN SHALL BE 4". UPRIGHT REFLECTORS SHALL BE YELLOW WITH WHITE REFLECTIVE TAPE. CENTERLINE OF NEW MEDIAN SHALL FOLLOW THE EXISTING CENTERLINE OF THE ROADWAY DETERMINED BY THE MIDPOINT BETWEEN YELLOW STRIPES.
2. CONTRACTOR TO PROVIDE FINAL LAYOUT FOR MEDIAN AFTER COLLECTING EXISTING CONDITION INFORMATION FOR ENGINEER'S APPROVAL PRIOR TO ANY FIELD INSTALLATION.
3. REMOVE EXISTING STRIPING WHERE NEW MEDIAN OR NEW STRIPING IS INSTALLED.
4. SEE CA MUTCD DETAIL 21. LENGTH = 30'-6".
5. SEE CA MUTCD DETAIL 41. LENGTH = 43'-0".
6. DIMENSION FROM CONTROL POINT TO THE TIP OF MEDIAN.

GARWOOD WAY

REALIGNMENT OF FUTURE GARWOOD WAY UNDER CONSTRUCTION

INSTALL 30'-LONG MOUNTABLE CENTERLINE MEDIAN WITH YELLOW UPRIGHT REFLECTORS WITH WHITE REFLECTIVE TAPE (SEE NOTE 1)
REQUEST TO CPUC STAFF FOR AUTHORIZATION TO ALTER HIGHWAY-RAIL CROSSING PURSUANT TO GENERAL ORDER 88-B

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| PUC Crossing Number:        | 105E-28.45                                    |
| U.S. DOT Crossing Number:   | 754989F                                       |
| Street Name:                | Glenwood Avenue                               |
| City:                       | Menlo Park                                    |
| County:                     | San Mateo                                     |
| Average Daily Vehicle Traffic (ADT) on roadway crossing tracks | 5,767                                         |
| Year ADT count taken (should be within last 5 years) | 1/23/2014                                     |
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| Other Railroads Operating on Tracks: | Union Pacific                               |

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<td>2 Commission Standard 9 (flashing light signal assembly with automatic gate arm), 2 Commission Standard 9 Pedestrian Gates</td>
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701 Laurel Street
Menlo Park CA 94025

Signature and Date
7/31/2020

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