

AGREEMENT COVER SHEET

City Manager's Office
701 Laurel Street, Menlo Park, CA 94025
tel 650-330-6620

*Last one
#1825*



Contract #: *2009*

Project Manager: Nicholas Yee

Department: Public Works

Date: 11/15/2016

Time Sensitive New Agreement Attest Only Amendment Choose an item.

First Party: Peninsula Corridor Joint Powers Board

Type of Agreement: Services

Agreement or Project Title: 2017 Caltrain Go Pass

Purpose:

Go pass program for City of Menlo park Employees calendar year 2017.

Agreement Amount: \$ 38,570

Begin Date: 11/15/2016

End Date: 12/31/2017

Approved Budget: \$55,000

Budgeted YR: 2016-17

Available Budget: \$55,000

Account/Funding: 834 20301 5970

Required Approval: Department City Manager City Council

Language Modifications Approved by City Attorney *at Tuesday PW Meetings*

Summary of Modifications:

Attachments:

Two (2) Copies of Agreement

Staff Report

Prior Agreement/Amendments(s) for reference

PO/Check Req

Receive an electronic copy of the executed Agreement

Request to forward PO/Check Req to Finance

Other/Comment _____

Approval:

Nicholas Yee

Supervisor

Justin Murphy

Department Head

City Attorney

Budget/Finance

2008

PENINSULA CORRIDOR JOINT POWERS BOARD
2017 CALTRAIN GO PASS AGREEMENT

Participant Name: City of Menlo Park

Address: 701 Laurel Street, Menlo Park CA 94025

Legal Notice Address (if different from above): _____

Contact Person: Nicholas G. Yee Email: NGYee@menlopark.org

Phone: 650-330-6754 Fax: 650-327-5497

Total Payment: \$38,570.00 Number of Participating Sites: 9

Number of Go Pass Users as defined below: 203

Go Pass Eligibility

Business
All staff working more than 20 hours per week, excluding temporary employees, interns, contractors, consultants and sworn peace officers** are considered "Go Pass Users" for the purpose of this Agreement. Temporary employees, interns, contractors, consultants and sworn peace officers** are not eligible to participate in the Go Pass Program. Notwithstanding the foregoing, if one or both of the Options offered below is selected, employees working less than 20 hours per week and/or interns will be considered "Go Pass Users" under this Agreement.

Options

Include staff working less than 20 hours per week: N/A – Not including
Include interns: N/A – Not including


Residential
All residents five years old and older are considered "Go Pass Users" for the purpose of this Agreement. Employees of residential developments are excluded from the Go Pass Program.

Educational
All students per selected group (i.e. Part-time, Full-time, Post graduates) are considered "Go Pass Users" for the purpose of this Agreement.


Agreement Term: January 1, 2017 through December 31, 2017

Participant agrees to the attached terms and conditions

CITY OF MENLO PARK *

By: 
Print Name: Alex D. Meluskey
Its: City Manager

PENINSULA CORRIDOR JOINT POWERS BOARD

By: 
Print Name: Seamus P. Murphy
Its: Chief Communications Officer

~~By: _____
Print Name: _____
Its: _____~~

* If Participant is a corporation or limited liability company, two corporate officers must sign on behalf of the corporation as follows: 1) the chairman of the board, president or vice-president; and 2) the secretary, assistant secretary, chief financial officer, or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the JPB is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws). ** Uniformed and non-uniformed, sworn peace officers are allowed to ride Caltrain for free subject to showing the proper identification.

TERMS AND CONDITIONS

This Go Pass Agreement ("Agreement") is made between the Peninsula Corridor Joint Powers Board, a public agency ("JPB") and the Go Pass Participant ("Participant") identified on page 1 of this Agreement.

1. PAYMENT: Full payment for all Go Pass stickers shall be due prior to JPB issuing stickers. The total cost of participating in the Go Pass program will be the greater of \$15,960.00 or \$190 per eligible Go Pass User, which includes a non-refundable Administration Fee (the "Administration Fee") of \$3 per Go Pass User. If the number of Users increases during 2017, the cost of additional Go Pass stickers will be a pro-rated per amount based on Exhibit A on page 5 of this Agreement. Go Pass Participant may share the cost of participation in the Go Pass program with its Users, but the cost to a particular User cannot be higher than the first-time replacement rate stated in Section 10 below. Participant must submit payment for any invoices within 30 days of the date shown on the invoice. Payments after 60 days will be charged a late fee of \$5 per day. Accepted payment methods include ACH, EFT and Participant checks. Personal Go Pass User checks are not accepted. The return of a check (electronic or paper) issued to JPB will result in a \$25 returned check fee being placed on the account of the Participant.

2. PROGRAM: JPB operates the "Caltrain" rail service between San Francisco and Gilroy, California, and Participant desires to provide a transit benefit for use on Caltrain to all of the Go Pass Users as defined on Page 1, in the form of a sticker affixed to a valid Participant-issued, JPB-approved, Go Pass User photo identification card (hereafter referred to as "Go Pass"). In order to facilitate the Caltrain Go Pass Program ("Program") JPB shall provide the necessary stickers and accept the Go Pass as valid fare media for travel on the Caltrain system. Participant is responsible for any stickers in its possession. Failure to comply with the terms in this Agreement may result in termination pursuant to Section 12.

3. ELIGIBLE PARTICIPANTS: Only individual Participants are eligible to participate in the Program. Participants with multiple locations, branches or campuses are eligible to participate in the Program and must provide a Go Pass User count for each individual Participant site. However, such Participants must enroll in the Program under a single Go Pass Agreement and designate a single contact and administrator. Such Participants' employees/students/residents at non-participating locations are not eligible to participate in the Program.

4. ELIGIBLE GO PASS USER VERIFICATION: Go Passes must be purchased for each and every Go Pass User at each Participant work site participating in the program ("Participating Site(s)"). Participant will be required, prior to the JPB issuing the Go Pass stickers, to provide JPB with a Letter of Intent ("Letter") signed by the Human Resources Director, an officer of the Participant or Development Manager verifying the then-current number of Go Pass Users of the Participant at each Participating Site. If a Business Participant selects an Option identified on Page 1, the letter must indicate the number of Users working more than 20 hours per week, working less than 20 hours per week and/or interns. If there are multiple Participating Sites, the Letter must indicate the individual site addresses and the number of then-current Users at each site. Neither Participant nor any of its affiliates shall be required to participate in the Program with respect to other sites other than the Participating Site(s) identified in the Letter.

5. GO PASS IDENTIFICATION: Participant must have an official Participant-issued photo ID card in order to participate in the Program and must supply a hard copy of that ID card to the JPB for review. Any Participant that doesn't have a photo ID card must create one. The ID card must display a clear Go Pass User headshot, Go Pass User first and last name, have a 1" x 1" square space for the Go Pass sticker and display the Participant name or logo. The ID cannot contain Caltrain's logo as part of the design. If the ID changes, it is the Participant's responsibility to submit the new version to the JPB three weeks in advance for approval. Participants may only use one JPB-approved ID card. The JPB will produce and issue serialized Go Pass stickers which will be distributed to Participant so that Participant can affix them to the Participant-issued Go Pass User ID card. Participant's designated administrator shall place the Go Pass sticker on each eligible Go Pass User's ID card, preferably on the front. Participant shall not distribute the Go Pass stickers to Users, as this practice may lead to unauthorized use of the sticker. Participant shall be responsible for retaining the Go Pass User's ID card or removing the Go Pass sticker from a Go Pass User's ID card when a Go Pass User leaves the employment of the Participant or relocates to non-participating location. Returned ID cards or stickers shall be presented to the JPB for verification upon request. A photocopy of the identification card with the Go Pass sticker attached is acceptable as proof that the Go Pass is no longer in use by a Go Pass User who has left the Participant. All Go Pass stickers allotted to the Participant at the beginning of the Participant's participation in the Program that are not issued to Users are to be returned to the JPB by December 15 of the Agreement year. Go Pass sticker is JPB's property.

6. PROGRAM RECORDS: Participant will create and maintain a file of documents to be available for review upon JPB request ("Go Pass File"). The Go Pass File must include a log (Go Pass Log) of its Users who currently hold Go Passes. The Go Pass Log shall include the Go Pass User's first and last name, unique serial number for the individual pass each Go Pass User holds, pass status (i.e. active, lost, damaged, etc.), date of issue, date of Go Pass User separation, if applicable, and any other pertinent information. The file must also include all separated Go Pass User's ID cards or Go

Pass stickers unless sent to JPB and Participant received an acknowledgement e-mail.

7. SURVEY AND ACKNOWLEDGEMENT: Prior to affixing the Go Pass sticker to the Go Pass User's Participant-issued ID card, Participant shall require each Go Pass User receiving a Go Pass, for the first time, to complete an online questionnaire ("Survey"). Once the Survey is complete, Participant administrator will receive an e-mail confirmation from the Go Pass User via the JPB. As part of completing the survey, the Go Pass User will be required to acknowledge that he or she understands the proper use of the Go Pass. The Surveys may be used to analyze the success of the Program and develop ridership projections for the Program. However, the Surveys are subject to disclosure under requests made pursuant to the California Public Records Act. Prior to disclosing Surveys, any identifying information concerning the Participant and/or the Go Pass User shall be redacted.

8. PROGRAM ANALYSIS AND AUDIT: JPB reserves the right to audit Participant's Go Pass Program at any point during the Program year with five (5) working days' notice. The purpose of the audit is to ensure that appropriate accounting, sticker distribution and security procedures are in place. JPB has the right to audit any internal Participant Go Pass-associated records, including Participant's Go Pass File. A current list of qualifying Users shall be provided to the JPB upon request. Within 10 working days of receipt of any audit report from the JPB, Participant must, in conjunction with JPB staff, develop a mutually agreeable action plan to satisfy any audit findings. If no mutually agreeable plan can be developed, JPB may terminate the Program upon 10-days' notice pursuant to the terms of Section 12, Termination.

9. PARKING PERMITS: Monthly parking permits for Caltrain lots may be purchased through any Caltrain station ticket machine. Go Pass Users will be required to complete an application for an access code in order to purchase the permit through the machine.

10. LOST, STOLEN, DAMAGED AND REPLACEMENT GO PASSES: For lost or stolen Go Passes, JPB will charge a \$190 first-time replacement fee. Participant must submit to the JPB documentation including the Go Pass User first and last name and Go Pass serial number. For stolen Go Passes, the JPB will replace the Go Pass at no additional charge provided that a police report is supplied to the JPB which describes the Go Pass as stolen. If the same Go Pass User loses the Go Pass or has the Go Pass stolen a second time, the replacement fee will be 2x the first-time replacement fee regardless of whether a police report is provided to the JPB. If a replacement Go Pass is issued and then the original is found, JPB will not provide a refund. Participant may not resell the Go Passes to Users at a rate higher than the replacement fee. A Go Pass will not be issued as a replacement for lost or stolen Go Passes a third time.

For Damaged Go Passes: If the Participant or a Go Pass User damages a Participant-issued ID card and thus renders the Go Pass sticker unusable, or if the sticker itself is damaged, a replacement Go Pass sticker may be issued to the Go Pass User or taken from the Participant's Go Pass inventory, provided that the Participant documents that the Go Pass sticker has been taken out of circulation in its Go Pass File. Participant must retain the damaged ID card or Go Pass sticker in its Go Pass File unless sent to JPB and Participant received an acknowledgement e-mail. If no additional stickers remain in the Participant inventory, the Participant shall return damaged Go Pass stickers or ID cards, or a photocopy, with complete documentation to the JPB prior to the JPB issuing a replacement Go Pass sticker to Participant at no charge. This courtesy will be extended no more than two times per Go Pass User per calendar year, after which the replacement cost for a damaged Go Pass sticker will be \$190.

For Separated Users: If the Go Pass User separates with the Participant, Participant shall retain the separated Go Pass User ID card or Go Pass sticker in its Go Pass File and document that the Go Pass sticker has been taken out of circulation in its Go Pass Log (See Section 6 above) unless sent to JPB and Participant received an acknowledgement e-mail. If no additional stickers remain in the Participant inventory, the Participant shall return separated Go Pass stickers or ID cards, or a photocopy, prior to the JPB issuing a replacement Go Pass sticker to Participant at no charge.

For Missing Go Passes: Participant shall be responsible for safeguarding the Go Pass stickers prior to issuing them to Users and shall be liable for any loss of Go Pass stickers. Replacement Go Pass stickers shall be issued under the lost terms above.

11. QUARTERLY REPORTING: Participant must submit a quarterly report to JPB by 3/1/17, 6/1/17, 9/1/17 and 12/1/17. The quarterly report must list all lost, stolen, damaged and replacement Go Passes issued and separated Users. It must include the reason for replacement, if applicable, Go Pass User first and last name and corresponding Go Pass serial number and the current number of Users working at the work site(s) /residing in the development enrolled in the program. Participant may submit its Go Pass Log (See Section 6 above) in lieu of the quarterly report.

12. TERMINATION: Either party may terminate this Agreement by giving the other party written notice at least 90 days prior to the desired termination date, which shall be the last day of a calendar month. If either party terminates the

Agreement pursuant to this provision, JPB shall refund to Participant a pro-rata portion of Participant's total payment in accordance with the Proration Schedule attached to and incorporated in this Agreement as Exhibit A, less the Administration Fee, as listed on Page 1, within 30 days of the termination date, provided that within 10 working days of the effective termination date: (a) all undistributed Go Passes issued to Participant are returned to JPB and (b) Participant verifies in writing that it has made every Good faith effort to collect or destroy all Go Passes that have been distributed to Users. In the event Participant fails to comply with the terms of this Agreement, JPB may terminate this Agreement with 15 days' notice. Non-compliance by Participant may make Participant ineligible to participate in the Go Pass program in subsequent years. This Agreement shall automatically terminate if Participant discontinues its business at the Participating Site(s) and it will be up to Participant to notify its Go Pass Users that the Go Pass will no longer be valid. In the event that Go Pass Users continue to use invalid Go passes, JPB will confiscate such passes in accordance with Section 14.

13. MISUSE OF GO PASS: The Go Pass constitutes a Go Pass sticker affixed to a valid, Participant-issued, JPB-approved Go Pass User photo ID card. Any other use of the Go Pass sticker is prohibited and will not be valid as fare payment on Caltrain.

Go Pass Participant – JPB agrees not to pursue any claims or demands against Participant for a Go Pass User's unauthorized use of the Go Pass, unless the unauthorized use is the result of Participant's failure to follow the sticker issuance procedures in Section 5, gross negligence or willful misconduct. The transfer of the Go Pass sticker constitutes fare evasion, a violation of California Penal Code 640. At the time of Go Pass issuance, Participant shall (1) notify its Users that Go Pass stickers are non-transferrable and that transferring a Go Pass constitutes fare evasion under the law, and (2) shall remind Users of their agreement to the terms of usage provided in the Survey.

Go Pass User - All Go Pass Users shall be subject to JPB's fare inspection regulations. JPB may confiscate and/or destroy the Go Pass sticker and pursue claims or demands against, or seek prosecution of, anyone who duplicates, alters, transfers, sells or commits unauthorized use of the Go Pass. Unauthorized use of the Go Pass includes, but is not limited to, allowing a non-eligible person to use a Go Pass or affixing a Go Pass sticker to any form of identification other than a valid Participant-issued, JPB-approved, Go Pass User ID card.

JPB may cancel any individual Go Pass if it has reason to believe that the Go Pass was issued and/or used in a manner that fails to comply with the requirements herein. JPB will notify Participant if it has any such concerns and, after appropriate investigation, revoke those passes in question. Participant agrees to cooperate with JPB in such an investigation, including assisting the JPB in determining the identity of the Go Pass User(s) who are alleged to have misused the Go Pass. Participant waives all remedies and rights to refunds for any Go Passes revoked for misuse. JPB will incur no liability resulting from confiscation of misused Go passes or Go passes from a Go Pass User whose Participant's Agreement has been terminated.

14. PROTECTION OF PRIVACY: JPB acknowledges that it may review documents in the Go Pass File or other materials that contain personal or confidential information about the Participant or the Go Pass User ("Information"). Except as required to administer the Go Pass Program in accordance with this Agreement or as otherwise required by law, JPB agrees not to use or to disclose to third parties the Information. JPB may use Participant's name in a list showing Go Pass Program participants. Notwithstanding the foregoing, JPB shall be free to use and disclose to third parties information in an aggregate format that does not personally identify a Go Pass User.

15. ENTIRE AGREEMENT: This contract contains the entire Agreement between the parties hereto for the term specified on Page 1 of this Agreement and cannot be changed or altered except by written agreement signed by both parties hereto. Neither party shall be bound by any oral agreement or other understandings contrary to or in addition to the terms and conditions as stated herein.

16. SUCCESSORS AND ASSIGNS: The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Participant and JPB and, except as otherwise provided herein, their personal representatives and successors and assigns.

17. NO THIRD-PARTY BENEFICIARIES: There are no third-party beneficiaries to this Agreement.

18. NO JOINT VENTURE: It is expressly agreed that Participant is not, in any way or for any purpose, a partner of the JPB in the conduct of JPB's business or a member of a joint enterprise with JPB, and does not assume any responsibility for JPB's conduct or performance of this Agreement. It is expressly agreed that JPB is not, in any way or for any purpose, a partner of the Participant in the conduct of Participant's business or a member of a joint enterprise with Participant, and does not assume any responsibility for Participant's conduct or performance of this Agreement.

19. ATTORNEYS' FEES: In the event that either JPB or Participant fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

20. GOVERNING LAW: This Agreement shall be governed and construed in accordance with the laws of the State of California. Any action relating to, and all disputes arising under, this Agreement shall be instituted and prosecuted in a court of competent jurisdiction in the State of California.

21. NOTICES: All notices, requests, communications and legal notices to be made or given to Participant under this Agreement shall be addressed as shown on page 1 of this Agreement. All notices, including legal notices, communications and requests to be made or given to JPB shall be addressed as follows:

Peninsula Corridor Joint Powers Board (Caltrain)
1250 San Carlos Ave.
San Carlos, CA 94070-1306
Attn: Market Research and Development

**Exhibit A
Proration Schedule**

New Participants

Effective Date (falling in month)	Portion of Total Fee per Go Pass More than Minimum (includes administration fee)	Portion of Total Fee per Go Pass Less than Minimum (includes administration fee)
February	\$174.42	\$14,651.00
March	\$158.83	\$13,342.00
April	\$143.25	\$12,033.00
May	\$127.67	\$10,724.00
June	\$112.08	\$9,415.00
July	\$96.50	\$8,106.00
August	\$80.92	\$6,797.00
September	\$65.33	\$5,488.00
October	\$49.75	\$4,179.00
November	\$34.17	\$2,870.00
December	\$18.58	\$1,561.00

Terminating Participants

Effective Termination Date (falling in month)	Portion of Total Fee Returned per Go Pass More than Minimum (less administration fees)	Portion of Total Fee Returned per Go Pass Less than Minimum (less administration fees)
February	\$171.42	\$14,399.00
March	\$155.83	\$13,090.00
April	\$140.25	\$11,781.00
May	\$124.67	\$10,472.00
June	\$109.08	\$9,163.00
July	\$93.50	\$7,854.00
August	\$77.92	\$6,545.00
September	\$62.33	\$5,236.00
October	\$46.75	\$3,927.00
November	\$31.17	\$2,618.00
December	\$15.58	\$1,309.00