

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Agreement with Joint Powers Board

DATE: June 16, 2016

### **City Council Goals:**

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

### **Purpose:**

To obtain Council's approval of an Agreement that will memorialize the interagency cooperation and consultation during the rail corridor electrification project; transitioning from diesel-powered trains to electric power is consistent with the community's value of being environmentally progressive.

### **Recommendation:**

Approve the Comprehensive Agreement between the Peninsula Corridor Joint Powers Board and City of Brisbane relating to the Peninsula Corridor Electrification Project, and authorize the City Manager to sign the Agreement on the City's behalf.

### **Background:**

The overriding purpose of the Peninsula Corridor Electrification Project (PCEP) is to allow Caltrain to convert diesel-powered trains to electric power for service between San Francisco and San Jose. An additional safety benefit of the project will be the installation of an advanced signal system that incorporates "positive train control" that can monitor and control train movement in the event of human error.

There are three specific elements of the project within Brisbane addressed in the agreement:

1. The permanent installation of an overhead contact system (poles and wires) to provide electricity to the trains.

2. The replacement of existing overhead bridge barrier on Tunnel Avenue, and the JPB's acceptance of ownership and maintenance of the new barrier after construction.
3. A temporary staging area on private property during construction.

Staff agrees that ownership and maintenance responsibility of the barrier intended to keep falling objects from contacting the 25-kilovolt power lines should be transferred to the JPB.

**Discussion:**

In addition to memorializing responsibilities of the parties, the agreement also assists the JPB staff in complying with state and federal requirements relative to accounting for funds.

Staff has reviewed the "business points" of the agreement and recommends approval. In addition to the terms of the agreement, staff also received a "side letter" from the Caltrain Deputy Director of Engineering that commits to completing design review for any future Brisbane projects over the JPB right-of-way in the same timeframe Brisbane has committed to the PCEP project in the agreement.

**Fiscal Impact:**


The JPB will reimburse Brisbane for all design review and inspection costs. The agreement also requires the JPB to have their contractor promptly repair damage incurred to any city improvement incurred because of their operations.

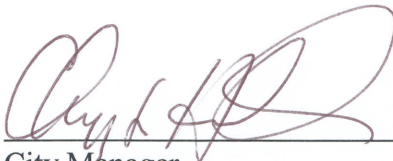
**Measure of Success**

Completion of the PCEP project with the least impact to the Brisbane community.

**Attachments:**

Resolution 2016-18  
Comprehensive Agreement  
4/28/16 Letter from Caltrain Engineering to Brisbane Engineering

  
\_\_\_\_\_  
Director of Public Works/City Engineer

  
\_\_\_\_\_  
City Manager

**RESOLUTION NO. 2016-18**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BRISBANE APPROVING THE COMPREHENSIVE  
AGREEMENT BETWEEN THE PENINSULA CORRIDOR  
JOINT POWERS BOARD AND CITY OF BRISBANE  
RELATING TO THE PENINSULA CORRIDOR  
ELECTRIFICATION PROJECT**

**WHEREAS**, the Peninsula Corridor Electrification Project (Project) will install Traction Power Facilities and Overhead Contact System to deliver and distribute electrical power for train usage; and

**WHEREAS**, the Project will be constructed almost completely within the Peninsula Corridor Joint Powers Board right-of-way and will incur construction impacts to the adjacent community and City right-of-way; and

**WHEREAS**, City staff negotiated the comprehensive agreement with the Peninsula Corridor Joint Powers Board to memorialize respective responsibilities of each party through design and construction of the Project, and recommend its approval by the City Council;

**NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane as follows:**

1. The Comprehensive Agreement with the Peninsula Corridor Joint Powers Board for the Peninsula Corridor Electrification Project is approved.
2. The City Manager is authorized to execute the Comprehensive Agreement in substantially the form submitted to City Council as well as any necessary amendments.

\* \* \* \*

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Clifford R. Lentz, Mayor

ATTEST:

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Sheri Marie Spediacci, City Clerk

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

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

### RECITALS

- A. City is a duly established municipal corporation organized and existing under the laws of the State of California.
- B. JPB is a joint exercise of powers agency organized and existing under the laws of the State of California.
- C. JPB is the owner of the Peninsula Corridor Railroad right-of-way, including certain real property and fixtures located in the City of Brisbane between milepost (MP) 5.2 and 7.9, (the “**Right-of-Way**”), and includes one overhead crossing.
- D. The Peninsula Corridor Electrification Project (“**Project**”) consists of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4<sup>th</sup> and King Street Station in San Francisco and the Tamien Station in San Jose.
- E. In 2009, the JPB completed a Final Environmental Assessment/Environmental Impact Report (EA/EIR) for the Project. Based upon that document, the Federal Transit Administration issued a Finding of No Significant Impact (FONSI) in 2009, which completed the federal environmental review for the Project in accordance with the National Environmental Policy Act (NEPA).
- F. On January 31, 2013, the JPB issued a Notice of Preparation of an Environmental Impact Report and, in February, 2014, issued a Draft Environmental Impact Report for a 60-day comment period ending on April 29, 2014. A Final Environmental Impact Report was issued in December 2014.
- G. On January 8, 2015, pursuant to Resolution No. 2015-03, the JPB certified conformance with the California Environmental Quality Act (CEQA) to the extent that it is applicable to the Project, and certified the Final Environmental Impact Report (FEIR) for the Project.
- H. On January 8, 2015, pursuant to Resolution No. 2015-04, the JPB adopted CEQA findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting plan.
- I. On February 5, 2015, pursuant to Resolution No. 2015-08 the JPB authorized the issuance of the PCEP Project Design Build Request for Proposals to engage a Design-Build Contractor to construct the Project.

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

## **SECTION 1: AFFIRMATION OF RECITALS AND OPERATIVE DATE**

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

## **SECTION 2: DEFINITIONS**

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

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

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

### **SECTION 3: PURPOSE OF THE AGREEMENT**

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

### **SECTION 4: PROJECT FEATURES**

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

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



OCS, an electric safety zone to adjacent vegetation is needed. This electric safety zone distance is approximately 10 feet from the face of the OCS pole.

- C. Specific to the City , and based on preliminary design, the Project elements anticipated within the City include:
- (1) OCS poles. Installation of foundations, poles and appurtenances.
  - (2) Installing one overhead bridge barriers, which are required to prevent falling objects from coming into contact with the OCS. The JPB will coordinate with City and obtain its approval for the design and construction of the new overhead bridge barrier. After installation and final acceptance of the overhead bridge barrier, the overhead bridge barrier will be owned and maintained by JPB.
  - (3) Staging areas. The PCEP FEIR identified one staging area for the DB Contractor's use. The location of the staging areas is near the intersection of Tunnel Avenue and Bayshore Boulevard. The location is shown in Exhibit A. Additional staging areas will comply with applicable mitigation measures and will be coordinated with the City.

#### **SECTION 5: GENERAL COMMITMENTS**

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

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

**SECTION 6: MITIGATION MEASURES**

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

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

- (2) The JPB will coordinate with the City on design selection of overbridge protection barriers and fencing that would be viewed from highly used public spaces and historical train stations.
- B. Mitigation Measure Aesthetics-4a: Minimize spillover light during nighttime construction adjacent to residential neighborhoods. The JPB will direct any artificial lighting onto the worksite and away from adjacent residential areas at all times.
- C. Mitigation Measure Biology-5: A Tree Avoidance, Minimization, and Replacement Plan will be developed in consultation with a certified arborist and in consultation with cities, counties, and affected property owners along the Project. A complete field survey of the entire Project area will be completed to support the plan development by preparing a tree inventory for all affected areas.

## **SECTION 7: CITY IMPROVEMENTS**

- A. Construction Standards: The JPB is designing and constructing the Project. The design and construction of the Project shall conform with JPB's adopted standards, specifically JPB Standards Dated September 30<sup>th</sup>, 2011 and the Design/Build Contract Documents. Any work required to repair or replace City Improvements damaged or affected by the Project shall conform with the City's adopted codes. If no City codes exist for such work, it shall be designed to applicable Caltrans codes, or if no Caltrans standards apply, it shall be designed to such standards as JPB shall reasonably determine to apply and approved for application by the City.
- B. Design Review: The JPB will do a page-turn design review, or detailed walkthrough of the Project elements within the City limits at the 65% and Issued For Construction design levels prior to official submittal of Issued for Construction plans for final approval. All comments received will be addressed prior to official submittal of Issued for Construction plans. Design review for Project elements within the JPB Right-of-Way is for informational purposes only and is not for City approval. The City will review and approve the design of any required work that alters or replaces City Improvements within 21 days of receipt of the official submittal of Issued For Construction plans.
- C. Permits: Following approval of official submittal of Issued For Construction plans, the City will issue all necessary permits for work to be performed in the City in accordance with the City's Municipal Code. The JPB will pay the City for its staff time and/or consultant costs spent on review of design documents, permits or inspections of City Improvements. The JPB shall pay all applicable City permit or other fees with regard to the Project. The JPB shall make an initial deposit of \$25,000.00 to the City for design review and inspection costs. The JPB will pay the City's standard permit and processing fees, as applicable to the Project. The method of payment is described below in Section 8. The City will cooperate with the JPB in identifying all City permits necessary for work to be performed under this Agreement. With the approved official submittal of

Issued For Construction plans, the City will issue the permits no later than twenty one (21) calendar days following the City's receipt of such permit submission.

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

#### **SECTION 8: METHOD OF PAYMENT TO THE CITY**

The JPB shall make an initial deposit of \$25,000.00 to the City for costs incurred by the City for design review and inspection costs for the Project as described in Section 7 above. The JPB will pay the City's standard permit and processing fees, as applicable to the Project. The City shall notify the JPB when 75% of the initial deposit has been spent, at which time the JPB and the City shall review the spent and remaining budget to determine any additional needs beyond the initial deposit. Any change to the deposit amount shall be agreed upon by the JPB and the City.

#### **SECTION 9: TRAFFIC MAINTENANCE AND DETOURS**

The JPB will assume full responsibility for maintaining in service, or causing to be maintained in service, all traffic detours during JPB construction of the Project in a manner satisfactory to the City, subject to and consistent with all applicable California Department of Transportation requirements. All traffic control, lane closure, and detour plans shall be submitted to the City for approval prior to commencement of any phase of construction requiring either traffic control or detour(s), which approval shall not be unreasonably withheld. The traffic control, lane closure, and detour plans shall specify the length of time that portions of City streets will likely be closed.

- A. Although certain City streets will, of necessity, be partially closed for some period during construction of the Project, the JPB will, to the greatest extent practicable, maintain in service, or cause to be maintained in service, all City streets and related City Improvements within the limits of the Project area in a manner reasonably satisfactory to the City. At a minimum, two-way service will be maintained on all City streets affected by the Project, unless otherwise agreed to by the JPB and the City.
- B. In its Contract Documents, the JPB will require its contractor(s) to submit traffic plans showing haul routes, temporary closures, and the method of traffic maintenance and staging to the City for approval, which approval shall not be unreasonably withheld. The

City shall approve or disapprove the plans no later than twenty-one(21) calendar days following the City's receipt of such plans.

- C. In its Contract Documents, the JPB will, prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, require that its contractor(s) provide at least fourteen (14) calendar days' notice of such closure to the City. Deviation from this fourteen (14) calendar day requirement may be permitted in bona fide emergency situations as determined by the JPB and the City.
- D. At least seventy two (72) hours prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, the JPB will post notice of such closure. Such notice of any road closure shall include, at minimum, use of an electronic sign. The JPB will also provide closure-information fliers to residents, schools, and businesses within a one hundred (100) foot radius of any such closure.

#### **SECTION 10: EROSION CONTROL PLAN**

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

To the extent that city is required to enforce erosion control requirements as issued by either the State Water Resources Control Board or the San Francisco Regional Bay Water Quality Control Board, JPB shall comply with the orders issued by City.

#### **SECTION 11: DESIGNATED AGENT OF THE PARTIES**

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

#### **SECTION 12: INDEMNIFICATION**

##### **A. City's Indemnity.**

- (1) City shall fully release, indemnify, hold harmless and defend the JPB, as well as the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, Transit America Services, Inc. or any successor Operator of the Service, the Union Pacific Railroad Company, and/or their respective officers, directors, employees, contractors and agents (collectively, "JPB Indemnitees") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, the passengers, employees and contractors of City and JPB), and damage to or loss of property arising out of or resulting from any act or omission

by City, its agents, employees, contractors or subcontractors in the performance of its obligations under this Agreement.

- (2) City's obligation to defend shall include the payment of all reasonable attorney's fees and all other costs and expenses of suit, and if any judgment is rendered against any JPB Indemnitee, City shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the City without prejudice to City's rights and/or abilities to undertake a defense of said claim.

**B. JPB's Indemnity.**

- (1) JPB shall fully release, indemnify, hold harmless and defend the City and its respective officers, directors, employees, contractors and agents (collectively, "City Indemnitees") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, passengers, employees and contractors of City and JPB) and damage to or loss of property arising out of or resulting from any act or omission by the JPB, its agents, employees, contractors or subcontractors in performance of its obligations under this Agreement.

- (2) JPB's obligation to defend shall include the payment of all reasonable attorney's fees and all other costs and expenses of suit, and if any judgment is rendered against City Indemnitee's or any one of them, JPB shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the JPB without prejudice to JPB's rights and/or abilities to undertake a defense of said claim.

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

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

**SECTION 13: INSURANCE**

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

**SECTION 14: RESOLUTION OF DISPUTES**

**A.** Prior to commencement of any formal litigation arising out of this Agreement, the Parties shall submit the matters in controversy to a neutral mediator jointly selected by the Parties. The costs of said mediator shall be borne evenly by the Parties involved in said dispute. To the extent the disputes remain outstanding following completion of mediation, any claim, controversy, action or proceeding arising out of or relating to this Agreement or to any document, instrument or exhibit executed pursuant to this Agreement shall be tried by a judge pro tem. Said judge is to be selected by counsel for

the Parties from a list of retired judges furnished by the presiding judge of the County of San Mateo. If counsel are unable to select a judge pro tem said judge will be selected by the presiding judge from the list provided.

- B. Each Party shall pay its pro rata share of the fee for the judge pro tem. Each Party shall bear its own fees and expenses in such proceedings and the prevailing Party shall not be entitled to reimbursement from the losing Party for any such fees or expenses.
- C. The judge pro tem shall have the authority to try and decide any or all of the issues in the claim, controversy, action or proceeding, whether of fact or of law, and to report a statement of decision thereon. In any proceedings before the judge pro tem, the issues are to be determined under the statutory and decisional law of the State of California. All local and California Rules of Court shall be applicable to any proceeding before the judge pro tem. All proceedings shall be conducted on consecutive dates without postponement or adjournments.

#### **SECTION 15: NOTICES**

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

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

City: City of Brisbane  
50 Park Place, Brisbane, CA 94005  
Attn: City Manager

#### **SECTION 16: PARTIES NOT CO-VENTURERS**

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

#### **SECTION 17: FURTHER ASSURANCES, TIME PERIODS AND RECORDS**

- A. Each Party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.

- B. Should unforeseen circumstances occur, the JPB and the City shall negotiate in good faith to reach agreement on any amendment(s) that may be necessary to fully effectuate the Parties' respective intentions in entering into this Agreement.
- C. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of the JPB or as part of any audit of the JPB by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

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

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

**SECTION 19: HEADING AND TITLES**

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

**SECTION 20: APPLICABLE LAW**

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

**SECTION 21: SEVERABILITY**

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

**SECTION 22: BINDING UPON SUCCESSORS**

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

**SECTION 23: REMEDIES NOT EXCLUSIVE**

No right or remedy conferred upon or reserved to the JPB or the City under this Agreement is intended to be exclusive of any other right or remedy, except as expressly stated in this Agreement, and each and every right and remedy shall be cumulative and in addition to any



other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited in this Agreement.

**SECTION 24: FORCE MAJEURE**

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

**SECTION 25: INTEGRATION**

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

**SECTION 26: COUNTERPARTS**

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

**SECTION 27: AMENDMENTS**

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

**SECTION 28: THIRD PARTY RIGHTS**

Nothing herein shall be considered as creating any rights and/or obligations by any of the Parties to this Agreement to any third parties. Specifically, none of the duties to inspect or maintain shall in any way be construed as creating or expanding any additional obligations to any third Party beyond those required and established under the applicable statutes, regulations, ordinances or law.

**SECTION 29: SUCCESSORS**

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

**SECTION 30: BONDING**

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

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

PENINSULA CORRIDOR JOINT POWERS BOARD      CITY OF BRISBANE

By: \_\_\_\_\_

Jim Hartnett  
General Manager

Clay Holstine  
City Manager


APPROVED AS TO FORM:

APPROVED AS TO FORM:

JPB Attorney

City of Brisbane City Attorney

By: \_\_\_\_\_

By:  \_\_\_\_\_  
Michael Roush

**EXHIBIT A**

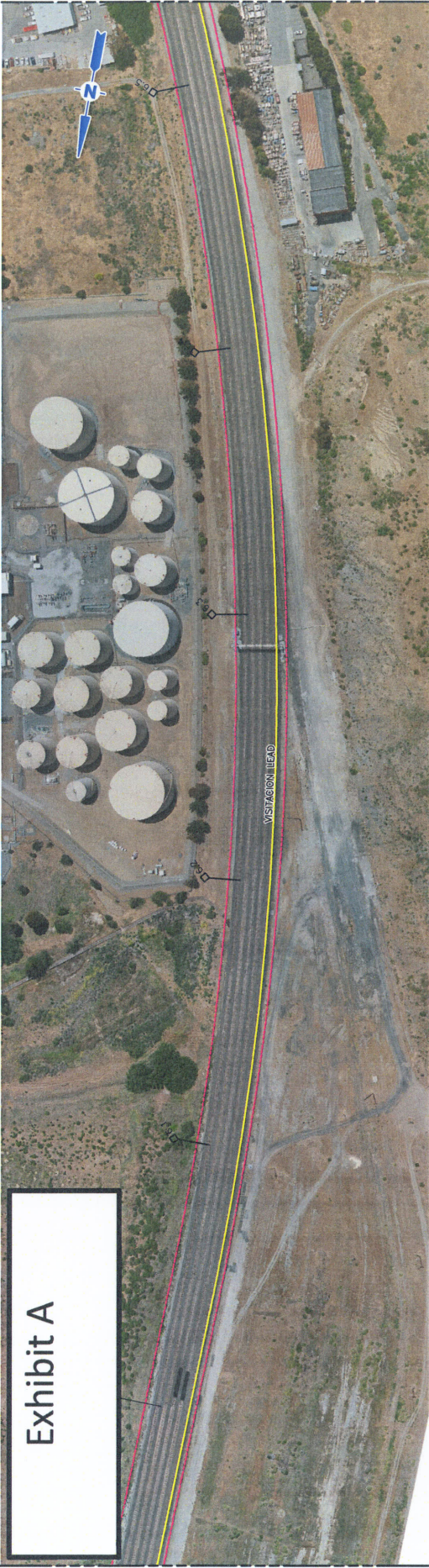
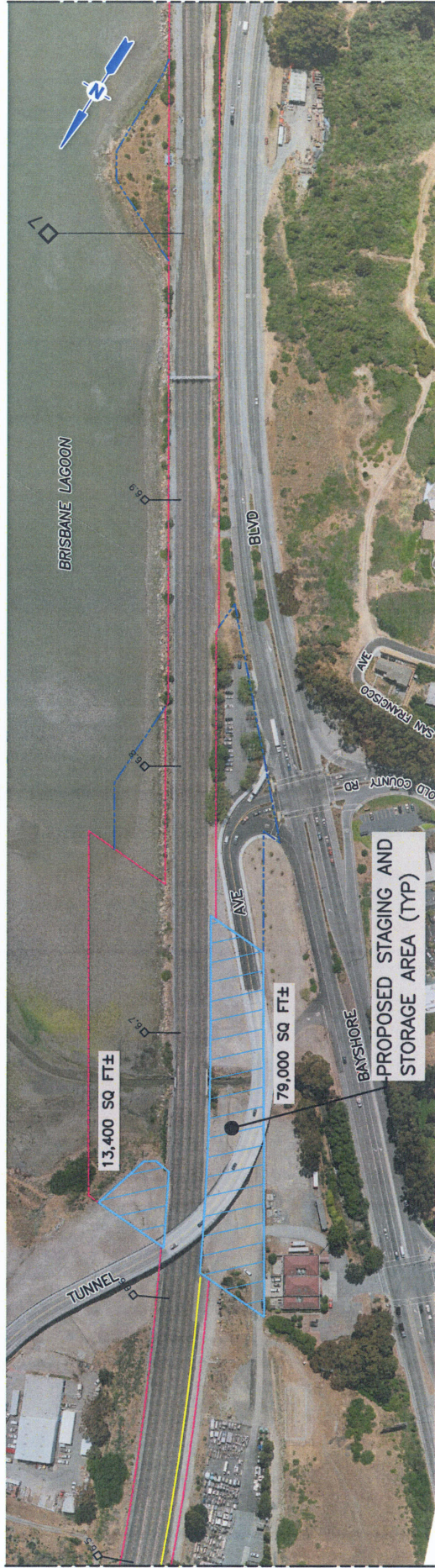


Exhibit A

SEE BELOW LEFT



SEE ABOVE RIGHT

SEE DWG MP 07

<p><b>PROPERTY INFORMATION</b></p> <ul style="list-style-type: none"> <li>PCJPB OPERATING EASEMENT</li> <li>RAILROAD FRANCHISE EASEMENT</li> <li>PCJPB EASEMENT</li> <li>RAILROAD FRANCHISE EASEMENT</li> <li>PCJPB EASEMENT</li> </ul>		<p><b>PROPERTY INFORMATION</b></p> <ul style="list-style-type: none"> <li>UPRR</li> <li>CITY EASEMENT ON PCJPB PROPERTY</li> <li>CITY AND COUNTY EASEMENT</li> <li>SFPUC EASEMENT</li> </ul>		<p><b>SYMBOLS</b></p> <ul style="list-style-type: none"> <li>PROPOSED STAGING/STORAGE AREA</li> <li>PROPOSED CONSTRUCTION ACCESS ALIGNMENT</li> </ul>		<p><b>Caltrain.</b> 1236 San Carlos Avenue San Carlos, CA 95050</p>		<p><b>PENINSULA CORRIDOR JOINT POWERS BOARD</b> <b>ELECTRIFICATION PROJECT</b> <b>ACCESS, STORAGE AND STAGING</b> <b>CITY OF BRISBANE</b> <b>SHEET 1 OF 2</b></p>		<p>CSDB FILE NAME: ASAS_00-10 SCALE: 1"=100' CONTRACT NO: DRAWING NO: MP 06 REV: PAGE NO: 07 DATE: 12/02/2015</p>	
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## Modernization Program Peninsula Corridor Electrification Project (PCEP)

BOARD OF DIRECTORS 2016

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EXECUTIVE DIRECTOR

CALMOD-2036-LTO-VEN-001-YY

04/28/16

Mr. Randy Breault, Director of Public Works  
City of Brisbane  
50 Park Place  
Brisbane, CA 94005

Subject: Engineering Review Time for Bayland Overcrossing Projects

Dear Mr. Breault:

Thank you for the time and assistance in working with us on the Comprehensive Agreement Between the Peninsula Corridor Joint Powers Board (JPB) and the City of Brisbane regarding the Peninsula Corridor Electrification Project (PCEP).

Per our discussions, JPB understands the City of Brisbane has two upcoming transportation projects, Bayland Overcrossing Projects, which includes multiple alternatives that will cross over the existing JPB Right of Way, the easterly extension of Geneva Avenue to a future join with an improved US-101/Candelstick Interchange, and the creation of a new collector street initially referred as Roundhouse Arc. During our meetings, the City of Brisbane expressed the desire to receive cooperation from the JPB to facilitate the future design and construction of the Bayland Projects, and specifically a 21-day turnaround for design plan review and 3<sup>rd</sup> party permit process.

The JPB Engineering and Construction Department, who leads the 3<sup>rd</sup> Party Project process, agrees to commit to a 21-day turnaround for design plan reviews and 3<sup>rd</sup> party permits process. This commitment will also be captured in the terms of the 3<sup>rd</sup> Party Project Agreement that is required for all 3<sup>rd</sup> Party Projects interfacing with the JPB Right of Way. As the City of Brisbane nears the design and construction phases of the Bayland Projects, any advanced communication with the JPB will be greatly appreciated in order for our 3<sup>rd</sup> Party Project group to allocate and plan for the appropriate resources in order to support your project and this 21-day turnaround commitment. It is a lengthy process to initially set up 3<sup>rd</sup> Party Projects, .The sooner we can start that process, the better we can support your schedule. Stephen Chao, the Deputy Director of Engineering, will follow up with you to assist with the initial process.

CALTRAIN MODERNIZATION PROGRAM  
Peninsula Corridor Electrification Project (PCEP)  
2121 S. El Camino Real, Suite 300  
San Mateo, CA 94403



**Modernization Program**  
**Peninsula Corridor Electrification Project (PCEP)**

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EXECUTIVE DIRECTOR

CALMOD-2036-LTO-VEN-001-YY

We look forward to our continued cooperation on the PCEP as well as the Baylands Project and Roundhouse Arc Project. If you have any questions regarding the PCEP, please contact Lin Guan, Project Manager, at [quanz@samtrans.com](mailto:quanz@samtrans.com) or (650) 508-7976. And any questions on the 3<sup>rd</sup> PartyProjects process in regards to the Baylands Projects, please contact Stephen Chao, Deputy Director of Engineering, at [chaos@samtrans.com](mailto:chaos@samtrans.com) or (650) 508-6301

Sincerely,

Zhenlin Guan  
Project Manager  
Caltrain Modernization Program

Stephen Chao  
Deputy Director of Engineering  
Caltrain

CC: Jill Gibson, Principal Planner, Caltrain  
Liria Larano, Director of Engineering and Construction, Caltrain  
Document Control, Caltrain

CALTRAIN MODERNIZATION PROGRAM  
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2121 S. El Camino Real, Suite 300  
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# City of Brisbane

## Staff Report

To: Honorable Mayor and City Council

From: Richard Johnson, Deputy Fire Chief/Fire Marshal, Fire Prevention Services Bureau  
Via Ron D. Myers, Fire Chief

Subject: Weed and Flammable Waste Abatement

Date: Meeting of June 16, 2016

### **Purpose:**

To reduce the threat of fire created by weeds and flammable waste located on private property.

### **Recommendation:**

1. Open the Public Hearing and hear any objections by noticed property owners of properties on which a nuisance has been declared to exist.
2. Close the Public Hearing and sustain or overrule any objections which have been raised.
3. Give direction to Enforcement Officer to clear the properties that have not complied with the notice.

### **Background:**

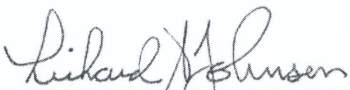
In April of 2009, the City Council adopted an ordinance establishing a procedure for the abatement of weeds and flammable wastes that create fire hazards. Further, the ordinance establishes the process by which abatement is accomplished for those properties that do not comply, enabling the City to recover its costs associated with bringing the property in compliance, through levying an assessment against the property on which the abatement work has been performed. The ordinance mandates that those properties not in compliance as of the due date receive a letter by mail, which provides the date and time for the public hearing, whereby a property owner can state why they should not be a part of the weed abatement requirements and abatement process.

### **Discussion:**

A list was created of those properties, in which weeds or flammable waste materials were found to exist after the compliance due date of May 30<sup>th</sup> and constituted a fire hazard.. This list was reviewed by the Fire Chief and then notices were sent to the property owners as required by the ordinance

### **Fiscal Impact:**

There are no fiscal impacts.



Richard A. Johnson, Deputy Fire Chief,  
Fire Prevention Services Bureau  
for Ron D. Myers, Fire Chief

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Clayton Holstine, City Manager