

**Peninsula Corridor Electrification Project
Addendum to the Final Environmental Impact Report
Paralleling Station 3 Option 3**

Prepared by ICF for the Peninsula Corridor Joint Powers Board, July 2018

The Peninsula Corridor Joint Power Board (JPB) certified the Peninsula Corridor Electrification Project (PCEP) Environmental Impact Report (EIR) on January 8, 2015 (JPB 2015). Since certification of the Final EIR, the JPB has identified one new potential site for Paralleling Station 3 (PS3). The environmental effects of the new PS3 Option 3 compared with the environmental effects of the PS3 Options 1 and 2 evaluated in the certified 2015 Final EIR are examined in this addendum.

Under the California Environmental Quality Act (CEQA), an addendum to an EIR is needed if minor technical changes or modifications to a proposed project occur (CEQA Guidelines Section 15164). An addendum is appropriate only if these minor technical changes or modifications do not result in any new significant impacts or a substantial increase in the severity of previously identified significant impacts. An addendum does not need to be circulated for public review (CEQA Guidelines Section 15164(c)); however, an addendum is to be considered along with the Final EIR by the decision-making body prior to making a decision on a project (CEQA Guidelines Section 15164(d)). This addendum to the PCEP Final EIR (State Clearinghouse No. 2013012079) has been prepared in accordance with CEQA Guidelines Section 15164.

Project Background and Supplemental Environmental Review

In 2015, the JPB certified the Final EIR for the PCEP. The Proposed Project would require the installation of 130 to 140 single-track miles of overhead contact system (OCS) for the distribution of electrical power to the electric rolling stock. The OCS would be powered from a 25 kilovolt (kV), 60 Hertz (Hz), single-phase, alternating current (AC) supply system consisting of two traction power substations (TPSs), one switching station (SWS), and seven paralleling stations (PSs). The Final EIR evaluated environmental impacts associated with the four options for the site of the northern TPS (TPS1 in South San Francisco) and three options for the site of the southern TPS (TPS2 in San Jose). In addition, the Final EIR evaluated environmental impacts associated with one switching station (SWS1) (with two site location options) and seven paralleling stations (PS1 through PS7) at a spacing of approximately 5 miles. Two options were evaluated for the PS3 and PS6 sites and three options were evaluated for the PS4, PS5, and PS7 sites. Subsequent addenda have reviewed additional options for PS2 and PS7, minor pole relocations, and design detail for the PG&E interconnections and substation upgrades.

Since certification of the Final EIR, the JPB has proposed one additional alternative location for PS3 (Option 3). A new location (PS 3 Option 3) was needed because the original location included in the FEIR is no longer viable. The location of the original PS3 is in conflict with the potential Broadway Grade Separation Project.

PS3 Option 3 would be located at approximately Mile Post 14.6, west of the Caltrain tracks along California Drive in Burlingame. The approximately 0.14 acre site would be situated approximately 130

feet south of the intersection of California Drive and Mills Avenue, partially on land owned by JPB within the Caltrain right-of-way and partially on land owned by the City and County of San Francisco within the San Francisco Public Utilities Commission's (SFPUC) right-of-way. The acquisition of 6,000 square feet of land (120 feet by 50 feet) within the SFPUC's right-of-way would be required. The site would be setback from California Drive by 15 feet to avoid existing overhead utility lines and poles, and would be accessed via a driveway at the southern end of the site that connects to California Drive. **Table 1** describes the potential environmental impacts of PS3 Option 3 and analyzes any potential change in the level of significance as determined in the 2015 Final EIR.

An attached figure, Figure 1, shows the site location and the area of property acquisition.



Source: Imagery, ESRI 2018

Figure 1, Proposed Paralleling Station 3 (PS3) Option 3
Burlingame

Table 1. Summary of Impacts of PS3 Option 3

Environmental Topic	Impact
Aesthetics	<ul style="list-style-type: none"> The EIR significance criteria concern scenic vistas, scenic roadways, visual character/quality, and light and glare. The area surrounding the site is not a scenic vista as it consists of a roadway, single-family residences, utility poles and wires, and urban trees, and thus no impacts to a scenic vista are identified. California Drive is not a designated scenic roadway and thus no impacts to scenic roadways are identified. Impacts associated with visual character/quality and light and glare are addressed below. PS3 Option 3 would be located between the Caltrain tracks and California Drive, on land partially within Caltrain's and SFPUC's rights-of-way, across the street from residential areas along California Drive in Burlingame. The existing visual elements of the PS3 Option 3 area consist of suburban residential land uses to the west of the Caltrain corridor, and a row of trees and overhead utility lines and poles lining the SFPUC right-of-way. Nearby residents, roadway users, and recreationalists (e.g., bicyclists) using local roadways have views toward the PS3 Option 3 location, which would be approximately 60 feet closer to adjacent residences than the PS3 Option 1 evaluated in the Final EIR. Figure 2a depicts the existing and simulated view of the PS3 Option 1 evaluated in the Final EIR. Figure 2b depicts the existing view from the neighborhood west of the corridor to the PS3 Option 3 site and a simulation of PS3 Option 3 with potential vegetative screening. The introduction of PS3 Option 3 would alter the visual character of the existing railway ROW, overhead utility lines and poles, and vegetative screening due to removal of existing vegetation at the site and the introduction of new structures and equipment. PS3 Option 3 would also introduce an elevated element (the gantry) that would be higher than current features on the site. However, given the existing visual character is a busy roadway with utility poles and wires and urban trees, the new features only moderately change the overall visual character by introducing additional utility-like infrastructure. To reduce the change in visual character, Mitigation Measure BIO-5 would minimize impacts on trees lining the SFPUC right-of-way to only that necessary for electric equipment safety, while Mitigation Measure AES-2b would require vegetative screening along California Avenue between the roadway and PS3 Option 3, and appropriate color treatment for the TPF facilities to reduce the visual effect on views from the neighborhood. With mitigation, the change in visual character would be lessened as the paralleling station equipment and compound would be screened from view from the roadway and residences by vegetative screening in the form of a vegetated wall. With the vegetated wall, the elevated gantry and some of the higher parts of the paralleling station would still be apparent. However, given the existing visual character is not a high value aesthetic landscape, but rather a mixed urban one of residences, roadway, and train and utility infrastructure, the residual aesthetic impact after mitigation is considered less than significant. Construction of PS3 Option 3 could result in spillover light or glare, and new nighttime lighting for security purposes could spill outside of the site boundaries, creating a new source of nuisance lighting or glare to nearby residents. Mitigation Measures AES-4a and AES-4b would apply to reduce impacts from lighting; the impact determinations identified in the Final EIR would not change.



Existing View of EIR Location for PS3



Simulated View of PS3, EIR Location



Existing View of New Location for PS3



Simulated View of PS3, Relocated to Avoid Broadway Grade Separation Project

Figure 2b
PS-3 Proposed Addendum #5 Location

Environmental Topic	Impact
Air Quality	<ul style="list-style-type: none"> PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding aesthetics that were analyzed in the Final EIR. <hr/> <ul style="list-style-type: none"> No new air quality impacts are identified relative to PS3 Options 1 and 2 because the amount and duration of construction would be similar to the construction of the other paralleling stations. Mitigation Measures AQ-2a, AQ-2b, and AQ-2c would apply to reduce construction impacts regarding criteria pollutants and toxic air contaminants (TACs) by requiring Bay Area Air Quality Management District (BAAQMD) best management practices (BMPs) and equipment requirements to reduce construction-related dust, reactive organic gasses (ROG), and nitrogen oxides (NOx) emissions. The impact determinations identified in the Final EIR would not change. PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding air quality than were analyzed in the Final EIR.
Biological Resources	<ul style="list-style-type: none"> The PS3 Option 3 is located in an area covered by urban landscaping: trees and ornamental shrubs line the existing SFPUC right-of-way. Tree surveys have not been conducted at this location, but the dominant tree species along the Caltrain right-of-way in Burlingame include acacia trees, eucalyptus, and oak. No waters of the U.S., including wetlands, or habitat for special-status species are present with the boundaries of the PS3 Option 3 location. The trees provide suitable habitat for migratory birds during the breeding season (February 1 to August 31). No other habitat for special-status species are present with the boundaries of the PS3 Option 3. Mitigation Measures BIO-1a, BIO-1g, and BIO-1j would apply to reduce potential impacts to nesting birds and Mitigation Measure BIO-5 would apply to reduce impacts from tree pruning and removal; the impact determinations identified in the Final EIR would not change. PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding biological resources than were analyzed in the Final EIR.
Cultural Resources	<ul style="list-style-type: none"> An ICF Architectural Historian reviewed the records for the PS3 Option 3 site on June 20, 2018 and determined that there are no historic resources on or adjacent to the site. An ICF Archaeologist reviewed the records for the PS3 Option 3 site on June 20, 2018 and determined that there are no archaeological sites or areas of known archaeological sensitivity within the vicinity of the site and there would be no new archaeological effect related to selection of PS3 Option 3. Mitigation Measures CUL-2a through CUL-2f would apply to reduce potential impacts to unknown archaeological resources; the impact determinations identified in the Final EIR would not change. PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding cultural resources than were analyzed in the Final EIR.

Environmental Topic	Impact
Electromagnetic Fields (EMF)/Electromagnetic Interference (EMI)	<ul style="list-style-type: none"> The distance from PS3 Option 3 to sensitive receptors would be similar to that of the paralleling station sites evaluated in the Final EIR and thus EMF/EMI impacts related to PS3 Option 3 would also be below the EMF thresholds used in the Final EIR for the general public, workers, and individuals with pacemakers or implanted medical devices. PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding EMF/EMI than were analyzed in the Final EIR.
Geology, Soils, Seismicity	<ul style="list-style-type: none"> The soil underlying the PS3 Option 3 site is 132—Urban land-Orthents, cut and fill complex. The site has moderate susceptibility to liquefaction and low susceptibility to landslides. Expansive soil could exist on the site since specific soil sampling has not been completed. Mitigation Measures GEO-4a and GEO-4b require identification and mitigation of expansive soils. Mitigation Measure GEO-1 would require a site-specific geotechnical study for PS3 Option 3 to reduce exposure of people or structures to potential substantial adverse effects, including the risk of loss, injury, or death, involving rupture of a known earthquake fault, strong seismic ground shaking, seismic-related ground failure, or landslides; the impact determinations identified in the Final EIR would not change. PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding geology, soils, and seismicity than were analyzed in the Final EIR.
Greenhouse Gas Emissions	<ul style="list-style-type: none"> PS3 Option 3 would not introduce any new construction impacts not previously analyzed in the Final EIR because the amount of construction would be the same as the PS3 sites analyzed in the Final EIR. With PS3 Option 3, there would be no changes to normal train operations, so there would be no change to operational emissions. The impact determinations identified in the Final EIR would not change. PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding greenhouse gas emissions than were analyzed in the Final EIR.

Environmental Topic	Impact
Hazards and Hazardous Material	<ul style="list-style-type: none"> • Thirteen hazardous materials sites are within 0.25 mile of PS3 Option 3. Each of these thirteen cases are closed and represent a low level of concern. • Sunshine Family Child Care and Coolidge Grammar School are located approximately 0.18 mile southeast and 0.13 mile south of PS3 Option 3, respectively; the distances from these schools to PS3 Option 3 is comparable to the distance of these schools to the PS3 sites evaluated in the Final EIR. • Mitigation Measures HAZ-2a and HAZ-2b would require additional actions for areas with a high likelihood of contaminated media and would control exposure of workers and the public to contamination where encountered. This mitigation would also control potential spills of hazardous material during construction, as well as potential effects on emergency plans. With these mitigation measures, construction and operation of PS3 Option 3 would not affect land uses outside of the project footprint, including schools. • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding hazards and hazardous materials than were analyzed in the Final EIR.

Environmental Topic Impact

Hydrology and
Water Quality

- Like PS3 Option 1, PS3 Option 3 would be within the 100-year floodplain due to the proximity to Mills and Easton Creeks, which experience flooding overflow in large events and are located approximately 0.16 mile northeast and 0.1 south east of PS3 Option 3, respectively. The amount of existing infiltration at the site is likely limited because PS3 Option 3 would be approximately 120 feet by 50 feet (6,000 square feet or 0.14 acre) and would be located in a previously cleared and graded area on the northern edge of the inundation area along the Caltrain right-of-way. As a result, it is unlikely that PS3 Option 3 would contribute significantly to flooding due to loss of infiltration.
 - Mitigation Measure HYD-4 would reduce the potential of PS3 Option 3 to contribute to localized flooding by minimizing the amount of new impervious areas by using graveled or pervious pavement for all facility areas other than the foundations for new electric equipment and any other weight-bearing facilities.
 - Mitigation Measure HYD-5 would provide for electrical safety at PS3, Option 3 from flood damage by requiring all new electrical equipment to be placed on elevated pads above expected flood depths and/or protect such equipment with flood barriers. If equipment cannot be designed so that flood waters cannot contact the equipment, then sealed or capped moisture-resistant components are required. Ground Fault Circuit Interrupters (GFCIs) will be utilized for all electrical circuits below the base flood elevation for the 100-year flood. Caltrain will develop emergency response procedures to provide electrical safety including system shutdown during projected flood events. Due to the potential for gaps in current FEMA mapping of areas subject to flooding due to levee failures, Caltrain will also investigate potential flooding risks due to levee failures for all new TPFs and apply emergency shutdown requirements to all additional facilities identified as at risk of flooding due to potential levee failures.
 - PS3 Option 3 would be located in an area vulnerable to potential sea level rise after 2050. Such inundation could result in damage to Caltrain facilities resulting in structural damage and service interruptions.
 - Mitigation Measure HYD-7 would require Caltrain to assess its vulnerability to future flooding associated with sea level rise and partner with adjacent municipalities, flood districts, regional agencies, state agencies, and federal agencies to do its fair share to help adapt to changing flood conditions over time. Potential adaptation solutions could include flood levees, seawalls, elevated tracks, and/or minor track realignment. The secondary environmental effects of construction of additional flood facilities for PS3 Option 3 would likely be similar to that disclosed in the Final EIR.
 - If groundwater is encountered during construction activities, dewatering may be required and Mitigation Measure HYD-1 would be implemented.
 - The impact determinations identified in the Final EIR would not change.
 - PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding hydrology and water quality than were analyzed in the Final EIR.
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Environmental Topic	Impact
Land Use and Recreation	<ul style="list-style-type: none"> • The site for PS3 Option 3 is zoned as unclassified, as it is within the existing Caltrain and SFPUC rights-of-way. The site is adjacent to areas covered by the North Burlingame/Rollins Road Specific Plan, and is separated from residential development to the west by a major arterial route, California Drive, which fronts along the Caltrain ROW. The nearest residences are approximately 60 feet south of the site, but would be buffered by California Drive. • PS3 Option 3 would not physically divide an established community and would be consistent with the existing Caltrain and SFPUC operations and compatible with the surrounding land uses. • The site is not within an existing specific, area, or precise plan. • The closest park is the Village Park located approximately 0.18 mile east of the PS3 Option 3 site. PS3 Option 3 would not be visible from this park. • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding land use and recreation than were analyzed in the Final EIR.
Noise and Vibration	<ul style="list-style-type: none"> • With PS3 Option 3, the character of construction and operational noise would be the same as disclosed in the Final EIR. • PS3 Option 3 would be located approximately 60 feet from single-family residences. It is not anticipated that there would be new significant impacts from operational noise at PS3 Option 3 based on the analysis of paralleling station noise in the Final EIR because significant operational noise effects to residential receptors would not exceed the significance threshold at locations 55 feet or more away from a paralleling station • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding noise and vibration than were analyzed in the Final EIR.
Population and Housing	<ul style="list-style-type: none"> • No housing or other displacements would occur with PS3 Option 3. • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding population and housing than were analyzed in the Final EIR.
Public Services and Utilities	<ul style="list-style-type: none"> • There would be no change in demand for public service or utilities with implementation of PS3 Option 3 as the demand would be the same as previously analyzed options. • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding public services and utilities than were analyzed in the Final EIR.

Environmental Topic	Impact
Transportation	<ul style="list-style-type: none"> • Impacts to transportation during construction would be similar to those described in the Final EIR. Mitigation Measure TRA-1 would reduce temporary construction impacts on roadway traffic; the impact determinations identified in the Final EIR would not change. • PS3 Option 3 would have no adverse operational impact on transportation (traffic, transit, bicycle and pedestrian facilities) because it would result in minimal operational traffic due to site maintenance. • PS3 Option 3 would not change any conditions for freight operations. • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new significant impacts or a substantial increase in the severity of impacts regarding transportation than were analyzed in the Final EIR.
Cumulative	<ul style="list-style-type: none"> • No new impacts associated with PS3 Option 3 have been identified. Therefore, there would be no change to the cumulative analysis. • The impact determinations identified in the Final EIR would not change. • PS3 Option 3 would not result in new cumulative significant impacts or a substantial increase in the severity of cumulative impacts that were analyzed in the Final EIR.
Alternatives	<ul style="list-style-type: none"> • No new alternatives identified relative to PS3 are proposed. The Final EIR together with this addendum consider three potential sites for PS3. No new or substantially more severe impacts were identified with implementation of PS3 Option 3 compared to the prior options. Therefore, three options for PS3 are sufficient and additional alternatives are not warranted.

Conclusion

This addendum analyzes the proposed PS3 Option 3 and compares the potential impacts to the conclusions of the 2015 Final EIR. This analysis was completed to determine the requirement for further environmental documentation pursuant to the State CEQA Guidelines sections 15162, 15163 and 15164. This analysis has identified no new or substantially more severe impacts of the proposed PS3 Option 3 compared with those identified and evaluated in the 2015 Final EIR. Mitigation measures identified in the 2015 Final EIR would be applied to PS3 Option 3, as proposed, to reduce or avoid significant impacts. With the application of these previously-identified mitigation measures, no new significant impacts or substantial increases in the severity of previously identified impacts requiring revisions to the 2015 Final EIR would occur. No new mitigation measures are required for the adoption and implementation of the proposed PS3 Option 3.



MICHAEL BROWNRIGG, MAYOR
DONNA COLSON, VICE MAYOR
EMILY BEACH
ANN KEIGHRAN
RICARDO ORTIZ

The City of Burlingame

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July 31, 2018

Board of Directors
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Email Address: board@caltrain.com

Subject: Peninsula Corridor Electrification Project (PCEP) - Addendum to the Final Environmental Impact Report (FEIR) regarding the proposed relocation of Paralleling Station 3 (PS-3) in Burlingame

Dear Board of Directors:

I am writing in response to the Addendum to the PCEP FEIR regarding the proposed relocation of the PS-3 in Burlingame.

The City Council appreciates Caltrain's efforts to work with Burlingame staff to identify feasible solutions for the relocation of the PS-3 to avoid future conflicts with the proposed Broadway Grade Separation Project infrastructure elements in order to save significant time and taxpayer money. It is unfortunate that, while the conflict in land use has existed since the City Council signed off on the preferred Broadway Grade Separation plan in January 2017, our dialogue with you on relocation sites for PS3 only began in March of this year, with the first public hearing on alternatives occurring on July 18, when many people are on vacation. Nevertheless, we expect to resolve this in a mutually satisfactory way through collaboration, as has been the case in the past.

That said, we do not support the current Caltrain recommended relocation site. Caltrain staff has identified Alternative 3, near Mills Avenue, as the most cost-effective solution that will have the least impact on the project's schedule. However, Alternative 3 is significantly closer to a residential neighborhood than the location originally proposed in the FEIR, and the City believes its impacts have not been adequately evaluated in the proposed addendum to the FEIR. Since the release of the Addendum, and the Caltrain public meeting on July 18, 2018, the City has received numerous complaints from residents in the adjacent neighborhood in opposition to the proposed relocation of PS-3. After considerable analysis and evaluation of the matter, and its potential impact to the residential community, the Burlingame City Council strongly requests that PS-3 be located on the east side (industrial side) of the tracks in Burlingame for the following reasons:

- The newly proposed site of PS-3 is much closer to residential properties than the one originally identified in the FEIR. Though the Addendum generally states that the impacts from the proposed relocation are more or less the same as identified at the original location, no qualified supporting data or engineering studies are provided. The City is concerned about potential negative health impacts on residents from the proposed high voltage facility.

- The proposed relocation of PS-3 creates visual impacts to the residential neighborhood that will not be adequately mitigated. The relocation of PS-3 results in the removal of a landscaping wall that currently provides screening to the residential neighborhood from the railway tracks, resulting in negative aesthetics to the neighborhood. Even in Caltrain renderings of future vegetation, the PS-3 is not fully hidden from the street or neighboring houses.
- Since the proposed site is much closer to residential properties, the noise impacts from the proposed relocation would be greater than those associated with the previous site originally identified in the FEIR.
- The ingress and egress to the relocated PS-3 site would create a potential hazard to the general public as California Drive is a narrow, two-lane roadway with limited visibility due the landscaping barrier. The potential hazard would directly affect the roadway traffic and the maintenance workers accessing the site.
- Because this is such a significant matter of public concern, and this permanent facility will be in place for decades, the City believes adequate time should be taken to comprehensively study the issue, identify mutually acceptable and feasible solutions, including deeper review of alternatives on the east side of the tracks, and conduct outreach to the community to address their justified concerns.

In order to address this crucial matter in the most expedient way, the City requests that Caltrain relocate PS-3 on the east side of the railway tracks, as previously identified in Alternative 4. The City strongly believes that relocating PS-3 to the east side of the railway tracks, which is our commercial/light industrial sector, will significantly minimize potential health, noise, and visual impacts to the residential community. The City understands that timing is of the essence as Caltrain is in the midst of construction of the PCEP, and as such the City is willing to work in partnership with Caltrain expeditiously to identify other potential feasible sites on the east side of the railway tracks, including the possibility of offering City-owned property for maintenance access to PS-3 to amicably resolve this matter.

On behalf of the City Council, I request that the Caltrain Board delay the decision regarding the Addendum to the FEIR as scheduled on August 2, 2018, and direct Caltrain staff to work with the City of Burlingame to find other feasible alternatives for relocating PS-3 to address the above-stated concerns.

If you have any questions regarding this matter, please contact Director of Public Works Syed Murtuza at smurtuza@burlingame.org, or (650) 558-7230.

Sincerely,

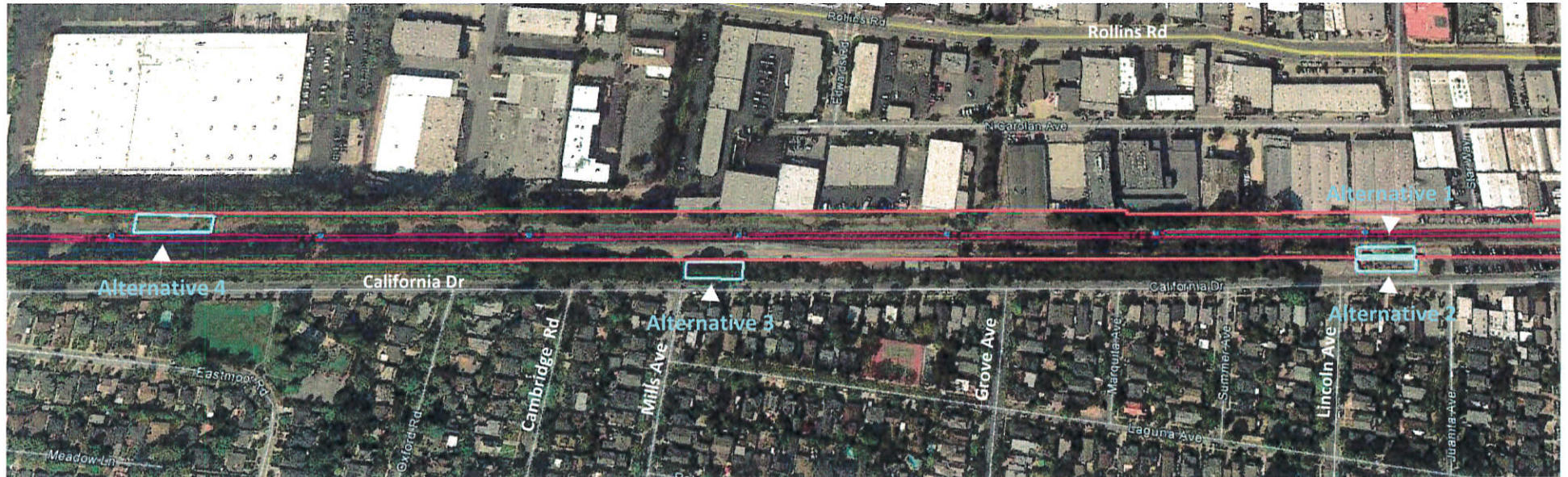


Michael Brownrigg
Mayor

c: Burlingame City Council
Lisa K. Goldman, City Manager
Syed Murtuza, Public Works Director
Art Morimoto, Assistant Public Works Director

Enclosures

**Figure 1: Paralleling Station 3 (PS-3) Alternative Locations, Burlingame
May 2, 2018**



Notes:

Alternative #1 = existing location. Within Caltrain right-of-way between Lincoln Ave. and Juanita Ave.

Alternative #2 = relocated onto SFPUC property along California Ave. between Lincoln Ave. and Juanita Ave.

Alternative #3 = relocated onto SFPUC property along California Ave. at Mills Ave.

Alternative #4 = relocated within Caltrain right-of-way, on the east side of the tracks near Ingold St.

STAR WAY

026-131-190

026-131-180

026-131-200

026-131-230

EASEMENT - SM-70-1 (SM1)
V-74/2, NO. 5 (R1) - V-74/3, NO. 2 (R1)

SM-39 (SM1)
V-74/1, NO. 1 (R1) - V-74/2, NO. 1 (R1)
V-74/3, NO. 1 (R1) - V-74b/8, NO. 1 (R1)

EASEMENT - SM-70-1 (SM1) - V-74/2, NO. 5 (R1) - V-74/3, NO. 2 (R1)

PARCEL ONE SM-79A (SM1)
V-74/2, NO. 7 (R1) - V-74/3, NO. 5 1, 21, 24 (R1)

PAGE A-7 (S)

PROPOSED GRADE
SEPARATION
RETAINING WALL

PARALLELING STATION PS-3

5'

32'

95'

093-361-010

CALIFORNIA DRIVE

LINCOLN AVENUE

JUANITA WAY

RHINETTE AVENUE



025-280-300

025-280-310

026-101-140

026-101-110

026-101-120

026-101-040

PARCEL 11
2970 OR 199, ORSMC

PLANTING STRIP
42 M 21-23, ORSMC

EL ONE
(SM1)
NO. 8 (R1)

SM-65A (SM1) - V-74/2, NO. 7 (R1)

EASEMENT
SM-70-1 (SM1)
V-74/2, NO. 5 (R1)
V-74/3, NO. 2 (R1)

PARCEL 1
3A (SM1)
NO. 3 (R1)

768+00

130'

770+00

770+88
146

MT1

772+00

774+00

SM-39 (SM1)
V-74/2, NO. 1 (R1)
V-74/3, NO. 1 (R1)

SM-65A (SM1) - V-74/2, NO. 3 (R1)

PARCEL TWO
SM-66 (SM1)
V-74/2, NO. 8 (R1)

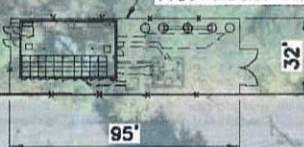
SM-39 (SM1)
V-74/1, NO. 1 (R1) - V-74/2, NO. 1 (R1)
V-74/3, NO. 1 (R1) - V-74/3, NO. 1 (R1)

EASEMENT - SM-70-1 (SM1) - V-74/2, NO. 5 (R1) - V-74/3, NO. 2 (R1)

PARCEL ONE SM-79A (SM1)
V-74/2, NO. 7 (R1) - V-74/3, NO. 1, 21, 24 (R1)

093-360-010

PARALLELING STATION PS-3



093-361-010

CALIFORNIA DRIVE

MILLS AVENUE

LAGUNA AVENUE



Existing View of New Location for PS3



Simulated View of PS3, Relocated to Avoid Broadway Grade Separation Project



MICHAEL BROWNRIGG, MAYOR
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August 1, 2018

Mr. John Funghi
Chief Officer, Caltrain Modernization Program
and for the Board of Directors, Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
By email and hard copy

Subject: Peninsula Corridor Electrification Project (PCEP) – Proposed Modification to Siting for Paralleling Station 3 (PS-3) in Burlingame

Dear Mr Funghi:

On behalf of the Burlingame City Council and our City staff, I want to thank you and your team for joining us on-site at the Burlingame Corporation Yard today to review the options for locating PS-3 adjacent to our Corp Yard, rather than at any of the prior four alternative locations identified in the FEIR.

From the City's perspective, each of the options 1, 2 and 3 were sub-optimal given their location on the residential side of Burlingame. We have made it clear over several years that a deployment of a Paralleling Station, with its incumbent transformers, trucks, and industrial aspects, was better placed on the east side of Caltrain's tracks in Burlingame, which is in our commercial and light industrial zone, rather than on the west side of the tracks where a proposed PS-3 would be within 50' of private homes and nearby schools and parks. The challenge for Caltrain, as it was explained to us, is that the east side was set aside for the temporary "Shoofly" tracks needed to construct the Broadway Grade Separation project. Putting both the Paralleling Station and the Shoofly on the East side would require additional private property takes that are outside Caltrain's control. Therefore, the ability of Caltrain to negotiate access to its tracks for construction and operation of PS-3 was potentially very expensive and time consuming to acquire.

Based on our conversation today, I am pleased to report that we have reached a compromise that should allow Caltrain to construct PS-3 adjacent to and on the Burlingame City-owned Corporation Yard, with minimal impact on City operations to the extent technically feasible. Access would be provided through a secure Corp Yard parking lot. We have reviewed the matter internally and agree that this is the best solution for each agency.

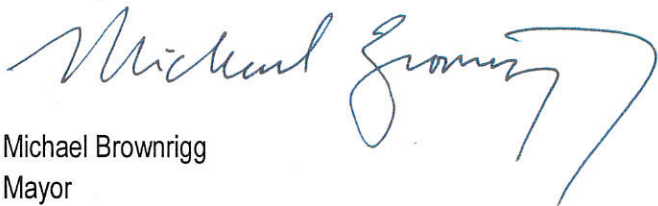
We note that certain specific terms may need to be resolved between our staffs over the days and weeks ahead, but this is the broad basis of our agreement.

1. Burlingame's Corporation Yard at 1361 N. Carolan will be host to PS-3, providing permanent access and maintenance property easement for the site and potentially some minimal land on which to construct PS-3.
2. The footprint of PS-3 will be designed as efficiently as possible, but in any event will be designed to fit within the as-built parameters on site. In particular, it will not require the City to move its back-up generator, and ideally it will allow roadway access to the right hand side so that staging materials can be stored on JPB land behind the adjacent property at 1379 North Carolan Street, minimizing the impact on Corp Yard space for staging. A temporary construction easement shall be provided to the JPB approximately 40' deep and 100' wide to be used as the PS-3 construction laydown area at no cost to the JPB.
3. To allow for future construction of a Shoofly track during the Broadway Grade Separation project, the PS-3 may need to encroach on Burlingame land; if so, the amount of land would be no more than approximately 20' deep and 100' wide (2000 ft²), inclusive of fencing. In this case, the parties will enter into either a long term lease or a purchase agreement, to be worked out in good faith between the respective parties at a cost not to exceed the fair market value per square foot.
 - a. There will be a clause in our agreement such that if, in the future, PS-3 disappears or for any reason Caltrain's need for the City land no longer exists, then the land will revert to the City's ownership at no cost to the City.
4. JPB shall install appropriate screening for Paralleling Stations as specified in the FEIR.
5. JPB shall provide the City with the engineering drawings and layout details in sufficient time for City staff to review them and provide comments, and shall coordinate the construction activity such that there is minimal impact to Public Works operations and the use of the City parking lot.
6. Any damage to City property as a result of the construction activity related to PS-3, shall be repaired in kind by the JPB and its contractor.
7. During construction and afterward, PS-3 will impair City parking at our Corp Yard, which is already constrained, and cause other expenses to the City. We have examined nearby parking options, and prices are significant. Therefore, in consideration for the access during and afterwards, and for other expenses, PCEP shall pay the City of Burlingame \$[60,000-150,000], final amount to be negotiated in good faith between the parties, taking in the balance of costs and benefits of the entire agreement.
 - a. The City shall join with PCEP to seek reimbursement of this sum from the San Mateo County Transportation Authority, as would have been the case with the proposed fee paid to SFPUC in one of the other alternatives. This is appropriate since a significant reason for these added costs is to make room for the future shoofly tracks associated with the planned future Broadway Grade Separation, which is a high priority for all parties.
8. The City will work in good faith with Balfour Beatty and your team to ensure 24/7 secure access to the construction site, materials, and other equipment, both during construction and afterwards.

9. It is the intention of both parties to formalize the above arrangements by August 21, 2018.

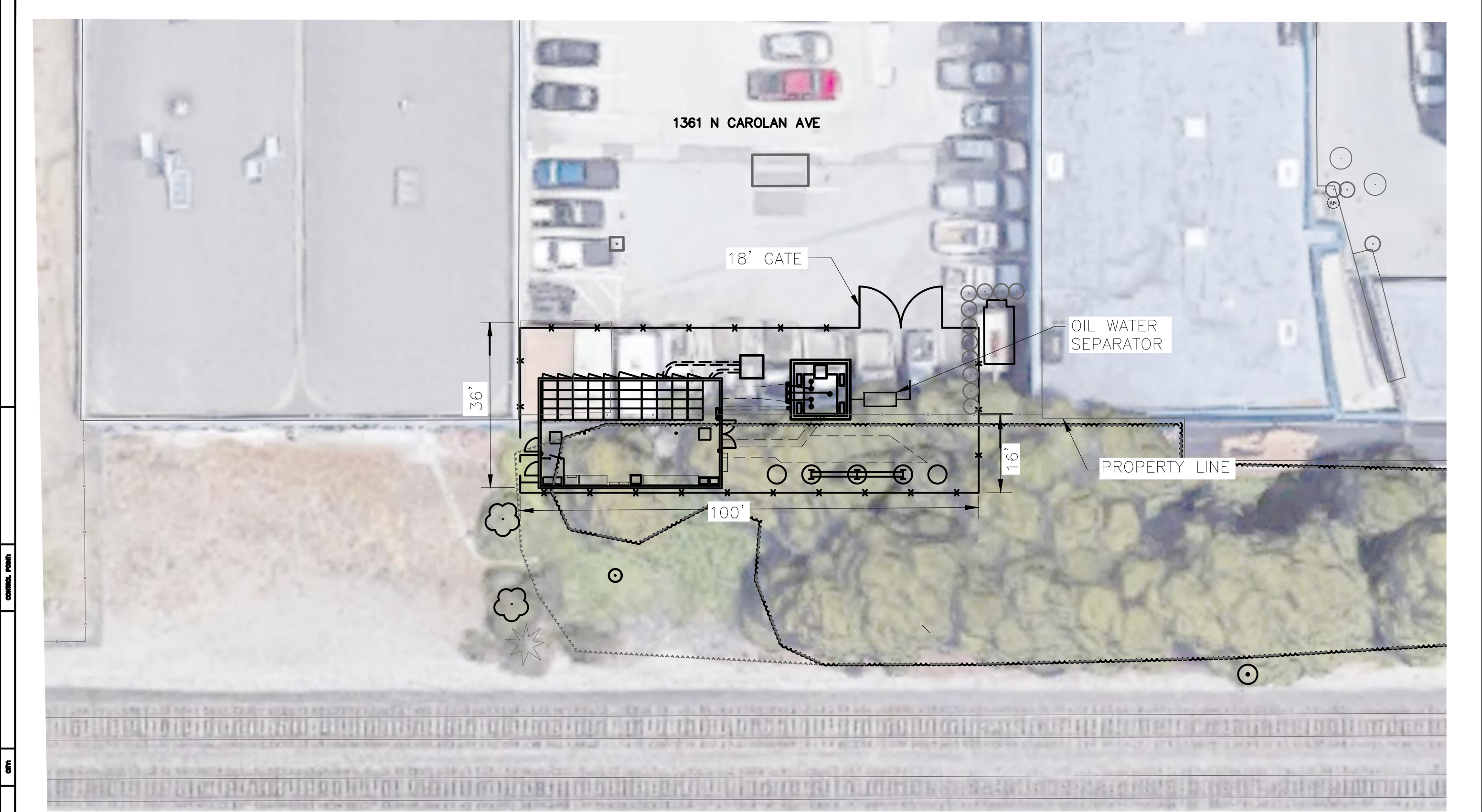
Again, we appreciate your flexibility and your willingness to work with us to identify a solution that will keep the PCEP construction schedule on time without roiling our residential neighborhoods, while also "future proofing" PS-3 against the Broadway Grade Separation project, another high-priority project for all concerned.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Brownrigg", with a large, stylized flourish at the end.

Michael Brownrigg
Mayor

c: Burlingame City Council
Lisa K. Goldman, City Manager
Syed Murtuza, Public Works Director
Art Morimoto, Assistant Public Works Director

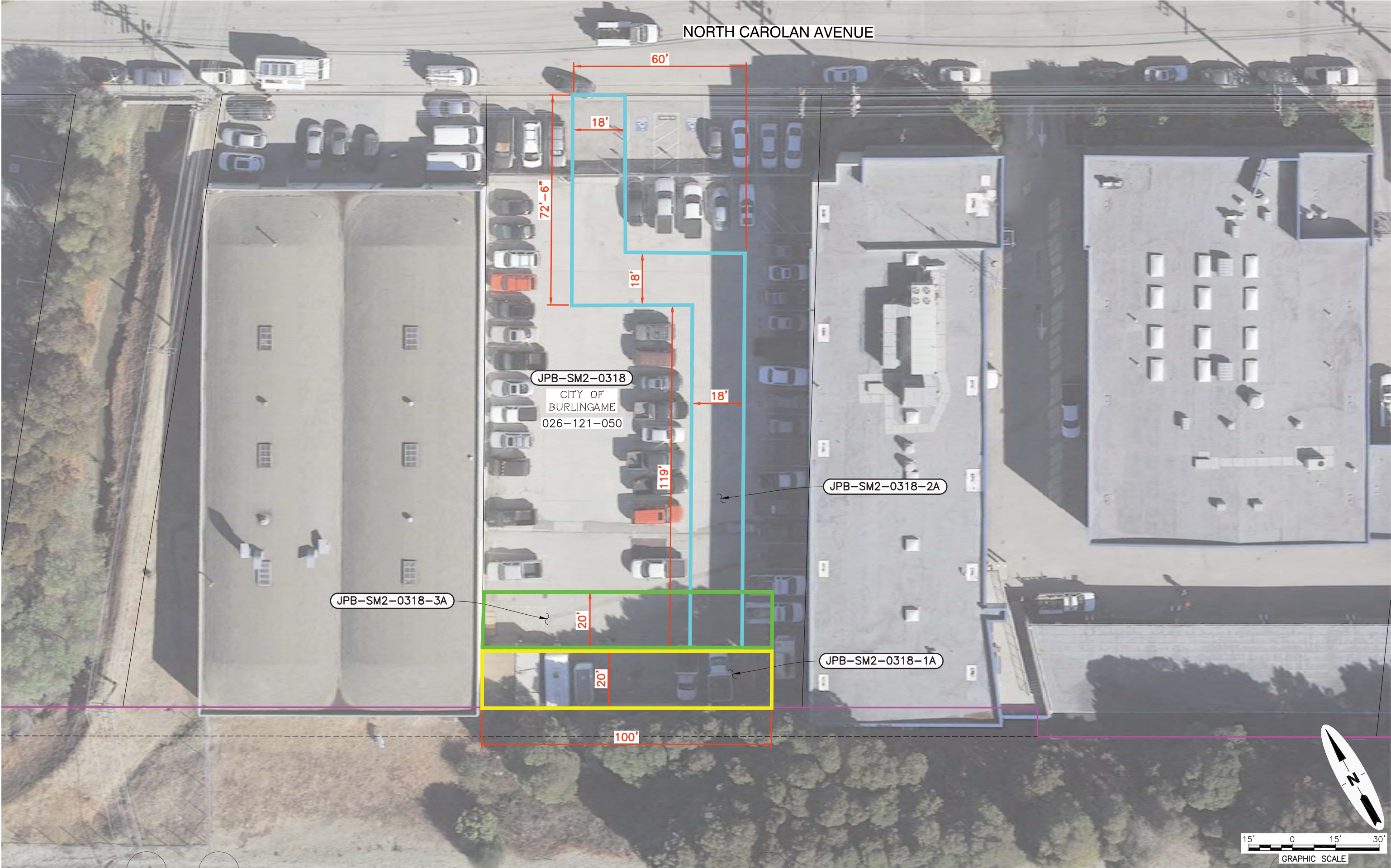


SITE PLAN – PS-3
BROADWAY

10' 0 10' 20'
GRAPHIC SCALE

NOT FOR CONSTRUCTION

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REAL ESTATE AGREEMENT
by and between
THE CITY OF BURLINGAME
and
PENINSULA CORRIDOR JOINT POWERS BOARD

PREAMBLE

This real estate agreement ("Agreement" or "Lease") is made and entered into this ___ day of _____, 2018, ("Agreement Date") by and between the City of Burlingame, California, a California municipal corporation, with its primary business address at 501 Primrose Road, Burlingame CA 94010-3997 ("City" or "Lessor") and Peninsula Corridor Joint Powers Board, a Joint Powers Authority, with its primary business address at 1250 San Carlos Avenue, San Carlos, CA 94070 ("Caltrain" or "Lessee") for the lease of a parcel of land (the "Premises") to be used as the site for an electrical paralleling station for the Caltrain electrified rail service. City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

These recitals are a substantive portion of this Agreement:

- A. Lessee provides passenger train service in the San Francisco Bay Area region including Burlingame;
- B. Lessee is undertaking the Peninsula Corridor Electrification Project ("PCEP") which will electrify the rail service on its right-of-way between San Francisco and San Jose and has adopted a Final Environmental Impact Report ("FEIR") for that project in January of 2105;
- C. As part of the PCEP, Caltrain needs to install electrical facilities along its right-of-way, including certain electrical paralleling stations to provide power to operate the trains, one of which is planned for Burlingame and is referred to as "PS-3";
- D. City owns an improved parcel of real estate located at 1361 North Carolan Street, Burlingame, commonly known as the "Burlingame Corporation Yard" ("Yard") in the City of Burlingame;
- E. The original location planned for Caltrain's paralleling station in Burlingame, which was approved in the FEIR, is in conflict with the location of facilities that will be needed for the planned construction of a railroad grade separation project at Broadway in Burlingame;
- F. Caltrain considered several alternative locations, all on the west side of its tracks because feasible options were not available on the east side of the tracks, but the City has offered to make available certain rights at its Yard to facilitate the siting of PS-3

on the east side, away from residences;

- G. On August 2, 2018, the Caltrain Board of Directors approved Resolution 2018-28, which authorized its Executive Director to approve an Addendum #5 to the FEIR to include the location offered by the City, provided suitable property rights can be obtained in a prompt fashion; and
- H. Lessee desires to lease a portion of the Yard (the "Premises") and to obtain attendant easement rights over other portions of the Yard in order to construct and maintain PS-3 (the "Project") in the location preferred by the City and to obtain a temporary construction easement, consisting of property of approximately 4,000 square feet, and a permanent access easement across the Yard property to access the Premises.

In consideration of the above referenced recitals and the following mutual covenants, commitments, and obligations of the Parties, Lessee and City agree as follows:

AGREEMENT PROVISIONS

1. LEASE OF PROPERTY

In order to provide a location for Caltrain to locate its paralleling station on a portion of the Yard and in consideration of the faithful performance by Lessee of the terms and conditions of this Agreement and of the payments to be made by Lessee, City hereby leases to Lessee, and Lessee leases from City, certain improved real property located at 1361 North Carolan Street, Burlingame, County of San Mateo, State of California. The Premises consists of approximately a maximum of 2000 square feet of developed land and is more particularly shown on Exhibit A, attached and incorporated herein by reference. Caltrain is preparing legal descriptions for the Premises and the easements listed in Section 2 below, which the parties will review and agree upon before any documents are recorded evidencing these interests.

2. GRANT OF EASEMENTS

In order to provide Caltrain with access to the Premises, and to areas required for the construction of PS-3, City will grant to Caltrain the following easements over the Yard, in the forms attached as Exhibits B and C respectively, and in the general locations shown on Exhibit A:

- A. A perpetual access and maintenance easement over, across and through the Yard; and
- B. A temporary construction easement for the duration of the construction of PS-3.

3. AGREEMENT DATE AND TERM OF THE AGREEMENT

- A. For purposes of all leasehold rights and interest created by this Agreement, the term of this Agreement shall commence on August 21, 2018 (also known as the "Effective Date") and shall terminate fifty five (55) years thereafter or August 21, 2073 ("Lease

Term"), unless Lessee exercises an option to extend the Agreement as provided below.

- B. Subject to the terms and conditions set forth in this Section, Lessee hereby is granted the right and option ("Renewal Option") to extend the term of this Lease for an additional 44-year term(s) ("Renewal Term"). Lessee shall exercise the Renewal Option, if at all, by giving written notice to City of Lessee's election to extend the Term no earlier than one hundred and eighty (180) days prior to the end of the Lease Term and no later than ninety (90) days prior to the end of the Lease Term. Lessee shall be entitled to exercise the Renewal Option only if:
- (1) Lessee has complied with all terms and conditions of the Agreement prior to the date of exercise; and,
 - (2) Lessee is not at the time of exercise in default under the Agreement.

4. USE OF PROPERTY

- A. The Premises shall be used by Lessee to construct and operate an electrical paralleling station as part of the PCEP. Lessee shall not use or permit the Premises, or any part thereof, to be used in whole or in part for any purpose other than as set forth above except with the prior written consent of the City nor for any use in violation of any present or future applicable laws, ordinances, rules or regulations.
- B. Lessee hereby expressly agrees at all times during the term of this Agreement, at its own cost, to maintain and operate the Project in a clean and sanitary condition and in compliance with any present or future applicable laws, ordinances and rules or regulations. Lessee shall at all times faithfully obey and comply with all laws, rules and regulations applicable to the Project adopted by federal, state, local or other governmental bodies or departments or officers thereof. Lessee further agrees to cooperate with City in maintaining and adhering to reasonable restrictions related to the security of City property and persons in the Corporation Yard facility.
- C. The Parties agree to cooperate in the event that, in the future, Caltrain requires more extensive access through the Yard to undertake major repairs, which will be conducted in a manner so as to minimize impacts to the operations of the Yard.
- D. Following completion of the construction of the Broadway grade separation project, the Parties agree to consider allowing the City to use a portion of the Caltrain Right-of-Way for additional parking for the Yard, provided such areas are not required for rail operations.

5. RENT AND COMPENSATION

- A. Upon execution of this Agreement, Caltrain shall pay the City rental for the Premises in the amount of \$1.00 per year, for \$55.00 for the full term of the lease.
- B. The payment for the easements referred to in Section 2 above ("Payment"), shall be \$150,000 to be paid by Lessee to the City within 90 days of receiving an invoice from the City. The Payment is intended to make the City whole for the actual cost of securing replacement parking for its vehicles displaced by the temporary construction easement and for mitigating permanent impacts to City operations.

6. DELINQUENCY CHARGE

If the Payment is not received by Lessor within fifteen days (15) of the date it is due, then Lessee shall be subject to a delinquency charge for violation of this Agreement and for damages, of a sum equal to one-tenth of one percent (0.1%) of such required payment amount per day for each day from the date such required payment amount became due and payable until payment of said required payment amount has been received by the City.

7. CONSTRUCTION OF IMPROVEMENTS

By executing this Agreement, the City consents to the construction of PS-3 based as generally shown on attached Exhibit D. JPB shall cooperate with the City to install appropriate landscaping screening surrounding the PS-3 to minimize visual impacts. No additional improvements shall be constructed on the Premises, with the exception of additional facilities necessary to support the continued safe and efficient operation of PS-3, unless the City specifically and in writing consents to such construction, which consent shall not be unreasonably withheld. All federal, state, and local laws and regulations, including but not limited to land use and permitting laws, must be adhered to in the event of such construction.

8. MAINTENANCE, REPAIRS AND ALTERATIONS

Lessee shall maintain, at its own expense, all equipment and utility lines serving the Project to their point of connection with the main lines. Lessee waives the right to make repairs at the expense of the City and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of California relating thereto; and, further agrees that if and when any repairs, alterations, additions or betterments shall be made by it as this paragraph provides, it promptly shall pay for all labor done or materials furnished in that behalf and shall keep Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever.

9. TERMINATING THE AGREEMENT

The Lease is terminable by City upon the occurrence of an event of default as provided below, or by Caltrain without cause on 30 days' advance written notice to the City.

The occurrence of any of the following shall constitute a material breach and default ("Default") of

this Lease by Lessee:

- A. Any failure by Lessee to pay when due any of the Rent or other charges payable by Lessee;
- B. A failure by Lessee to observe or perform any other provision of this Lease to be observed or performed by Lessee when such failure is not corrected within 45 days after written notice thereof from Agency; or if such failure cannot be cured within this 45 day period, as determined by Agency in its reasonable discretion, if such cure is not commenced within 30 days of Agency's written notice and thereafter diligently pursued to completion;
- C. The abandonment or the vacation of the Premises by Lessee for a period of more than 90 consecutive days;

10. STATE AND LOCAL LICENSES AND LAWS

- A. Lessee shall, at all times, comply with all applicable laws, rules and regulations and orders of the Federal government, State of California, County of San Mateo and City of Burlingame.
- B. Lessee shall observe and comply with the requirements of all applicable federal, state and local statutes, ordinances and regulations regarding the Project. Lessee shall, at its sole expense and cost, procure and keep in force, during the entire term of this Agreement and any extension thereof, all permits and licenses required by such statutes, ordinances or regulations.

11. SIGNS

Lessee shall not install, paint, inscribe or place any new signs or placards without the prior written consent of the City and concurrence by the Planning Director of the City of Burlingame that the signs are in conformance with all City of Burlingame ordinances.

12. UTILITIES

Lessee agrees to pay the cost of all utilities furnished to it in connection with its use and occupation of the Premises. The City is not obligated to provide or pay for any utility services, but in the event the City by arrangement with Lessee provides or pays for any utility services, Lessee shall pay the City for such services or reimburse to the City any payment the City has made for such services not later than the first business day of the calendar month following Lessee's receipt from the City of a billing statement for said services or reimbursement. Any and all other utility services required by Lessee shall be provided by Lessee at its expense.

13. TAXES AND ASSESSMENTS

The parties do not expect the site to be taxed, but if taxes are assessed, the Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Agreement or any possessory right which Lessee may have in or to the Premises covered hereby by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the Project and shall hold City harmless therefrom.

14. DAMAGE OR DESTRUCTION OF THE PROPERTY

- A. General Provisions. City shall not be required to repair any injury or damage to the Project or the Premises, except to the extent of City's obligations under this Agreement. City and Lessee hereby waive the provisions of:
1. Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of law from time to time in effect during the term of this Agreement and relating to the effect on leases of partial or total destruction of the Premises; and,
 2. Sections 1941 and 1942 of the Civil Code, providing for repairs to and of Premises. City and Lessee agree that their respective rights upon any damage or destruction of the Premises and the Premises shall be those specifically set forth in this Paragraph 14.
- B. City and Lessee waive the provisions of any statutes that relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Agreement.

15. HOLD HARMLESS/INDEMNIFICATION

It is an express condition of this Agreement that the City of Burlingame shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of Lessee, its agents or employees, or third persons, from any cause or causes whatsoever while on the Premises or any part thereof during the term of this Agreement or occasioned by any occupancy or use of the Premises or any activity carried on by Lessee in connection with this Agreement.

To the extent permitted by law, Lessee hereby covenants and agrees to protect, defend, indemnify and to save harmless the City from all liabilities, charges, expenses, including counsel fees and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or

losses, however occurring, or damages for which Lessee shall become legally liable arising from Lessee's negligent acts, errors or omissions by Caltrain or its employees, agents or contractors on the Premises or with respect to or in any way connected with this Agreement. This obligation to indemnify, defend, and hold harmless the City extends to criminal or negligent acts committed by agents or contractors of Lessee while on City property or accessing the Premises.

Lessee shall not be liable for damage caused by City or its employees, agents or contractors. To the extent permitted by law, the City hereby covenants and agrees to protect, defend, indemnify and to save harmless the Lessee from all liabilities, charges, expenses, including counsel fees and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses, however occurring, or damages for which City shall become legally liable arising from negligent acts, errors or omissions by the City or its employees, agents or contractors on the Premises or with respect to or in any way connected with this Agreement.

16. INSURANCE REQUIREMENTS

- A. Lessee agrees to maintain in full force and effect, at Lessee's own cost and expense, at all times for the term of this Agreement or any authorized extension thereof, insurance coverage in amounts and with the endorsements herein indicated and set forth in Exhibit E, attached and incorporated herein by reference. Lessee and City shall be listed as additional insureds under all insurance policies required under this Agreement, and such insurance shall be primary as to the City under the terms of this Agreement. Upon execution of this Agreement, and before commencing any work hereunder, Lessee shall file with the City Clerk of the City of Burlingame, and subject to the approval of the Attorney for the City for adequacy of protection, proper certificates and endorsements for the insurance requirement as set forth in Exhibit E. City understands that a substantial portion of the coverage required in Exhibit E is within Lessee's self-insured retention and agrees to accept such coverage.
- B. A certificate or certificates evidencing such insurance coverage and endorsements shall be filed with the City Clerk of the City of Burlingame prior to the commencement of the term of this Agreement, and said certificate and endorsement, as applicable, shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the City Clerk. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City Clerk. If such coverage is canceled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction in coverage, file with the City Clerk a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

17. LIENS

Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Premises by Lessee and shall keep the Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission.

18. ASSIGNMENT AND SUBLETTING

Lessee shall not voluntarily, involuntarily or by operation of law, assign, mortgage or otherwise encumber, all or any part of Lessee's interest in this Agreement or in the Premises or sublet the whole or any part of the Premises (any and all of which transactions are herein referred to as a "Transfer"), except as specifically permitted by this Agreement or consented to by Lessor in writing, which consent shall not be unreasonably withheld. The foregoing notwithstanding, Lessee may contract with third parties to operate its commuter rail service or permit other parties to operate trains on its Right-of-Way. Any third parties or contractors accessing, maintaining, or otherwise working on the Premises at the behest of Lessee shall be subject to the same insurance requirements in favor of the City as imposed under Paragraph 16 of this Agreement.

19. HAZARDOUS MATERIALS

- A. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees, except as is necessary for the efficient and safe use of PS-3, and as is necessary for railroad and maintenance operations.
- B. Termination of Agreement. Lessor shall have the right to terminate the Agreement, but only after consultation with Lessee in the event that (i) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or, (ii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Premises, but only such order requires vacation of the Premises.
- C. Assignment and Subletting. If (i) any anticipated use of the Premises by any proposed assignee or sublessees involves the generation or storage, use, treatment or disposal or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessees has been required by any prior Lessor, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material, then it shall not be unreasonable for Lessor to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.

- D. Hazardous Materials Defined. The term “Hazardous Material(s)” shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of “hazardous substances,” “hazardous waste,” “hazardous chemical substance or mixture,” “imminently hazardous chemical substance or mixture,” “toxic substances,” “hazardous air pollutant,” “toxic pollutant” or “solid waste” in the (a) “CERCLA” or “Superfund” as amended by SARA, 42 U.S.C. Sec. 9601 et seq.; (b) RCRA, 42 U.S.C. Sec. 6901 et seq.; (c) CWA., 33 U.S.C. Sec. 1251 et seq.; (d) CAA, 42 U.S.C. 78401 et seq.; (e) TSCA, 15 U.S.C. Sec. 2601 et seq.; (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407; (g) OSHA, 29 U.S.C. 651 et seq.; (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq.; (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments); (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq.; (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq.; (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq.; (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq.; (n) “Proposition 65,” Cal. Health and Safety Code Sec. 25249.5 et seq.; (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq.; (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq.; (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq.; (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541; (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq.; and, (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos; (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii) radioactive materials and waste.
- E. Lessor’s Right to Perform Tests. At any time prior to the expiration of the Lease Term, Lessor shall have the right to enter upon the Premises in order to conduct tests of water and soil and to deliver to Lessee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Lessee's use of the Premises, provided that Lessor’s activities on the Premises shall not block entrances to the Premises nor unreasonably interfere with Lessee’s use of the Premises, provided that if City seeks to enter upon the Caltrain

Right-of-Way, it will be required to comply with all necessary, then-current requirements, including the execution of any necessary permits or other access documents and compliance with applicable safety procedures. Lessee shall be solely responsible for and shall indemnify, protect, defend and hold Lessor harmless from and against all claims, costs and liabilities including actual attorney's fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the Premises to its condition existing prior to the appearance of the Hazardous Materials for which Lessee is responsible. The testing shall be at Lessee's expense only if Lessor has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under or about the Premises or the Project, which has been caused by or resulted from the activities of Lessee, its agents, employees, contractors or invitees.

- F. Environmental Audits. Upon request by Lessor during the Lease Term and option periods, prior to vacating the Premises, Lessee shall undertake and submit to Lessor an environmental audit from an environmental company reasonably acceptable to Lessor. The audit shall evidence Lessee's compliance with the terms of this Agreement.
- G. Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect and hold Lessor harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises) and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorney's fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, during the Lease Term, by the presence or discharge in, on, under or about the Premises by Lessee, Lessee's agents, employees, licensees or invitees or at Lessee's direction of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

20. INTENTIONALLY BLANK.

21. SURRENDER AND HOLDING OVER

- A. Lessee covenants that at the expiration of the term of this Agreement, or upon its earlier termination, it will quit and surrender the Premises in good state and condition, reasonable wear and tear and damage by the elements excepted. The City shall have the right upon termination to enter into and upon and take possession of the Premises. Should Lessee hold over the use of the Premises after this Agreement has been terminated in any manner, such holding over shall be deemed merely a tenancy from month to month and at a rental rate of \$500.00 per month for a maximum period of one year, payable monthly in advance, but otherwise on the same terms and conditions as herein set forth.
- B. It is understood and agreed that nothing contained in this Agreement shall give Lessee any right to occupy the Premises at any time after expiration of the term of this Agreement or its earlier termination, and that this Agreement shall not create any right in Lessee for relocation assistance or payment from the City upon expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph. Lessee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260, et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this paragraph.

22. WAIVERS

- A. No waiver by either Party at any time of any of the terms, conditions or covenants or agreements of this Agreement or of any forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or of any other term, condition or covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the City to re-enter the Premises or to exercise any right, power or privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option or be construed a waiver of any such default or relinquishment thereof, or acquiescence therein, and, after waiver by the City of default in one or more instance, no notice by the City shall be required to restore or revive time as being of the essence in this Lease. No option, right, power, remedy or privilege of the City shall be construed as being exhausted by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the City by this Agreement are cumulative and not one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise

of one right, power, option or remedy by the City shall not impair its rights to any other right, power, option or remedy.

- B. In no event shall this Agreement be construed to limit in any way (i) the City's rights, powers or authority under the police power and other powers of the City to regulate or take any action in the interest of the health, safety and welfare of its citizens or (ii) Lessee's rights and privileges as an individual or corporate resident and/or citizen or governmental entity of the City of Burlingame, State of California and/or the United States of America as provided under applicable laws, except as expressly waived or limited by this Agreement.

23. RIGHT TO INSPECT PREMISES

The City or its duly authorized representatives or agents and other persons for it, may enter into or upon the Premises at any and all reasonable times during the term of this Agreement for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to rights of the City, provided that City's activities on the Premises shall not block entrances to the Premises nor unreasonably interfere with Lessee's use of the Premises and provided further, due to the proximity of the Premises to the Right-of-Way, City will comply will all necessary, then-current requirements to enter the Caltrain Right-of-Way, including the execution of all necessary permits or other access documents and compliance with Lessee's then-current safety procedures.

24. DISPOSAL OF TRASH AND GARBAGE

Lessee agrees to handle and dispose of its trash, garbage and refuse in a sanitary manner and in accordance with the requirements set forth in the Burlingame City Code. Lessee agrees not to place any boxes, cartons, barrels, trash, debris or refuse in or about the Premises. Lessee shall provide an area or areas within the trash area of the Premises for the cleaning of garbage cans and for the placement of trash and storage bins. Lessee shall not wash or clean waste containers except within the designated area. Trash and garbage can storage and the garbage can cleaning area shall be screened from public view.

25. EXTENSIONS OF TIME

The City shall have the right to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

26. SUCCESSORS

Each and every one of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Agreement and in favor of either Party shall be available in favor of the

successors and assigns thereof, irrespectively provided no assignment by or through Lessee in violation of the provisions of this Agreement shall vest any rights in such assignee or successor.

27. TIME OF ESSENCE

Time is hereby expressly declared to be of the essence of this Agreement.

28. NOTICES

All notices to the Parties to this Agreement shall, unless otherwise requested in writing, be sent by mail, facsimile or personally delivered to the addresses listed in this paragraph. The notices shall be deemed served and delivered three (3) days after deposited in the United States mail by first class mail or personal delivery or upon receipt of a facsimile transmission. Any notice permitted or required to be served upon the City may be served upon:

City of Burlingame
Attention: Syed Murtuza, Director of Public Works
501 Primrose Road
Burlingame CA 94010-3997

Any notice permitted or required to be served on the Lessee may be served upon:

Peninsula Corridor Joint Powers Board
Attention: Manager of Real Estate and Development
1250 San Carlos Avenue
San Carlos, CA 94070-1306
(650) 508-7781
or by facsimile at (650) 508-6365

29. EQUAL OPPORTUNITY; NONDISCRIMINATION

In furtherance of the City's policy to ensure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all City-related activities, it is expressly understood and agreed with respect to Lessee's activities in conducting the Project:

- A. That Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, physical handicap or veteran's status. Lessee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- B. That Lessee shall, in all solicitations or advertisements for employees placed by or on

behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, physical handicap, or veteran's status.

30. DISPUTE RESOLUTION

- A. No arbitration or civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement, except for the nonpayment of rent, may be commenced until the matter has been submitted to mediation. The Parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings, said mediation to take place in Burlingame, California.
- B. Either Party may commence mediation by providing to the other Party a written notice of mediation, setting forth the subject of the dispute and the relief requested. Each Party agrees to participate in up to eight (8) hours of mediation before resorting to litigation in the San Mateo County Superior Court.
- C. The Parties may agree on one mediator. In the event the Parties are unable to agree upon a mediator within ten (10) days following the date of the written Notice of Mediation, the Parties shall submit the matter to the American Arbitration Association, which shall appoint a mediator. The Parties shall share equally in the costs of mediation. Either Party may seek injunctive relief prior to the mediation to preserve the status quo pending the completion of that process. Except for an action to obtain such injunctive relief, neither Party may commence arbitration or a civil action with respect to the matters submitted to mediation until after the completion of the first mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first.
- D. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. Mediation may continue after the commencement of arbitration or a civil action, if the Parties so agree.
- E. The costs of the mediator shall be borne by the Parties equally. However, all costs, fees, expenses and any attorney's fees related to such mediation activities are to be paid by the Party having incurred such fees, costs and expenses.
- F. The provisions of this paragraph may be enforced by any court of competent jurisdiction.

31. QUIET POSSESSION

Lessee, upon performing its obligations hereunder and while not in default, shall have the quiet and undisturbed possession of the Premises throughout the term of this Agreement.

32. CONSENT AND APPROVAL

Whenever the City's consent or approval is required, under the terms and conditions of the Agreement, said consent or approval shall not be unreasonably withheld.

33. INTENTIONALLY BLANK

34. SEVERABILITY

The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

35. ENTIRE AGREEMENT, MODIFICATION

This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

36. CUMULATIVE REMEDIES

No remedy or election under this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

37. BINDING EFFECT; CHOICE OF LAW

Subject to any provision hereof restricting assignment or subletting by Lessee and subject to the provisions of Article 9, this Agreement shall bind the parties, their personal representatives, successors and assigns. The laws of the State of California shall govern this Agreement. The language of all parts of this Agreement shall be construed with its fair meaning and not strictly for or against the City or Lessee.

38. STATUS OF TITLE

Title to the leasehold estate created by this Agreement is subject to all exceptions, easements, rights, rights-of-way, and other matters of record on the date of approval by the City Council.

39. NO PARTNERSHIP OR JOINT VENTURE

Nothing in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture or associate in any relationship with Lessee other than that of Landlord and Tenant, nor shall this Agreement be construed to authorize either to act as agent for the other.

40. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY

No official or employee of City or Caltrain shall be personally liable for any default or liability under this Agreement.

41. INDEPENDENT CONTRACTOR

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

42. MEMORANDUM OF LEASE

Following execution of this Agreement, either party, at its sole expense shall be entitled to record a memorandum of Agreement in the official records of San Mateo County. Upon termination or expiration of this Agreement, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Agreement Date first set forth and defined above.

**CITY OF BURLINGAME, CALIFORNIA
a California municipal corporation**

APPROVED AS TO FORM:

KATHLEEN KANE
City Attorney

LISA GOLDMAN
City Manager

ATTEST:

501 Primrose Road
Burlingame CA 94010-3997
Telephone:
Fax Number:

City Clerk

**PENINSULA CORRIDOR JOINT POWERS BOARD
a Joint Powers Authority**

Approved as to Form:

Parcel: JPB-SM2-0318

BRIAN FITZPATRICK
Director, Real Estate and Development

Attorney

1250 San Carlos Avenue
San Carlos, CA 94070-1306
Telephone Number: (650) 508-7781

DRAFT

**REAL ESTATE AGREEMENT
by and between
THE CITY OF BURLINGAME
and
PENINSULA CORRIDOR JOINT POWERS BOARD**

EXHIBIT A

SITE DESCRIPTION

**REAL ESTATE AGREEMENT
by and between
THE CITY OF BURLINGAME
and
PENINSULA CORRIDOR JOINT POWERS BOARD**

EXHIBIT B

PERMANENT NON-EXCLUSIVE ACCESS AND MAINTENANCE EASEMENT

**REAL ESTATE AGREEMENT
by and between
THE CITY OF BURLINGAME
and
PENINSULA CORRIDOR JOINT POWERS BOARD**

EXHIBIT C

TEMPORARY CONSTRUCTION AND MAINTENANCE EASEMENT

REAL ESTATE AGREEMENT
by and between
THE CITY OF BURLINGAME
and
PENINSULA CORRIDOR JOINT POWERS BOARD

EXHIBIT D

PAYMENT SCHEDULE

REAL ESTATE AGREEMENT
by and between
THE CITY OF BURLINGAME
and
PENINSULA CORRIDOR JOINT POWERS BOARD

EXHIBIT E

INSURANCE REQUIREMENTS

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Burlingame, California, individually or collectively.