

**SECOND AMENDMENT TO
THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY, THE
CITY OF SAN MATEO, AND THE PENINSULA CORRIDOR JOINT POWERS
BOARD FOR THE 25TH AVENUE GRADE SEPARATION AND RAIL
REALIGNMENT PROJECT**

THIS SECOND AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY, THE CITY OF SAN MATEO, AND THE PENINSULA CORRIDOR JOINT POWERS BOARD FOR THE PRELIMINARY ENGINEERING/ENVIRONMENTAL PHASE FOR THE 25TH AVENUE GRADE SEPARATION AND RAIL REALIGNMENT PROJECT is made as of the ____ day of _____, 2017, by and between the San Mateo County Transportation Authority (TA), the City of San Mateo (Sponsor), and the Peninsula Corridor Joint Powers Board (JPB), referred to herein individually as “Party” and jointly as “Parties.”

WHEREAS, the Parties entered into a MOU for the Preliminary Engineering/Environmental (PE/ENV) phase of work on July 11, 2014, and the Parties entered into a First Amendment to the MOU on March 3, 2016 for the Final Design and Right of Way (PS&E and ROW) phases of work for the 25th Avenue Grade Separation and Rail Realignment Project (Project); and

WHEREAS, on October 6, 2016, the TA programmed and allocated \$65.3 million in Measure A Grade Separation Program Category funds (Measure A Funds) to complete the ROW and Construction phases of work for the Project; and

WHEREAS, the Parties desire to amend the MOU to allow the Sponsor and the JPB to seek reimbursement for Project costs incurred to complete the ROW and Construction phases of work; and

WHEREAS, the Sponsor will contribute, or otherwise provide for the contribution of, a total of \$106 million in matching funds for the PE/ENV, PS&E, ROW and Construction phases for the Project as described in the following Scope of Work Budget/Scope of Funding Table and agreed upon in the original MOU, first amendment to the MOU and this second amendment to the MOU:

Scope of Work Budget/Scope of Funding Table

	TA Responsibility	Sponsor Responsibility			Total
Phase	Measure A Funding	Sponsor Local Funds	CHSRA	Section 190	
PE/ENV ¹	\$3.7 Million	\$1Million			\$4.7 Million
PSE/ROW	\$5 Million	\$5 Million			\$10 Million
ROW/Construction ²	\$65.3 Million	\$6 Million	\$84 Million	\$10 Million	\$165.3Million
Total	\$74 Million	\$12 Million	\$84 Million	\$10 Million	\$180 Million

Footnotes

- 1) \$200,000 of the Sponsor's \$1 million match from the PE/ENV phase was from in-kind staff support
- 2) Sponsor costs for in-kind staff support during the ROW/Construction phase, as further described in the Sponsor Responsibilities, are anticipated to be \$225,000 and may be subject to change during the course of the Project upon mutual agreement by the Parties' authorized representatives. These costs will be paid first from: 1) A balance of \$94,066 of Sponsor in-kind staff support capacity carried over from the PE/ENV and PS&E/ROW phases, and then 2) \$130,934 from the contributions of other fund sources listed in the Table above under "Sponsor Responsibility"; and

WHEREAS, the Project also requires the conveyance of approximately 3.7 acres of TA-owned real property to the JPB for Caltrain access and the street connection at 28th Avenue. An independent third party has valued the subject properties at \$19.97 million. The form and documentation of property conveyance, along with the price and terms of any appropriate compensation, is still under discussion; and

WHEREAS, the California High-Speed Rail Authority (CHSRA) entered into an agreement with the Sponsor on _____, 2017 for a commitment of up to \$84 million, which shall not exceed 50.82% of the total cost to complete the ROW and Construction phases of work for the Project, which is estimated to be \$165.3 million; and

WHEREAS, the JPB and the Sponsor entered into an MOU on _____, 2017 in which the Sponsor committed to provide \$100 million in funding for the Project, equating to 60.5% of the total budgeted Project ROW/Construction cost, including \$84 million in CHSRA funds, \$10 million in California State Department of Transportation, Streets and Highway Section 190 Grade Separation Program funds (Section 190 Funds), and \$6 million in Sponsor's local funds.

IT IS HEREBY AGREED by the Parties that the MOU is revised and amended as follows:

1. **EFFECTIVE DATE.** This Second Amendment is effective as of the day and year first written above.
2. **SCOPE OF WORK.** Section A.2, Scope of Work, of the MOU is revised and restated to read:

The Scope of Work is:

- a. The Preliminary Engineering/Environmental Phase as described in Exhibit A, "Scope of Work Information," which is attached to the MOU and incorporated herein by this reference; and

- b. The PS&E and ROW Phases, including advertisement and award of the construction contract as described in Exhibit A-1, "Scope of Work Information," which is attached to the First Amendment to this MOU and incorporated herein by this reference; and
- c. The ROW and Construction Phases, including additional right of way costs and costs associated with the advertisement and award of the construction contract not fully funded under the First Amendment to this MOU, and the construction of Project, as described in Exhibit A-2, "Scope of Work Information," which is attached to the Second Amendment to this MOU and incorporated herein by this reference.

3. FUNDING COMMITMENT. Section B.1. of the MOU is revised and restated to read:

The total Project cost in Exhibits A and A-1 is \$14.7 million, \$8.7 million of which is to be provided by the TA and \$6 million of which is to be provided by the Sponsor. The next phase of work, set forth in Exhibit A-2, has a Scope of Work cost of \$165.3 million, \$65.3 million of which is to be provided by the TA and \$100 million of which is to be contributed by the Sponsor or secured by the Sponsor from other sources. In sum, the TA will provide no more than \$74 million for the Project, which is up to 39.5% of the total estimated Project cost of \$180 million.

For purposes of the work set forth in Exhibit A-2: The TA will reimburse the JPB for 100% of the cost of performance of the work prior to the award of a construction contract. The TA may provide reimbursement at a variable rate after the JPB awards the construction contract, but in no event will the TA payout more than its 39.5% pro-rata share of the ROW and Construction phase costs upon Project completion set forth in Exhibit A-2. The TA's funding commitment under this MOU in no way establishes a right for the Sponsor to receive additional funding from the TA.

4. INVOICES; PAYMENTS. Section B.8.b. of the MOU, Invoices; Payments, is revised and restated to read:

- b. To the Sponsor:
by email to alam@cityofsanmateo.org

or otherwise delivered to:

Jay Yu, Associate Engineer
City of San Mateo
330 W. 20th Avenue
San Mateo, CA 94403

5. TA RESPONSIBILITIES. Section D.1 of the MOU, TA Responsibilities, is revised and restated to read:

- 1. The TA will make available Measure A Funds as detailed in Section B.1.

6. TERM OF MOU. Section C.1 of the MOU, Term of MOU, is revised and restated to read:

1. Term of MOU. This MOU is effective upon the Execution Date. This MOU, as amended, will terminate upon the earliest of: (a) six months after the written acceptance/endorsement of the Sponsor of the completion of the Scope of Work, (b) termination by Sponsor, the JPB or the TA pursuant to section C.3, C.4, C.5, or C.6, or (c) five years and six months from the date of execution of the Second Amendment to this MOU.

7. TIME OF PERFORMANCE. Section C.2 of the MOU, Time of Performance, is revised and restated to read:

2. Time of Performance. The Project Scope of Work must be completed no later than five years from the date of the execution of the Second Amendment to this MOU.

8. JPB RESPONSIBILITIES. Section E of the MOU, JPB Responsibilities, is revised to add the following new paragraph E.3 after paragraph E.2:

3. The JPB is the lead implementing agency responsible for delivering the Scope of Work described in Exhibit A-2 for the ROW and Construction Phases of the Project and agrees to:
 - a. Undertake the advertisement and award of the construction contract, and accept responsibility to manage the construction of the Project, which includes administering the construction contract and overseeing construction management and design services during construction.
 - b. Coordinate utility relocation for Project construction. Where utilities within the JPB right-of-way are required to be relocated or protected in place, the JPB will enforce its contractual rights to ensure timely action by the utility owner in support of the Project.
 - c. Acquire all necessary right-of-way for the Project, including temporary construction easements as needed.
 - d. Provide technical Project oversight and management.
 - e. Coordinate with regulatory and review agencies.
 - f. Invoice the TA and Sponsor and assist the Sponsor with progress reporting to the TA.
 - g. Support public outreach efforts.
 - h. Coordinate with other Caltrain projects.

- i. Obtain environmental permits from regulatory agencies, as required.

9. SPONSOR RESPONSIBILITIES. Section F of the MOU, Sponsor Responsibilities, is revised to replace the following paragraph added by the First Amendment between paragraphs F.2 and F.3:

2.1. For the Scope of Work described in Exhibit A-1, the Sponsor will also:

- a. Assist in utility relocation for Project construction. Where utilities within the Sponsor's franchise are required to be relocated or protected in place, the Sponsor will enforce its franchise rights to ensure timely action by the utility owner in support of the Project.
- b. Assist JPB with successful implementation of construction; provide responses to JPB inquiries in a timely manner. Provide all design comments for design services during construction within three (3) weeks of receipt of any design changes from the JPB.
- c. Coordinate with major Project stakeholders, including Hillsdale Mall and Bay Meadows Development.
- d. Conduct public outreach meetings to provide updates and local input for the Project, including progress updates to City Council as needed.
- e. Coordinate regular Project development team meetings with JPB.
- f. Secure all non-Measure A funding to complete the ROW and Construction phases of the Project as described in Exhibit A-2.

10. EFFECT. Except as and solely to the extent amended by this Second Amendment, the MOU and the First Amendment will continue in full force and effect in accordance with their terms.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed by the persons authorized to act in their respective names on the day and year first written above.

CITY OF SAN MATEO

By: _____
Name: _____
Its: _____

Approved as to Form:

City Attorney for the City of San Mateo

ATTEST

By: _____
Its: _____

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Name: Jim Harnett
Its: Executive Director

Approved as to Form:

Attorney for the JPB

ATTEST

By: _____
Its: Board Secretary

**SAN MATEO COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name: April Chan
Its: Chief Officer, Planning, Grants, Transportation
Authority

Approved as to Form:

Attorney for the TA

ATTEST

By: _____
Its: Authority Secretary

EXHIBIT A-2: SCOPE OF WORK INFORMATION

25th Avenue Grade Separation and Rail Realignment Project Right-of-Way and Construction

Sponsoring Agency:

Contact:

City of San Mateo (Sponsor)
Jay Yu, Senior Engineer
330 West 20th Avenue
San Mateo, CA 94403
(650) 522-7323; jyu@cityofsanmateo.org

Lead Implementing Agency:

Contact:

Peninsula Corridor Joint Powers Board (JPB)
Rafael Bolon, Acting Deputy Director of Capital Programs
1250 San Carlos Avenue P.O. Box 3006
San Carlos, CA 94070
(650) 622-7828; bolonr@samtrans.com

Overall Project Description:

The overall Project will construct a two-track elevated rail alignment grade separating the existing at-grade crossing at 25th Avenue in San Mateo, California. The elevated rail alignment will require the relocation of the existing Hillsdale Caltrain Station northward to a location between 28th and 31st Avenues. The elevated rail alignment also creates an opportunity to make new street connections between El Camino Real and Delaware Street at 28th and 31st Avenues.

While the overall Project consists of creating a two-track elevated alignment, it will be designed so that four (4) tracks could be incorporated in the future if the section is selected for construction of passing tracks.

The Project has completed the preliminary engineering/environmental and final design phases, which include the layout of the relocated Hillsdale Caltrain Station.

Measure A Funded Scope of Work:

This second amended Scope of Work includes costs for (a) all activities needed to secure right of way for the project, (b) the advertisement and award of the construction contract and (c) construction of the Project, none of which are fully funded under MOU and the First Amendment to the MOU. The construction of the Project includes construction management.

Scope of Work Schedule:

	<u>Begin</u>	<u>End</u>
Planning	(COMPLETED)	
Preliminary Engineering/Environmental	(COMPLETED)	
Final Design	(COMPLETED)	
Right-of-Way	03/01/2016	9/30/2018

Scope of Work Budget/ Source of Funding:**Scope of Work Budget/Scope of Funding Table**

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- 3) The Project also requires the conveyance of approximately 3.7 acres of TA-owned real property to the JPB for Caltrain access and the street connection at 28th Avenue. An independent third party has valued the subject properties at \$19.97 million. The form and documentation of property conveyance, along with the price and terms of any appropriate compensation, is still under discussion.

Cash Flow Projection for Measure A funds only

The cash flow projections are provided for informational purposes only and include projections for both Sponsor and JPB activities. Total costs listed for right of way and construction are best estimates and may be subject to change within the overall total amount of Measure A funds allocated for the Scope of Work.

Task/Activity	FY16				Subtotal FY16	FY17				Subtotal FY17
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
Prior Right of Way ¹	\$0	\$0	\$1,510,000	\$0	\$1,510,000	\$0	\$0	\$0	\$0	\$0
Right of Way ²	\$0	\$0	\$0	\$0	\$0		\$0	\$1,850,000	\$3,737,500	\$5,587,500
Construction	\$0	\$0	\$0	\$0	\$0		\$0	\$426,847	\$5,195,830	\$5,622,677
Total	\$0	\$0	\$1,510,000	\$0	\$1,510,000	\$0	\$0	\$2,276,847	\$8,933,330	\$11,210,177
Cumulative to Date	\$0	\$0	\$1,510,000	\$1,510,000		\$1,510,000	\$1,510,000	\$3,786,847	\$12,720,177	
Task/Activity	FY18				Subtotal FY18	FY19	FY20	FY21	Subtotal for FY19-FY21	Project Total ³
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)						
Prior Right-of-Way ¹	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,510,000
Right-of-Way ²	\$662,500	\$0	\$0	\$1,325,000	\$1,987,500	\$1,325,000	\$0	\$0	\$1,325,000	\$8,900,000
Construction	\$4,095,510	\$5,282,762	\$3,210,326	\$6,642,430	\$19,231,028	\$16,397,727	\$15,148,568	\$0	\$31,546,295	\$56,400,000
Total	\$4,758,010	\$5,282,762	\$3,210,326	\$7,967,430	\$21,218,528	\$17,722,727	\$15,148,568	\$0	\$32,871,295	\$66,810,000
Cumulative to Date	\$17,478,187	\$22,760,949	\$25,971,275	\$33,938,705		\$51,661,432	\$66,810,000	\$66,810,000		

Footnotes

- 1) Includes Measure A cash flow for remaining balance of right of way funds from the First Amendment to this MOU.
- 2) Includes right of way for utility relocation during construction.
- 3) Includes remaining funds of \$1.51 million from TA Resolution 2015-21 and \$65.3 million allocation per TA Resolution 2016-25.