

**COOPERATIVE AGREEMENT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY,
CITY OF PALO ALTO,
AND
PENINSULA CORRIDOR JOINT POWERS BOARD
FOR
THE PRELIMINARY ENGINEERING AND ENVIRONMENTAL CLEARANCE PHASES OF THE
CHURCHILL AVENUE, MEADOW DRIVE AND CHARLESTON ROAD GRADE SEPARATION
PROJECTS**

THIS COOPERATIVE AGREEMENT ("**AGREEMENT**") is made and entered into by and between the CITY OF PALO ALTO ("**CITY**"), SANTA CLARA VALLEY TRANSPORTATION AUTHORITY ("**VTA**"), and the PENINSULA CORRIDOR JOINT POWERS BOARD ("**PCJPB**"), as of the last date of signature set forth on the signature lines below and effective as of November 1, 2024 ("**EFFECTIVE DATE**"). Hereinafter, each of which may be individually referred to as "PARTY" or collectively referred to as "**PARTIES**".

I. RECITALS

1. WHEREAS, the PCJPB is a public agency existing under the laws of the State of California and operates commuter rail passenger service ("**Caltrain**") along a seventy-seven (77) mile route between San Francisco and Gilroy, California; and
2. WHEREAS, the VTA is a public agency existing under the laws of the State of California and is a member agency of the PCJPB and is authorized to design, fund, and construct transportation improvements in and near the County of Santa Clara; and
3. WHEREAS, CITY is the sponsor of the Connecting Palo Alto (Rail Grade Separation Projects) Program, which includes four Caltrain at-grade crossings within the CITY limits, and is moving forward with the Churchill Avenue, Meadow Drive, and Charleston Road at-grade crossing locations ("**PROJECT**") of the Connecting Palo Alto (Rail Grade Separation Projects) Program; and
4. WHEREAS, on November 8, 2016, Santa Clara County voters enacted 2016 Measure B ("**2016 MEASURE B**"); and
5. WHEREAS, on October 5, 2017, the VTA Board of Directors (i) established the 2016 Measure B Program, which includes a Caltrain Grade Separations program category to fund grade separation projects along the Caltrain corridor in the cities of Sunnyvale, Mountain View, and Palo Alto, separating the Caltrain tracks from roadways to provide increased safety benefits for drivers, bicyclists, and pedestrians and also reduce congestion at the intersections ("**GRADE SEP PROGRAM**") and (ii) adopted the 2016 Measure B Caltrain Grade Separations Program Category Guidelines ("**GRADE SEP GUIDELINES**"), which are attached as Exhibit A; and

6. WHEREAS, the implementation of the GRADE SEP PROGRAM Projects will enable Caltrain to operate more frequent service without negatively impacting local traffic while also making rail operations safer by separating rail operations from local streets; and
7. WHEREAS, PCJPB is responsible for the safe and reliable operation of its train service and the passengers who use it, and PCJPB retains responsibility for the final design and construction of GRADE SEP PROGRAM projects occurring on its right of way; and
8. WHEREAS, VTA is responsible for the allocation and use of the 2016 MEASURE B funding for the GRADE SEP PROGRAM projects and provides oversight, guidance, and support throughout all applicable phases of the GRADE SEP PROGRAM projects; and
9. WHEREAS, the GRADE SEP GUIDELINES require that a minimum of ten percent (10%) of the TOTAL PROJECT COSTS must be funded with non-2016 MEASURE B funds ("**NON-2016 MEASURE B CONTRIBUTION REQUIREMENT**") For purposes of this AGREEMENT "**TOTAL PROJECT COSTS**" shall mean the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measured at the completion or termination of the PROJECT; and
10. WHEREAS, CITY is responsible for the provision of NON-2016 MEASURE B CONTRIBUTION REQUIREMENT to sponsor GRADE SEP PROGRAM projects within the CITY; and
11. WHEREAS, CITY has been awarded \$6.0 million (six million dollars) in Federal Railroad Administration's ("**FRA**") Rail Crossing Elimination ("**RCE**") grant funds towards the Preliminary Engineering and Environmental Clearance phases of PROJECT which is credited toward the NON-2016 MEASURE B CONTRIBUTION REQUIREMENT; and
12. WHEREAS, this AGREEMENT is intended to delineate the duties and funding responsibilities of the PARTIES for delivery of SCOPE OF WORK for the PROJECT; and

NOW, THEREFORE, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

The Connecting Palo Alto (Rail Grade Separation Projects) Program includes four Caltrain at-grade crossing locations within CITY limits. CITY is moving forward on three of the four locations: Churchill Avenue, Meadow Drive and Charleston Road (PROJECT). The proposed PROJECT improvements are:

A. Churchill Avenue

The Churchill Avenue Grade Separation project proposes to separate Churchill Avenue from the Caltrain tracks via a partial underpass, with through-traffic on Churchill Avenue no longer allowed at the intersection with Alma Street. A separate pedestrian/bicycle crossing

will be provided at Seale Avenue, which will cross under both Alma Street and the Caltrain tracks, emerging at Peers Park and connecting to City streets or an alternative location in the vicinity.

B. Meadow Drive & Charleston Road (Meadow/Charleston)

Due to their proximity to each other, the Meadow Drive and Charleston Road Grade Separation projects are being studied as one project at this time. CITY is currently considering two alternatives.

2. SCOPE OF WORK

The “**SCOPE OF WORK**” or “**SOW**” for this AGREEMENT is detailed in Exhibit B to this Agreement, and includes the preliminary engineering and environmental clearance phases for the PROJECT, advancing the PROJECT to 35% design and obtaining environmental clearance through both California Environmental Quality Act (“**CEQA**”) and National Environmental Policy Act (“**NEPA**”) as described in further detail in Exhibit B.

The SOW for Churchill Avenue includes developing the bicycle/pedestrian underpass at Seale Avenue, confirming this alternative with the City Council and its Rail Committee, and advancing preliminary engineering to approximately 35 percent (35%) while environmental clearance work is performed concurrently.

The SOW for Meadow Drive/Charleston Road includes advancing preliminary engineering to a mid-point when the CITY will select a locally preferred alternative (“LPA”). Once the LPA is selected, design work will continue to approximately 35% concurrently with environmental clearance work.

3. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the EFFECTIVE DATE and continue until the earliest of: (i) December 31, 2027; (ii) the funds allocated hereunder to PCJPB and CITY for the SOW have been expended entirely; or (iii) termination by CITY, PCJPB or VTA pursuant to Section II, Paragraph 17.

4. ELIGIBLE USE OF FUNDS

a. **Eligible Costs.** VTA will only reimburse CITY and PCJPB for actual costs directly related to performance of the SOW and in compliance with the requirements of the RCE funding agreement (Exhibit C), including 2 C.F.R. part 200, subpart E, as applicable. For purposes of this AGREEMENT, “ELIGIBLE COSTS” are as described below. No other expenses will be subject to reimbursement as ELIGIBLE COSTS without the prior written approval of VTA.

i. **Direct Labor costs.**

- ii. **Travel Expenses.** Any travel expense (as described below) must be authorized by VTA and CITY in writing prior to PCJPB, consultants, and contractors incurring them. VTA may deny reimbursement of any travel expense incurred by PCJPB, consultants and contractors prior to VTA and CITY's written approval. If VTA and CITY approve travel, VTA will reimburse the following types of travel expenses related to the performance of SOW at the following then-current per-diem or lump sum rates:
 - i. Car Rental: \$50/day as set forth by VTA (including all gas and all associated fees);
 - ii. Flight: The rates set forth as GSA City Pairs Gov't "YCA" Fare (<https://www.gsa.gov/travel/plan-a-trip/transportation-airfare-rates-pov-rates-etc/airfare-rates-city-pair-program>);
 - iii. Food/Beverage and Hotel: The rates set forth as GSA per diem rates (<https://www.gsa.gov/travel/plan-book/per-diem-rates>); and
 - iv. Mileage: The rates set forth as GSA mileage allowance (<https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/private-owned-vehicle-pov-mileage-reimbursement-rates>).
- iii. **Other Direct Costs.** VTA will reimburse parking, tolls, deliveries, printing, plan reproduction, blue print services, any fees required for background checks from iproveit.com and any other expenses directly associated with the SOW at actual cost without markup. CITY or PCJPB must provide appropriate supporting documentation, including detailed receipts. If any of the other direct costs ("ODCs") described in this paragraph will exceed \$500 (five hundred dollars), CITY or PCJPB must receive VTA and CITY's written approval prior to incurring such expense. VTA may deny reimbursement of any such ODC expense incurred by CITY or PCJPB prior to VTA and CITY's written approval.
- iv. **Indirect Costs.** VTA will reimburse CITY and PCJPB for indirect costs in accordance with Federal Transit Administration-approved rates and plans.
- b. **Ineligible Costs.** Specific "Ineligible Costs" include, but are not limited to the following:
 - i. Expenses for organizations functions, business services, and information technology including, but not limited to telephone charges, computer costs, CAD machine charges, in-house copying charges, and facsimile charges will not be reimbursed as other direct costs;
 - ii. Rent and utilities;
 - iii. Food or beverages (e.g. as part of meetings, workshops, trainings or events); and
 - iv. Alcohol, travel upgrades, fines, memberships, loss of personal property or cash, "no shows," or personal itinerary changes.

No other categories of expenses will be subject to reimbursement as ELIGIBLE COSTS without the prior written approval of VTA and CITY.

- c. Should the eligibility of a cost be questioned, the TWG, as defined below in Section II, Paragraph 10.b.xiv, will determine, in writing, the eligibility of a cost before the cost is

incurred. In its performance under this AGREEMENT, all PARTIES will strictly comply with all VTA 2016 MEASURE B program requirements set forth in Exhibit A, attached hereto and incorporated herein.

5. FUNDING

a. Total SCOPE OF WORK Cost.

It is currently anticipated that the cost of performing the SOW, including preliminary engineering and environmental clearance, will not exceed \$20,000,000 (twenty million dollars). The Total SCOPE OF WORK Cost (defined below) will therefore not exceed \$20,000,000 (twenty million dollars).

The Total SCOPE OF WORK COST

The “**Total SCOPE OF WORK Cost**” means the total cumulative dollar amount actually incurred and expended toward the SCOPE OF WORK by all PARTIES involved, as measured at the completion or termination of the SCOPE OF WORK of PROJECT.

b. Commitment.

- i. VTA’s Financial Contribution for SCOPE OF WORK. VTA shall provide funding hereunder on a reimbursement basis. VTA shall reimburse PCJPB and CITY for ELIGIBLE COSTS actually incurred and paid for by PCJPB and CITY, in an amount not to exceed \$14,000,000 (fourteen million dollars) (“**MAXIMUM 2016 MEASURE B FUNDING AMOUNT**”) for SCOPE OF WORK activities for the PROJECT as follows:

- Churchill Avenue: \$6,100,000 (six million one hundred thousand dollars)
- Meadow Drive/Charleston Road: \$7,900,000 (seven million nine hundred thousand dollars)

VTA shall reimburse PCJPB for ELIGIBLE COSTS actually incurred and paid for by PCJPB in an amount not to exceed \$11,900,000 (eleven million nine hundred thousand dollars) for SOW activities. VTA will use GRADE SEP PROGRAM funds to provide the SCOPE OF WORK funding hereunder.

VTA shall reimburse CITY for ELIGIBLE COSTS actually incurred and paid for by PCJPB or CITY in an amount not to exceed \$2,100,000 (two million one hundred thousand dollars) for SOW activities. VTA will use GRADE SEP PROGRAM funds to provide the SCOPE OF WORK funding hereunder.

- ii. 2016 MEASURE B Funds Limitation. Notwithstanding any funding obligations set forth in this AGREEMENT, 2016 MEASURE B funds shall not be used to finance more than ninety percent (90%) of the TOTAL PROJECT COSTS.

- iii. Non Measure B Funding (FRA RCE Program Funding) on behalf of the CITY for SCOPE OF WORK. CITY has agreed to contribute up to \$900,000 (nine hundred thousand dollars) of RCE funds to be expended on costs incurred by the CITY related to these tasks in the SOW, including, but not limited to, staff time, consultants, materials, tools, and equipment.

CITY shall reimburse PCJPB for ELIGIBLE COSTS actually incurred and paid for by PCJPB in an amount not to exceed \$5,100,000 (five million one hundred thousand dollars) of RCE funds for SOW activities. CITY will use RCE funds to provide the SOW funding hereunder.

FRA RCE funding on behalf of the CITY's is the total contribution is \$6,000,000 (six million dollars) towards completion of SCOPE OF WORK ("**CITY's FINANCIAL CONTRIBUTION FOR SCOPE OF WORK**").

Notwithstanding the above, CITY shall be responsible for ensuring the NON-2016 MEASURE B CONTRIBUTION REQUIREMENT is met, which may include, but is not limited to, funding sources including CITY funds, state grants, and federal grants. CITY's FINANCIAL CONTRIBUTION FOR SCOPE OF WORK under this AGREEMENT shall be credited towards NON-2016 MEASURE B CONTRIBUTION REQUIREMENT for the PROJECT.

- iv. PCJPB Financial Participation. The PCJPB is not contributing funding to accomplish the SOW. While the PCJPB will make initial payments to consultants and contractors engaged to complete the SOW, subject to reimbursement pursuant to the terms of this AGREEMENT and all applicable requirements in the FRA RCE Agreement (See Exhibit C), it is the intent of the PARTIES that the CITY and VTA will be responsible for all costs of accomplishing the SOW and PCJPB will bear none of that cost as long as PCJPB meets the requirements of this Agreement and the work is accomplished within the amounts set forth in this Agreement.

- c. Cost Savings.

Any cost savings of the MAXIMUM 2016 MEASURE B FUNDING AMOUNT allocated to the SCOPE OF WORK will be carried over to future phases of PROJECT.

Any cost savings of CITY'S FINANCIAL CONTRIBUTION for SCOPE OF WORK will be carried over to future phases of PROJECT, as applicable.

- d. Cost Updates.

PCJPB and CITY shall actively monitor actual SCOPE OF WORK expenditures. The final SCOPE OF WORK cost may ultimately exceed current cost estimates. Any cost increases resulting from increased contract prices or changes that require additional funding shall be submitted to CITY and VTA for review in conformance with Section II, Paragraph 6, Insufficient Funding. PCJPB shall not do any work in excess of SCOPE OF WORK budget without authorization and approval of CITY and VTA.

6. **INSUFFICIENT FUNDING**

In the event that additional funding is needed to complete the SCOPE OF WORK, the PARTIES will work together to identify opportunities for cost savings and/or to obtain the additional funds necessary to complete the SCOPE OF WORK.

CITY and/or VTA may consider requests for additional funding but are under no obligation to grant such requests. PCJPB is not obligated to complete the tasks within the SCOPE OF WORK unless funding for reimbursement is secured by CITY and/or VTA. If additional funds are required and secured to complete SCOPE OF WORK, funds may be added to cover SCOPE OF WORK completion pursuant to an amendment of this AGREEMENT in conformance with Section II, Paragraph 20(d).

7. **REIMBURSEMENT OF SCOPE OF WORK COSTS**

VTA will reimburse CITY or PCJPB in an amount of (i) ELIGIBLE COSTS submitted to VTA or (ii) the MAXIMUM 2016 MEASURE B FUNDING AMOUNT, whichever is less. VTA shall reimburse the CITY or PCJPB based on receipt of invoices showing ELIGIBLE COSTS incurred and paid for by PCJPB.

FRA Funding will be used by the CITY to reimburse PCJPB in an amount of (i) ELIGIBLE COSTS submitted to CITY or (ii) \$5,100,000 (five million one hundred thousand dollars), whichever is less. CITY shall reimburse the PCJPB based on receipt of invoices showing ELIGIBLE COSTS under FRA agreement incurred and paid for by PCJPB.

In the event that this AGREEMENT is terminated, as set forth in Section II, Paragraph 17, VTA will not be responsible for and will not reimburse any costs or expenses incurred by PCJPB and CITY after the effective date of termination, except for necessary costs due to consultants and contractors under existing contractual arrangements that pertain to costs incurred to wind-up contracts following their termination, such as the preservation of files and return of project documents. (“**WIND-UP COSTS**”).

In the event that this AGREEMENT is terminated, as set forth in Section II, Paragraph 17, CITY will not be responsible for and will not reimburse any costs or expenses incurred by PCJPB after the effective date of termination, except for WIND-UP COSTS.

8. **INVOICING TO VTA AND CITY**

CITY and PCJPB must account for the funds provided to accomplish the SCOPE OF WORK. PCJPB and CITY will submit invoices to vta.accountspayable@vta.org, no more frequently than monthly, for reimbursement of work completed on SCOPE OF WORK. PCJPB must also copy CITY in all reimbursement requests to VTA. Each invoice must include all records, including staff hours, contractors’ invoices, miscellaneous invoices, force account charges, and any other documentation requested by VTA as substantiation for invoices submitted to VTA for reimbursement hereunder. Invoices must be submitted within one year of PCJPB or CITY incurring the cost(s) as substantiation for PCJPB’s or CITY’s invoice.

PCJPB must submit the same invoice packet to VTA and CITY every month, which will include a

request for reimbursement to VTA for 70% of ELIGIBLE COSTS and a request to CITY for submission to FRA for 30% of ELIGIBLE COSTS incurred during the same period. PCJPB must provide anticipated funding and scope of work to be performed in the current and subsequent quarter to plan and appropriate required funding for the cash flow.

PCJPB shall submit invoices to the City to: Grade Separation Project Manager, Office of Transportation, City of Palo Alto, 250 Hamilton Avenue, Palo Alto CA 94301

CITY must submit an invoice packet to VTA every three months for ELIGIBLE COSTS incurred.

All invoices must detail:

- a. ELIGIBLE COSTS actually incurred and paid by PCJPB or CITY/FRA,
- b. Total reimbursement amount (in dollars) requested,
- c. Total amount reimbursed by VTA to date, and
- d. SCOPE OF WORK tasks or milestones completed for which PCJPB or CITY incurred ELIGIBLE COSTS during the relevant billing cycle and is seeking reimbursement.

VTA shall remit the amount due to the PCJPB or CITY within thirty (30) calendar days of receipt of a complete, fully documented invoice. VTA will not reimburse PCJPB or CITY for any costs that are not ELIGIBLE COSTS.

CITY shall remit the amount due to the PCJPB within thirty (30) calendar days of receipt of a complete, fully documented invoice. CITY will not reimburse PCJPB for any costs that are not ELIGIBLE COSTS.

9. **RETURN OF FUNDS**

The provisions set forth in this Section II, Paragraph 9 will survive the termination or expiration of this AGREEMENT.

In the event that VTA reimburses costs and later learns that such costs are not ELIGIBLE COSTS, PCJPB or CITY must, no later than thirty (30) business days after receipt of written notice thereof from VTA, return the 2016 Measure B funds for those ineligible SOW costs to VTA.

In the event that CITY reimburses costs and later learns that such costs are not ELIGIBLE COSTS, PCJPB must, no later than thirty (30) business days after receipt of written notice thereof from CITY, return the RCE funds for those ineligible SOW costs to CITY.

10. **ROLES AND RESPONSIBILITIES**

a. ALL PARTIES

- i. PARTIES will comply with 2016 Measure B Complete Streets requirements as approved by the VTA Board of Directors for capital projects and set forth in Exhibit D, attached hereto and incorporated herein, as follows:

1. Adopt a Complete Streets Resolution containing the nine Complete Streets elements outlined in Exhibit D or adhere to the nine Complete Streets elements outlined in Exhibit D;
 2. Apply Complete Streets best practices in development of SCOPE OF WORK;
- ii. Complete and submit 2016 Measure B Complete Streets Capital Project Checklist as supplied by VTA for each phase of the SCOPE OF WORK; and
1. Upon completion of the SCOPE OF WORK, the submitted close out form, as supplied by VTA, must detail Complete Streets elements provided by the SCOPE OF WORK and, if necessary, explain why Complete Streets infrastructure identified in a local, county, or regional adopted plan was not included in the SCOPE OF WORK.

b. PCJPB

PCJPB will work as the lead implementing agency to deliver the preliminary engineering and environmental clearance phases.

PCJPB's tasks and responsibilities include:

- i. Procure and administer the consultant/contractor services to complete the SCOPE OF WORK in collaboration with VTA and CITY and in accordance with all applicable laws, regulations, and codes, including, but not limited to, the California Public Contract Code and the California Labor Code, and in accordance with the FRA'S RCE requirements as identified in the funding agreement between CITY and FRA as shown in Exhibit C.
- ii. Develop a Project Management Plan ("PMP") in conjunction with CITY in accordance with the FRA RCE, as supplied by CITY to PCJPB, and submit the PMP to VTA and CITY. This PMP will also meet the obligations required by the 2016 MEASURE B Program.
- iii. Submit to VTA the most current version of VTA's 2016 MEASURE B Complete Streets Checklist for Capital Projects (as supplied by VTA to PCJPB) within ten (15) business days of the the last date of signature set forth on the signature lines of this AGREEMENT.
- iv. Manage the SOW, including developing and carrying out the SCOPE OF WORK on schedule and within budget.
- v. Consult with CITY for review and necessary approvals in seeking any consultant support performing work on the PROJECT.
- vi. Provide VTA and CITY copies of draft professional services agreements, including consultant scope of work and deliverables for the SOW; PCJPB must allow VTA and CITY to participate in the selection of any consultant and provide input on final terms of contract(s) between PCJPB and PCJPB's selected consultant(s). VTA and CITY reserve the

right of final approval of all insurance requirements in the contract(s) between PCJPB and the selected consultant(s) and/or contractor(s).

- vii. Coordinate work in conjunction with other PARTIES and PCJPB-hired consultants.
- viii. Designate a project manager ("**PCJPB Project Manager**") to function as a liaison to the PARTIES throughout the duration of the AGREEMENT.
- ix. By each January 31st and July 31st during the term of the AGREEMENT, provide VTA and CITY with written progress updates on the PROJECT, as required by the RCE, including, but not limited to, updates on PROJECT expenditures, any changes in scope, budget and schedule, community engagement outcome, PROJECT status, and any other information requested by the VTA and CITY in a format previously provided to PCJPB.
- x. Provide VTA and CITY copies of SCOPE OF WORK deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. PCJPB will provide VTA and CITY a minimum of thirty (30) calendar days to review and provide comments. VTA and CITY's comments must be considered in any phase of the SCOPE OF WORK before PCJPB proceeds to next phase. If PCJPB chooses not to incorporate any comment into the SCOPE OF WORK, PCJPB must provide other PARTIES with a written explanation of why such comment was not incorporated. PCJPB will also provide copies of required documents to County of Santa Clara ("**COUNTY**") when related to work in COUNTY's right of way.
- xi. Lead the environmental permitting processes and serve as lead agency in CEQA and NEPA compliance.
- xiii. Establish a PROJECT third-party stakeholder interaction protocol with PARTIES during the TWG meetings.
- xiv. Convene a Technical Working Group ("**TWG**") consisting of representatives from CITY, PCJPB and VTA to:
 - a. Receive, at minimum, quarterly SCOPE OF WORK updates;
 - b. Keep all PARTIES apprised of developments, such as award of contracts or potential changes that may affect the scope, schedule, or budget of the SCOPE OF WORK; and
 - c. Provide opportunities for input into technical issues and project management and coordination.

The meetings will include updates on outreach efforts pertaining to Caltrain patrons, Caltrain operations, the Caltrain Modernization (CalMod) project and California High Speed Rail (HSR) programs in addition to PROJECT outreach work. PCJPB will invite COUNTY as part of TWG when working on SCOPE OF WORK that is within COUNTY's right of way. TWG will also determine ELIGIBLE COST questions as set forth in Section II, Paragraph 4, Eligible Use of Funds.

- xv. Attend and assist in SCOPE OF WORK meetings, outside of TWG meetings, as required by VTA and CITY.
- xvi. Attend and assist at CITY Council meetings to keep the Council informed and request CITY Council approval of any changes to the PROJECT's design layout, major features, and urban design elements in the SCOPE OF WORK as set forth in Section 2.
- xvii. Attend VTA committees, as requested, to present on the PROJECT.
- xviii. Prepare and provide to VTA SCOPE OF WORK products and supporting documentation upon VTA's request for the purpose of VTA quality management, quality assurance audits (including 2016 Measure B Performance Audits), and for VTA to provide SCOPE OF WORK oversight in adherence to approved PMP.
- xix. Actively monitor actual SCOPE OF WORK expenditures to ensure that the SCOPE OF WORK funds are used to pay only for ELIGIBLE COSTS.
- xx. Conduct standard close-out activities for the SCOPE OF WORK, including but not limited to, performing final accounting review and reviewing all contractual requirements.
- xxi. Submit a written final report ("REPORT") to VTA and CITY within forty-five (45) business days of SCOPE OF WORK completion. This REPORT must include the following information:
 - A description of the PROJECT, including a statement detailing any overall progress and success of the SCOPE OF WORK and the PROJECT, a compilation of any data collected during the active phase(s) of the SCOPE OF WORK, and changes/additions to the scope of the PROJECT.
 - Total SCOPE OF WORK costs, including an accounting of all 2016 MEASURE B funds expended in connection with the PROJECT, and reflecting any unexpended 2016 MEASURE B Funds that may remain.
 - An explanation and the status of any outstanding or potential issues related to the SCOPE OF WORK.
 - A discussion of any pertinent issues or problems that arose during the completion of the SCOPE OF WORK.
 - An estimation of the timeline and cost to complete the remaining work for the PROJECT.
 - Any other information VTA or CITY may require for inclusion in the REPORT.
- xxiii. Prepare and update monthly PROJECT Critical Path schedule to VTA and CITY including

utility work and other ongoing planned projects that would impact the PROJECT.

- xxiv. Submit a PROJECT Risk Management Plan to VTA and CITY identifying and assessing risk categories, quantification, probabilities and severities, impact and control, and prepare monthly updated risk register to track and document PROJECT risks and actions.

c. CITY

CITY will work as the Sponsor throughout the PROJECT.

CITY's tasks and responsibilities include:

- i. Provide VTA written documentation of CITY's financial contribution to the SCOPE OF WORK, including but not limited to copies of contractor invoices and payments for work on SCOPE OF WORK, in accordance with Section 9.
- ii. Direct and implement all SCOPE OF WORK community outreach activities, keeping the CITY Council and community informed and providing an opportunity for input on the SCOPE OF WORK.
- iii. Assist PCJPB with successful implementation of SCOPE OF WORK and provide responses to PCJPB inquiries within fifteen (15) business days.
- iv. Provide input and oversight based on local policies and desires regarding the outcome and deliverables of the SCOPE OF WORK.
- v. At its discretion, review any professional services agreements, change orders and any other third-party agreements that PCJPB has entered into for the performance of SCOPE OF WORK; however, PCJPB retains ultimate authority over contracting and related decisions.
- vi. At its discretion, review the progress reports, work products and deliverables produced by the PCJPB and/or its contractors/consultants for the SCOPE OF WORK, including reports, designs, drawings, plans, specifications, schedules, and other materials.
- vii. Approve or endorse, in writing, the final deliverables or work products produced by PCJPB and/or its contractors/consultants for the SCOPE OF WORK.
- viii. Attend and assist in SCOPE OF WORK meetings, as required by PCJPB and VTA.
- ix. Attend VTA Board of Directors and/or committee meetings as needed to present on the PROJECT.

d. VTA

For the purposes of this AGREEMENT, VTA will be the Oversight Agency. As Oversight Agency, VTA's tasks and responsibilities include:

- i. At its discretion, review any professional services agreements, change orders and any other third-party agreements that PCJPB has entered into for the performance of SCOPE OF WORK; however, PCJPB retains ultimate authority over contracting and related decisions.
- ii. Assist PCJPB with successful implementation of SCOPE OF WORK and provide responses to PCJPB inquiries within fifteen (15) business days.
- iii. Review, process, and audit solely at VTA's discretion all invoices and documentation submitted by other PARTIES.
- e. Provide Complete Streets Checklist form to PCJPB and review completed checklist for SOW to ensure Complete Streets compliance.
- iv. Review the PMP and provide written comments within thirty (30) business days of receipt of the PMP regarding PCJPB's technical and management capacity and capability.
- v. Provide semi-annual progress reporting form to PCJPB and review completed progress reports for PROJECT to provide oversight of the delivery of SOW and to ensure PROJECT complies with GRADE SEP PROGRAM guidelines.
- vi. At its discretion, review the work products and deliverables produced by the PCJPB and CITY and/or its contractors/consultants for the SCOPE OF WORK, including reports, designs, drawings, plans, specifications, schedules, and other materials.
- vii. Attend and assist in SCOPE OF WORK meetings, outside TWG meetings, as required by PCJPB and CITY.
- viii. Provide technical oversight throughout the duration of SCOPE OF WORK.

11. **INDEMNIFICATION**

Each of the PARTIES shall indemnify, keep and save harmless the other PARTIES and each of their directors/councilmembers, officers, agents, volunteers, and employees (collectively, "**INDEMNITEES**") against any and all suits, claims or actions ("**CLAIM(S)**") to the extent arising out of any act or omission by the indemnifying PARTY, its agents, employees, contractors or subcontractors in connection with of the following:

- a. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of the SCOPE OF WORK or implementation of this AGREEMENT;
or

- b. Any allegation that materials or services developed, provided, or used for the SCOPE OF WORK infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

In case of any and all suits, claims or actions arising out of any act or omission by the indemnifying PARTY, its agents, employees, contractors or subcontractors, each indemnifying PARTY further agrees to defend any and all such actions, suits or claims and pay all reasonable attorneys' fees and all other reasonable costs and expenses of defenses of the other PARTIES and other Indemnitees as they are incurred. The indemnifying PARTY shall employ competent counsel reasonably acceptable to the indemnified PARTY. If any judgment is rendered, or settlement reached, against any Indemnitees in any such action, the indemnifying PARTY will, at its expense, satisfy and discharge the same.

This indemnification shall survive termination or expiration of the AGREEMENT.

12. **INSURANCE**

At all times during this AGREEMENT, CITY and PCJPB must comply with the insurance requirements and specifications of the attached Exhibit D, Insurance Requirements, herein incorporated into this AGREEMENT. CITY and PCJPB each may, in its discretion, elect to self-insure, but an such self-insurance must meet the requirements and specifications in Exhibit E, Insurance Requirements.

13. **ADDITIONAL INSURED AND INDEMNITY PROVISIONS**

In any agreement executed between the PCJPB and a third party for purposes related in any way to the subject matter of this Agreement ("Third Party Contract"), PCJPB must require that VTA and CITY be named as (i) an additional insured on a primary and non-contributory basis with separation of insureds and waiver of subrogation on all policies of insurance, except when not applicable and (ii) an indemnified party in any indemnity provision contained in the Third Party Contract. Third Party Contracts must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Exhibit E, Insurance Requirements.

14. **PUBLIC WORKS**

If a PARTY awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "**PUBLIC WORKS CONTRACT**") in connection with this AGREEMENT, that PARTY must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. as applicable. If the Public Works Contract is funded in whole or in part with federal funds, the PARTY must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148) as applicable.

15. **COMPLIANCE WITH APPLICABLE LAW**

In the execution of the Project and performance of its responsibilities under this Agreement, PCJPB must comply with all applicable requirements of local, state, and federal laws.

16. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this Agreement, PCJPB must comply with, and must ensure Project compliance with, all 2016 MEASURE B requirements set forth in the Caltrain Grade Separations Guidelines.

17. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days written notice of such termination to other PARTIES. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination, CITY and PCJPB must submit its final invoice to VTA within thirty (30) calendar days of the effective date of the notice of termination, and such invoice will be solely for ELIGIBLE COSTS incurred by PCJPB prior to the SCOPE OF WORK termination (see Section II, Paragraph 7).

In the event of termination, PCJPB must submit its final invoice to CITY within thirty (30) calendar days of the effective date of the notice of termination, and such invoice will be solely for ELIGIBLE COSTS incurred by PCJPB prior to the SCOPE OF WORK termination (see Section II, Paragraph 7).

WIND-UP COSTS shall be invoiced and reimbursed consistent with Section II, Paragraph 8.

18. AUDIT AND RECORDS

- a. All PARTIES shall maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts, and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, the PARTIES and their representatives shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

19. NOTICES

All notices required or permitted under this AGREEMENT must be in writing and delivered by personal service, certified or registered mail, return receipt requested, with postage prepaid, or by electronic mail, to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto. Notice by personal service or certified or registered mail will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. Notice by email will be deemed given two (2) business days after sending.

PCJPB: Robert Barnard
Chief, Design Rail and Construction
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Email: barnardr@caltrain.com

MTA: Marcella Rensi
Deputy Director, Grants & Allocation
Santa Clara Valley Transportation Authority
3331 N. First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

CITY: Philip Kamhi
Chief Transportation Official
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 95301
Email: Philip.Kamhi@cityofpaloalto.org

Written notification to the other PARTIES must be provided, in advance, for changes in the name or address of the individuals identified above.

20. **GENERAL TERMS AND CONDITIONS.**

- a. **Headings.** The subject headings of the articles and paragraphs in this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.
- b. **Incorporation of Exhibits and Attachments.** All exhibits and attachments referenced in this Contract are incorporated into it by this reference.
- c. **Construction and Interpretation of Agreement.** This Agreement, and each of its provisions, terms, and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each Party expressly acknowledges and agrees that (i) this Agreement will not be deemed to have been authored, prepared, or drafted by any particular Party and (ii) the

rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or in the resolution of disputes.

- d. Amendment. Except as expressly provided in this Agreement, its provisions cannot be altered, modified, or amended except through the execution of a written amendment executed by the Parties.
- e. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter and supersedes all prior negotiations, contracts, agreements, or understandings, whether oral or written, of the Parties regarding the subject matter.
- f. No Waiver. The failure of either Party to insist upon the strict performance of any of the terms, covenants, or conditions of this Agreement will not be deemed a waiver of (i) any right or remedy that either Party may have or (ii) either Party's right to require strict performance of all of the terms, covenants, and conditions of this Agreement.
- g. Dispute Resolution.
 - a) If a question or allegation arises regarding (i) interpretation of this Agreement or its performance, or (ii) the alleged failure of a Party to perform, the Party raising the question or making the allegation must give written notice thereof to the other Party. The Parties must promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the greatest extent possible to avoid litigation as a method of dispute resolution.
 - b) Notwithstanding the foregoing, nothing in this Paragraph g. will be deemed to prevent a Party from filing suit or an administrative action to preserve its right to assert a claim within any applicable statute of limitations. To the extent practicable, the Parties will negotiate in good faith to create a tolling agreement to toll such statute(s) of limitations to allow for the Parties to engage in dispute resolution provisions of this Agreement prior to filing of such actions.
- h. Severability. If any provisions of this Agreement (or portions or applications of it) are held to be unenforceable or invalid by any court of competent jurisdiction, (a) the Parties will negotiate in good faith to make an equitable adjustment to the Agreement provisions with a view toward effecting the Agreement's purpose, and (b) the remaining provisions (or portions or applications of them) will remain valid and enforceable.
- i. Governing Law. The laws of the State of California will govern this Agreement and any claim that might arise between PCJPB and VTA without regard to conflict of law provisions.

- j. Venue. Any lawsuit or legal action arising from this Agreement must be commenced and prosecuted in the courts of Santa Clara County, California. PCJPB agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
- k. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for the PCJPB relative to the Project are the sole property of the PCJPB unless otherwise agreed upon by the PCJPB. The PCJPB hereby grants an irrevocable license to the CITY to use all such work product for any and all purposes.
- l. Attribution to VTA. PCJPB must include attribution to VTA that indicates part of the work was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded in whole or in part by 2016 Measure B funds. Acceptable forms of attribution include 2016 Measure B's branding on Project-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to PCJPB for this purpose.
- m. Non-discrimination. The Parties and any contractors performing services on behalf of the Parties ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the Parties and Contractors must not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The Parties and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- n. Public Records. The Parties recognize and acknowledge that each Party is subject to the California Public Records Act and records are subject to disclosure pursuant to the Act.
- o. Relationship of the Parties. It is understood that this is an Agreement by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- p. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. Unless otherwise prohibited by law, VTA policy, or PCJPB ordinance or policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed

contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by each of the Parties.

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

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the EFFECTIVE DATE.

CITY OF PALO ALTO

By: _____
Ed Shikada
City Manager

Date: _____

Approved By: _____
Philip Kamhi
Chief Transportation Official

Approved as to Form: _____
Tim Shimizu
Assistant City Attorney

Date: _____

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Michelle Bouchard
Executive Director

Date: _____

Approved as to Form: _____
James Harrison
PCJPB Legal Counsel

Date: _____

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____
Carolyn M. Gonot
General Manager/CEO

Date: _____

Approved as to Form: _____
Shannon Smyth-Mendoza
Deputy General Counsel

Date

EXHIBIT A

2016 Measure B Caltrain Grade Separation Program Guidelines

[Revised and approved by VTA Board of Directors: August 4, 2022]

To fund grade separation projects along the Caltrain corridor in the cities of Sunnyvale, Mountain View and Palo Alto, separating the Caltrain tracks from roadways to provide increased safety benefits for drivers, bicyclists and pedestrians and also reduce congestion at the intersections.

Total Funding

11.11% of Program Tax Revenues

Program Type

Need/Capacity-based program

- Must comply with Board-approved Project Readiness Criteria

Project Readiness Criteria

- Project delivery status: Allocations for projects in the 10-year Program will be based on project delivery phases and completion of each phase. Projects must complete prior delivery phase(s) as a prerequisite for allocation of funds in a Biennial Budget for the next phase.
- Funding status: Project must have non-2016 Measure B match funds identified for inclusion in the 10-year Program and secured for a Biennial Budget allocation.
- Partner agency/community support: Partner agencies must be identified for inclusion in the 10-year Program. Community, permitting agency and partner agency support must be demonstrated for a Biennial Budget allocation.

Distribution of Funds

- Funds will be allocated on a two-year cycle, in conjunction with the VTA Biennial Budget process.
- As approved by the Board of Directors as the implementation strategy and as agreed to by VTA and the Cities of Sunnyvale, Mountain View and Palo Alto, total available program category funds will be allocated by percentage to each jurisdiction as follows:
 - City of Sunnyvale: 25%
 - City of Mountain View: 25%
 - City of Palo Alto: 50%
- At the end of the life of the sales tax, should the Program Tax Revenue available for the Grade Separation be higher than the originally estimated amount in 2017 dollars, the cities that have received their allocation based on previous percentage calculations will not receive any additional Grade Separation Program funds.
- The percentage distribution may be revised by the VTA Board of Directors.
- As candidate projects move forward and meet the Project Readiness criteria, the project

sponsor will submit requests to the 2016 Measure B Program Office for inclusion in the Biennial Budget and/or 10-year Program.

- Funds will be distributed on a reimbursement basis.

Implementation

- VTA will work with the cities, Caltrain and other partners as applicable to deliver all eight grade separation projects eligible for 2016 Measure B funds.
- Based on the project's ability to meet the Project Readiness criteria, VTA will develop and enter funding agreements with individual jurisdictions for project phases.
- VTA will provide technical oversight to jurisdictions during project implementation.

Requirements

- All project sponsors must apply to the State §190 Grade Separation Program.
- Reporting requirements regarding project progress will be detailed in agreements executed with VTA for project funding.
- Projects require a minimum 10% non-2016 Measure B contribution.
- All projects must comply with VTA's Complete Streets reporting requirements.
- All projects must comply with 2016 Measure B program oversight requirements.

All collateral material must comply with 2016 Measure B branding requirements.

EXHIBIT B
SCOPE OF WORK

***Connecting Palo Alto (Rail Grade Separation Projects) Program:
Churchill Avenue, Meadow Drive and Charleston Road Grade Separations Project
Preliminary Engineering and Environmental Clearance Phases***

The Peninsula Corridor Joint Powers Board (PCJPB) will be the lead implementing agency for the SCOPE OF WORK. Therefore, PCJPB will be responsible for completing the preliminary engineering and environmental documentation required in accordance with Federal Railroad Administration (FRA) funding agreement requirements with the City of Palo Alto (Exhibit C).

Scope of Work

The following lists the major tasks involved in performing the Preliminary Engineering and Environmental phase. PCJPB will develop a more detailed outline of the tasks and subtasks needed to accomplish this scope. All tasks listed below can be adjusted if determined to be necessary.

Task 1: Develop Project Management Plan

Develop Project Management Plan (PMP) in compliance with FRA Rail Crossing Elimination Grant requirements after seeking input and feedback from the City staff.

Deliverables - Project Management Plan:

Draft & Final Project Management Plan

Completion: Two (2) months from execution of agreement

Task 2: Develop 15% Design, Renderings, and Cost Estimates

- Churchill Avenue: Partial Underpass Alternative with bicycle and pedestrian crossing at Seale Avenue
- Meadow Drive and Charleston Road: Underpass Alternative & Hybrid (Combination of column and earthen embankment)

Plan, Specification, Cost Estimates, and Rendering Development: This task will include a review of the conceptual plans to address the following elements listed below, focusing on feedback from the community, the Palo Alto Rail Committee, and the City Council for developing drawings, renderings, and estimates at 15% design level. The review includes but is not limited to the following elements:

- Seek ways to reduce property impacts
- Optimize bike/pedestrian crossings
- Where feasible, improve connections to bike infrastructure beyond the study area to improve the bike network
 - Improve connection to Park Blvd

- Explore modifications/refinements to the bike boulevard facilities along Park Blvd to improve overall bike network
- Further refine the traffic circle on Charleston Road to reduce the property impacts
- Refine construction impacts to better understand possible mitigations needed during the lengthy construction process.

Assist in preparing community outreach materials, attend meetings, collect feedback for addressing comments.

Conduct analysis/prepare reports supporting review of alternatives by the Committee and Council.

Attend community meetings, Committee Meetings, and seek approval from the City Council for the selection of Locally Preferred Alternative.

Deliverables: The deliverable package for each sub task will include the following:

15% Drawings, Renderings, Estimates and supporting studies for each crossing

Completion: Fifteen (15) months from execution of agreement

Task 3: Advance Preliminary Engineering (35% Design, Renderings, Construction Sequencing, Specifications, and Cost Estimates).

- Churchill Avenue
- Meadow Drive
- Charleston Road

Based on City Council review and directions, develop 35% Design for the Locally Preferred Alternative for each crossing at Churchill Road, Meadow Drive, and Charleston Road—to inform project delivery, construction sequencing, renderings, and construction-style schedule and budget estimates. The design will be prepared in accordance with the FRA Funding Agreement requirements (Exhibit C). The PROJECT documents will include applicable documents to the satisfaction of the FRA and include the following:

Completion of the Preliminary Engineering (PE) Plan Set and coordinate with City and FRA for review and approval to support the future proposed construction project. The PE Plan Set will include a cost estimate and may, when applicable, include the following items:

- Basis of Design or Design Criteria, which includes all pertinent AREMA, AA Caltrain, FRA, or other standards that will be used for different design elements of the project.
- A title sheet identified with a drawing revision number or date; an index identifying various plan sheets comprising the drawing set; notation of design criteria referenced; and a legend of symbols or abbreviations.
- PE plan drawings overlaid on maps/aerial photography and prepared at an appropriate scale are to include:

- Existing and proposed right-of-way limits to include property lines and railroad ownership;
- Proposed track changes including removals and installations; track centers, track speeds, turnout sizes, curve, and spiral data; vertical profiles and grades of proposed construction; typical cross sections to scale showing the proposed work to existing conditions for each change in track configuration and at other locations requiring retaining walls or right-of-way acquisitions, and public and private at-grade crossings;
- Bridge span arrangement, Typical sections of bridge approach spans and movable (main) span, bridge size and location (Bridge TSL drawing), if applicable;
- Bridge horizontal and vertical profile, if applicable;
- Typical Retaining Wall Detail, Section, and elevation with footing type and type of fill used;
- New bridge elevation with limits of navigation channel shown, current and proposed if applicable;
- Substructure type and size detail and any construction requirements and if applicable, impacts to river and navigational traffic during construction;
- Limits of removal of the existing bridge superstructure and substructure if applicable;
- Horizontal and vertical alignment drawings to include existing and proposed grades;
- Cross sections showing the proposed work to existing conditions for each change in track configuration and at other locations requiring easements, retaining walls, or right-of-way acquisitions, as needed;
- All pertinent flood elevations;
- Correspondence with US Coast Guard and obtaining PNCD if applicable;
- Correspondence with US Army Corps of Engineers and any work that can be advanced at PE stage towards future permit requirements if applicable, Limits of disturbance (must be within the APE shown in the approved NEPA document);
- Survey and base mapping of the bridge site: initiation of additional topographic survey of the Project location. This additional work will include courthouse research, property boundary mapping, digital terrain modeling, and subsurface public and franchise utility locations;
- Geotechnical investigation, report, and recommendations for type of support structures based on borings at proposed bridge support locations;
- Label all critical components such as rail centerlines, track centers, turnout sizes, curve and spiral data, bridges, road dimensions, etc.
- Proposed track changes including removals and installations;
- Public and private at-grade crossings;

- Preliminary utility coordination (identify utility type, size, and owners in the area for which conflicts may occur) and suggested utility relocation in case of conflict and approval of relocation by the utility owners Include all aerial and submarine cables, also include any railroad utilities and appurtenances, as feasible;
- Identify construction access and temporary laydown (staging) areas for contractors, as appropriate; and
- Provide construction phasing plans and Maintenance of rail traffic details during construction.
- If existing signal system and instrumentation are modified or new signals and instrumentation are being installed, preparation of route and aspect charts, preliminary block design, and identification of signal equipment locations will occur.
- A preliminary Risk Register showing risk, risk owner, mitigation strategies, etc. Contingency in the cost estimate should include these risks.
- New track configuration schematic must be signed by all project stakeholders before PE can start (if applicable).
- Obtain signature approval of the PE cover sheet by all stakeholders impacted by the proposed Project.
- Bridge Design plans submitted to FRA Engineering must also meet the requirements of 49 CFR Part 237 Subparts F and G, as appropriate (see FRA's Track and Rail Infrastructure Integrity Compliance Manual, Volume IV, Chapter I, Bridge Safety Standards for more details and guidance regarding plan preparation and requirements).
- A detailed and itemized construction cost estimate that will include all the proposed construction elements with their respective unit cost, quantity, and total cost, separate itemized Force Account Work done by the railroad itself and with appropriate level of contingencies to account for unknown conditions expected at the PE level Plans. Use FRA Cost Estimating Guidance and FRA Standard Cost Category as much as possible. See Capital Cost Estimating Guidance | FRA (dot.gov) <https://railroads.dot.gov/rail-network-development/training-guidance/capital-cost-estimating-guidance> for more information.

Deliverables: The deliverable package for each sub task will include the following:

- Basis of Design or Design Criteria for all design elements
- Geotechnical Investigation Report and Recommendations- For Information only
- Preliminary Engineering Plans and Detailed Cost Estimate
- Revised Track Configuration schematic signed by all stakeholders
- FEMA No-Rise Certification
- PNCD from USCG (For information only, if applicable)
- USACE correspondence (and fulfilling all their initial requirements)- For information only

Completion: Thirty-Four (34) months from execution of agreement

Task 4: Environmental Review (NEPA & CEQA)

Completion of the appropriate environmental document for the Project, in accordance with the National Environmental Policy Act (NEPA), its implementing regulations at 40 CFR parts 1500-508, FRA's Environmental Procedures at 23 CFR parts 771 and 774, Section 4(f) of the Department of Transportation Act, the National Historic Preservation Act, and related environmental laws.

Completion of the appropriate environmental document for the Project, in accordance with the California Environmental Quality Act (CEQA), its implementing regulations Title 14, Division 6, Chapter 3 of the California Code of Regulations) are administrative regulations governing implementation of the California Environmental Quality Act.

Identification of all necessary permits required for the Project's implementation.

Deliverables: The deliverable package shall include the following for each crossing:

- NEPA Environmental Document
- CEQA Environmental Document

Completion: Thirty-four (34) months from execution of agreement

Task 5: Public Outreach and Coordination throughout various tasks:

Public outreach will be a critical component of the Project. Below are specific roles for this effort.

City:

- Collaborate on the development and review the public outreach and engagement plan;
- Review of all engagement materials;
- Conduct outreach to affected property owners once adequate engineering design and environmental assessment have been performed;
- Secure venues for public meetings; and
- Promote and facilitate public meetings.

PCJPB:

- Lead development with collaboration from the City on the public outreach and engagement plan;
- Oversee and guide implementation of engagement strategy;
- Lead development and review the engagement activities and materials;
- Lead coordination of JPB, TOPS, executives, elected official, and public meetings;
- Facilitate engagement all activities and meetings with support from the City; and
- Develop necessary information and maintain a project website.

Project Schedule

Activity	Begin	End
Preliminary Engineering	December 2024	September 2027

Environmental Scoping and Clearance	December 2024	September 2027
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Project Budget by Crossing

Crossings	RCE Funds	2016 Measure B Funds	Total Project Budget
Churchill Avenue (and Seale Avenue)	\$2,000,000	\$6,100,000	\$8,100,000
Meadow Drive and Charleston Road	\$4,000,000	\$7,900,000	\$11,900,000
Total	\$6,000,000	\$14,000,000	\$20,000,000

Project Budget by Agency

Agency	RCE Funds	2016 Measure B Funds	Total Project Budget
Palo Alto	\$900,000	\$2,100,000	\$3,000,000
PCJPB	\$5,100,000	\$11,900,000	\$17,000,000
Total	\$6,000,000	\$14,000,000	\$20,000,000

EXHIBIT C

Railroad Crossing Elimination Grant Funding Agreement between Federal Railroad Administration & the City of Palo Alto



FRA_Agmt_CityofPal
oAlto_PE_EnvPhase-

EXHIBIT D

2016 Measure B Complete Streets Elements (Adopted by the VTA Board of Directors on June 1, 2017)

In order to be eligible for Measure B funding, all Member Agencies must adopt a resolution which contains the nine (9) Complete Streets elements described below. This list is drawn from Metropolitan Transportation Commission's (MTC) model Complete Streets resolution, which was in turn based on the work of SMART Growth America's National Complete Streets Coalition. More information can be found on MTC's website: <http://mtc.ca.gov/tools-and-resources/digital-library/obag-2-complete-streets-resolution-guidance>.

The general language below gives Member Agencies flexibility to develop their own policy; Member Agencies are encouraged to develop the best policy that fits within the context of their local area, in consultation with affected departments and stakeholders, and to go beyond the required nine elements if desired.

Complete Street Principles

1. **Serve all Users** – All transportation improvements will be planned, designed, constructed, operated and maintained to support safe and convenient access for all users, and increase mobility for walking, bicycling and transit use.
2. **Context Sensitivity** – The planning and implementation of transportation projects will reflect conditions within and surrounding the project area, whether the area is a residential or business district or urban, suburban, or rural. Project planning, design and construction of complete streets projects should include working with residents and merchants to ensure that a strong sense of place is maintained.
3. **Complete Streets in all Departments** – All departments whose work affects the roadway must incorporate a complete streets approach into the review and implementation of their projects and activities. Potential Complete Streets opportunities include transportation projects, road rehabilitation, new development, and utility work, among others.
4. **All Projects/Phases** – The policy will apply to all roadway projects including those involving reconstruction, new construction retrofits, repaving, rehabilitation, or changes in the allocation of pavement space on an existing roadway, as well as those that involve new privately built roads, and easements intended for public use.

Implementation

5. **Plan Consultation** – Any proposed improvements should be evaluated for consistency with all local bicycle, pedestrian and/or transit plans and any other plans that affect the right of way.
6. **Street Network/Connectivity** – The transportation system should provide a connected network of facilities accommodating all modes of travel. This includes looking for opportunities for repurposing rights-of-ways to enhance connectivity for cyclists, pedestrians, and transit users. The network should include non-motorized connectivity to schools, parks, commercial areas, civic destinations and

regional non-motorized networks from publicly owned roads/land and private developments (or redevelopment areas).

7. **BPAC Consultation** – Input shall be solicited from the local bicycle and pedestrian advisory committee (BPAC) or similar advisory group in an early project development phase to verify bicycling and pedestrian needs for projects.
8. **Evaluation** – Agencies will establish a means to collect data for the purpose of evaluating implementation of complete streets policies. Examples include tracking the mileage of bike lanes and sidewalks, the number of street crossings, or the amount of signage, etc.

Exceptions

9. **Process** – Plans or projects that seek exemptions from the Complete Streets approach must provide written finding of how exceptional circumstances dictated that accommodations for all modes were not to be included in the project. The memorandum should be signed by the Public Works Director or equivalently senior staff person or his/her designee. Plans or projects that are granted exceptions must be made publicly available for review.

EXHIBIT E

INSURANCE REQUIREMENTS

CITY AND PCJPB'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CITY AND PCJPB CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE

Without limiting City's and PCJPB's indemnification and defense of claims obligations to VTA, City and PCJPB must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the Agreement. The cost of such insurance must be borne by City and PCJPB. City and PCJPB must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and or Federal Employer's Liability insurance, as applicable.
4. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.

5. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

B. MINIMUM LIMITS OF INSURANCE

1. City and PCJPB must maintain limits no less than:
 - a. General Liability: Five Million Dollars (\$5,000,000) limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
 - b. Automobile Liability (including umbrella/excess liability): Five Million Dollars (\$5,000,000) limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying Automobile Liability policy, "Follow Form" coverage, and a "Drop Down" provision. As described below, PCJPB may self-insure for this requirement.
 - c. Workers' Compensation and Federal Employer's Liability Act: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars (\$1,000,000) per accident.
 - d. Professional Liability: Two Million Dollars (\$2,000,000) each occurrence/aggregate minimum limit per claim. Upon providing the assurances described in Section C below, PCJPB may self-insure for this amount.
 - e. Contractor's Pollution Liability: Three Million Dollars (\$3,000,000) per occurrence. This requirement may be satisfied by a combination of Pollution Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying Pollution Liability policy, "Follow Form" coverage, and a "Drop Down" provision. As described below, PCJPB may self-insure for this requirement.
2. Notwithstanding any language in this Lease to the contrary, if City and PCJPB carry insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of Two-Hundred Fifty Thousand Dollars (\$250,000) must be declared to and approved by VTA. If City and PCJPB are a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of Two-Hundred Fifty Thousand Dollars (\$250,000), City and PCJPB must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess City and PCJPB's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require City and PCJPB to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by City and PCJPB. City and PCJPB may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, City and PCJPB must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the Agreement period.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of City and PCJPB's performance under this Agreement. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. Coverage must state that Lessee's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

- a. City and PCJPB must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the Agreement.
- b. City and PCJPB's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to City and PCJPB's insurance.

City and PCJPB's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the rights to require City and PCJPB to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

G. CERTIFICATES OF INSURANCE

City and PCJPB must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. City and PCJPB must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to real.estate@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess

policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement documents.

It is a condition precedent to granting of this Agreement that all insurance certificates and endorsements be received and approved by VTA before Agreement execution. No occupancy may be taken until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If City and PCJPB receive notice that any of the insurance policies required by this Attachment may be cancelled or coverage reduced for any reason whatsoever, City and PCJPB must immediately provide written notice to VTA that such insurance policy required by this Attachment is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If City and PCJPB fail to maintain insurance as required herein, VTA, at its option, may suspend the Agreement until a new policy of insurance is in effect.