RAILROAD MAINTENANCE AGREEMENT FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT IN THE CITY OF SAN JOSÉ

THIS AGREEMENT is made effective this_	day of	, 2020, by and between
the City of San Jose, hereinafter referred to	as "CITY" and the	Peninsula Corridor Joint Powers
Board, a joint powers agency created under	Government Code	Section 6500 et seq., hereinafter
referred to as "JPB" and collectively referred	to as "PARTIES."	

SECTION I

RECITALS

- 1. WHEREAS, CITY is a government entity which owns lands and property rights for public roadway purposes and is responsible for the planning, construction and maintenance of its street system; and
- 2. WHEREAS, the JPB operates the Caltrain commuter rail system, for which it owns the right of way between San Francisco and San Jose (Caltrain Right-of-Way), and upon which it is developing the Peninsula Corridor Electrification Project (PCEP), which will electrify the rail operation on the Caltrain Right-of-Way; and
- 3. WHEREAS, the CITY and JPB entered into that certain Comprehensive Agreement, dated as of September 27, 2016, regarding the PCEP; and
- 4. WHEREAS, as noted in the Comprehensive Agreement, the PCEP will utilize certain portions of CITY's streets and roadways pursuant to Public Utilities Code §103282; and
- 5. WHEREAS, the PCEP requires the installation of certain enhanced barriers on certain public street overcrossings ("Overcrossings") over the Caltrain Right-of-Way, in order to separate the overhead roadway from the electrified rail system; and
- 6. WHEREAS, the PCEP will be attaching certain fixtures to the underside of the Overcrossings at West Hedding Street and West San Carlos Street which will require the installation of safety barriers; and
- 7. WHEREAS, the PCEP will be installing additional PCEP Facilities on City right of way, including electrical ductbanks, overhead catenary poles and wires, and connection to City's storm drain system; and
- 8. WHEREAS, PARTIES desire to address the long-term maintenance and operational responsibilities of PCEP facilities, fixtures and safety barriers (collectively, the "Facilities") that are located on the Overcrossings.

1

SECTION II

AGREEMENT

- 1. JPB agrees to maintain the safety bridge screening on bridge structures, overhead catenary system attachments underneath bridge structures, overhead catenary poles and wires, electrical ductbanks, and connection to City's storm drain system shown on the map and photographs attached hereto, marked Exhibit A, and made a part hereof by this reference.
- 2. JPB must obtain the necessary encroachment permits from CITY prior to entering CITY right of way to perform JPB maintenance responsibilities on the roadways or to make modifications to the PCEP Facilities that will affect CITY structure or roadway. JPB or its contractor will pay all fees associated with the permit application and inspection.

3. VEHICULAR AND PEDESTRIAN OVERCROSSINGS

- 3.1. CITY will continue to inspect and maintain, at CITY expense, the entire structure of any CITY constructed vehicular and pedestrian overcrossings of the JPB Right-of-Way.
- 3.2. JPB will inspect and maintain, at JPB expense, safety barriers on the overcrossings and any PCEP fixtures attached to the underside of the overcrossings. JPB shall reimburse CITY for any costs related to the removal and reattachment of PCEP Facilities to Overcrossing structures, should such structures require reconstruction. JPB will alsokeep the PCEP Facilities reasonably free of debris and graffiti.
- 3.3. CITY will perform emergency repairs and maintenance of any safety barriers that are damaged and require repairs or maintenance work in order to protect public safety or the orderly operation of the public roadway. JPB will be responsible for reimbursing CITY for the cost of such emergency repairs and maintenance that are not recovered from third parties who have caused the damage.
- 3.4. CITY may contact JPB at the following numbers:

Accidents/Emergencies: Caltrain Emergency Dispatch San Jose (Central Control Facility-CCF) 408-271-4987

Routine Maintenance: Deputy Director, Rail Infrastructure 650-508-7780

Future Improvements: Deputy Director, Capital Program Delivery, 650-508-7783

4. LEGAL RELATIONS AND RESPONSIBILITIES

4.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not PARTIES to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of CITY roadways and local facilities different from the standard of care imposed by law.

- 4.2. Neither JPB nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY, under or in connection with any work, authority or jurisdiction conferred upon CITY arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless JPB and all of their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
- 4.3. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by JPB under or in connection with any work, authority or jurisdiction conferred upon JPB and arising under this Agreement. It is understood and agreed that JPB shall fully defend, indemnify and save harmless CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by JPB under this Agreement.
- 5. INSURANCE JPB and its contractors shall maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the CITY, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the CITY that shall be delivered to the CITY with a signed copy of this Agreement.
- 6. TERMINATION This Agreement may be terminated by timely mutual written consent by PARTIES, and JPB's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by CITY.
- 7. TERM OF AGREEMENT This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by CITY for cause.

PARTIES are empowered by law to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

14534983.1

3

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

PENINSULA CORRIDOR JOINT POWERS BOARD	CITY OF SAN JOSE	
By:Executive Director	By:City Clerk	
Approved as to form:	Approved as to form:	
By: JPB Attorney	By: City Attorney	





























