



October 31, 2017

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**EX-OFFICIO
BOARD MEMBERS**

**Honorable
Jr. Joaquin Arambula**

Honorable Jim Beall

City of San Mateo
Larry Patterson, City Manager
330 West 20th Street
San Mateo, CA 94403

RE: Contract No. HSR16-108 Amendment # 1

Dear Larry Patterson

Enclosed you will find a copy of the amended Agreement with the California High-Speed Rail Authority.

A fully executed copy of the above-referenced Agreement is enclosed for your files. You are not authorized to commence work until you have been notified by the State's designated contract manager to begin work. The contract manager is not authorized to approve payment for any work or services performed prior to contract execution. In addition, the contract manager is not authorized to change the terms of the contract without an executed Amendment.

The Authority looks forward to continuing working with your firm. If you have any questions or concerns regarding the Agreement, please don't hesitate to contact the Contract Manager, Ben Tripousis at 408-277-1085 or ben.tripousis@hsr.ca.gov.

Regards,


Dominique Wilson
Acquisition Specialist

Enclosure

cc: Ben Tripousis

RECEIVED

NOV 01 2017

OFFICE OF THE CITY MANAGER

EDMUND G. BROWN JR.
GOVERNOR



STANDARD AGREEMENT AMENDMENT

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 55 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
HSR16-108	1
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and Contractor named below:

STATE AGENCY'S NAME

California High-Speed Rail Authority

CONTRACTOR'S NAME

Peninsula Corridor Joint Powers Board and City of San Mateo

2. The term of this

Agreement is June 27, 2017 through June 30, 2021

3. The maximum amount of this

\$84,000,000.00Agreement after this amendment is: Eighty-Four Million and Zero cents

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

The Agreement is hereby replaced in its entirety as attached hereto.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto:

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

Peninsula Corridor Joint Powers Authority

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

James Hartnett, Executive Director

ADDRESS

1250 San Carlos Avenue, San Carlos, CA 94070

CALIFORNIA
Department of General Services
Use Only

STATE OF CALIFORNIA

AGENCY NAME

California High-Speed Rail Authority

BY (Authorized Signature)



DATE SIGNED (Do not type)

10/26/17

PRINTED NAME AND TITLE OF PERSON SIGNING

Thomas Fellenz, Interim Chief Executive Officer

ADDRESS

770 L Street, Suite 620 MS 2, Sacramento, CA 95814

Exempt per PUC 185036

Additional Contractor Signature

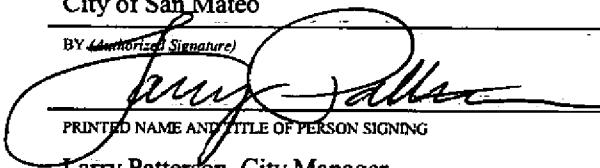
CONTRACTOR	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)	
City of San Mateo	
BY <i>Authorized Signature</i> 	DATE SIGNED (Do not type) 10-4-17
PRINTED NAME AND TITLE OF PERSON SIGNING	
Larry Patterson, City Manager	
ADDRESS	
330 West 20th Avenue, San Mateo, CA 94403	

EXHIBIT A: SCOPE OF WORK

1 PARTIES

This agreement (“Agreement”) is entered into by and between the California High-Speed Rail Authority, an agency of the State of California, hereinafter referred to as the “Authority,” the City of San Mateo, a municipality, hereinafter referred to as the “City” and the Peninsula Corridor Joint Powers Board, a joint exercise of powers agency organized under Chapter 5 of Division 7 of Title 1 of the California Government Code, hereinafter referred to as “PCJPB.” The Authority, the City and the PCJPB are referred to herein individually as a “Party” and as collectively the “Parties.”

2 BACKGROUND

The Authority is responsible for the planning, design, construction and operation of a high-speed rail (“HSR”) system that will connect most of populated California. Between San Francisco and San Jose, the Authority’s trains will share the rails in the corridor (“Peninsula Rail Corridor” or “Corridor”) that is currently used primarily by commuter rail service operated by the PCJPB. The Corridor passes through the City’s limits.

Shared usage of the Corridor by the Authority and PCJPB (and by existing freight) is known as the “Blended System.” The Corridor is not currently electrified; current PCJPB trains are diesel. Functionality of the Blended System requires the Corridor to be electrified, as only an electrified Corridor with PCJPB operating electric trains creates the capacity to add and blend in Authority electric trains. To improve safety and traffic operation in the Corridor, and to create the opportunity (if necessary) for additional track in the Corridor, a project to grade separate the Caltrain operating right-of-way from 25th Avenue, 28th Avenue and 31st Avenue (the “Grade Separation Project” or “Project”) is planned.

Electrification of the Corridor and the Grade Separation Project are each of independent utility relative to each other and relative to HSR.

The City, PCJPB, and the San Mateo County Transportation Authority (“SMCTA”) executed a Memorandum of Understanding (“MOU”) on July 11, 2014 (as first amended on March 3, 2016) for the funding and delivery of the Grade Separation Project, whereby the City serves as the Project sponsor, the PCJPB serves as the Lead Implementing Agency, and the SMCTA would, along with the City, provide funding for the Grade Separation Project.

The PCJPB has successfully completed the planning, preliminary engineering and environmental (“PE/ENV”) phase and final design (“PS&E”) phase; and the Grade Separation Project is currently in the right of way and construction phase. On December 22, 2016, PCJPB issued an invitation for bids (JPB Contract 17-J-C-048, IFB, Plans and Specifications, dated Dec. 22, 2016, as well as 12 Addenda, referred to herein collectively as “IFB”) for a construction contract to construct the Grade Separation Project, based on the final design completed in the PS&E phase. The Authority has seen and concurs with the final design drawings upon which the IFB (“IFB Final Design”) was based and which will govern the construction contract to be awarded following the IFB, except as noted in Section 3.1 of this Exhibit A and in Attachment 1.

EXHIBIT A: SCOPE OF WORK

On August 9, 2016, the Authority passed Resolution #HSRA 16-22 authorizing the Chief Executive Officer to execute an agreement to contribute funding in the amount of up to \$84 million for the construction of the Grade Separation Project. This Agreement is intended to fund 65.24 percent of certain costs listed in Section 6.1, up to \$84 million, to complete the Grade Separation Project, in exchange for certain protections, benefits and assurances.

In consideration of the foregoing, this Agreement has been entered into by the Parties to identify and define their respective roles and responsibilities with regard to the Grade Separation Project described in the Agreement. The Parties are fully responsible for their obligations as provided hereunder, whether performed by the Party itself, or through arrangements with others, such as contractors or (in the case of PCJPB) member agencies.

3 WORK TO BE DONE

3.1 Grade Separation Project

PCJPB will construct grade separation structures separating the Caltrain operating right-of-way from the existing grade crossing at 25th Avenue, and new crossings at 28th Avenue and 31st Avenue within San Mateo. The structures shall be constructed pursuant to the design and specifications described in the IFB, except that, no later than October 24, 2017, PCJPB shall cause JPB Contract 17-J-C-048 to be amended to include the design and specification elements required for the modified Blended Service alignment depicted in Attachment 1 hereto (as to be modified, hereinafter the “JPB Contract 17-J-C-048 Modified”). The grade separations will allow the above-referenced streets to pass under the structure upon which PCJPB and Authority trains will operate. The crossing at 25th Street has been identified as DOT Crossing Number 754910E aka CPUC Crossing No. 105E-19.70. As they are new crossings, the DOT and CPUC references do not yet exist for the 28th Avenue or 31st Avenue grade separations.

The grade separation will be supported by a mechanically stabilized earth wall located to the west of the existing PCJPB right-of-way.

In addition, the Grade Separation Project at 25th Avenue will relocate the existing Hillsdale Caltrain Station and provide new at-grade parking and station access for the new Hillsdale Station. The new station will be an elevated, center-board platform, located immediately south of 28th Avenue. The Grade Separation Project will construct three new precast box girder concrete bridges (one each at Borel Creek, 25th Avenue and 28th Avenue), one new steel beam span bridge at 31st Avenue, and one new cast-in-place concrete pedestrian and vehicular underpass.

In addition to lowering 25th Avenue, the Grade Separation will construct two new east-west connections between Delaware and El Camino Real, one each at 28th and 31st Avenues. Both 31st and 28th Avenues will have four through-lanes, one left turn only pocket, and two sidewalks/bike lanes. Temporary Parking will be constructed within the PCJPB right of way east of the new track alignment to the north and south of 28th Avenue.

3.2 Project Uses

EXHIBIT A: SCOPE OF WORK

The Grade Separation Project is to be used for vehicular traffic and pedestrian crossing under the Corridor rail tracks.

4 ROLES AND RESPONSIBILITIES OF THE PARTIES

4.1 Property Ownership, Use and Access Rights

4.1.1 Ownership of Project Site Property (PCJPB)

PCJPB is the owner of the Peninsula Corridor Railroad right-of-way, and specifically that certain real property and fixtures located in the City of San Mateo between milepost (MP) 19.0 and MP 20.3. The PCJPB shall obtain any additional property rights necessary to properly construct and maintain the structure and the roadway resulting from the Grade Separation Project.

4.1.2 Ownership of Project Site Property (City)

The City shall allow use of and access to City-owned property as necessary for the PCJPB to complete the Grade Separation Project.

4.2 Environmental Obligations

4.2.1 During construction, the PCJPB will comply with all applicable environmental laws, and the specific environmental commitments provided for in the following documents: San Mateo 25th Avenue Grade Separation Project CEQA Exemption and San Mateo 25th Avenue Grade Separation Project – Determination of Categorical Exclusion or any other environmental clearance document required for the Grade Separation Project.

4.2.2 PCJPB is and will remain the lead agency under CEQA and will obtain any further required environmental clearance for the Grade Separation Project. PCJPB shall also obtain all required environmental permits and approvals necessary for the Grade Separation Project.

4.3 Responsibility for Obtaining Governmental Permits and Approvals

The PCJPB will be responsible for obtaining all governmental permits and approvals for the Grade Separation Project.

4.4 Construction

The PCJPB will be responsible for completing all construction work for the Grade Separation Project. The Grade Separation Project must be built in material conformance with JPB Contract 17-J-C-048 Modified. Any material changes PCJPB proposes to make must first be approved by the Authority, after PCJPB communicates such proposed change to the Authority, in writing, return receipt requested. The Authority's review will be limited to ensuring that no aspect of the Authority's planned operations and/or construction will be negatively impacted, including but not limited to increasing potential costs. If the Authority does not respond within five (5) working days, Authority's approval of the change will be deemed given.

4.5 Construction Schedule

EXHIBIT A: SCOPE OF WORK

The contract for the construction of the Grade Separation Project was executed on July 26, 2017 and the PCJPB will use its best efforts to ensure the work is completed within 900 days from the issuance to the contractor of notice to proceed. It is understood, however, that PCJPB will not be responsible for unavoidable delays not caused by the actions or inactions of the PCJPB or its staff.

4.6 Other Obligations Necessary to Cause Completion of the Grade Separation Project

Except as otherwise assigned in this Agreement, the City shall take or cause to be taken all actions (whether identified in this Agreement or not) necessary to cause completion of the Grade Separation Project and its placement into service.

5 OWNERSHIP AND MAINTENANCE OBLIGATIONS

5.1 City Ownership and Maintenance Obligations

After completion of the Grade Separation Project, City shall own and be responsible for maintenance of the roadbeds, pavement delineation, signage, lighting, drainage systems, any other supporting appurtenances and landscape established including irrigation, planting and hardscape. The City's maintenance obligations will not extend to the grade separation structure or the railroad right-of-way. City further agrees that it shall take no action with respect to City maintenance and use (or future modification) of the roadbeds and related improvements that City knows or reasonably should know at the time of the action would effectively preclude or make materially more complicated or expensive Authority future use of the Corridor for Blended System operations or make such use or operations non-compliant with Proposition 1A.

5.2 PCJPB Ownership and Maintenance Obligations

After the completion of the Grade Separation Project, the PCJPB shall own and be responsible for all aspects of the Grade Separation Project structures not covered by Section 5.1, including but not limited to the maintenance of the railroad right-of-way, including the grade-separated structure, associated with the Grade Separation Project in a safe and good condition and state of repair and in compliance with all applicable laws, using such care as a reasonably prudent owner of such infrastructure would use.

PCJPB further agrees that (a) it will not make any material modification to the Grade Separation Structure or the associated railroad right-of-way (between MP 19.0 and MP 20.3) without prior written approval of the Authority and (b) it will take no action with respect to PCJPB's maintenance and use of the Grade Separation Structure or the associated railroad right-of-way (between MP 19.0 and MP 20.3) that PCJPB knows or reasonably should know at the time would effectively preclude or make materially more complicated or expensive Authority future use of the Corridor for Blended System operations or make such use or operations non-compliant with Proposition 1A.

5.3 Authority Ownership and Maintenance Obligations

Except as otherwise agreed to by the Authority and a Party (either the PCJPB or the City) in a separate existing or future agreement, the Authority will have no ownership rights nor any maintenance obligations associated with the Grade Separation Project.

EXHIBIT A: SCOPE OF WORK

6 COST OF WORK

6.1 Authority Cost Responsibilities

The Authority will be responsible to reimburse the PCJPB, as further detailed in Exhibit B, for **65.24 percent** of the following costs, up to a total maximum contribution of \$84 million. In no event will the Authority be responsible for more than \$84 million.

- 6.1.1 Costs invoiced to the PCJPB by the construction contractor pursuant to JPB Contract 17-J-C-048 Modified.
- 6.1.2 Price paid to acquire the following right-of-way and land rights necessary for the Grade Separation Project:
 - 6.1.2.1 Total price paid to acquire a Permit to Enter Parcels JPB-SM-0052 (a portion of APN 039-087-020) and JPB-SM-0053 (a portion of APN 039-086-020), as more specifically set forth in Attachment 6-1, from the County of San Mateo.
 - 6.1.2.2 The amount, if any, over PCJPB's offer appraisal, paid (including any severance damages and interest) to acquire the temporary construction easement (TCE) on Parcel JPB-SM-0048-1 (a portion of APN 039-360-120), as more specifically set forth in Attachment 6-2.
 - 6.1.2.3 The amount, if any, over PCJPB's offer appraisal, paid (including any severance damages and interest) to acquire Parcel JPB-SM-0049-1 (a portion of APN 039-360-060) and to acquire TCEs on Parcels JPB-SM-0049-2 and JPB-SM-0049-3 (also portions of APN 039-360-060), as more specifically set forth in Attachment 6-3.
 - 6.1.2.3.1 Unless the purchase price of the acquisition addressed in section 6.1.2.3 is dictated by court order, any acquisition payment exceeding the PCJPB's offer appraisal of the subject property by more than \$4 million must be approved in writing by the Authority's Project Representative in advance of the acquisition, which approval must not be unreasonably withheld.
- 6.1.2.3.1.1 *The Parties acknowledge the time restraints inherent in condemnation valuation proceedings. If the PCJPB requests the Authority's approval of an offer amount in the context of the exchange of demands and offers in a valuation proceeding for any property interest addressed herein, the PCJPB will communicate its anticipated offer amount and available supporting information for that amount at least 8 working days in advance of a Board meeting at which it plans to seek settlement authority from the PCJPB Board of Directors. The Authority will respond within 4 working days.*

If the amount authorized by the PCJPB Board of Directors is insufficient to settle the matter, the PCJPB will communicate its new proposed offer amount and supporting information for that amount to the Authority at least 8 working days in advance of a Board meeting at which it plans to seek additional settlement authority from the PCJPB Board, and the Authority shall respond within 4 working days.

EXHIBIT A: SCOPE OF WORK

If a mediation or court schedule does not allow for information to be exchanged in the time periods set forth herein, the PCJPB will inform the Authority of the time restraints and the PCJPB and Authority will work in concert to consider requests for settlement authority within the time available.

- 6.1.3 Costs invoiced to the PCJPB by PG&E, AT&T or UPRR (as landlord to Sprint and the PCJPB) to complete the utility relocations necessary for the Grade Separation Project.
 - 6.1.3.1 Prior to executing any contracts for utility relocation work, the PCJPB shall provide the Authority with the opportunity to review and approve said contracts to ensure the PCJPB has (1) properly accounted for depreciation and betterments and (2) established a process whereby prior rights documentation is required prior to approving Project-funded relocations. The Authority's approval shall not be unreasonably withheld; however, if the PCJPB fails to obtain the Authority's approval for any individual contract, costs invoiced pursuant to said contract will not be subject to reimbursement hereunder.

6.2 PCJPB Cost Responsibilities

The PCJPB will be responsible for contributing \$1.75 million toward the completion of the Grade Separation Project.

6.3 City Cost Responsibilities

The City is solely responsible for securing all costs for all phases to complete the Grade Separation Project (regardless of the accuracy or inaccuracy of the plans, estimates and assumptions that form the basis of the Grade Separation Project), through final completion and placement into service, except as specifically set forth in Section 6.1 – Authority Cost Responsibilities and Section 6.2 – PCJPB Cost Responsibilities.

7 DOCUMENTATION AND QUARTERLY REVIEWS

- 7.1 On or before September 1, 2017, PCJPB shall provide the Authority with all (1) information regarding the right-of-way they have yet to acquire including, but not limited to, appraisals, legal descriptions, plats, maps, contracts, deeds and acquisition status and (2) contracts or scopes of planned contracts for utility relocation work and related trend and progress reports. PCJPB shall provide updates, if any, to this information prior to the Quarterly Reviews required pursuant to Section 7.2.
- 7.2 The Parties shall meet (in person or by phone) quarterly to review PCJPB's progress in completing the Grade Separation Project, and to discuss any pending contract management or invoicing and payment matters. In advance of a quarterly review, any Party may reasonably request, and the holding Party shall provide copies of, then-existing documents to aid the quarterly review.

8 GRADE SEPARATION PROJECT AS RELATES TO BLENDED SYSTEM DESIGN

The Parties acknowledge that passing tracks may or may not be needed (the Authority and PCJPB are currently in disagreement) for operation of the Blended System within the limits of the Grade Separation Project. Should it be determined that passing tracks are necessary in this location, the Parties agree to

EXHIBIT A: SCOPE OF WORK

reasonably cooperate and support the construction of such passing tracks pursuant to the conceptual design set forth in Attachment 2.

Nothing in this Agreement shall be construed to mean any Party has agreed to the need or lack of need for passing tracks or any allocation of implementation or cost responsibility related to the implications of adding any passing track (including but not limited to replacement of displaced parking or other uses).

9 PROJECT REPRESENTATIVES

The Project Representatives during the term of this Agreement shall be as listed below.

CITY

City Project Representative	Brad Underwood, Director of Public Works
Phone Number	650-522-7303
Address:	330 W. 20th Avenue, San Mateo, CA 94403
E-Mail Address	bunderwood@cityofsanmateo.org

PCJPB

PCJPB Project Representative	April Chan, Chief Officer, Planning, Grants and Transportation Authority
Phone Number	650-508-6228
Address:	1250 San Carlos Avenue, San Carlos, CA 94070
E-Mail Address	chana@samtrans.com

AUTHORITY

Authority Project Representative	Ben Tripousis
Phone Number	408-277-1085
Address:	100 Paseo de San Antonio, #206, San Jose, CA 95113
E-Mail Address	ben.tripousis@hsr.ca.gov

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

1 FUNDING CONTINGENCY CLAUSE

- 1.1 If, following execution of this Agreement, the legislature of the State of California actually or effectively de-appropriates some or all of the funds the Authority has committed under this Agreement ("Funds"), or if forces beyond the Authority's ability to control (including market forces, litigation, court decisions, and actions or inactions of the Legislature) render the Funds unavailable, the Authority shall have the right, at the Authority's election, to either (1) cancel this Agreement, with no further liability occurring to the Authority for the portion of the Funds de-appropriated or rendered unavailable, or (2) negotiate with PCJPB and the City changes to the Scope of Work, funding, or timing of the Grade Separation Project or other terms of this Agreement. This Agreement is also subject to any additional restrictions, limitations, and conditions, and any delays, as may be approved or imposed by the Congress of the United States or the legislature of the State of California or any court of law, and which may affect the provisions, terms or funding of this Agreement.

2 INVOICING AND PAYMENT

- 2.1 For services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices by the Authority Project Representative, the Authority agrees to reimburse the PCJPB for 65.24 percent of the costs set forth in Exhibit A, Section 6.1, subject to the following.

- 2.1.1 No payment shall be made in advance of services rendered.
 - 2.1.2 The total amount payable by the Authority for this Agreement shall not exceed the amount on the STD. 213, which is \$84 million. It is further understood and agreed that (1) this total is the maximum amount payable to the PCJPB and (2) the total amount payable to the PCJPB shall not exceed the lesser of \$84 million or 65.24 percent of the total costs reimbursable pursuant to Exhibit A, Section 6.1 of this Agreement.
 - 2.1.3 PCJPB shall provide one paper original and two copies of the invoice for payment. Invoices shall be submitted no more than monthly in arrears and no later than 30 calendar days after completion of each billing period or upon completion of a task to:

Financial Office
California High-Speed Rail Authority
770 L Street, Suite 620 MS 3
Sacramento, CA 95814

accountspayable@hsr.ca.gov

(1 original and 2 copies)

AND

The PCJPB shall also submit (electronically) one additional copy of the invoice and supporting documentation to the Authority's Project Representative or designee at the address identified in Exhibit A, Section 9.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

3 INVOICE FORMAT

- 3.1 The Authority will accept computer generated or electronically transmitted invoices. The date of "invoice receipt" shall be the date the Authority receives the paper copy at the address listed in Section 2.1.3 of this Exhibit.
- 3.2 An invoice shall include all aspects and information as set forth in Attachment 3.
- 3.3 The PCJPB acknowledges that the Authority may add reasonable information or documentation requirements to the above invoice list to meet the Authority's needs, and that the Authority may add any information or documentation requirements to the above invoice list if required by the State Controller's Office or if legally required for the Authority to meet any reporting requirements. The PCJPB, upon receipt of written communication requiring additional documentation or information, shall promptly provide such requested documentation and/or information.
- 3.4 The PCJPB shall retain back-up documentation for audit purposes available to the Authority upon request. The PCJPB shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all PCJPB's contractor services and expenses invoiced for payment under this Agreement.

4 PROMPT PAYMENT ACT

- 4.1 Authority will endeavor to make all payments in the time frames set forth in Government Code Chapter 927, et seq.

5 INVOICE DISPUTES

- 5.1 Payments shall be made to the PCJPB for undisputed invoices. An undisputed invoice is an invoice submitted by the PCJPB for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if the invoice is inaccurate, or if it does not comply with the terms of the Agreement. If the invoice is disputed, the PCJPB will be notified via a Dispute Notification Form, or with other written notification within 15 working days of receipt of the invoice; the PCJPB will be paid the undisputed portion of the invoice.
- 5.2 Though this Project is of independent utility relative to the Peninsula Corridor Electrification Project, in the event the project representatives are unable to resolve the issue(s) leading to the disputed invoice, the Parties shall follow the dispute resolution procedures set forth in Section IV of the Agreement Regarding Funding Commitments Towards the Peninsula Corridor Electrification Project between the Authority and PCJPB dated August 9, 2016 ("Two-Party Agreement").

6 COST PRINCIPLES

- 6.1 The PCJPB agrees to comply with procedures in accordance with OMB Circular A-87, as amended, Cost Principles for State, Local, and Indian Tribal Governments.
- 6.2 The PCJPB agrees to comply with Title 49 Code of Federal Regulations, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

- 6.3 Any costs for which payment has been made to the PCJPB that are determined by subsequent audit to be unallowable under OMB Circular A-87, as amended, or 49 C.F.R. Part 18, are subject to repayment by the PCJPB to the Authority.
- 6.4 Any subagreement in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions of Exhibit B Section 6.

EXHIBIT C: GENERAL TERMS AND CONDITIONS

1 APPROVAL

- 1.1 This Agreement is of no force or effect until signed by all Parties.

2 AMENDMENT

- 2.1 No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the Parties.

3 ASSIGNMENT

- 3.1 This Agreement is not assignable by any Party, either in whole or in part, without the written consent of all Parties to this Agreement in the form of a formal written amendment.

4 AUDIT

- 4.1 The PCJPB and the City agree that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The PCJPB and the City agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The PCJPB and the City agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the PCJPB agrees to include a similar right of the State to audit records and interview staff in any contract or subcontract related to performance of this Agreement. (Gov. Code §8546.7).

5 INDEMNIFICATION

- 5.1 The PCJPB and the City agree to indemnify, defend and save harmless the Authority and State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the PCJPB or the City in the performance of this Agreement.

6 DISPUTES; SETTLEMENT OF DISPUTES

- 6.1 The PCJPB and the City shall continue with the responsibilities under this Agreement during any dispute.

EXHIBIT C: GENERAL TERMS AND CONDITIONS

- 6.2 The Parties will follow the dispute resolution procedure set forth in Section IV of the August 2016 Two-Party Agreement. If the City is involved in the dispute, the procedure will be adjusted only as needed to address the involvement of a third party.

7 INDEPENDENT CONTRACTOR

- 7.1 The PCJPB and the City, and the agents and employees of the PCJPB and the City, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

8 NON-DISCRIMINATION CLAUSE

- 8.1 During the performance of this Agreement, the PCJPB and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. PCJPB and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. PCJPB and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. PCJPB and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- 8.2 PCJPB shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Agreement.

9 CERTIFICATION CLAUSES

- 9.1 **DRUG-FREE WORKPLACE REQUIREMENTS:** PCJPB and its contractors will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
- 9.1.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 9.1.2 Establish a Drug-Free Awareness Program to inform employees about:

EXHIBIT C: GENERAL TERMS AND CONDITIONS

- 9.1.2.1 The dangers of drug abuse in the workplace;
 - 9.1.2.2 the person's or organization's policy of maintaining a drug-free workplace;
 - 9.1.2.3 any available counseling, rehabilitation and employee assistance programs; and,
 - 9.1.2.4 penalties that may be imposed upon employees for drug abuse violations.
- 9.1.3 Every employee who works on the proposed Agreement will:
- 9.1.3.1 receive a copy of the company's drug-free workplace policy statement; and,
 - 9.1.3.2 agree to abide by the terms of the company's statement as a condition of employment on the Agreement.
- 9.1.4 Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and PCJPB may be ineligible for award of any future State agreements if the Authority determines that any of the following has occurred: the PCJPB has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)
- 9.2 **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the PCJPB certifies that PCJPB is in compliance with Public Contract Code section 10295.3. PCJPB shall include this clause in all contracts to perform work under the Agreement.
- 9.3 **AMERICANS WITH DISABILITIES ACT:** PCJPB assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.) PCJPB shall include this clause in all contracts to perform work under the Agreement.
- 9.4 **AIR OR WATER POLLUTION VIOLATION:** PCJPB shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
- 9.5 **RESOLUTION:** The City must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

EXHIBIT C: GENERAL TERMS AND CONDITIONS

10 TIMELINESS

10.1 Time is of the essence in this Agreement.

11 GOVERNING LAW

11.1 This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

12 CHILD SUPPORT COMPLIANCE ACT

12.1 For any Agreement in excess of \$100,000, PCJPB acknowledges in accordance with Public Contract Code 7110, that:

- 12.1.1 The PCJPB recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- 12.1.2 The PCJPB, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department. PCJPB shall include this clause in all contracts to perform work under the Agreement.

13 UNENFORCEABLE PROVISION

13.1 In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the Parties agree to work cooperatively to amend this Agreement to restore the original full intent and rights and obligations of the Parties contained in this Agreement, if reasonably feasible. If not reasonably feasible, any Party may terminate this Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

1 CONTRACT MANAGEMENT

- 1.1 PCJPB's and the City's Project Representatives are responsible for the day -to-day project status, decisions and communications as outlined in this Agreement.
- 1.2 Any Party may change its Project Representative at any time by giving written notice to the other Parties.

2 SUBAGREEMENTS

- 2.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Authority and any PCJPB contractors, and no contract shall relieve the PCJPB of its responsibilities and obligations under this Agreement. The PCJPB agrees to be as fully responsible to the Authority for the acts and omissions of its contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of its contractors and of persons either directly or indirectly employed by the PCJPB. The PCJPB's obligation to pay its contractors is an independent obligation from the Authority's obligation to make payment to the PCJPB. As a result, the Authority shall have no obligation to pay or enforce the payment of any moneys to any PCJPB contractor or subcontractor.
- 2.2 The City shall not subcontract any of its obligations under this Agreement.

3 CONFLICT OF INTEREST

- 3.1 All Parties acknowledge their shared interest in avoiding organizational conflicts of interest in the performance of work funded under this Agreement.
- 3.2 The PCJPB's contractors, subcontractors and their employees will comply with the PCJPB's Organizational Conflict of Interest Policy.
- 3.3 By inclusion of the authorized contractors listed in the Approved Contractor List attached hereto as Attachment 4 the PCJPB and the Authority agree that no significant conflict exists that would preclude the listed firms from performing work under this Agreement.
- 3.4 If the PCJPB seeks to add any contractors or subcontractors to this Agreement, the Authority retains authority to analyze whether such additions would present an organizational conflict of interest under the Authority's Organizational Conflict of Interest Policy and, if so, either to decline to add such contractors or subcontractors, or to require mitigation of identified conflicts before the conflicted entity is assigned any work under this Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

4 NON-WAIVER

- 4.1 No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. No remedy available in this Agreement is intended to be exclusive of any other remedy, and every remedy shall be cumulative, in addition to and not a condition precedent to any other remedy provided herein or available at law or in equity.
- 4.2 The failure of any Party to enforce any provision of this Agreement or require performance by any other Party of any provision shall in no way be construed to be a waiver of those provisions, affect the validity of this Agreement in whole or in part, or the right of the non-breaching Party to subsequently enforce any such provision.

5 RULES OF CONSTRUCTION

- 5.1 All references herein to the singular shall include the plural, and vice versa.

6 NONDISCRIMINATION COMPLIANCE

- 6.1 During the performance of this Agreement, the PCJPB and its contractors shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The PCJPB shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 6.2 The PCJPB shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900, *et seq.*) the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, section 11000, *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.
- 6.3 The PCJPB shall permit access by representatives of the Department of Fair Employment and Housing to the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.
- 6.4 The PCJPB and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 6.5 The PCJPB shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

7 ACCESS TO SITES AND RECORDS

- 7.1 The Authority staff or its representatives shall have reasonable access to all sites (including the Grade Separation Project construction site) and records related to this Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

8 RIGHTS IN DATA

- 8.1 PCJPB and City will provide access and rights of use to the Authority to all reports, documents, plans, specifications, electronic documents and estimates produced in whole or in part with funding provided under this Agreement. Furthermore, in the event PCJPB is unable for any reason to complete the Grade Separation Project, ownership of Grade Separation Project plans will vest equally in the Authority, the PCJPB and the City, although such vesting does not carry with it any obligation to complete the Grade Separation Project.

9 PREVAILING WAGES

- 9.1 The PCJPB shall comply with all Labor Code requirements applicable to the scope of work set forth in Exhibit A of this Agreement or any additional requirements stemming from the funding provided under this Agreement.

10 LICENSES AND PERMITS

- 10.1 The PCJPB shall ensure that all contractors hired to complete the scope of work under Exhibit A of this Agreement possess all required licenses and permits.

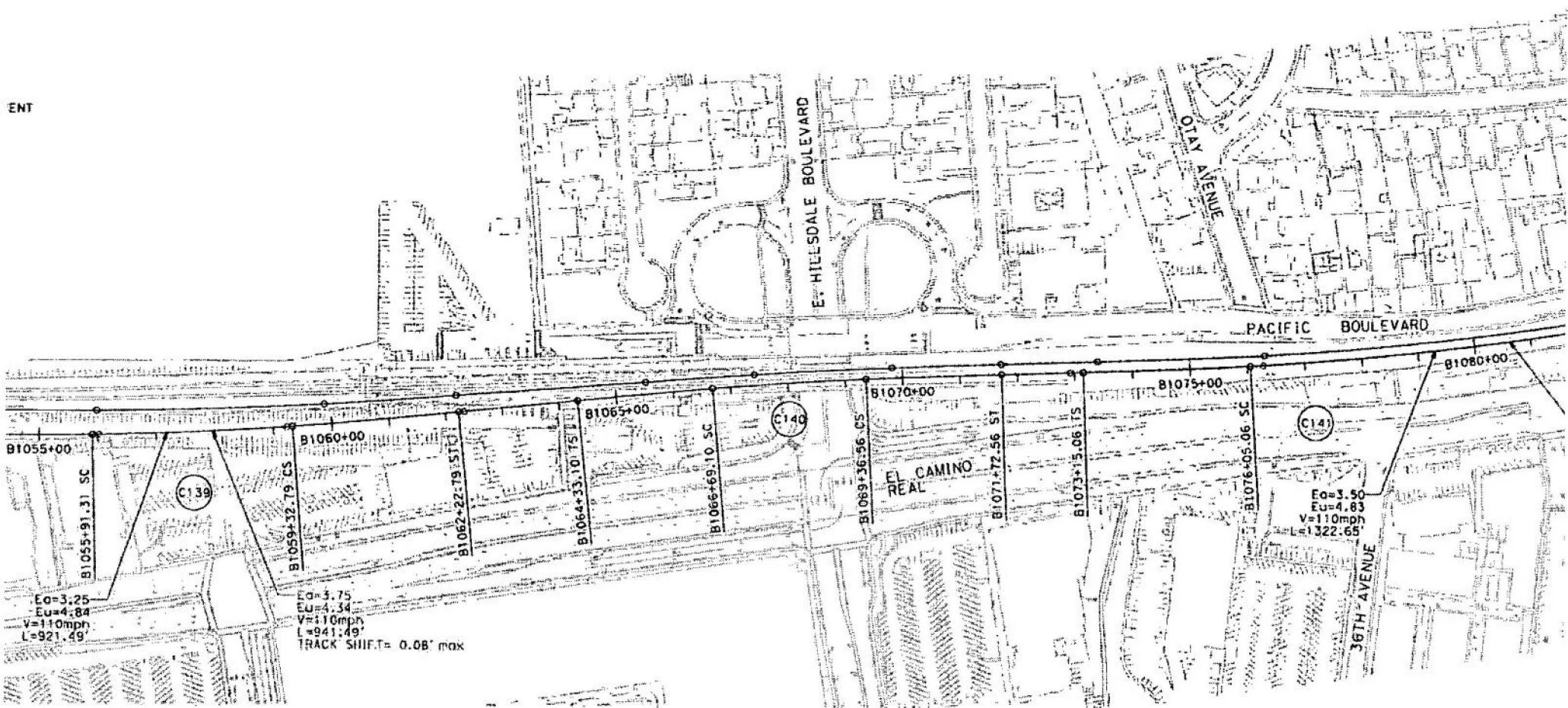
11 INSURANCE

- 11.1 Without limiting the PCJPB's indemnification of the Authority, PCJPB agrees to require any and all PCJPB contractors to list the Authority as an additional insured on all insurance required under the contract between the PCJPB and its PCJPB contractors. The PCJPB shall provide certificates of insurance to the Authority as evidence of the insurance coverage required herein. The PCJPB shall ensure that it provides current certifications of insurance to the Authority at all times during the term of this Agreement.

12 PERFORMANCE BOND

- 12.1 The PCJPB will require PCJPB's construction contractor to provide performance and payment bonds in the full amount of the construction contract and will require a one-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 City and PCJPB.

REQUIRED CHANGE ORDER

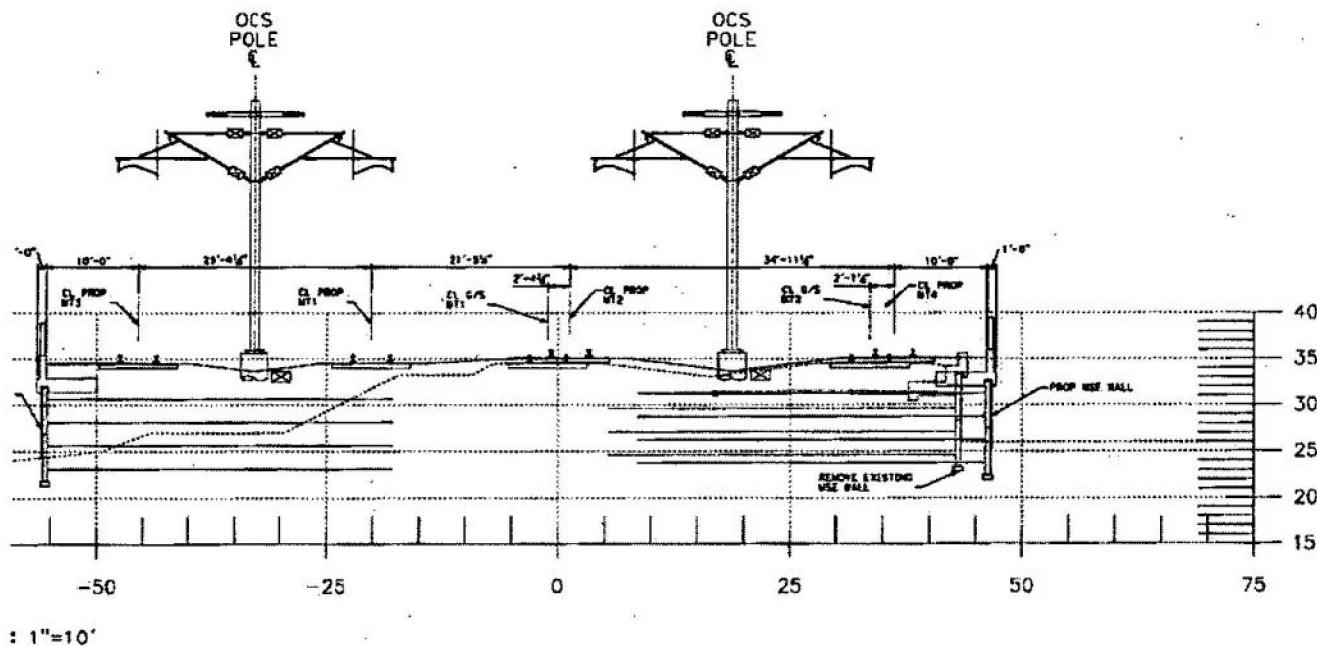


PASSING TRACKS - CONCEPTUAL DESIGN

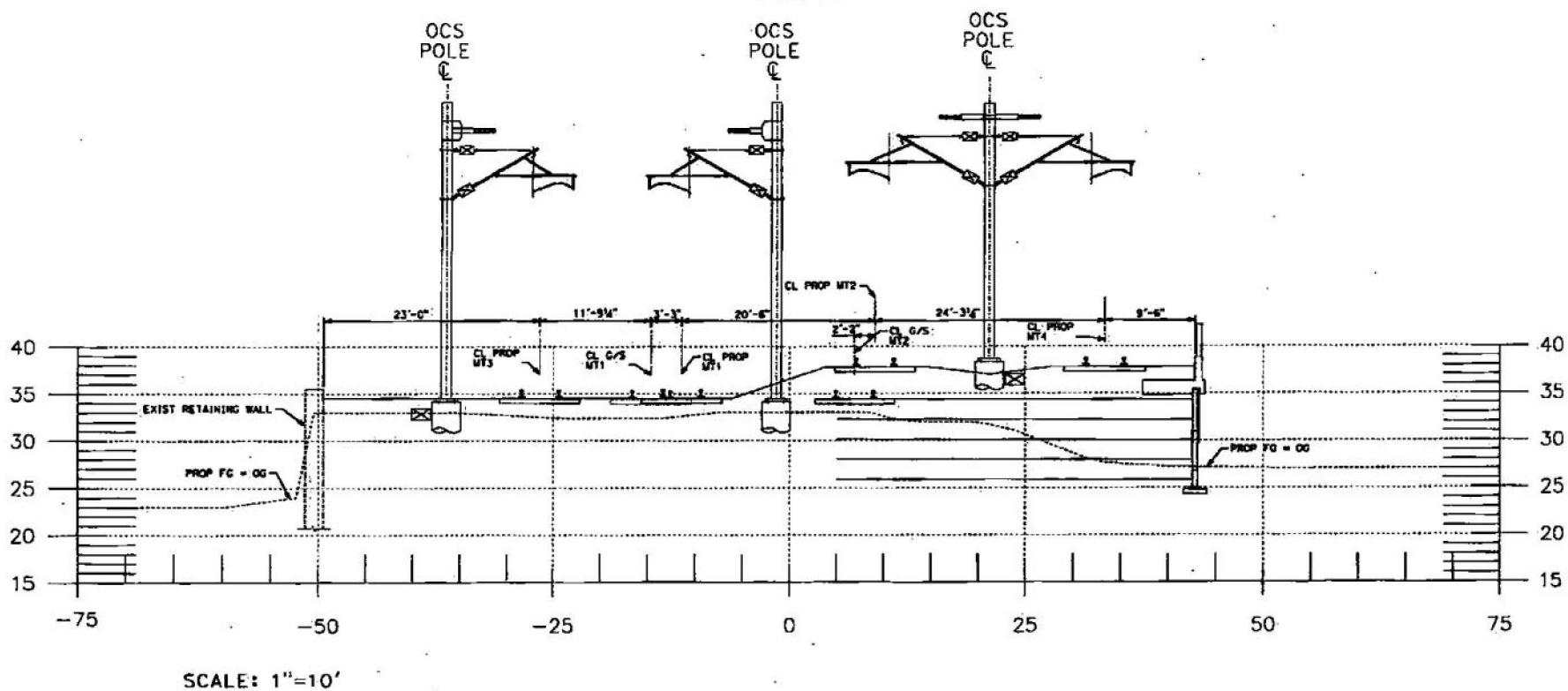
ATTACHMENT 2

PCJPB/City of San Mateo
HSR 16-108 – Amendment 1
Page 1 of 7

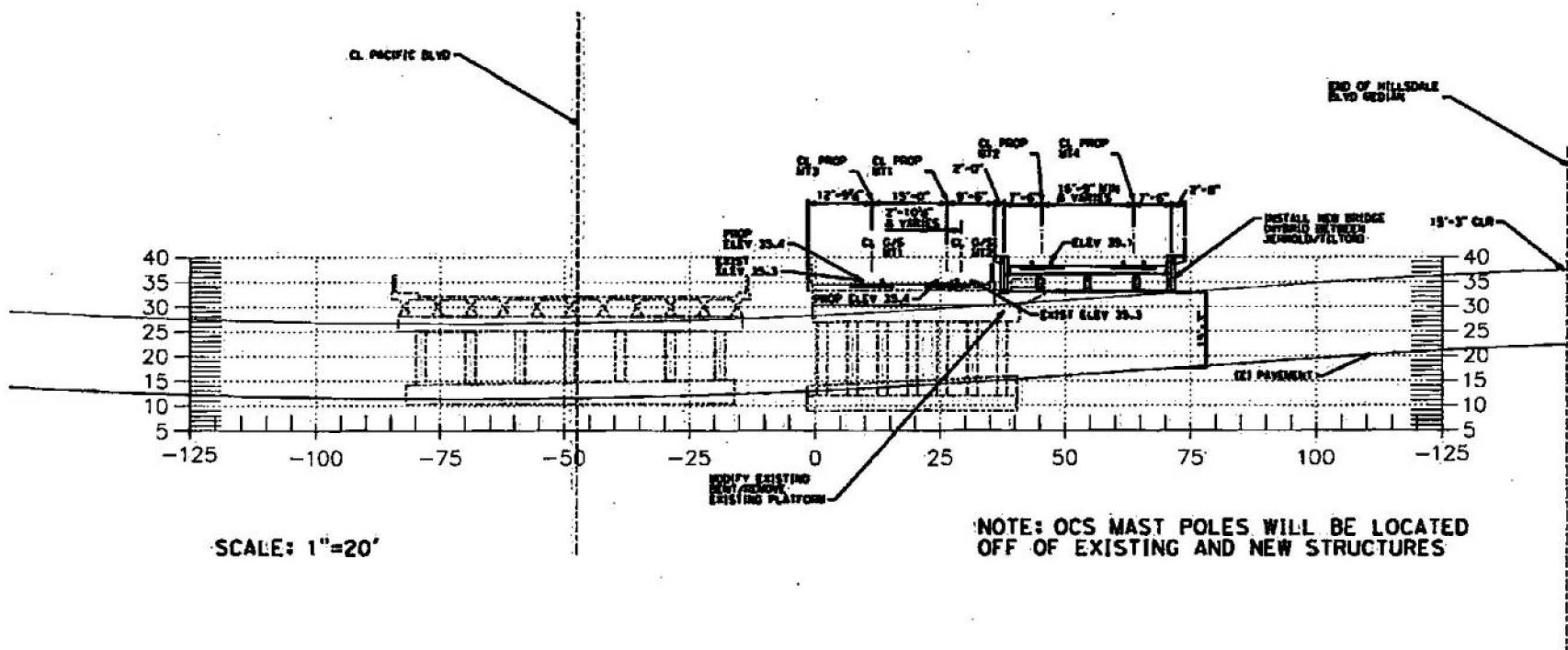
SECTION AT STATION 1059+50
DRAFT-FOR DISCUSSION PURPOSES ONLY.
3-28-17

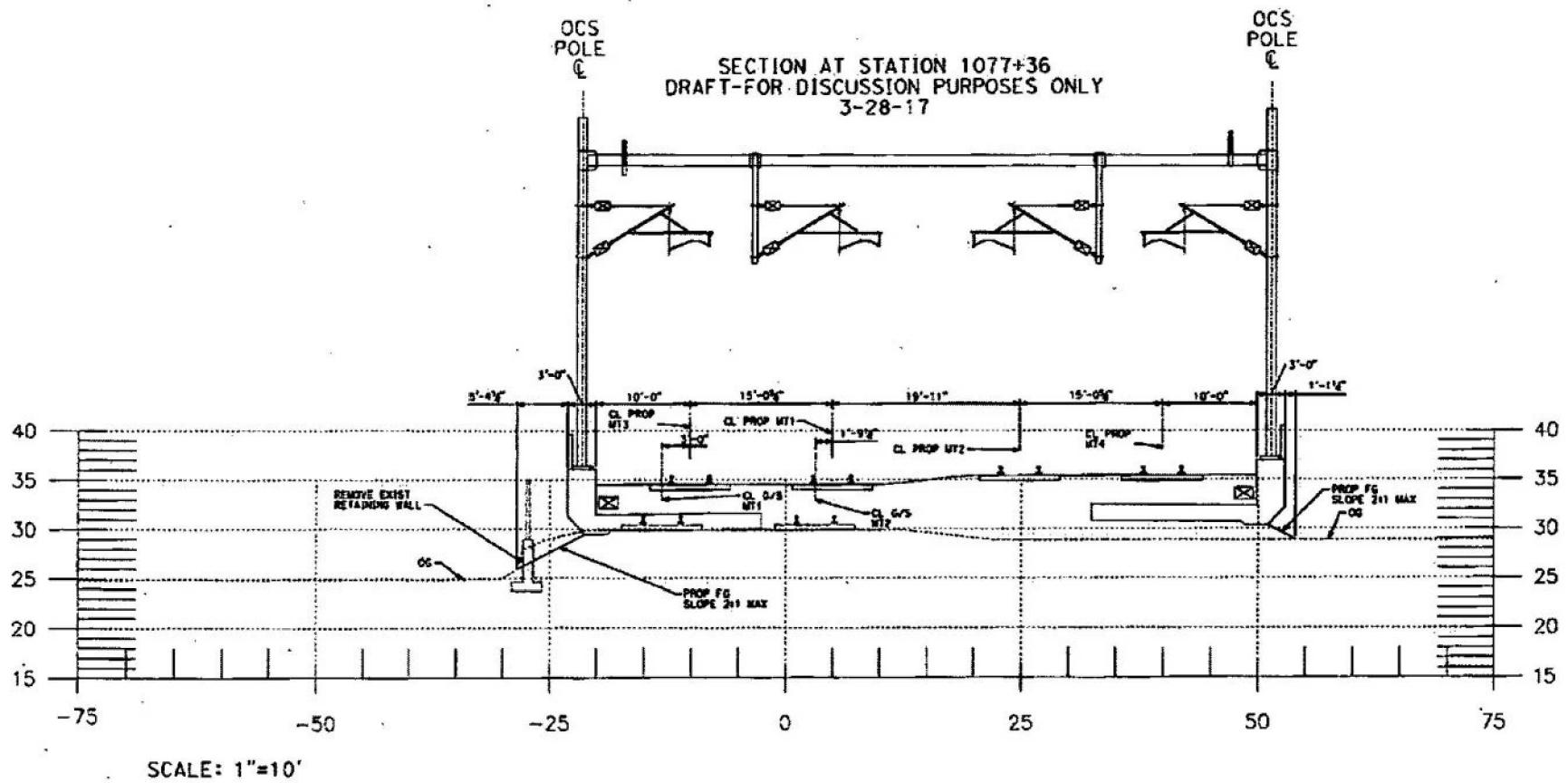


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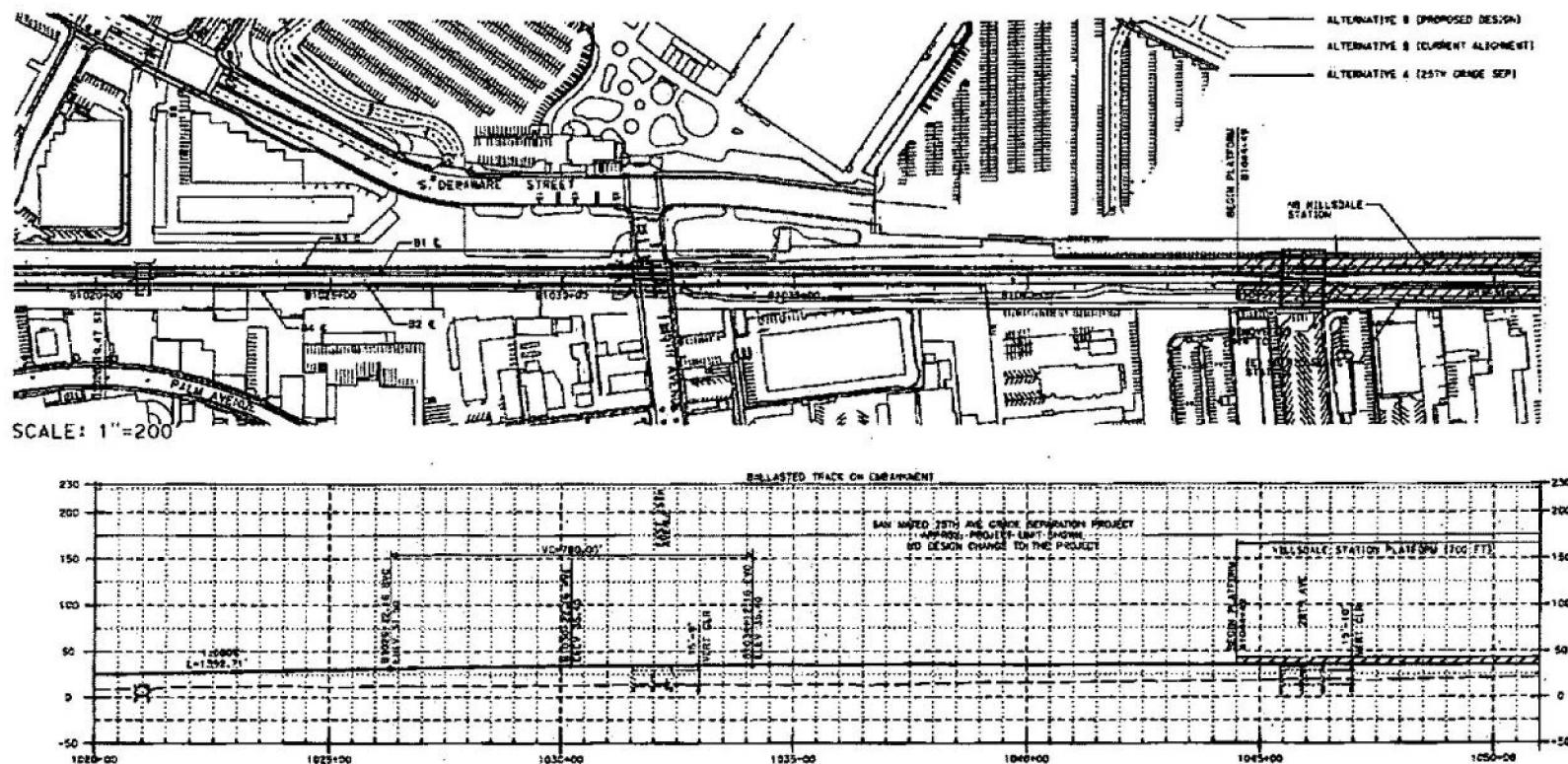


SECTION AT HILSDALE BLVD
DRAFT-FOR DISCUSSION PURPOSES ONLY
3-28-17

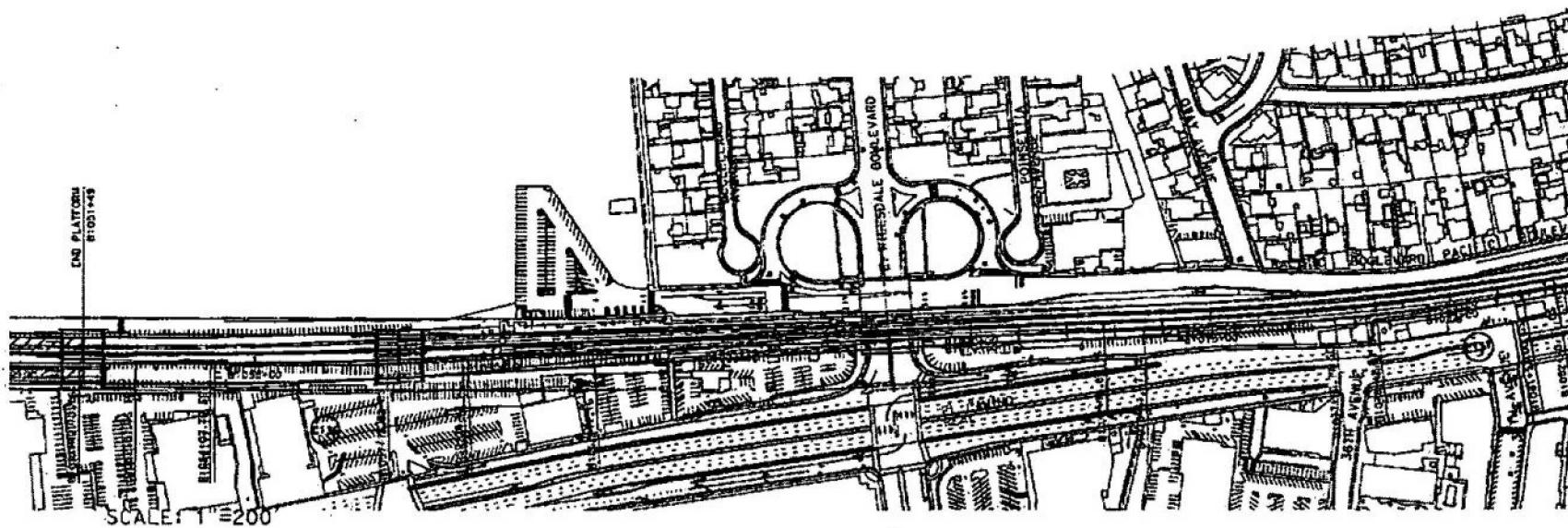




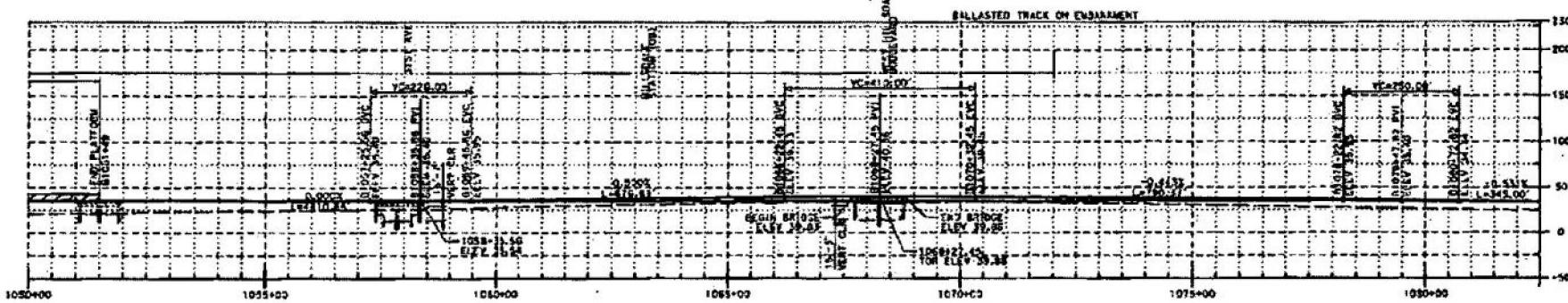
HILLSDALE BLVD INTERSECTION UPDATE
 DRAFT - FOR DISCUSSION PURPOSES ONLY
 MARCH 28, 2017

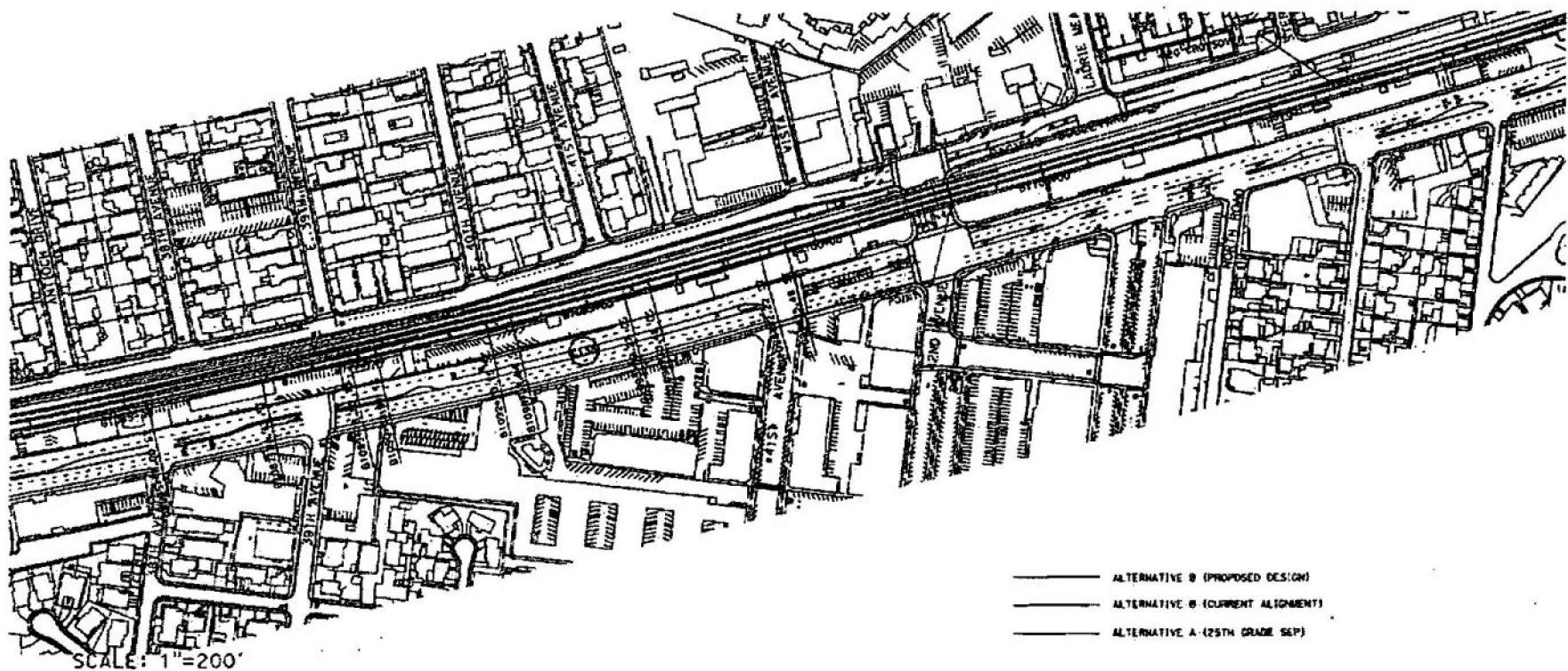


- ALTERNATIVE 3 (PROPOSED DESIGN)
- ALTERNATIVE 2 (CURRENT ALIGNMENT)
- ALTERNATIVE 1 (25TH GRADE SEP)

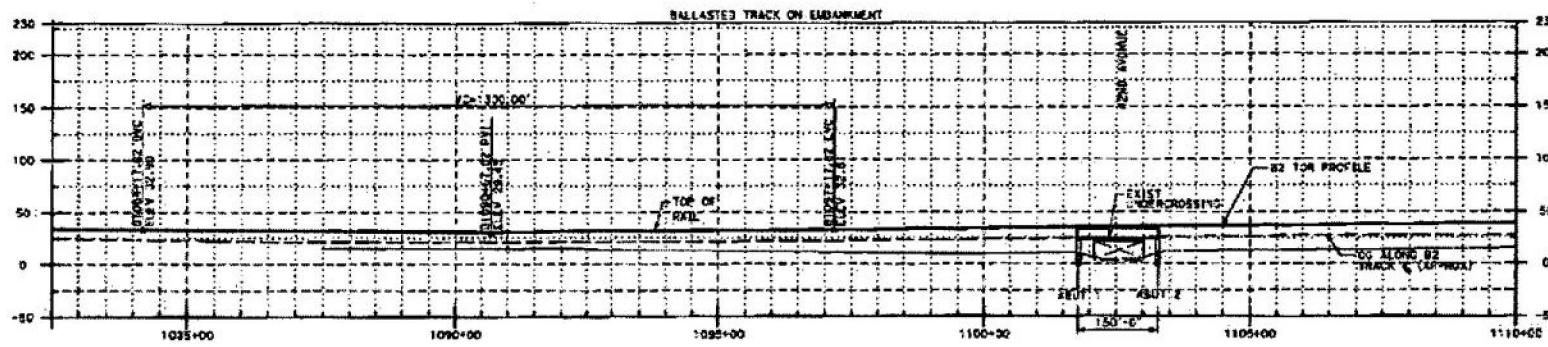


SCALE: 1" = 200'





SCALE: 1"=200'



ATTACHMENT 3

INVOICE REQUIREMENTS

Invoice Cover Sheet containing the following:

- Agreement number
- Date invoice prepared
- Billing and service period
- Cumulative billed amount by category (JPB Contract 17-J-C-048 Modified, Right-of-Way and Utility Relocation)
- Cumulative billed amount (Total)
- Cumulative percentage of total JPB Contract 17-J-C-048 Modified costs billed to the Authority (JPB Contract 17-J-C-048 Modified costs billed to the Authority/Total-billed to the PCJPB pursuant to JPB Contract 17-J-C-048 Modified)
- Current service billing period costs
- Signature of a PCJPB official
- Signature block for Authority Project Representative
- Signature block for Authority Financial Officer

Narrative:

- Narrative setting forth general description of charges contained in the invoice

Invoice Sheet containing the expense information as follows:

- Contractor invoices (for JPB Contract 17-J-C-048 Modified and Utility Relocation)
 - Detail associated with task completed
 - Total budget, expenditure for the current invoice and cumulative to date.
 - Prime expenditure for the current invoice and cumulative to date.
 - Subcontractors expenditure for the current invoice and cumulative to date, if available.
 - Subcontractors' information:
 - List of all subcontractors in alphabetical order.
 - Small Business Subcontractors designation (SB, Micro, DBE and DVBE) and utilization percentage.
- Executed Right-of-Way Contracts or Eminent Domain Judgments, as applicable

Certification as follows:

- The PCJPB hereby certifies that the work performed/costs incurred and billed under this invoice were reasonable and necessary for the Grade Separation Project and are reimbursable pursuant to Exhibit A, Section 6.1 of HSR 16-108. The PCJPB further certifies that the invoiced amount has not and will not be reimbursed from another source.

ATTACHMENT 4
APPROVED CONTRACTOR LIST

- **Bender Rosenthal, Inc.**
- **Burnis, Michael**
- **Comcast**
- **Dell Marketing L.P.**
- **Fehr & Peers**
- **HDR**
- **Jacobs Engineer Group Inc.**
- **OfficeMax**
- **Pacific Gas & Electric**
- **Rail Surveyors and Engineers, Inc.**
- **TransitAmerica Services, Inc.**
- **URS Corporation (aka AECOM)**
- **Vali Cooper & Associates**
- **Wells Fargo Insurance**

ATTACHMENT 5

25th Ave Grade Separation Cost Estimate and Funding Plan (6/11/2017 Update)

Cost Item	Post-Bid Opening Estimate		August 2016 Estimate	
	Estimate (in \$M)	Total Cost (in \$M)	Estimate (in \$M)	Total Cost (in \$M)
Pre-Construction Phase:				
Environmental	\$ 3.50		\$ 3.50	
Design	\$ 7.20		\$ 7.20	
ROW Acquisition (Partial)	\$ 4.00		\$ 4.00	
Sub-Total: Pre-Construction Phase	\$ 14.70	\$ 14.70	\$ 14.70	\$ 14.70
Construction Phase:				
Construction Contract	\$ 82.90		\$ 107.80	
Set-Out Track Replacement (To be issued as a change order)	\$ 2.00		\$ 2.00	
Contingency at 20% for Revised Estimate/ 10% for Original Estimate	\$ 16.98		\$ 10.98	
Sub-Total: Construction Contract	\$ 101.88		\$ 120.78	
Construction Support Costs:				
Utility Relocation	\$ 4.00		\$ 4.00	
ROW Acquisition (Remaining)	\$ 8.00		\$ 8.00	
Construction Management	\$ 10.80		\$ 10.80	
DSOC	\$ 2.49		\$ 2.49	
Agency & Consultant Staff	\$ 6.30		\$ 6.30	
TASI	\$ 9.00		\$ 9.00	
Sub-Total: Construction Support	\$ 40.59		\$ 40.59	
Contingency at 20% for Revised Estimate/ 10% for Original Estimate	\$ 8.12		\$ 4.06	
Sub-Total: Construction Support Costs	\$ 48.70		\$ 44.65	
Sub-Total: Construction Phase	\$ 150.58	\$ 150.58	\$ 165.43	\$ 165.43
Total Project Cost Estimate		\$ 165.28		\$ 180.13

	August 2016		Revised Per Addendum			
PCEP			1.75	\$		
CPUC	10	\$	10.00	\$		
SMCTA	74	\$	66.83	\$		
City of SM	12	\$	10.84	\$		
HSR	84	\$	75.86	\$	<u>75.86</u>	= 65.24%
	180	\$	165.28	\$	116.28	

ATTACHMENT 6-1

Description of Land – Exhibit A, Section 6.1.2.1

April 26, 2016

RSE, Inc.

JPB-SM-0052

A Portion of APN 039-087-020

LEGAL DESCRIPTION

All that real property situate in the City of San Mateo, County of San Mateo, State of California and being a portion of that certain parcel of land described as recorded January 2, 1964 in Book 4619, Pages 472 and 473, together with that parcel of land described as Parcel 2B as recorded November 6, 1964 in Book 4855 page 115, all in the office of the Recorder of County of San Mateo; said real property being more particularly described as follows:

Beginning at the most westerly corner of that parcel described per said Book 4619 pages 472 and 473, said corner being also a point on the easterly line of the right of way line of the Peninsula Corridor Joint Powers Board (PCJPB) formerly known as the right of way of Union Pacific Railroad and the True Point of Beginning of this description.

Thence along the westerly line of said parcel and the easterly line of said right of way, South 32° 53' 03" East, 358.63 feet to the northwesterly line of 25th Avenue (80 feet wide) described as Parcel 1A per deed recorded November 25, 1964 in Book 4846 pages 345-347, Inclusive, in the office of the Recorder of County of San Mateo;

thence, along the northwesterly line of 25th Avenue, North 50° 06' 49" East, 75.56 feet to the northeasterly line of said parcel described per said Book 4619, pages 472 and 473;

thence, along said line, North 32° 53' 03" West, 27.34 feet to the southwesterly corner of that parcel described per said Book 4855, page 115;

thence, along the southeasterly line of said parcel, North 57° 06' 57" East, 10.00 feet to the most easterly corner of said parcel;

thence, along the northeasterly line of said parcel, North 32° 53' 03" East, 322.08 feet to the northeasterly corner of said parcel;

thence along the northwesterly line of said parcels, South 57° 06' 57" West, 85.00 feet to the True Point of Beginning of this description.

April 26, 2016

Containing an area of 29,773.50 square feet or 0.68 acres, more or less.

The bearings and distances in this description are based on the North American Datum of 1983, 2010.00 Epoch. The distances are grid distances.

A plat showing the above-described parcel is attached hereto and made a part hereof.

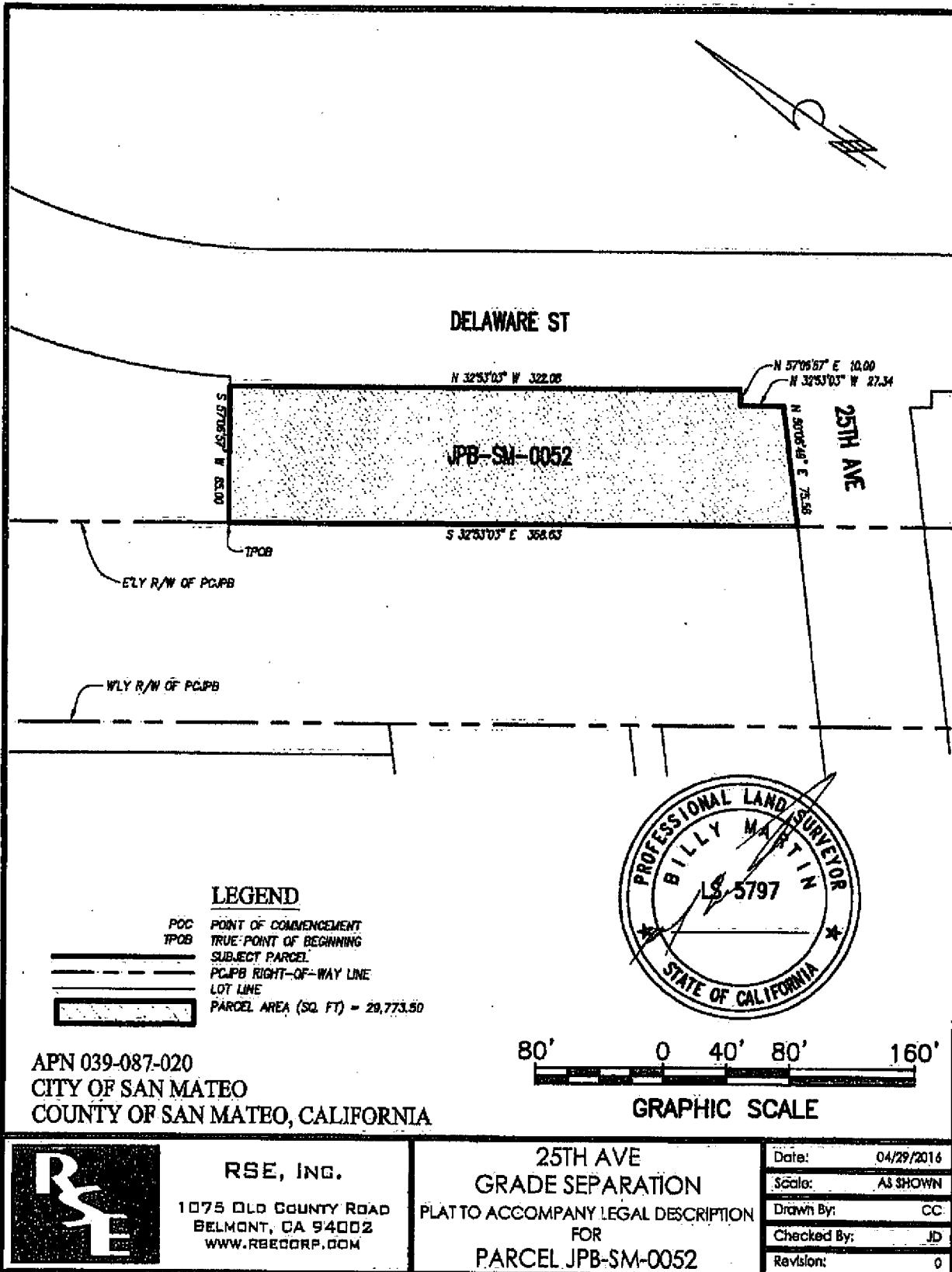
This description was prepared by me or under my direction in conformance with requirements of the Professional Land Surveyors' Act.


Billy Martin, PLS 5797



Sept. 30, 2016
Dated

END OF DESCRIPTION



July 27, 2016

RSE, Inc.

JPB-SM-0053

A Portion of APN 039-086-020

LEGAL DESCRIPTION

All that real property situate in the City of San Mateo, County of San Mateo, State of California and being a portion of that certain parcel of land described as recorded January 2, 1964 in Book 4619, Pages 472 and 473, together with that parcel of land described as Parcel 28 as recorded November 6, 1964 in Book 4855 page 115, all in the office of the Recorder of County of San Mateo; said real property being more particularly described as follows:

Commencing at the southwesterly corner of that parcel described per said Book 4619 pages 472 and 473, said corner being also a point on the easterly line of the right of way line of the Peninsula Corridor Joint Powers Board (PCJPB) formerly known as the right of way of Union Pacific Railroad;

thence along the westerly line of said parcel and the easterly line of said right of way, North 32° 53' 03" West, 40.39 feet to the True Point of Beginning of this description.

Thence continuing along the westerly line of said parcel and the easterly line of said right of way, North 32° 53' 03" West, 224.39 feet to the southeasterly line of 25th Avenue (80 feet wide) described as Parcel 1A per deed recorded November 25, 1964 in Book 4846 pages 345-347, inclusive, in the office of the Recorder of County of San Mateo;

thence along the southeasterly line of said 25th Avenue, North 50°06'49" East, 70.53 feet to a point lying 70.00 feet easterly of, measured perpendicular to, said easterly right of way line;

thence along a line parallel to and 70.00 feet easterly of said easterly line, South 32°53'03" East, 120.00;

thence North 73°46'42" East, 15.66 feet to the northeasterly line of said parcel;

thence along said northeasterly line, South 32°53'03" East, 28.96 feet;

thence South 62°38'26" West, 15.07 feet to a point lying 70.00 feet easterly of, measured perpendicular to, said easterly right of way line;

July 27, 2016

thence along a line parallel to and 70.00 feet easterly of said easterly line, South 32°53'03" East, 80.99 feet;

thence South 57°06'57" West, 70.00 feet to the True Point of Beginning of this description.

Containing an area of 16,465 square feet or 0.38 acres, more or less.

The bearings and distances in this description are based on the North American Datum of 1983, 2010.00 Epoch. The distances are grid distances.

A plat showing the above-described parcel is attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with requirements of the Professional Land Surveyors' Act.



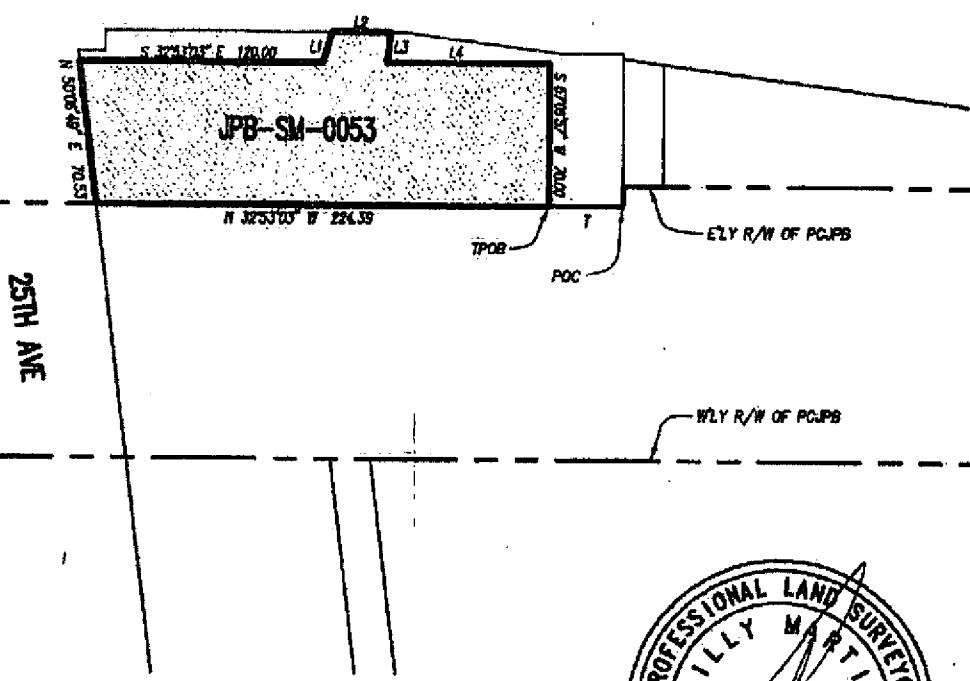

Billy Martin, PLS 5797

Sept. 30, 2016
Dated

END OF DESCRIPTION

LINE	COURSE	LENGTH
T	N 32°53'03" W	40.39
L1	N 73°46'42" E	15.66
L2	S 32°53'03" E	28.98
L3	S 82°36'26" W	15.07
L4	S 32°53'03" E	80.99

DELAWARE ST



PERMIT AGREEMENT
No. 5390

This Permit Agreement, dated, for reference purposes only, as this 16th day of December, 2016, by and between the **COUNTY OF SAN MATEO**, a political subdivision of the State of California, ("County" or "Permittee") and **PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)** ("Permittee"), is entered into subject to the following terms and conditions:

1. **PREMISES AND USE:** Permittee is hereby granted permission to use and occupy APNs: 039-087-020 and 039-086-020, located northwest and southwest of the intersection of 25th Avenue and South Delaware Street in the City of San Mateo, California, as shown on the attached Exhibit A and Exhibit B ("Premises"), for the purpose of construction staging, inclusive of a office trailer(s), while completing work for the 25th Avenue Grade Separation Project involving the construction of a grade separation at 25th Avenue, elevation of the rail between Hillsdale Boulevard and Highway 92, relocation of Hillsdale Station to provide station access and parking, and construction of East-West connections at 28th and 31st Avenues. No other use is allowed without prior consent of County.
2. **RELOCATION:** Permittee agrees during the term of the Permit to relocate any and all staged or stored materials or equipment of any kind, from APN: 039-087-020 (the property northwest of 25th Avenue) to allow County and the San Mateo County Event Center full use of APN: 039-087-020 for the County Fair and Maker Fair events which days are shown on the attached Exhibit C ("County Fair and Maker Fair Dates").
3. **IMPROVEMENTS AND MAINTENANCE OF IMPROVEMENTS:** Permittee shall maintain and repair the Premises at its sole cost. Permittee agrees to keep the Property in good and safe condition, free from waste and hazardous materials, so far as affected by Permittee's operations to the reasonable satisfaction of the County. If Permittee fails to keep the Premises in good and safe condition, free from waste or hazardous materials, then County may perform the necessary remediation work at the expense of Permittee, which expense Permittee agrees to pay upon demand.
4. **TERM:** This Permit shall commence September 1, 2017 and shall terminate upon completion of the 25th Avenue Grade Separation Project, but in no event later than September 1, 2021, unless otherwise agreed to in writing by the parties, in which case, the four year term will be revised. In no instance shall the term extend beyond September 1, 2023.
5. **NATURE OF PERMIT:** This Permit does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest by County. Permittee acknowledges that County is entering into this License in its capacity as a property owner, and not as a regulatory agency.
6. **ASSIGNMENT:** This Permit is not transferable or assignable. Any such transfer or assignment without the consent of County shall be void from the time made.
7. **PERMIT FEE:** Permittee agrees to pay County a sum of **FIVE HUNDRED AND FORTY-THREE THOUSAND, TWO HUNDRED AND FORTY-NINE DOLLARS (\$514,249.00)** for use of the Premises as defined in Section 1 [Premises and Use]. The amount of the fee due pursuant to this Permit has been determined by an engineer's estimate of the cost to pave the Premises upon completion of the project. The sum shall be due in one lump sum within 45 days of Permit being duly executed.
8. **CHANGES, ADDITIONS OR ALTERATIONS:** Permittee agrees not to make any changes, additions, or alterations to the Premises or any part thereof, without first consulting with and obtaining the prior and specific written consent of County.
9. **REMOVAL OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION:** Upon the expiration, or termination of this Permit for any reason, including but not limited to bankruptcy, Permittee shall immediately (and in no event later than ten (10) days after termination) remove from the Premises any and all property placed on the Premises by Permittee or any of Permittee's Agents. Such removal shall be performed in such a manner as to not interfere with the continuing use of the Premises by County, San Mateo County Event Center, or others. Permittee shall, at Permittee's sole expense, repair any damage to the Premises, or any facilities or equipment on the Premises,

caused by such removal or damaged by Permittee during the term. Upon any failure of Permittee to remove any other possessions of Permittee or Permittee's agents or representatives pursuant to this Section, County shall have the option, but not the obligation, to remove the possessions from the Premises and store the possessions, all at Permittee's expense, upon ten (10) days advance written notice to Permittee. Any damages to the Premises occasioned by such removal and storage are expressly waived by Permittee. Any possessions so removed will be returned to Permittee upon payment in full of all removal and storage costs. Notwithstanding the foregoing, any possessions not retrieved by Permittee within sixty (60) days after removal from the Premises by County shall be deemed abandoned by Permittee and shall become the property of County without further action by either party. Such abandonment shall not relieve Permittee of liability for the costs of removal and storage of the possessions.

10. COSTS TO RECOVER PREMISES: Permittee agrees to pay County all costs and expenses in any action brought by County to recover possession of the Premises or to enforce any rights of County hereunder.

11. RELATIONSHIP: County shall not become or be deemed a partner or joint venturer with Permittee by reason of this Permit or any provision hereof. Nothing in this Permit shall be construed to make Permittee an agent, employee, or department of County. Permittee warrants that it will not represent, directly or indirectly, to any person or entity, that it is a department, agent, or employee of the County of San Mateo or that it is performing any official function of County.

Permittee further understands and agrees that County is entering into this Permit in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Permit shall limit in any way Permittee's obligation to obtain any and all required approvals from applicable governmental agencies or commissions having jurisdiction over the Premises. By entering into this Permit, County is in no way modifying or limiting Permittee's obligation to cause the Premises to be used and occupied in accordance with all applicable laws and regulations.

12. LICENSES: Permittee shall secure any and all necessary licenses, permits and approvals applicable to the use of the Premises for which this Permit is granted. Permittee acknowledges and agrees that the Premises are being accepted in "AS IS" condition, without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing the use, occupancy and possession thereof. Permittee acknowledges and agrees that neither County nor any of its agents have made, and County hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Premises or the Property, the present or future suitability of the Premises for Permittee's intended use, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

13. LICENSE, FEES, AND TAXES: Permittee shall be liable for, and shall pay throughout the term of this Permit, any license fees and taxes, including possessory interest taxes, if any, covering its use of the Premises.

14. RESERVATIONS: This Permit is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements, or licenses of any kind whatsoever as the same appear on record in the San Mateo County Recorder's Office, or in the other public records of County.

15. LAW AND REGULATIONS: Permittee shall at all times maintain, occupy, use, and improve the Premises in compliance with all laws, rules, regulations which may be applicable thereto, including but not limited to storm water runoff and environmental regulations.

Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises.

16. INDEMNIFICATION: Permittee agrees to indemnify and save harmless County, its officers, and employees from all claims, suits, or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property of any kind whatsoever and to whomsoever belonging, from any cause or causes whatsoever while in, upon or in any way connected with, the Premises during the term of this Permit or any extension hereof except with respect to APN: 039-087-020 during any period of relocation under Section 2 hereof.

The duty of the Permittee to indemnify and save harmless, as set forth hereinabove, shall include the duty to defend as established in Section 2778 of the California Civil Code.

17. **WORKERS' COMPENSATION AND EMPLOYER LIABILITY INSURANCE:** During the entire term of this Permit, and any extension hereof, Permittee shall have in effect Workers' Compensation and Employer Liability Insurance providing full statutory coverage for all its employees. In signing this Permit, Permittee makes the following certification:

I/We am/are aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers' Compensation or (2) to undertake self-insurance in accordance with the provisions of the Code. I/We will comply with such provisions.

18. **LIABILITY INSURANCE:** Permittee shall obtain at its sole expense, and furnish evidence to County prior to the effective date of this Permit of a combined general liability and property damage insurance policy in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, to be kept in full force during the term of this Permit and any extension hereof:

County, its officers, agents and employees shall be named as additional insured on the liability insurance policy required hereinabove, which shall also contain a provision that the insurance afforded thereby to County shall be the primary insurance to the full limits of liability of the policy. If County has other insurance coverage against a loss covered by the coverage that Permittee is required to have, such other insurance coverage of County shall be excess insurance only.

19. **NONDISCRIMINATION:** Permittee acknowledges and agrees that no person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under this Permit on account of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Permittee shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Permittee shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Permittee that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Permittee shall provide County with a copy of its response to the Complaint when filed.

With respect to the provision of employee benefits, Permittee shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

20. **TERMINATION:** County shall have the right to terminate this Permit at any time for cause in the event of breach or default by serving written notice on the other party at least thirty (30) days in advance of termination.

21. **RIGHTS ON DEFAULT:** If Permittee fails to perform an obligation under this Permit, then unless Permittee promptly rectifies, or commences to rectify, the default, Permittee may, at Permittee's sole discretion, upon written notice to Permittee, take any or all of the following action:

- a. Perform such obligation, in which event the cost thereof becomes immediately due and payable by Permittee to Permittee, and/or
- b. Terminate this Permit.

If the nature of Permittee's default is such that more than thirty (30) days are reasonably required for cure thereof, then Permittee shall not be in default if Permittee shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

22. **NOTICES:** Any notice to be given hereunder shall be by U.S. Certified Mail, prepaid, and addressed to the parties hereto, or personally delivered to, as follows:

County:	County of San Mateo County Manager's Office Real Property Division 455 County Center, 4 th Floor Redwood City, CA 94063
Permittee:	Peninsula Corridor Joint Powers Board c/o San Mateo County Transit District 1250 San Carlos Ave., San Carlos, CA, 94070-1306

23. **HAZARDOUS MATERIAL.** Permittee covenants and agrees that neither Permittee nor any of its Agents or Invitees shall cause or permit any hazardous material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises, with the sole exception that Permittee may keep and use such substances on the Premises in such reasonably limited amounts as are customary for the use authorized in Section 1 [Premises and Use] hereof so long as such use is in compliance with all applicable Environmental Laws at all times and all such hazardous materials are completely removed upon termination or conclusion of this Permit. Permittee shall give immediate written notice to County of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Permittee with respect to the presence or release or suspected presence or release of hazardous material on the Premises or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Permittee relating to any loss or injury resulting from any hazardous materials on the Premises or Property; (c) any release of hazardous material on or about the Premises or any other part of the Property that has occurred and may require any investigation or remediation; and (d) all matters of which Permittee is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

Permittee shall be responsible for investigating and remediating any environmental contamination whatsoever caused by Permittee on the Premises. Notwithstanding anything to the contrary in this Permit, this provision shall survive termination.

24. **SUCCESSORS IN INTEREST:** All of the provisions in this Permit apply to and bind the heirs, successors, executors, administrators and assigns of both parties hereto, both of whom shall be jointly and severally liable hereunder.

25. **ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing executed by both parties.

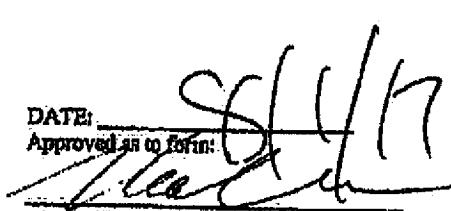
26. **AUTHORIZED REPRESENTATIVE OF COUNTY OF SAN MATEO:** The County Manager shall be the authorized representative of County for purposes of giving any notices or exercising any rights, options or privileges of County in this Permit, including the right to terminate this Permit or to grant Permittee permission to make changes, additions or alterations in the Premises.

The parties hereto have executed this Permit in triplicate on the day and year first above written.

Each party executing this Permit acknowledges receipt of a copy hereof.

PENINSULA JOINT POWERS BOARD

DATE: SS/11/17
Approved in to form:


Michael Conneran

BY: 
Jim Harrington
Executive Director

COUNTY OF SAN MATEO

DATE: August 8, 2017

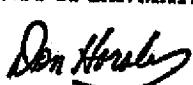
BY: 
Resolution No. 075372
Don Horsley,
President, Board of Supervisors

Exhibit A



Exhibit B



Exhibit C

County Fair and Faire Maker dates for APN 039-087-020 (JPB-SM-0052)

Material and equipment may be stored within Parcel JPB-SM-0052 at the northwest corner of South Delaware and 25th Avenue intersection in San Mateo. Material and equipment must be removed from the Parcel prior to and during the following dates:

May 17, 2018 through May 21, 2018; June 8, 2018 through June 11, 2018; and June 15, 2018 through June 18, 2018.

May 16, 2019 through May 20, 2019; June 7, 2019 through June 10, 2019; and June 14, 2019 through June 17, 2019.

May 14, 2020 thru May 18, 2020; June 5, 2020 through June 8, 2020; and June 12, 2020 through June 15, 2020.

ATTACHMENT 6-2.

Description of Land – Exhibit A, Section 6.1.2.2

August 2, 2016

RSE, Inc.
JPS-SM-0048-1
A Portion of APN 039-360-120

LEGAL DESCRIPTION

All that real property situate in the City of San Mateo, County of San Mateo, State of California and being a portion of that certain parcel of land described in that certain Document No. 1999-151637 filed September 3, 1999 in the office of the Recorder of County of San Mateo; said real property being more particularly described as follows:

Beginning at the most northerly corner of said parcel, said corner being on the westerly line of the right of way line of the Peninsula Corridor Joint Powers Board (PCJPB) formerly known as the right of way of Union Pacific Railroad and said corner also being the True Point of Beginning of this description.

thence along the westerly line of the PCJPB right of way, South 32°53'03" East, 366.95 feet;

thence South 45°11'31" West, 3.07 feet to a point lying 3.00 feet westerly of, measured perpendicular to, said westerly line;

thence along a line parallel to and 3.00 feet westerly of said westerly line, North 32°53'03" West, 147.27 feet;

thence South 57°06'57" West, 3.50 feet to a point lying 6.50 feet westerly of, measured perpendicular to, said westerly line;

thence along a line parallel to and 6.50 feet westerly of said westerly line, North 32°53'03" West, 148.75 feet;

thence South 57°06'57" West, 3.50 feet to a point lying 10.00 feet westerly of, measured perpendicular to, said westerly line;

thence along a line parallel to and 10.00 feet westerly of said westerly line, North 32°53'03" West, 70.56 feet;

thence North 51°20'51" East, 10.05 feet to the True Point of Beginning of this description.

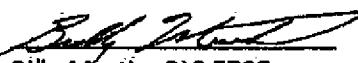
Containing an area of 2118 square feet or 0.05 acres, more or less.

August 2, 2016

The bearings and distances in this description are based on the North American Datum of 1983, 2010.00 Epoch. The distances are grid distances.

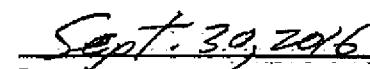
A plat showing the above-described parcel is attached hereto and made a part hereof.

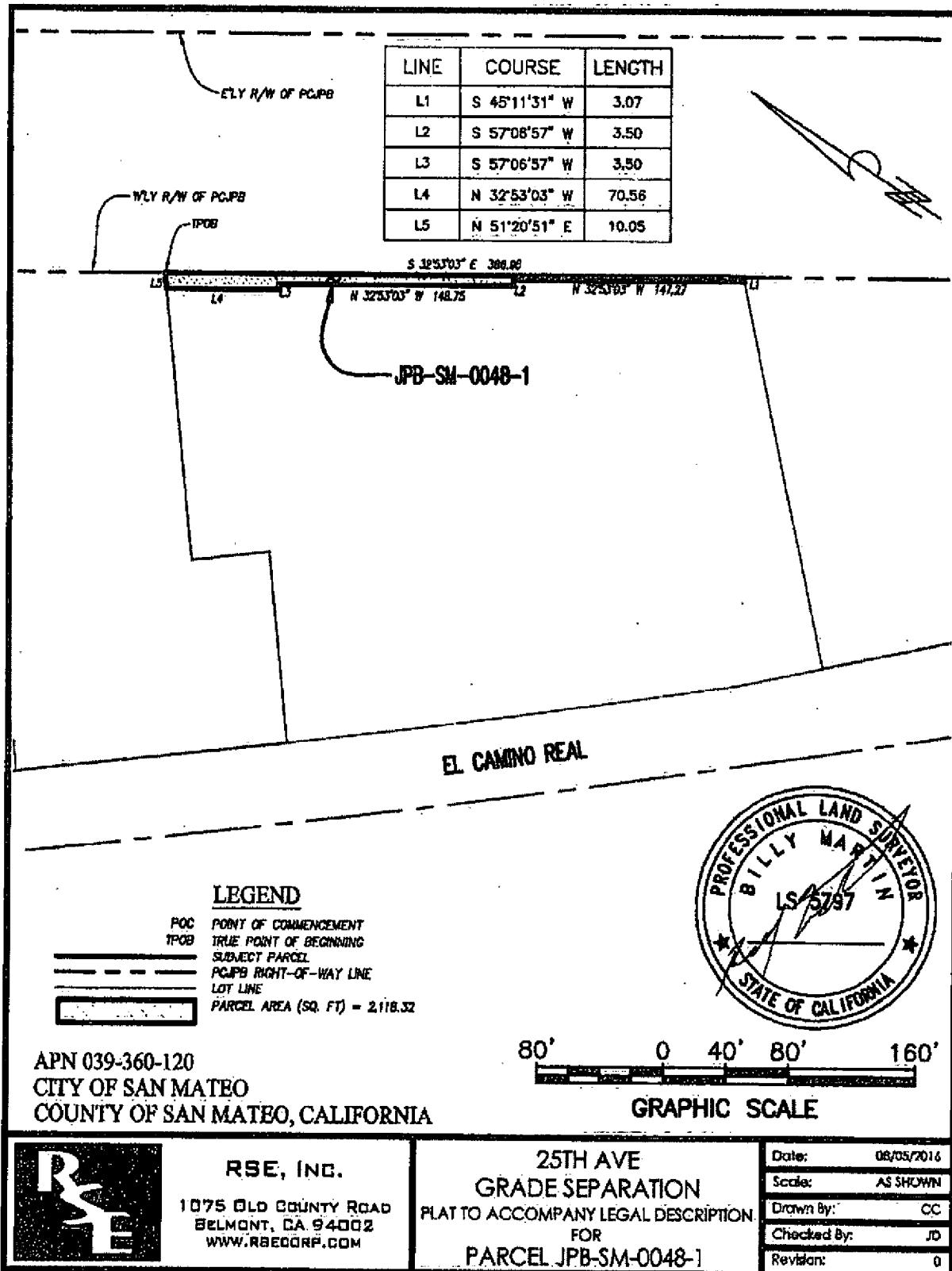
This description was prepared by me or under my direction in conformance with requirements of the Professional Land Surveyors' Act.


Billy Martin, PLS 5797

END OF DESCRIPTION




Dated



ATTACHMENT 6-3

Description of Land – Exhibit A, Section 6.1.2.3

May 2, 2016

RSE, Inc.

JPB-SM-0049-2

A Portion of APN 039-360-060

LEGAL DESCRIPTION

All that real property situate in the City of San Mateo, County of San Mateo, State of California and being a portion of that certain parcel of land described as recorded January 22, 1969, in Book 5588, Pages 643 and 644, in the office of the Recorder of the County of San Mateo; said real property being a strip of land of land 10 feet wide being more particularly described as follows:

Beginning at the most northerly corner of that parcel referenced above, being common with the most easterly corner of Parcel 1 as shown on Parcel Map No. 352 recorded in Book 69 Pages 63 and 64 of maps in the office of the Recorder of the County of San Mateo, said corner being also a point on the westerly line of the right of way line of the Peninsula Corridor Joint Powers Board (PCJPB) formerly known as the right of way of Union Pacific Railroad; Said point being True Point of Beginning of this description;

thence along the easterly line of said parcel and the westerly line of said right of way, South 32° 53' 03" East, 292.78 feet;

thence leaving said westerly right of way line of the Peninsula Corridor Joint Powers Board, South 57°07'13" West, 186.43 feet to the beginning of a curve to the right and having a radius of 10.00 feet;

thence westerly along said curve through a central angle of 47°21'11", an arc length of 8.26 feet to the southwesterly line of said parcel referenced above, also being the northeasterly line of El Camino Real, a radial line to said point bears South 14°28'30" West;

thence on said southwesterly line, North 44°48'29" West, 25.02 feet;

thence leaving said southwesterly line, North 45°11'31" East, 10.00 feet to a point on a line that is 10 feet northeasterly and parallel with said southwesterly line;

thence on said parallel line, South 44°48'29" East, 20.21 feet to a point on a line that is 10 feet northwesterly and parallel with aforesaid line referenced herein as "South 57°07'13" West, 186.43 feet";

thence on said parallel line North 57°07'13" East, 175.00 feet to a point on a line that is 10 feet southwesterly of and parallel with said westerly right of way line of the Peninsula Corridor Joint Powers Board;

May 2, 2016

thence on said parallel line North 32° 53' 03" West, 280.67 feet to the northwesterly line of said parcel referenced above;

thence on said northwesterly line, North 45°11'31" East 10.22 feet to the True Point of Beginning of this description.

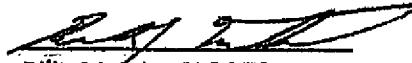
Containing: 4,944.15 square feet or 0.11 acres more or less.

The bearings and distances in this description are based on the North American Datum of 1983, 2010.00 Epoch. The distances are grid distances.

A plat showing the above-described parcel is attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with requirements of the Professional Land Surveyors' Act.

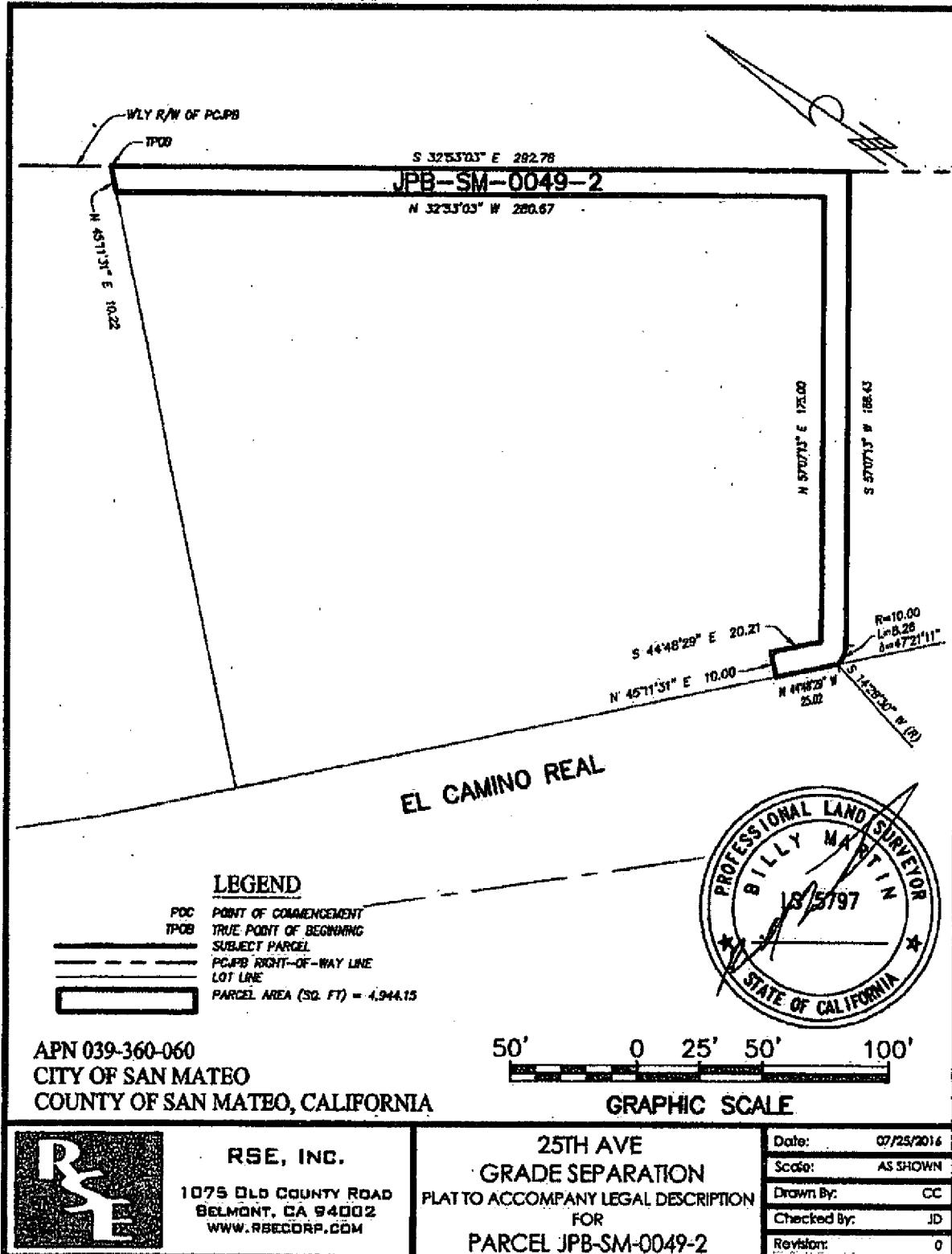



Billy Martin, PLS 5797

Dated

Sept. 12, 2016

END OF DESCRIPTION



May 2, 2016

RSE, Inc.

JPB-SM-0049-3

A Portion of APN 039-360-060

LEGAL DESCRIPTION

All that real property situate in the City of San Mateo, County of San Mateo, State of California and being a portion of that certain parcel of land described as recorded January 22, 1969, in Book 5588, Pages 643 and 644, in the office of the Recorder of County of San Mateo; said real property being more particularly described as follows:

Commencing at the most northerly corner of that parcel referenced above, being common with the most easterly corner of Parcel 1 as shown on Parcel Map No. 352 recorded in Book 69 Pages 63 and 64 of maps in the office of the Recorder of the County of San Mateo, said corner being also a point on the westerly line of the right of way line of the Peninsula Corridor Joint Powers Board (PCJPB) formerly known as the right of way of Union Pacific Railroad; thence along the easterly line of said parcel and the westerly line of said right of way, South 32° 53' 03" East, 379.78 feet to the **True Point of Beginning** of this description;

thence along the northeasterly line of said parcel and the westerly line of said right of way, South 32°53'03" East, 10.00 feet;

thence leaving said northeasterly line, South 57°07'13" West, 157.24 feet;

thence South 42°55'10" East, 101.52 feet;

thence South 45°54'49" West, 11.71 feet to a point on the southwesterly line of said parcel also being the northeasterly right of way line of El Camino Real;

thence along said southwesterly line, North 44°48'29" West, 10.00 feet to a point that lies 440.19 feet from the most westerly corner of said parcel being common with the most southerly corner of said parcel 1;

thence leaving said southwesterly along said southeasterly line, the following courses: North 45°54'49" East, 2.03 feet;

thence North 44°05'11" West, 88.78 feet;

thence North 45°54'49" East, 0.50 feet;

thence North 44°05'11" West, 3.10 feet to the beginning of a curve to the right and having a radius of 9.50 feet;

May 2, 2016

thence northerly along said curve through a central angle of $91^{\circ}26'15''$, an arc length of 15.16 feet;

thence North $42^{\circ}38'56''$ West, 0.50 feet to the beginning of a non-tangent curve concave southeasterly and having a radius of 10.00 feet, to which a radial line bears North $42^{\circ}38'56''$ West;

thence northeasterly along said curve through a central angle of $09^{\circ}46'09''$, an arc length of 1.71 feet;

thence North $57^{\circ}07'13''$ East, 159.14 feet to a point the **True Point of Beginning** of this description.

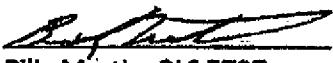
Containing an area of 2,793.63 square feet or 0.06 acres, more or less.

The bearings and distances in this description are based on the North American Datum of 1983, 2010.00 Epoch. The distances are grid distances.

A plat showing the above-described parcel is attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with requirements of the Professional Land Surveyors' Act.

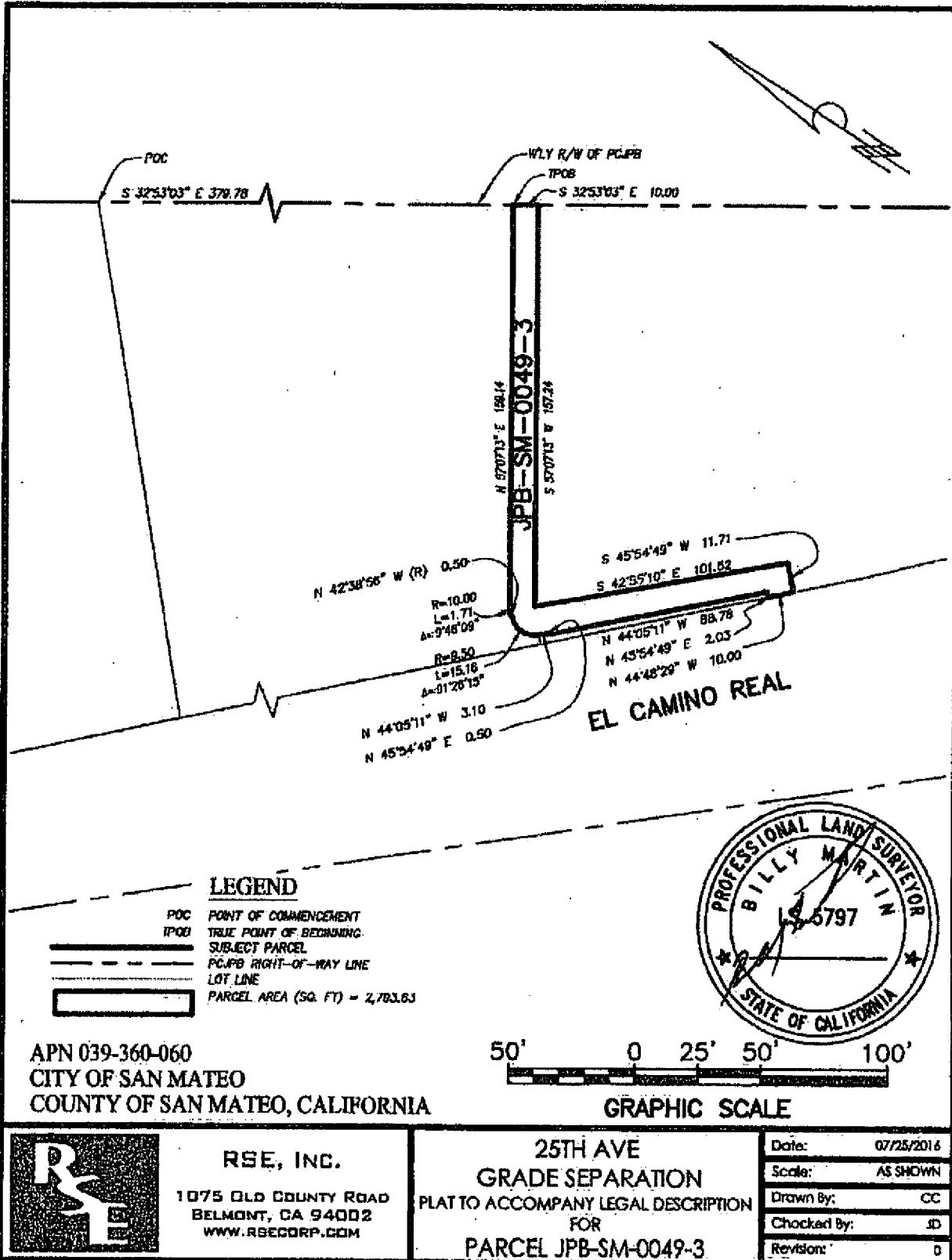



Billy Martin, PLS 5797

Dated

Sept. 12, 2016

END OF DESCRIPTION



May 2, 2016

RSE, Inc.

JPB-SM-0049-1

A Portion of APN 039-360-060

LEGAL DESCRIPTION

All that real property situate in the City of San Mateo, County of San Mateo, State of California and being a portion of that certain parcel of land described as recorded January 22, 1969, in Book 5588, Pages 643 and 644, in the office of the Recorder of County of San Mateo; said real property being more particularly described as follows:

Commencing at the most northerly corner of that parcel referenced above, being common with the most easterly corner of Parcel 1 as shown on Parcel Map No. 352 recorded in Book 69 Pages 63 and 64 of maps in the office of the Recorder of the County of San Mateo, said corner being also a point on the westerly line of the right of way line of the Peninsula Corridor Joint Powers Board (PCJPB) formerly known as the right of way of Union Pacific Railroad; thence along the easterly line of said parcel and the westerly line of said right of way, South $32^{\circ} 53' 03''$ East, 292.78 feet to the **True Point of Beginning** of this description;

thence leaving said westerly right of way line of the Peninsula Corridor Joint Powers Board, South $57^{\circ} 07' 13''$ West, 186.43 feet to the beginning of a curve to the right and having a radius of 10.00 feet;

thence westerly along said curve through a central angle of $47^{\circ} 21' 11''$, an arc length of 8.26 feet to the southwesterly line of said parcel referenced above, also being the northeasterly line of El Camino Real, a radial line to said point bears South $14^{\circ} 28' 30''$ West;

thence along said southwesterly line, South $44^{\circ} 48' 49''$ East, 196.94 feet to a point that lies 440.19 feet from the most westerly corner of said parcel being common with the most southerly corner of said parcel 1;

thence leaving said southwesterly line, North $45^{\circ} 54' 49''$ East, 2.03 feet; thence, North $44^{\circ} 05' 11''$ West, 88.78 feet;

thence North $45^{\circ} 54' 49''$ East, 0.50 feet; thence, North $44^{\circ} 05' 11''$ West, 3.10 feet to the beginning of a curve to the right and having a radius of 9.50 feet;

thence northerly along said curve through a central angle of $91^{\circ} 26' 15''$, an arc length of 15.16 feet;

May 2, 2016

thence on a radial line, North 42°38'56" West, 0.50 feet to the beginning of a non-tangent curve to the right and having a radius of 10.00 feet, to which a radial line bears North 42°38'56" West;

thence northeasterly along said curve through a central angle of 09°46'09", an arc length of 1.71 feet;

thence North 57°07'13" East, 159.14 feet to a point on the said northeasterly line of said parcel referenced above, that lies 379.78 feet from said most northerly corner of said parcel;

thence along said northeasterly line, North 32°53'03" West, 87.00 feet to the **True Point of Beginning of this description.**

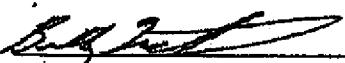
Containing an area of 16,331.02 square feet or 0.38 acres, more or less.

The bearings and distances in this description are based on the North American Datum of 1983, 2010.00 Epoch. The distances are grid distances.

A plat showing the above-described parcel is attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with requirements of the Professional Land Surveyors' Act.

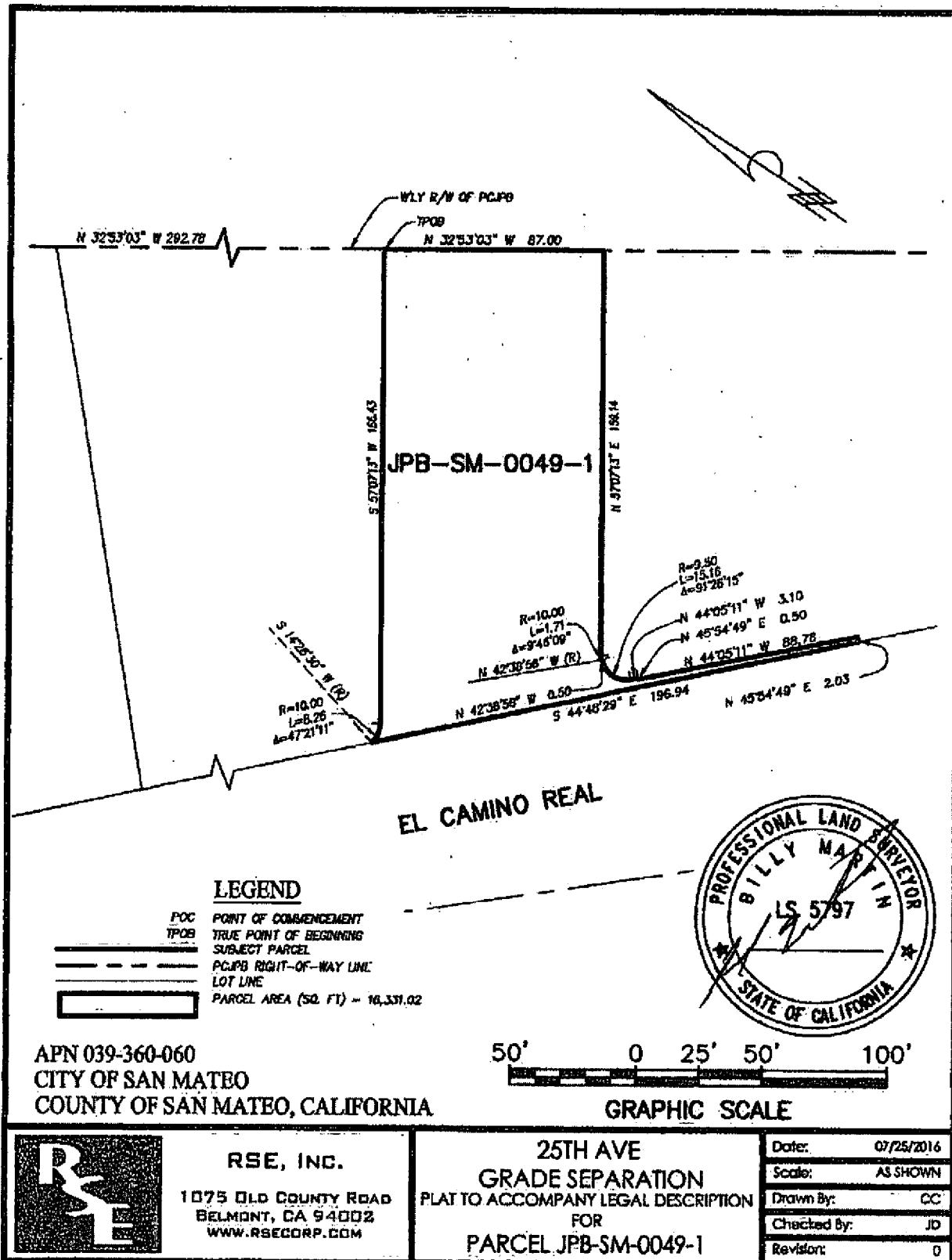



Billy Martin, PLS 5797

Dated

Sept. 12, 2016

END OF DESCRIPTION



STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 08/03)

Agreement Number
HSR16-108

Registration Number

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
California High-Speed Rail Authority

CONTRACTORS' NAME
Peninsula Corridor Joint Powers Board and City of San Mateo

2. The term of this Agreement is: June 1, 2017, or upon execution by all parties, whichever is later, through June 30, 2021.
3. The maximum amount of this Agreement is: \$84,000,000.00
Eighty-Four Million and Zero Cents
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	6 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit C – General Terms and Conditions	4 pages
Exhibit D – Special Terms and Conditions	3 pages
Attachment 1 – Required Change Order	1 page
Attachment 2 – Passing Tracks Conceptual Design	7 pages
Attachment 3 – Invoice Requirements	1 page
Attachment 4 - Approved Contractor List	1 page
Attachment 5 – 25th Ave Grade Separation Cost Estimate and Funding Plan	1 page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR (ADDITIONAL SIGNATURE ON FOLLOWING PAGE)

California Department of General Services Use Only

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Peninsula Corridor Joint Powers Authority

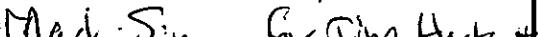
BY (Authorized Signature)



DATE SIGNED (Do not type)

6/27/17

PRINTED NAME AND TITLE OF PERSON SIGNING

James Hartnett, Executive Director 

ADDRESS

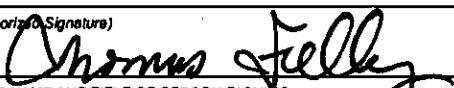
1250 San Carlos Avenue, San Carlos, CA 94070

STATE OF CALIFORNIA

AGENCY NAME

California High-Speed Rail Authority

BY (Authorized Signature)



DATE SIGNED (Do not type)

June 23, 2017

PRINTED NAME AND TITLE OF PERSON SIGNING

Thomas Fellner, Interim Chief Executive Officer

ADDRESS

770 L Street, Suite 620, MS1 Sacramento CA 95814

X Exempt per: Public Utilities Code section 185038

ADDITIONAL CONTRACTOR SIGNATURE

CONTRACTOR	
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)	
City of San Mateo	
BY (Authorized Signature) 	DATE SIGNED (Do not type) JUNE 27, 2017
PRINTED NAME AND TITLE OF PERSON SIGNING Larry Patterson, City Manager	
ADDRESS 330 West 20th Avenue, San Mateo, CA 94403	

EXHIBIT A: SCOPE OF WORK

1 PARTIES

This agreement ("Agreement") is entered into by and between the California High-Speed Rail Authority, an agency of the State of California, hereinafter referred to as the "Authority," the City of San Mateo, a municipality, hereinafter referred to as the "City" and the Peninsula Corridor Joint Powers Board, a joint exercise of powers agency organized under Chapter 5 of Division 7 of Title 1 of the California Government Code, hereinafter referred to as "PCJPB." The Authority, the City and the PCJPB are referred to herein individually as a "Party" and as collectively the "Parties."

2 BACKGROUND

The Authority is responsible for the planning, design, construction and operation of a high-speed rail ("HSR") system that will connect most of populated California. Between San Francisco and San Jose, the Authority's trains will share the rails in the corridor ("Peninsula Rail Corridor" or "Corridor") that is currently used primarily by commuter rail service operated by the PCJPB. The Corridor passes through the City's limits.

Shared usage of the Corridor by the Authority and PCJPB (and by existing freight) is known as the "Blended System." The Corridor is not currently electrified; current PCJPB trains are diesel. Functionality of the Blended System requires the Corridor to be electrified, as only an electrified Corridor with PCJPB operating electric trains creates the capacity to add and blend in Authority electric trains. To improve safety and traffic operation in the Corridor, and to create the opportunity (if necessary) for additional track in the Corridor, a project to grade separate the Caltrain operating right-of-way from 25th Avenue, 28th Avenue and 31st Avenue (the "Grade Separation Project" or "Project") is planned.

Electrification of the Corridor and the Grade Separation Project are each of independent utility relative to each other and relative to HSR.

The City, PCJPB, and the San Mateo County Transportation Authority ("SMCTA") executed a Memorandum of Understanding ("MOU") on July 11, 2014 (as first amended on March 3, 2016) for the funding and delivery of the Grade Separation Project, whereby the City serves as the Project sponsor, the PCJPB serves as the Lead Implementing Agency, and the SMCTA would, along with the City, provide funding for the Grade Separation Project.

The PCJPB has successfully completed the planning, preliminary engineering and environmental ("PE/ENV") phase and final design ("PS&E") phase; and the Grade Separation Project is currently in the right of way and construction phase. On December 22, 2016, PCJPB issued an invitation for bids (JPB Contract 17-J-C-048, IFB, Plans and Specifications, dated Dec. 22, 2016, as well as 12 Addenda, referred to herein collectively as "IFB") for a construction contract to construct the Grade Separation Project, based on the final design completed in the PS&E phase. The Authority has seen and concurs with the final design drawings upon which the IFB ("IFB Final Design") was based and which will govern the construction contract to be awarded following the IFB, except as noted in Section 3.1 of this Exhibit A and in Attachment 1.

On August 9, 2016, the Authority passed Resolution #HSRA 16-22 authorizing the Chief Executive Officer to execute an agreement to contribute funding in the amount of up to \$84 million for the

EXHIBIT A: SCOPE OF WORK

construction of the Grade Separation Project. This Agreement is intended to fund 75.72 percent of the costs billed to PCJPB by the IFB construction contractor up to \$84 million, in exchange for certain protections, benefits and assurances.

In consideration of the foregoing, this Agreement has been entered into by the Parties to identify and define their respective roles and responsibilities with regard to the Grade Separation Project described in the Agreement. The Parties are fully responsible for their obligations as provided hereunder, whether performed by the Party itself, or through arrangements with others, such as contractors or (in the case of PCJPB) member agencies.

3 WORK TO BE DONE

3.1 Grade Separation Project

PCJPB will construct grade separation structures separating the Caltrain operating right-of-way from the existing grade crossing at 25th Avenue, and new crossings at 28th Avenue and 31st Avenue within San Mateo. The structures shall be constructed pursuant to the design and specifications described in the IFB, except that, within two weeks of the date of execution (or such other timing as the Authority may agree to in writing) of JPB Contract 17-J-C-048, PCJPB shall cause JPB Contract 17-J-C-048 to be amended to include the design and specification elements required for the modified Blended Service alignment depicted in Attachment 1 hereto (as to be modified, hereinafter the "JPB Contract 17-J-C-048 Modified"). The grade separations will allow the above-referenced streets to pass under the structure upon which PCJPB and Authority trains will operate. The crossing at 25th Street has been identified as DOT Crossing Number 754910E aka CPUC Crossing No. 105E-19.70. As they are new crossings, the DOT and CPUC references do not yet exist for the 28th Avenue or 31st Avenue grade separations.

The grade separation will be supported by a mechanically stabilized earth wall located to the west of the existing PCJPB right-of-way.

In addition, the Grade Separation Project at 25th Avenue will relocate the existing Hillsdale Caltrain Station and provide new at-grade parking and station access for the new Hillsdale Station. The new station will be an elevated, center-board platform, located immediately south of 28th Avenue. The Grade Separation Project will construct three new precast box girder concrete bridges (one each at Borel Creek, 25th Avenue and 28th Avenue), one new steel beam span bridge at 31st Avenue, and one new cast-in-place concrete pedestrian and vehicular underpass.

In addition to lowering 25th Avenue, the Grade Separation will construct two new east-west connections between Delaware and El Camino Real, one each at 28th and 31st Avenues. Both 31st and 28th Avenues will have four through-lanes, one left turn only pocket, and two sidewalks/bike lanes. Temporary Parking will be constructed within the PCJPB right of way east of the new track alignment to the north and south of 28th Avenue.

3.2 Description

A detailed scope of work for the construction of the Grade Separation Project is set forth in JPB Contract 17-J-C-048 Modified, and is the work eligible for reimbursement under this Agreement.

EXHIBIT A: SCOPE OF WORK

Within forty-five (45) days after execution of this Agreement, and upon completion of good faith negotiations, the Parties will amend this Agreement to permit some or all of the items listed under "Construction Support Costs" in page 1 of Attachment 5 to be reimbursable under this Agreement; the Parties agree to prepare such amendment so as to (a) not result in the Authority contributing more than the lesser of \$84 million or 46.67 percent of the total actual Project cost and (b) contain terms providing adequate transparency and Authority oversight regarding accrual of such "Construction Support Costs."

3.3 Project Uses

The Grade Separation Project is to be used for vehicular traffic and pedestrian crossing under the Corridor rail tracks.

4 ROLES AND RESPONSIBILITIES OF THE PARTIES

4.1 Property Ownership, Use and Access Rights

4.1.1 Ownership of Project Site Property (PCJPB)

PCJPB is the owner of the Peninsula Corridor Railroad right-of-way, and specifically that certain real property and fixtures located in the City of San Mateo between milepost (MP) 19.0 and MP 20.3. The PCJPB shall obtain any additional property rights necessary to properly construct and maintain the structure and the roadway resulting from the Grade Separation Project.

4.1.2 Ownership of Project Site Property (City)

The City shall allow use of and access to City-owned property as necessary for the PCJPB to complete the Grade Separation Project.

4.2 Environmental Obligations

4.2.1 During construction, the PCJPB will comply with all applicable environmental laws, and the specific environmental commitments provided for in the following documents: San Mateo 25th Avenue Grade Separation Project CEQA Exemption and San Mateo 25th Avenue Grade Separation Project – Determination of Categorical Exclusion or any other environmental clearance document required for the Grade Separation Project.

4.2.2 PCJPB is and will remain the lead agency under CEQA and will obtain any further required environmental clearance for the Grade Separation Project. PCJPB shall also obtain all required environmental permits and approvals necessary for the Grade Separation Project.

4.3 Responsibility for Obtaining Governmental Permits and Approvals

The PCJPB will be responsible for obtaining all governmental permits and approvals for the Grade Separation Project.

4.4 Construction

The PCJPB will be responsible for completing all construction work for the Grade Separation Project. The Grade Separation Project must be built in material conformance with JPB Contract 17-J-C-048

EXHIBIT A: SCOPE OF WORK

Modified. Any material changes PCJPB proposes to make must first be approved by the Authority, after PCJPB communicates such proposed change to the Authority, in writing, return receipt requested. The Authority's review will be limited to ensuring that no aspect of the Authority's planned operations and/or construction will be negatively impacted, including but not limited to increasing potential costs. If the Authority does not respond within five (5) working days, Authority's approval of the change will be deemed given.

4.5 Construction Schedule

The contract for the construction of the Grade Separation Project is expected to be awarded to a contractor selected by PCJPB prior to the end of July 2017 and the PCJPB will use its best efforts to ensure the work is completed within 900 days from the issuance to the contractor of notice to proceed. It is understood, however, that PCJPB will not be responsible for unavoidable delays not caused by the actions or inactions of the PCJPB or its staff.

4.6 Other Obligations Necessary to Cause Completion of the Grade Separation Project

Except as otherwise assigned in this Agreement, the City shall take or cause to be taken all actions (whether identified in this Agreement or not) necessary to cause completion of the Grade Separation Project and its placement into service.

5 OWNERSHIP AND MAINTENANCE OBLIGATIONS

5.1 City Ownership and Maintenance Obligations

After completion of the Grade Separation Project, City shall own and be responsible for maintenance of the roadbeds, pavement delineation, signage, lighting, drainage systems, any other supporting appurtenances and landscape established including irrigation, planting and hardscape. The City's maintenance obligations will not extend to the grade separation structure or the railroad right-of-way. City further agrees that it shall take no action with respect to City maintenance and use (or future modification) of the roadbeds and related improvements that City knows or reasonably should know at the time of the action would effectively preclude or make materially more complicated or expensive Authority future use of the Corridor for Blended System operations or make such use or operations non-compliant with Proposition 1A.

5.2 PCJPB Ownership and Maintenance Obligations

After the completion of the Grade Separation Project, the PCJPB shall own and be responsible for all aspects of the Grade Separation Project structures not covered by Section 5.1, including but not limited to the maintenance of the railroad right-of-way, including the grade-separated structure, associated with the Grade Separation Project in a safe and good condition and state of repair and in compliance with all applicable laws, using such care as a reasonably prudent owner of such infrastructure would use.

PCJPB further agrees that (a) it will not make any material modification to the Grade Separation Structure or the associated railroad right-of-way (between MP 19.0 and MP 20.3) without prior written approval of the Authority and (b) it will take no action with respect to PCJPB's maintenance and use of the Grade

EXHIBIT A: SCOPE OF WORK

Separation Structure or the associated railroad right-of-way (between MP 19.0 and MP 20.3) that PCJPB knows or reasonably should know at the time would effectively preclude or make materially more complicated or expensive Authority future use of the Corridor for Blended System operations or make such use or operations non-compliant with Proposition 1A.

5.3 Authority Ownership and Maintenance Obligations

Except as otherwise agreed to by the Authority and a Party (either the PCJPB or the City) in a separate existing or future agreement, the Authority will have no ownership rights nor any maintenance obligations associated with the Grade Separation Project.

6 COST OF WORK

6.1 Authority Cost Responsibilities

The Authority will be responsible to reimburse the PCJPB, as further detailed in Exhibit B, for 75.72 percent of the costs invoiced to the PCJPB by the construction contractor pursuant to JPB Contract 17-J-C-048 Modified, up to a total maximum contribution of \$84 million. In no event will the Authority be responsible for more than \$84 million.

6.2 City Cost Responsibilities

The City is solely responsible for securing all costs for all phases to complete the Grade Separation Project (regardless of the accuracy or inaccuracy of the plans, estimates and assumptions that form the basis of the Grade Separation Project), through final completion and placement into service, except as specifically set forth in Section 6.1 – Authority Cost Responsibilities.

7 QUARTERLY REVIEWS

The Parties shall meet (in person or by phone) quarterly to review PCJPB's progress in completing the Grade Separation Project, and to discuss any pending contract management or invoicing and payment matters. In advance of a quarterly review, any Party may reasonably request, and the holding Party shall provide copies of, then-existing documents to aid the quarterly review.

8 GRADE SEPARATION PROJECT AS RELATES TO BLENDED SYSTEM DESIGN

The Parties acknowledge that passing tracks may or may not be needed (the Authority and PCJPB are currently in disagreement) for operation of the Blended System within the limits of the Grade Separation Project. Should it be determined that passing tracks are necessary in this location, the Parties agree to reasonably cooperate and support the construction of such passing tracks pursuant to the conceptual design set forth in Attachment 2.

Nothing in this Agreement shall be construed to mean any Party has agreed to the need or lack of need for passing tracks or any allocation of implementation or cost responsibility related to the implications of adding any passing track (including but not limited to replacement of displaced parking or other uses).

9 PROJECT REPRESENTATIVES

The Project Representatives during the term of this Agreement shall be as listed below.

EXHIBIT A: SCOPE OF WORK

CITY

City Project Representative Brad Underwood, Director of Public Works
Phone Number 650-522-7303
Address: 330 W. 20th Avenue, San Mateo, CA 94403
E-Mail Address bunderwood@cityofsanmateo.org

PCJPB

PCJPB Project Representative April Chan, Chief Officer, Planning, Grants
and Transportation Authority
Phone Number 650-508-6228
Address: 1250 San Carlos Avenue, San Carlos, CA 94070
E-Mail Address chana@samtrans.com

AUTHORITY

Authority Project Representative Ben Tripousis
Phone Number (408) 277-1085
Address: 100 Paseo de San Antonio, #206, San Jose, CA 95113
E-Mail Address ben.tripousis@hsr.ca.gov

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

1 FUNDING CONTINGENCY CLAUSE

- 1.1 If, following execution of this Agreement, the legislature of the State of California actually or effectively de-appropriates some or all of the funds the Authority has committed under this Agreement ("Funds"), or if forces beyond the Authority's ability to control (including market forces, litigation, court decisions, and actions or inactions of the Legislature) render the Funds unavailable, the Authority shall have the right, at the Authority's election, to either (1) cancel this Agreement, with no further liability occurring to the Authority for the portion of the Funds de-appropriated or rendered unavailable, or (2) negotiate with PCJPB and the City changes to the Scope of Work, funding, or timing of the Grade Separation Project or other terms of this Agreement. This Agreement is also subject to any additional restrictions, limitations, and conditions, and any delays, as may be approved or imposed by the Congress of the United States or the legislature of the State of California or any court of law, and which may affect the provisions, terms or funding of this Agreement.

2 INVOICING AND PAYMENT

- 2.1 For services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices by the Authority Contract Manager, the Authority agrees to reimburse the PCJPB for 75.72 percent of the costs listed in each invoice sent to the PCJPB by the construction contractor pursuant to JPB Contract 17-J-C-048 Modified.
 - 2.1.1 No payment shall be made in advance of services rendered.
 - 2.1.2 The total amount payable by the Authority for this Agreement shall not exceed the amount on the STD. 213, which is \$84 million. It is further understood and agreed that (1) this total is the maximum amount payable to the PCJPB and (2) the total amount payable to the PCJPB shall not exceed the lesser of \$84 million or 75.72 percent of the total costs invoiced to the PCJPB by the construction contractor pursuant to JPB Contract 17-J-C-048 Modified.
 - 2.1.3 PCJPB shall provide one paper original and two copies of the invoice for payment. Invoices shall be submitted no more than monthly in arrears and no later than 30 calendar days after completion of each billing period or upon completion of a task to:

Financial Office
California High-Speed Rail Authority
770 L Street, Suite 620 MS 3
Sacramento, CA 95814

accountspayable@hsr.ca.gov

(1 original and 2 copies)

AND

The PCJPB shall also submit (electronically) one additional copy of the invoice and supporting documentation to the Authority's Project Representative or designee at the address identified in Exhibit A, Section 9.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS**3 INVOICE FORMAT**

- 3.1 The Authority will accept computer generated or electronically transmitted invoices. The date of "invoice receipt" shall be the date the Authority receives the paper copy at the address listed in Section 2.1.3 of this Exhibit.
- 3.2 An invoice shall include all aspects and information as set forth in Attachment 3.
- 3.3 The PCJPB acknowledges that the Authority may add reasonable information or documentation requirements to the above invoice list to meet the Authority's needs, and that the Authority may add any information or documentation requirements to the above invoice list if required by the State Controller's Office or if legally required for the Authority to meet any reporting requirements. The PCJPB, upon receipt of written communication requiring additional documentation or information, shall promptly provide such requested documentation and/or information.
- 3.4 The PCJPB shall retain back-up documentation for audit purposes available to the Authority upon request. The PCJPB shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all PCJPB's contractor services and expenses invoiced for payment under this Agreement.

4 PROMPT PAYMENT ACT

- 4.1 Authority will endeavor to make all payments in the time frames set forth in Government Code Chapter 927, et seq.

5 INVOICE DISPUTES

- 5.1 Payments shall be made to the PCJPB for undisputed invoices. An undisputed invoice is an invoice submitted by the PCJPB for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if the invoice is inaccurate, or if it does not comply with the terms of the Agreement. If the invoice is disputed, the PCJPB will be notified via a Dispute Notification Form, or with other written notification within 15 working days of receipt of the invoice; the PCJPB will be paid the undisputed portion of the invoice.
- 5.2 Though this Project is of independent utility relative to the Peninsular Corridor Electrification Project, in the event the project representatives are unable to resolve the issue(s) leading to the disputed invoice, the Parties shall follow the dispute resolution procedures set forth in Section IV of the Agreement Regarding Funding Commitments Towards the Peninsula Corridor Electrification Project between the Authority and PCJPB dated August 9, 2016 ("Two-Party Agreement").

6 COST PRINCIPLES

- 6.1 The PCJPB agrees to comply with procedures in accordance with OMB Circular A-87, as amended, Cost Principles for State, Local, and Indian Tribal Governments.
- 6.2 The PCJPB agrees to comply with Title 49 Code of Federal Regulations, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

- 6.3 Any costs for which payment has been made to the PCJPB that are determined by subsequent audit to be unallowable under OMB Circular A-87, as amended, or 49 C.F.R. Part 18, are subject to repayment by the PCJPB to the Authority.
- 6.4 Any subagreement in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions of Exhibit B Section 6.

EXHIBIT C: GENERAL TERMS AND CONDITIONS**1 APPROVAL**

- 1.1 This Agreement is of no force or effect until signed by all Parties.

2 AMENDMENT

- 2.1 No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the Parties.

3 ASSIGNMENT

- 3.1 This Agreement is not assignable by any Party, either in whole or in part, without the written consent of all Parties to this Agreement in the form of a formal written amendment.

4 AUDIT

- 4.1 The PCJPB and the City agree that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The PCJPB and the City agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The PCJPB and the City agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the PCJPB agrees to include a similar right of the State to audit records and interview staff in any contract or subcontract related to performance of this Agreement. (Gov. Code §8546.7).

5 INDEMNIFICATION

- 5.1 The PCJPB and the City agree to indemnify, defend and save harmless the Authority and State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the PCJPB or the City in the performance of this Agreement.

6 DISPUTES; SETTLEMENT OF DISPUTES

- 6.1 The PCJPB and the City shall continue with the responsibilities under this Agreement during any dispute.

EXHIBIT C: GENERAL TERMS AND CONDITIONS

- 6.2 The Parties will follow the dispute resolution procedure set forth in Section IV of the August 2016 Two-Party Agreement. If the City is involved in the dispute, the procedure will be adjusted only as needed to address the involvement of a third party.

7 INDEPENDENT CONTRACTOR

- 7.1 The PCJPB and the City, and the agents and employees of the PCJPB and the City, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

8 NON-DISCRIMINATION CLAUSE

- 8.1 During the performance of this Agreement, the PCJPB and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. PCJPB and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. PCJPB and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. PCJPB and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- 8.2 PCJPB shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Agreement.

9 CERTIFICATION CLAUSES

- 9.1 DRUG-FREE WORKPLACE REQUIREMENTS: PCJPB and its contractors will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- 9.1.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 9.1.2 Establish a Drug-Free Awareness Program to inform employees about:

EXHIBIT C: GENERAL TERMS AND CONDITIONS

- 9.1.2.1 The dangers of drug abuse in the workplace;
- 9.1.2.2 the person's or organization's policy of maintaining a drug-free workplace;
- 9.1.2.3 any available counseling, rehabilitation and employee assistance programs; and,
- 9.1.2.4 penalties that may be imposed upon employees for drug abuse violations.
- 9.1.3 Every employee who works on the proposed Agreement will:
 - 9.1.3.1 receive a copy of the company's drug-free workplace policy statement; and,
 - 9.1.3.2 agree to abide by the terms of the company's statement as a condition of employment on the Agreement.
- 9.1.4 Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and PCJPB may be ineligible for award of any future State agreements if the Authority determines that any of the following has occurred: the PCJPB has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)
- 9.2 DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the PCJPB certifies that PCJPB is in compliance with Public Contract Code section 10295.3. PCJPB shall include this clause in all contracts to perform work under the Agreement.
- 9.3 AMERICANS WITH DISABILITIES ACT: PCJPB assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.) PCJPB shall include this clause in all contracts to perform work under the Agreement.
- 9.4 AIR OR WATER POLLUTION VIOLATION: PCJPB shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
- 9.5 RESOLUTION: The City must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

EXHIBIT C: GENERAL TERMS AND CONDITIONS

10 TIMELINESS

10.1 Time is of the essence in this Agreement.

11 GOVERNING LAW

11.1 This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

12 CHILD SUPPORT COMPLIANCE ACT

12.1 For any Agreement in excess of \$100,000, PCJPB acknowledges in accordance with Public Contract Code 7110, that:

- 12.1.1 The PCJPB recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- 12.1.2 The PCJPB, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department. PCJPB shall include this clause in all contracts to perform work under the Agreement.

13 UNENFORCEABLE PROVISION

13.1 In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the Parties agree to work cooperatively to amend this Agreement to restore the original full intent and rights and obligations of the Parties contained in this Agreement, if reasonably feasible. If not reasonably feasible, any Party may terminate this Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS**1 CONTRACT MANAGEMENT**

- 1.1 PCJPB's and the City's Project Representatives are responsible for the day-to-day project status, decisions and communications as outlined in this Agreement.
- 1.2 Any Party may change its Project Representative at any time by giving written notice to the other Parties.

2 SUBAGREEMENTS

- 2.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Authority and any PCJPB contractors, and no contract shall relieve the PCJPB of its responsibilities and obligations under this Agreement. The PCJPB agrees to be as fully responsible to the Authority for the acts and omissions of its contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of its contractors and of persons either directly or indirectly employed by the PCJPB. The PCJPB's obligation to pay its contractors is an independent obligation from the Authority's obligation to make payment to the PCJPB. As a result, the Authority shall have no obligation to pay or enforce the payment of any moneys to any PCJPB contractor or subcontractor.
- 2.2 The City shall not subcontract any of its obligations under this Agreement.

3 CONFLICT OF INTEREST

- 3.1 All Parties acknowledge their shared interest in avoiding organizational conflicts of interest in the performance of work funded under this Agreement.
- 3.2 The PCJPB's contractors, subcontractors and their employees will comply with the PCJPB's Organizational Conflict of Interest Policy.
- 3.3 By inclusion of the authorized contractors listed in the Approved Contractor List attached hereto as Attachment 4 the PCJPB and the Authority agree that no significant conflict exists that would preclude the listed firms from performing work under this Agreement.
- 3.4 If the PCJPB seeks to add any contractors or subcontractors to this Agreement, the Authority retains authority to analyze whether such additions would present an organizational conflict of interest under the Authority's Organizational Conflict of Interest Policy and, if so, either to decline to add such contractors or subcontractors, or to require mitigation of identified conflicts before the conflicted entity is assigned any work under this Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

4 NON-WAIVER

- 4.1 No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. No remedy available in this Agreement is intended to be exclusive of any other remedy, and every remedy shall be cumulative, in addition to and not a condition precedent to any other remedy provided herein or available at law or in equity.
- 4.2 The failure of any Party to enforce any provision of this Agreement or require performance by any other Party of any provision shall in no way be construed to be a waiver of those provisions, affect the validity of this Agreement in whole or in part, or the right of the non-breaching Party to subsequently enforce any such provision.

5 RULES OF CONSTRUCTION

- 5.1 All references herein to the singular shall include the plural, and vice versa.

6 NONDISCRIMINATION COMPLIANCE

- 6.1 During the performance of this Agreement, the PCJPB and its contractors shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The PCJPB shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 6.2 The PCJPB shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900, *et seq.*) the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, section 11000, *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.
- 6.3 The PCJPB shall permit access by representatives of the Department of Fair Employment and Housing to the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.
- 6.4 The PCJPB and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 6.5 The PCJPB shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

7 ACCESS TO SITES AND RECORDS

- 7.1 The Authority staff or its representatives shall have reasonable access to all sites (including the Grade Separation Project construction site) and records related to this Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS**8 RIGHTS IN DATA**

- 8.1 PCJPB and City will provide access and rights of use to the Authority to all reports, documents, plans, specifications, electronic documents and estimates produced in whole or in part with funding provided under this Agreement. Furthermore, in the event PCJPB is unable for any reason to complete the Grade Separation Project, ownership of Grade Separation Project plans will vest equally in the Authority, the PCJPB and the City, although such vesting does not carry with it any obligation to complete the Grade Separation Project.

9 PREVAILING WAGES

- 9.1 The PCJPB shall comply with all Labor Code requirements applicable to the scope of work set forth in Exhibit A of this Agreement or any additional requirements stemming from the funding provided under this Agreement.

10 LICENSES AND PERMITS

- 10.1 The PCJPB shall ensure that all contractors hired to complete the scope of work under Exhibit A of this Agreement possess all required licenses and permits.

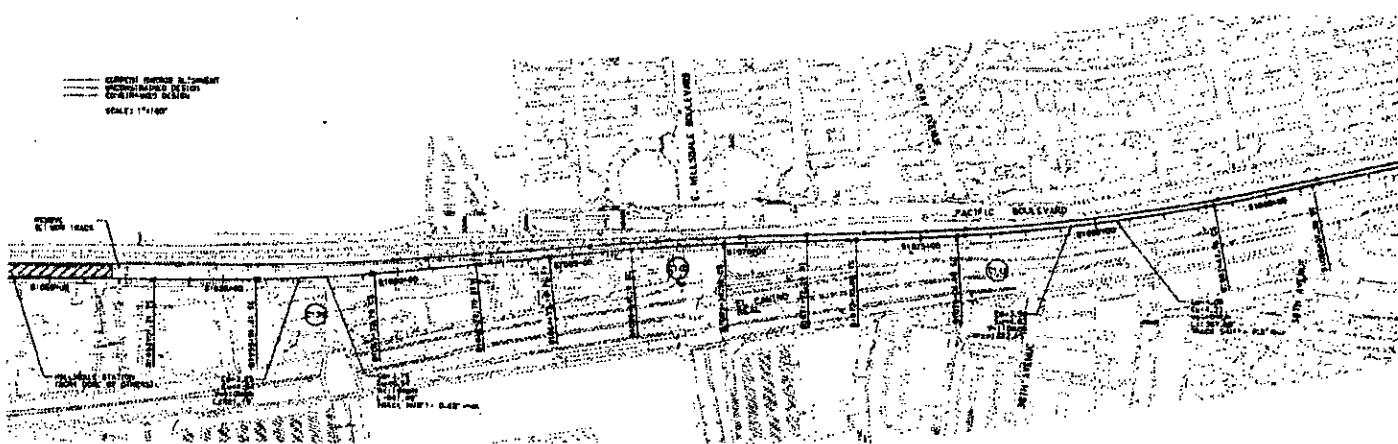
11 INSURANCE

- 11.1 Without limiting the PCJPB's indemnification of the Authority, PCJPB agrees to require any and all PCJPB contractors to list the Authority as an additional insured on all insurance required under the contract between the PCJPB and its PCJPB contractors. The PCJPB shall provide certificates of insurance to the Authority as evidence of the insurance coverage required herein. The PCJPB shall ensure that it provides current certifications of insurance to the Authority at all times during the term of this Agreement.

12 PERFORMANCE BOND

- 12.1 The PCJPB will require PCJPB's construction contractor to provide performance and payment bonds in the full amount of the construction contract and will require a one-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 City and PCJPB.

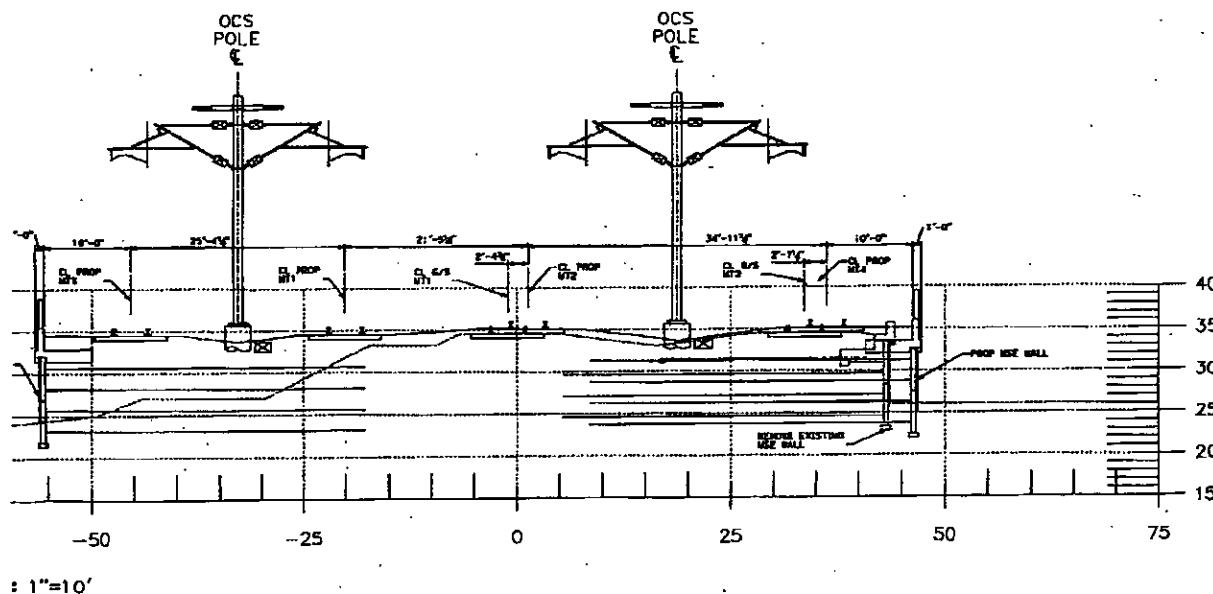
ATTACHMENT 1
REQUIRED CHANGE ORDER



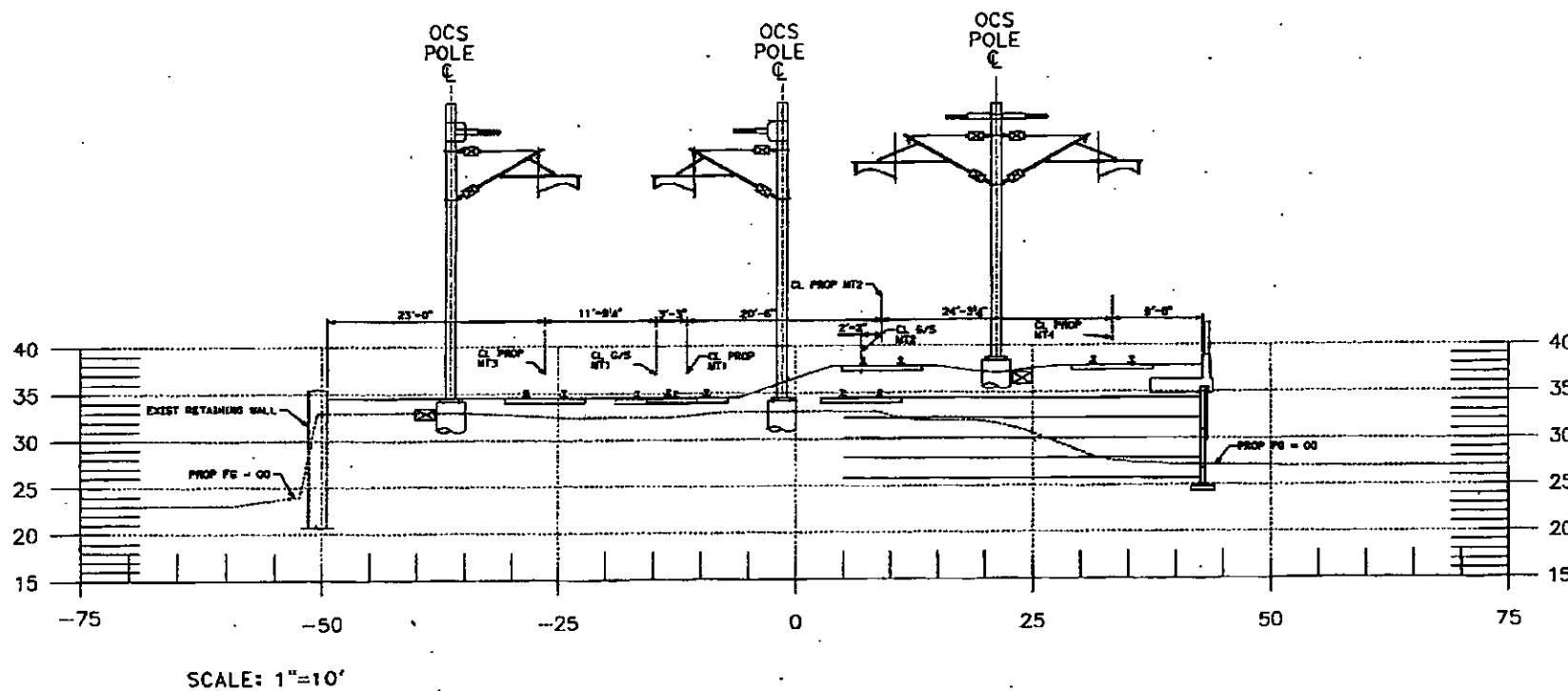
ATTACHMENT 2

PASSING TRACKS - CONCEPTUAL DESIGN

SECTION AT STATION 1059+50
DRAFT-FOR DISCUSSION PURPOSES ONLY.
3-28-17

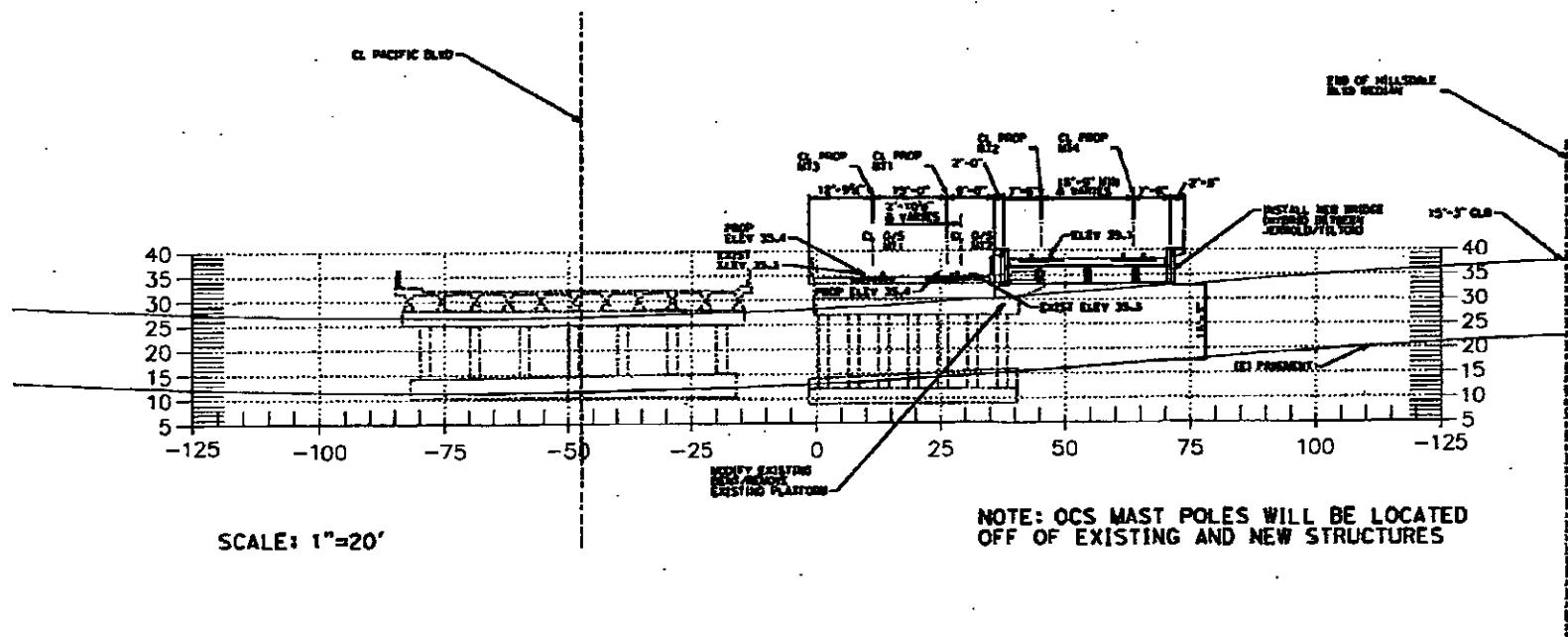


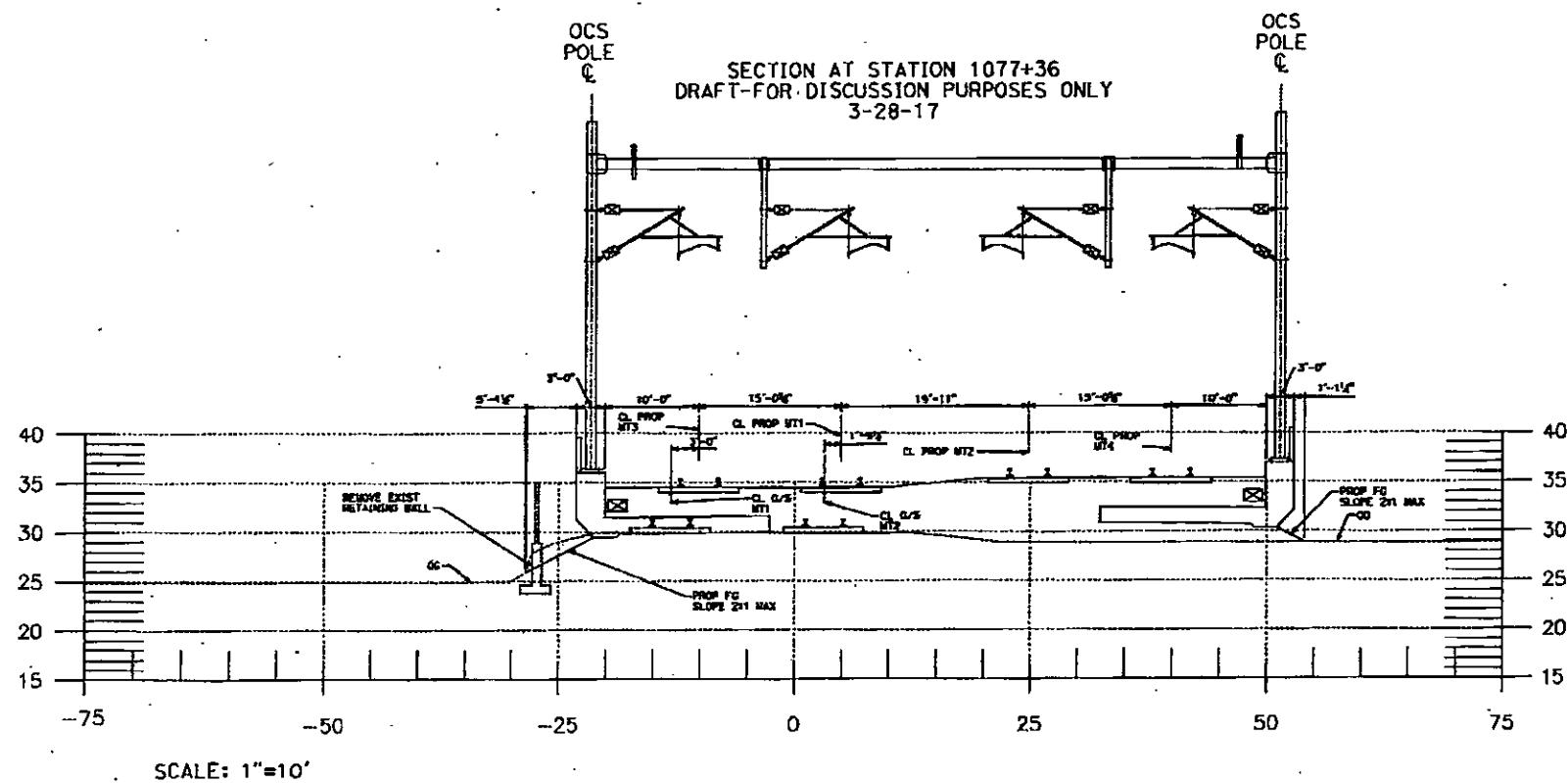
SECTION AT STATION 1065+00
DRAFT-FOR DISCUSSION PURPOSES ONLY
3-28-17



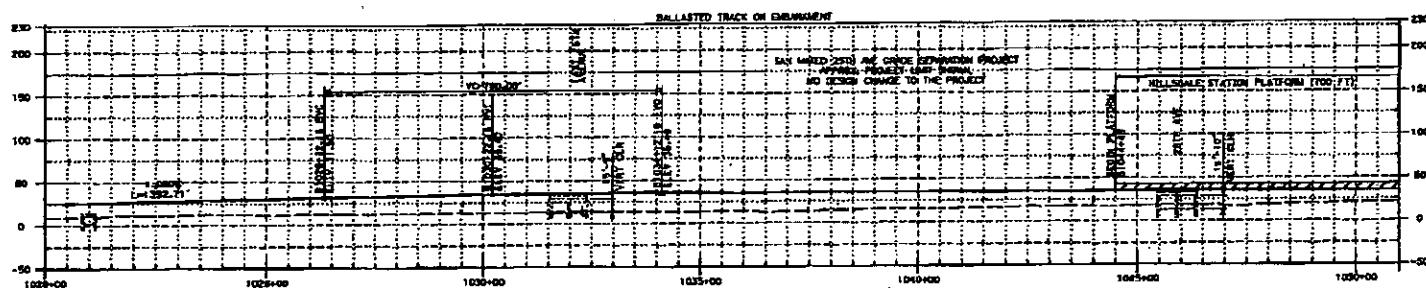
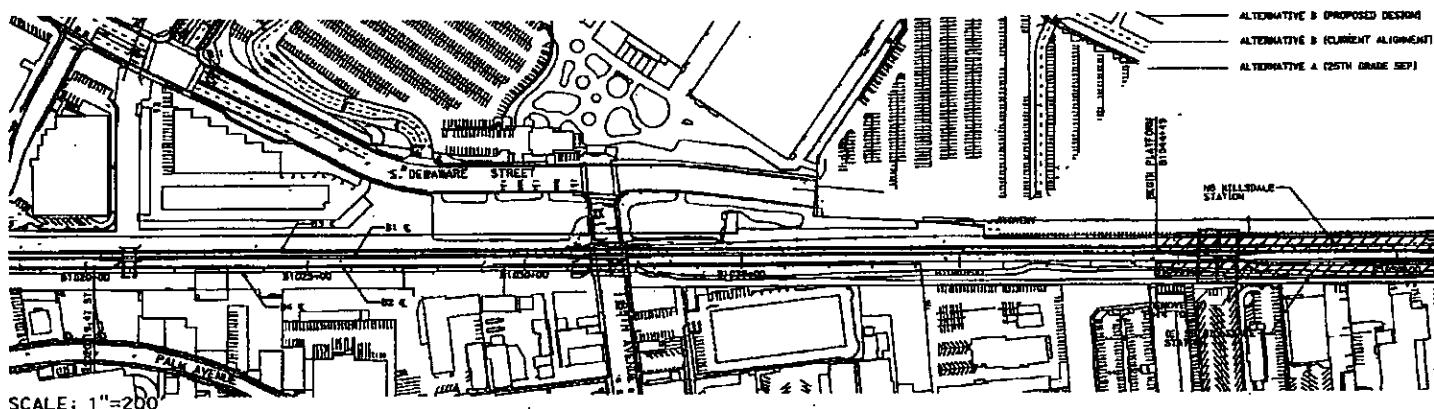
SCALE: 1"=10'

SECTION AT HILSDALE BLVD
DRAFT-FOR DISCUSSION PURPOSES ONLY
3-28-17

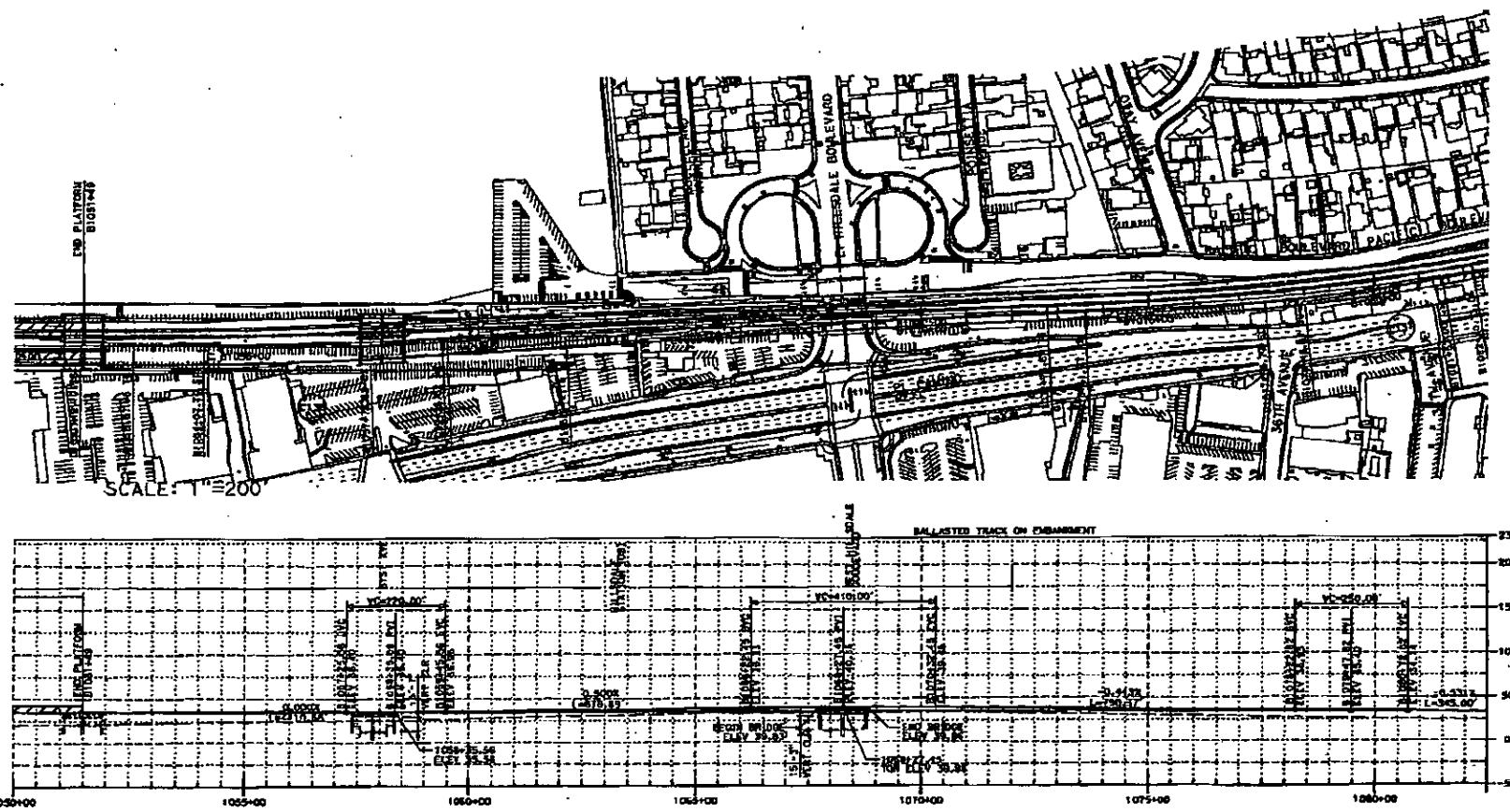


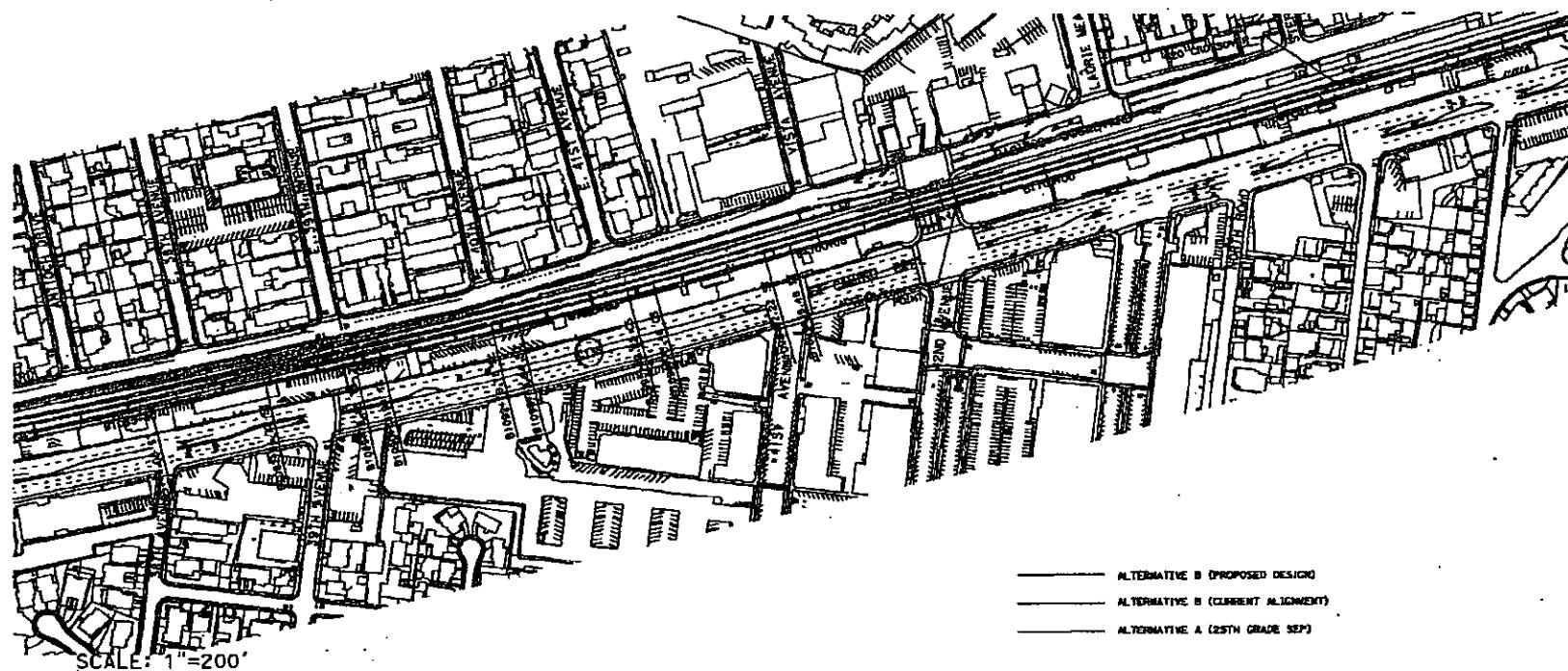


HILLSDALE BLVD INTERSECTION UPDATE
DRAFT - FOR DISCUSSION PURPOSES ONLY
MARCH 28, 2017

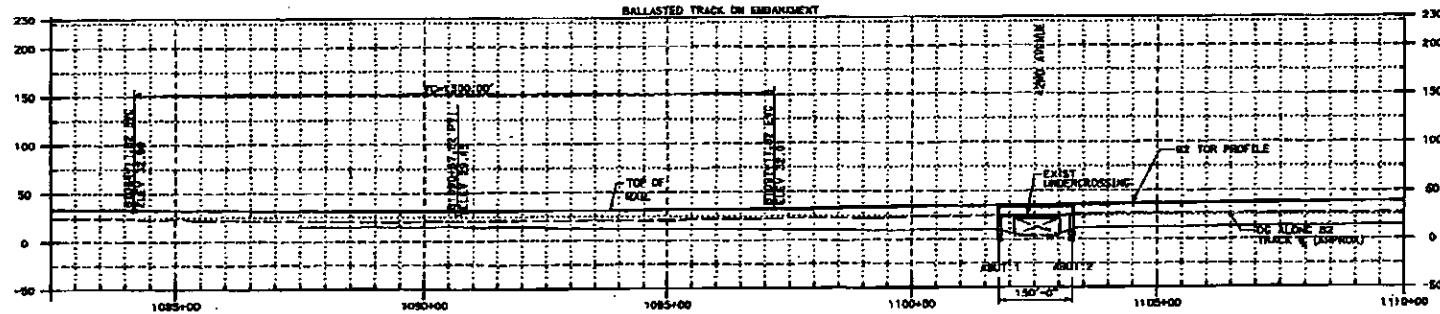


- _____ ALTERNATIVE B (PROPOSED DESIGN)
- _____ ALTERNATIVE B (CURRENT ALIGNMENT)
- _____ ALTERNATIVE A (25TH GRADE SEP)





SCALE: 1"=200'



ATTACHMENT 3

INVOICE REQUIREMENTS

Invoice Cover Sheet containing the following:

- Agreement number
- Date invoice prepared
- Billing and service period
- Cumulative billed amount
- Cumulative percentage of total JPB Contract 17-J-C-048 Modified costs billed to the Authority (JPB Contract 17-J-C-048 Modified costs billed to the Authority/Total-billed to the PCJPB pursuant to JPB Contract 17-J-C-048 Modified)
- Current service billing period costs
- Signature of a PCJPB official
- Signature block for Authority Contract Manager
- Signature block for Authority Financial Officer

Narrative:

- Narrative setting forth general description of charges contained in the invoice

Invoice Sheet containing the expense information as follows:

- Contractor invoices
 - Detail associated with task completed
 - Total budget, expenditure for the current invoice and cumulative to date.
 - Prime expenditure for the current invoice and cumulative to date.
 - Subcontractors expenditure for the current invoice and cumulative to date, if available.
 - Subcontractors' information:
 - List of all subcontractors in alphabetical order.
 - Small Business Subcontractors designation (SB, Micro, DBE and DVBE) and utilization percentage.

Certification as follows:

- The PCJPB hereby certifies that the work performed and billed under this invoice was reasonable and necessary pursuant to JPB Contract 17-J-C-048 Modified for the Grade Separation Project.

ATTACHMENT 4

APPROVED CONTRACTOR LIST

- **Bender Rosenthal, Inc.**
- **Burns, Michael**
- **Comecast**
- **Dell Marketing L.P.**
- **Fehr & Peers**
- **HDR**
- **Jacobs Engineer Group Inc.**
- **OfficeMax**
- **Pacific Gas & Electric**
- **Rail Surveyors and Engineers, Inc.**
- **TransitAmerica Services, Inc.**
- **URS Corporation (aka AECOM)**
- **Vali Cooper & Associates**
- **Wells Fargo Insurance**

ATTACHMENT 5

25th Ave Grade Separation Cost Estimate and Funding Plan (6/11/2017 Update)

Cost Item	Post-Bid Opening Estimate		August 2016 Estimate	
	Estimate (in \$M)	Total Cost (in \$M)	Estimate (in \$M)	Total Cost (in \$M)
Pre-Construction Phase:				
Environmental	\$ 3.50		\$ 3.50	
Design	\$ 7.20		\$ 7.20	
ROW Acquisition (Partial)	\$ 4.00		\$ 4.00	
Sub-Total: Pre-Construction Phase	\$ 14.70	\$ 14.70	\$ 14.70	\$ 14.70
Construction Phase:				
Construction Contract	\$ 82.90		\$ 107.80	
Set-Out Track Replacement (To be issued as a change order)	\$ 2.00		\$ 2.00	
Contingency at 20% for Revised Estimate/10% for Original Estimate	\$ 16.98		\$ 21.58	
Sub-Total: Construction Contract	\$ 101.88		\$ 120.78	
Construction Support Costs:				
Utility Relocation	\$ 4.00		\$ 4.00	
ROW Acquisition (Remaining)	\$ 8.00		\$ 8.00	
Construction Management	\$ 10.80		\$ 10.80	
DSDC	\$ 2.49		\$ 2.49	
Agency & Consultant Staff	\$ 6.30		\$ 6.30	
TASI	\$ 9.00		\$ 9.00	
Sub-Total: Construction Support	\$ 40.59		\$ 40.59	
Contingency at 20% for Revised Estimate/10% for Original Estimate	\$ 8.12		\$ 10.65	
Sub-Total: Construction Support Costs	\$ 48.70		\$ 44.65	
Sub-Total: Construction Phase	\$ 150.58	\$ 150.58	\$ 165.43	\$ 165.43
Total Project Cost Estimate		\$ 165.28		\$ 180.13

25th Ave. Grade Separation Funding Plan

6/11/17 Update

Budget	Funding Plan			
	August 2016	Post-Bid Estimate	Ratio of Contribution	
August 2016 \$ 180.00	CPUC 10 \$ 9.18		5.56%	
Revised post bid opening \$ 165.28	SMCTA 74 \$ 67.95		41.11%	
	SM 12 \$ 11.02		6.67%	
	HSR 84 \$ 77.13		46.67%	
	180 \$ 165.28			