



STAFF REPORT

City Council

Meeting Date:

5/24/2016

Staff Report Number:

16-082-CC

Consent Calendar:

Authorize the City Manager to enter into a comprehensive agreement with the Peninsula Joint Powers Board on the Caltrain Peninsula Corridor Electrification Project (PCEP)

Recommendation

Staff recommends that the Council authorize the City Manager to enter into a comprehensive agreement with the Peninsula Joint Powers Board on the Caltrain Peninsula Corridor Electrification Project (PCEP).

Policy Issues

This item is included in the Council's adopted 2016 Work Plan to coordinate with Caltrain to complete PCEP design review.

Background

The Peninsula JPB currently runs commuter rail service (Caltrain) along the peninsula. The current system utilizes traditional diesel locomotives to run the trains. To improve efficiency and reduce their reliance on fossil fuels, Caltrain has proposed a modification to electrify the corridor and run Electric Multiple Units (EMU) for the system. EMUs consist of self-propelled carriages that are powered by electricity. The electrification would include overhead catenary power lines that would provide power to the EMUs.

Caltrain prepared an Environmental Impact Report (EIR) for the project, which was initiated in early 2013. The City Council authorized submission of comments on the Notice of Preparation (NOP) on March 5, 2013 and on the Draft EIR on April 1, 2014. Caltrain prepared a Final EIR and certified the document on January 8, 2015. Caltrain currently plans to complete the Electrification Project by fiscal year 2020-21.

Analysis

Prior to advancing the project into detailed design and construction in mid-2016, Caltrain has requested to enter into a comprehensive agreement with each public agency along the rail corridor to memorialize expectations from Caltrain and for the City, to ensure timely review of plans and to identify coordination items necessary for the project design and construction. Construction may start as early as 2017.

City staff and Greg Rubens, contract City attorney that supports the City on rail-related issues, have reviewed the MOU (Attachment A). The agreement includes terms for items as summarized below:

- Terms for Caltrain to cover all City costs for necessary project review and inspection

- Summary of relevant mitigation measures identified in the EIR, including traffic signal timing modifications, measures to reduce light spillover into residential areas during nighttime construction, and preparation of a Tree Avoidance, Minimization, and Replacement Plan
- Identification, replacement and potential betterment of any City improvements (streets, curbs, gutters, sidewalks, traffic control devices, utilities, etc.)
- Anticipated work hours, construction staging areas and truck routes
- Notification requirements and construction complaint-resolution process
- Encroachment permit and design review process and expected timelines for review
- Dispute resolution process

Impact on City Resources

The cost of staff time for the City's review of the PCEP is proposed to be covered by Caltrain as outlined in the proposed MOU. This project is anticipated to be completed with current staffing levels and contract review assistance as needed.

Environmental Review

This Council action does not require environmental review under the California Environmental Quality Act (CEQA). The Caltrain PCEP was environmentally cleared by the JPB (lead agency) on January 8, 2015.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Comprehensive Agreement between the Peninsula Joint Powers Board and City of Menlo Park Relating to the Peninsula Corridor Electrification Project

Report prepared by:
Nicole H. Nagaya, P.E, Transportation Manager

COMPREHENSIVE AGREEMENT
BETWEEN
THE PENINSULA CORRIDOR JOINT POWERS BOARD
AND CITY OF MENLO PARK
RELATING TO THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT

This Comprehensive Agreement (“**Agreement**”) between the City of Menlo Park, a municipal corporation city of the State of California (“**City**”) and the Peninsula Corridor Joint Powers Board, a joint exercise of powers agency (“**JPB**”) (collectively, the “**Parties**”) is entered into as of this _____ day of _____ 201__ (the “**Effective Date**”), each of which is referred to herein individually as “**Party**” and jointly as “**Parties.**”

RECITALS

- A. City is a duly established municipal corporation organized and existing under the laws of the State of California.
- B. JPB is a joint exercise of powers agency organized and existing under the laws of the State of California.
- C. JPB is the owner of the Peninsula Corridor Railroad right-of-way and specifically certain real property and fixtures located in the City of Menlo Park between milepost (MP) 28.1 and 29.7, (the “**Right-of-Way**”), and includes the four vehicular at-grade and one pedestrian at-grade crossing at the Menlo Park Station.
- D. The Peninsula Corridor Electrification Project (“**Project**”) consists of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4th and King Street Station in San Francisco and the Tamien Station in San Jose.
- E. In 2009, the JPB completed a Final Environmental Assessment/Environmental Impact Report (EA/EIR) for the Project. Based upon that document, the Federal Transit Administration issued a Finding of No Significant Impact (FONSI) in 2009, which completed the federal environmental review for the Project in accordance with the National Environmental Policy Act (NEPA).
- F. On January 31, 2013, the JPB issued a Notice of Preparation of an Environmental Impact Report and, in February, 2014, issued a Draft Environmental Impact Report for a 60-day comment period ending on April 29, 2014. A Final Environmental Impact Report was issued in December 2014.
- G. On January 8, 2015, pursuant to Resolution No. 2015-03, the JPB certified conformance with the California Environmental Quality Act (CEQA) to the extent that it is applicable to the Project, and certified the Final Environmental Impact Report (FEIR) for the Project.
- H. On January 8, 2015, pursuant to Resolution No. 2015-04, the JPB adopted CEQA findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting plan.
- I. On February 5, 2015, pursuant to Resolution No. 2015-08 the JPB authorized the issuance of the PCEP Project Design Build Request for Proposals to engage a Design-Build Contractor to construct the Project.

- J. The City desires to cooperate with the JPB to facilitate the design and construction of the Project. The JPB and the City desire to memorialize the interagency cooperation and consultation between the Parties in this Agreement.
- K. The Parties acknowledge that the Project is funded in part with funds made available by the Federal Transit Administration. Accordingly, this Agreement and the obligations imposed on the Parties hereby shall be interpreted in a manner consistent with both Federal and State laws and regulations.
- L. The locations of certain elements of the Project may require the use of certain City streets for hauling operations and staging of construction during construction of the Project.
- M. The JPB and the City acknowledge that it will be necessary to develop procedures to ensure careful and continued cooperation between the Parties, including the following: (1) procedures to promote cooperation during the design and construction process; (2) procedures to avoid all unnecessary delays to either the contracting, design or construction process; and (3) procedures for inspecting the construction, relocation, and replacement, as necessary, of City Improvements.
- N. The Parties recognize and agree that this Agreement may not reasonably anticipate all aspects of the Project and changes thereto which may occur due to unforeseen circumstances. Accordingly, the Parties acknowledge their respective obligations to act reasonably and in good faith and to modify the terms hereof when necessary to accomplish their mutual goals.

SECTION 1: AFFIRMATION OF RECITALS AND OPERATIVE DATE

The JPB and the City affirm that the above recitals are true and correct.

SECTION 2: DEFINITIONS

The following definitions relate to such terms found in the entire Agreement, including, without limitation, all Exhibits hereto.

- A. **“City”** means City of Menlo Park, its officers, employees, agents, consultants and contractors.
- B. **“City Improvements”** means City streets (including curbs, gutters and sidewalks), traffic control devices, storm drains, sanitary sewers, water lines, hydrants, electroliers, landscaping, irrigation systems, street signs, City-owned or -maintained trees, and all other public facilities and appurtenances.
- C. **“Contract Documents”** means the executed Design-Build Contract, Contract Change Orders and additional documents incorporated by express reference into the Contract.
- D. **“JPB”** means the Peninsula Corridor Joint Powers Board, its employees, agents, consultants, and contractors.

- E. **"Project Improvements"** means all structures, features and fixtures, including tree replacements, constructed or installed for the Project, including all necessary changes to signal, fiber optic facilities and appurtenances, relocation of all utilities and pipelines of any kind within the Right-of-Way, grading, drainage, access roadways to the Right-of-Way, preliminary and construction engineering, and any and/or all other work of every kind and character necessary to build the Project.
- F. **"Project"** means the Peninsula Corridor Electrification Project described in the FEIR, consisting of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4th and King Street Station in San Francisco and the Tamien Station in San Jose.

SECTION 3: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to memorialize the Parties' consultation and cooperation, designate their respective rights and obligations, and ensure cooperation between the JPB and the City in connection with the design and construction of the Project.

SECTION 4: PROJECT FEATURES

The Project features set forth below are not intended to constitute a comprehensive list of Project features, but are described in this Agreement to provide a general description of the elements of the Project. A comprehensive list of Project features associated with the Project is set forth in the FEIR.

- A. The Project will install facility improvements, including overhead catenary wires, support poles, traction power facilities, and other appurtenances necessary to convert service from the existing diesel-locomotive driven trains to Electric Multiple Units (EMUs). EMUs are self-propelled electric trains that do not have a separate locomotive. EMUs can accelerate and decelerate at faster rates than diesel-powered trains, even with longer trains. With EMUs, Caltrain can run longer trains without degrading speeds, thus increasing peak-period capacity. This will support operations of up to 6 Caltrain trains per peak hour per direction (an increase from 5 trains per peak hour per direction at present). Electrification of the rail line is scheduled to be operational by 2020/2021. The Project includes operating 114 trains per day between San Jose and San Francisco and six trains per day between Gilroy and San Jose.
- B. The Project will include the installation of 130 to 140 single-track miles of Overhead Contact System (OCS) for the distribution of electrical power to the new electric rolling stock. The OCS would be powered from a 25 kilovolt (kV), 60 Hertz (Hz), single-phase, alternating current (AC) traction power system consisting of the following Traction Power Facilities (TPF): two Traction Power Substations, one Switching Station and seven Paralleling Stations. The OCS poles are typically about 180 to 200 feet apart. On curved sections, the span lengths between supports must be reduced. The OCS poles are placed approximately 9 – 11 feet from the centerline of the tracks. Associated with the OCS, an electric safety zone to adjacent vegetation is needed. This electric safety zone distance is approximately 10 feet from the face of the OCS pole.

- C. Specific to the City, and based on preliminary design, the Project elements anticipated within the City, include:
- (1) OCS poles. Installation of foundations, poles and appurtenances.
 - (2) Stringing wire for OCS. Which will require temporary street closures when work occurs at an existing at-grade crossing. Specificity about the closures will be included in the Traffic Control Plan.
 - (3) Staging areas. The PCEP FEIR identified one potential staging area for the DB Contractor's use. The location of this staging area is from approximately Encinal Avenue to Glenwood Avenue and is within the JPB right-of-way. This location is shown in Exhibit A. Additional staging areas will comply with applicable mitigation measures and will be coordinated with the City.

SECTION 5: GENERAL COMMITMENTS

- A. The JPB will avoid affecting any City Improvements to the extent feasible. In the event a City Improvement requires modification and/or relocation, JPB shall be responsible for the design and construction of the City Improvement. A comprehensive list of affected City Improvements will be prepared by the JPB, and will be provided to the City for review. The City agrees to cooperate with the JPB to identify all City Improvements affected by the Project. Any replacement City Improvements will be of a similar kind and capacity to the existing facilities per existing City codes. If City desires to increase size or upgrade a City Improvement beyond its existing codes, it shall be responsible for any additional costs for that change. The Parties will agree to a protocol for the review of plans and the inspection of affected City Improvements.
- B. In order to minimize disruption to the Caltrain passenger service during project construction as well as maximize protection of people and property, most of the Project work will be performed outside of the weekday peak commute hours [including at night](#).
- C. The JPB will provide the City with plan(s) addressing haul routes along city streets and roadways, and any staging areas or property owned or controlled by the City for City review and approval, which approval shall not be unreasonably withheld. JPB will also collaborate with the City to document existing conditions by video and photographic record of the proposed and accepted haul routes for comparison at the end of the project. The JPB shall be responsible for damages to City Improvements but only to the extent and in the event that use of the City Improvements for this Project creates damages that exceed ordinary wear and tear of the City Improvements.
- D. The JPB and the City will cooperate to reduce impacts of the Project on local police, fire, and emergency services.
- E. During construction of the Project, the JPB shall provide the City with a list of JPB personnel to be contacted in the event of an emergency on the Project construction site within the City.

- F. During construction of the Project, the JPB will take responsibility for maintaining the security of the JPB construction areas within the City in consultation with the City's Police Department, as necessary.
- G. For the duration of Project construction, the JPB shall assign a lead representative to handle Project-related complaints from City residents, City officials, and/or staff. The JPB shall provide written notice to the City and shall publicize the telephone number, and E-mail address of the lead representative. The JPB shall make an initial response to all complaints within a reasonable period of time not to exceed 72 hours. For urgent matters, the JPB will make initial contact immediately. Follow-up of complaints will be completed within a reasonable time following initial contact with the complainant. The JPB shall take all reasonable actions to ensure that its lead representative is authorized to and does, in fact, ensure that corrective actions are implemented within a reasonable period of time following the determination that corrective actions are appropriate.
- H. Construction Noticing. The JPB will provide weekly construction updates via social media, the Caltrain website and by email. The JPB will provide a 60-day advance notice for construction within the City. The JPB will provide an initial notice of road and driveway closures 7 days in advance of the closure and the visual notifications for closures will be posted 72 hours in advance.
- I. Tree Trimming and Tree Removal. JPB will comply with any City tree permit requirements for tree trimming or removal involving public or private property outside of the JPB property.
- J. Encroachment Permits. JPB will obtain any City permit legally required for construction of the Project. The City shall not unreasonably withhold approval of the issuance of any such permit.
- K. During construction of the Project, the JPB Contractors shall adhere to construction best practices for dust control and material and equipment storage.

SECTION 6: MITIGATION MEASURES

The JPB will require the Design/Build Contractor to perform the work to implement the mitigation measures outlined in the Mitigation, Monitoring and Reporting Plan adopted by the JPB on January 8, 2015, to include the following:

- A. Mitigation Measure Aesthetics-2b: Aesthetic treatments for OCS poles, TPFs in sensitive visual locations.
 - (1) The JPB shall coordinate with the City to obtain their input into OCS pole design relative to station aesthetics.

- B. Mitigation Measure Aesthetics-4a: Minimize spillover light during nighttime construction adjacent to residential neighborhoods. The JPB will direct any artificial lighting onto the worksite and away from adjacent residential areas at all times.
- C. Mitigation Measure Biology-5: A Tree Avoidance, Minimization, and Replacement Plan will be developed in consultation with a certified arborist and in consultation with cities, counties, and affected property owners along the Project. A complete field survey of the entire Project area will be completed to support the plan development by preparing a tree inventory for all affected areas.
- D. Mitigation Measure Traffic-1c: Implement Signal optimization and/or roadway geometry improvements will be implemented at impacted intersections for the 2020 Project condition per FEIR. The impacted intersections for the City are:
 - (1) El Camino Real and Glenwood Avenue, and
 - (2) El Camino Real and Oak Grove Avenue.

The mitigation strategy identified in the FEIR is adjust signal timings to better serve traffic after the project implementation, currently planned for revenue service in 2020.

SECTION 7: CITY IMPROVEMENTS

- A. Construction Standards: The JPB is designing and constructing the Project. The design and construction of the Project shall conform with JPB’s adopted standards, specifically JPB Standards Dated September 30th, 2011 and the Design/Build Contract Documents. Any work required to repair or replace City Improvements damaged or affected by the Project shall conform with the City’s adopted codes. If no City or codes exist for such work, it shall be designed to applicable Caltrans standards, or if no Caltrans standards apply, it shall be designed to such standards as JPB shall reasonably determine to apply. The JPB shall have the right to make changes to the design of work related to the City Improvements during construction, subject to the terms of this agreement and concurrence from the City.
- B. Design Review: The JPB will do a page-turn design review, or detailed walkthrough of the Project elements within the City limits at the 65% and Issued for Construction design levels prior to official submittal of Issued for Construction plans for final approval. All comments received will be addressed prior to official submittal of Issued for Construction plans. Design review for Project elements within the JPB Right-of-Way is for informational purposes only and is not for City approval. The City shall review and approve the design of any required work that alters or replaces City Improvements within 21 days of receipt of the official submittal of the Issued for Construction plans.
- C. Permits: Following approval of the official submittal of Issued for Construction plans, the City will issue all necessary permits for work to be performed in the City in accordance with the City’s Municipal Code. The JPB will pay the City for its staff time and/or consultant costs spent on review of design documents or inspections of City

Improvements. The JPB shall make an initial deposit of \$25,000 to the City for design review and inspection costs. The JPB will pay the City's standard permit and processing fees, as applicable to the Project. The method of payment is described below in Section 8. The City will cooperate with the JPB in identifying all City permits necessary for work to be performed under this Agreement. With the approved official submittal of Issued for Construction plans, the City shall issue the permits no later than fourteen (14) calendar days following the City's receipt of such permit submission, except in cases where City staff does not have the expertise to evaluate the proposed design. Such cases will be noted by the City during the page-turn design review noted in Section 7B above.

- D. Coordination: During construction of the Project, the City shall provide the JPB with a list of City personnel to be contacted in the event of an emergency on the Project construction site within the City.
- E. Obligations: The Parties shall agree in writing with regard to any new or replacement City Improvements that will be the obligation of JPB to construct. Unless specifically authorized in writing, JPB shall not be required to replace any City Improvement with facilities of greater capacity, durability or efficiency than the one replaced, unless such replacement is required by the Project. Upon acceptance of any Project work related to City Improvements, City will have the responsibility for any maintenance, repairs, alterations or future upgrades or replacements.

SECTION 8: INVOICING REQUIREMENTS AND METHOD OF PAYMENT TO THE CITY

- A. The JPB shall make an initial deposit of \$25,000 to the City for costs incurred by the City for design review and inspection costs for the Project as described in Section 7 above. The JPB will pay the City's standard permit and processing fees, as applicable to the Project. The City shall notify the JPB when 75% of the initial deposit has been spent, at which time the JPB and the City shall review the spent and remaining budget to determine any additional needs beyond the initial deposit. Additional deposit amounts shall be reviewed by the JPB and the City and shall be based on a reasonable estimate of the work required by City. If the \$25,000 deposit is not exhausted at conclusion of the project, any unused funds shall be returned to the JPB within sixty (60) days.

SECTION 9: TRAFFIC MAINTENANCE AND DETOURS

The JPB will assume full responsibility for maintaining in service, or causing to be maintained in service, all traffic detours during JPB construction of the Project in a manner reasonably satisfactory to the City, subject to and consistent with all applicable California Department of Transportation requirements. All traffic control, lane closure, and detour plans shall be submitted to the City for approval prior to commencement of any phase of construction requiring either traffic control or detour(s). The traffic control, lane closure, and detour plans shall specify the length of time that portions of City streets will likely be closed.

- A. Although certain City streets will, of necessity, be partially closed for some period during construction of the Project, the JPB will, to the greatest extent practicable, maintain in

service, or cause to be maintained in service, all City streets and related City Improvements within the limits of the Project area in a manner reasonably satisfactory to the City. At a minimum, two-way service will be maintained on all City streets affected by the Project, unless otherwise agreed to by the JPB and the City.

- B.** In its Contract Documents, the JPB will require its contractor(s) to submit traffic plans showing haul routes, temporary closures, and the method of traffic maintenance and staging to the City for approval. The City shall approve or disapprove the plans no later than twenty-one (21) calendar days following the City's receipt of such plans.
- C.** In its Contract Documents, the JPB will, prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, require that its contractor(s) provide at least fourteen (14) calendar days' notice of such closure to the City. Deviation from this fourteen (14) calendar day requirement may be permitted in bona fide emergency situations as determined by the JPB and the City.
- D.** At least seventy two (72) hours prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, the JPB will post notice of such closure and contact the City to inform of the work. Such notice of any road closure shall include, at minimum, use of an electronic sign. The JPB will also provide closure-information fliers to residents, schools, and businesses within a five hundred (500) foot radius of any such partial closure and within a one thousand (1000) foot radius of any such full closure.

SECTION 10: EROSION CONTROL PLAN

The JPB shall provide an erosion control plan to retain sediments on site in accordance with the JPB's Storm Water Pollution Prevention Program and Contract Documents. All stockpiled earthwork shall be protected from wind and water erosion. Dust control shall be undertaken in accordance with the JPB Contract Documents and shall provide for dust, erosion and pollution control seven days a week, 24 hours a day for the duration of construction activities

SECTION 11: DESIGNATED AGENT OF THE PARTIES

The City contact person for all matters related to this Agreement will be the City Manager or his or her designee. The JPB's contact person for all matters related to this Agreement will be the Lin Guan (650-508-7976; guanz@samtrans.com) or his designee.

SECTION 12: INDEMNIFICATION

A. City's Indemnity.

- (1)** City shall fully release, indemnify, hold harmless and defend the JPB, as well as 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, the Union Pacific Railroad Company, and/or their respective officers, directors, employees, contractors and agents

(collectively, “JPB 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, the passengers, employees and contractors of City and JPB), and damage to or loss of property arising out of or resulting from any act or omission by City, its agents, employees, contractors or subcontractors in the performance of its obligations under this Agreement.

- (2) City’s obligation to defend shall include the payment of all reasonable attorney’s fees and all other costs and expenses of suit, and 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.

B. JPB’s Indemnity.

- (1) JPB shall fully release, indemnify, hold harmless and defend the City and its 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 JPB) and damage to or loss of property arising out of or resulting from any act or omission by the JPB, its agents, employees, contractors or subcontractors in performance of its obligations under this Agreement.

- (2) JPB’s obligation to defend shall include the payment of all reasonable attorney’s fees and all other costs and expenses of suit, and if any judgment is rendered against City Indemnitee’s 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.

C. Severability. It is the intention of the Parties that should any term of this indemnity provision be found to be void or unenforceable; the remainder of the provision shall remain in full force and effect.

D. Survival. This indemnification shall survive termination or expiration of this Agreement.

SECTION 13: INSURANCE

The JPB shall include in its Contract Documents a requirement that the City be named an additional insured on all policies of insurance required of its contractors.

SECTION 14: RESOLUTION OF DISPUTES

A. Prior to commencement of any formal litigation arising out of this Agreement, the Parties shall submit the matters in controversy 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. Said judge is to be selected by counsel for the Parties from a list of retired judges furnished by the presiding judge of the County of San Mateo. If counsel are unable to select a judge pro tem said judge will be selected by the presiding judge from the list provided.

- B.** 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.
- C.** 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 except as agreed to by the parties or ordered by the Judge Pro tem.

SECTION 15: NOTICES

All notices required hereunder may be given by personal delivery, US Mail, or courier service (e.g. federal express) transmission. Notices shall be effective upon receipt at the following addresses.

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

City: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: City Manager

SECTION 16: PARTIES NOT CO-VENTURERS

Nothing in this Agreement is intended to nor does it establish the Parties as partners, co-ventures or principal and agent with one another.

SECTION 17: FURTHER ASSURANCES, TIME PERIODS AND RECORDS

- A. Each Party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.
- B. Should unforeseen circumstances occur, the JPB and the City shall negotiate in good faith to reach agreement on any amendment(s) that may be necessary to fully effectuate the Parties' respective intentions in entering into this Agreement.
- C. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of the JPB or as part of any audit of the JPB by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

SECTION 18: NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS

No director, member, official, employee or agent of the City or the JPB shall be personally liable to any Party to this Agreement or any successor in interest in the event of any default or breach of this Agreement or for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 19: HEADING AND TITLES

Any titles of the Sections of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any part of its provisions.

SECTION 20: APPLICABLE LAW

This Agreement shall be interpreted under and pursuant to the laws of the State of California. The Parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of San Mateo County.

SECTION 21: SEVERABILITY

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

SECTION 22: BINDING UPON SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the transferees, successors and assigns of each of the Parties to it, except that there shall be no transfer of any interest by any of the Parties to this Agreement except pursuant to the terms of the Agreement.

SECTION 23: REMEDIES NOT EXCLUSIVE

No right or remedy conferred upon or reserved to the JPB or the City under this Agreement is intended to be exclusive of any other right or remedy, except as expressly stated in this Agreement, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited in this Agreement.

SECTION 24: FORCE MAJEURE

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, casualties, acts of God, acts of the public enemy, epidemic, government restrictions on priorities, freight embargoes, shortage of labor or materials, unusually inclement weather, lack of transportation, court order, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause and such extension is not rejected in writing by the other Party within thirty (30) days of receipt of the notice. Time of performance under this Agreement may also be extended by mutual written agreement, signed by both Parties.

SECTION 25: INTEGRATION

This Agreement represents the full, complete and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings or agreements, whether written or oral, between the Parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by an authorized officer or representative of each of the Parties hereto.

SECTION 26: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute a single Agreement.

SECTION 27: AMENDMENTS

This Agreement may be amended only in a writing that is executed by the Parties hereto.

SECTION 28: THIRD PARTY RIGHTS

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.

SECTION 29: SUCCESSORS

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

SECTION 30: BONDING

JPB will require the design/build contractor for this Project to provide performance and payment bonds in the full amount of the contract and will require a two-year warranty period. The bond shall be maintained in full force and effect during the entire period that work is performed by the contractor until such work is accepted by JPB. With respect to work related to City Improvements, the JPB shall not accept the work related to such facilities for purposes of this section until it has reviewed the matter with the City.

This Agreement is made and entered into as of the date set forth above.

PENINSULA CORRIDOR JOINT POWERS BOARD CITY OF MENLO PARK

By: _____

Jim Hartnett
General Manager

Alex D. McIntyre
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

JPB Attorney

Menlo Park City Attorney

By: _____