

**RAILROAD CONSTRUCTION AND MAINTENANCE AGREEMENT
FOR
COLMA CREEK FLOOD CONTROL IMPROVEMENTS
AND THE REPLACEMENT OF THE CALTRAIN COLMA CREEK BRIDGE**

This Railroad Construction and Maintenance Agreement (the "Agreement") is entered into this ____ day of _____, 2002, between the Peninsula Corridor Joint Powers Board, a public agency ("JPB"), the San Mateo County Transit District ("SamTrans"), which are collectively referred to herein as "Railroad," and the San Mateo County Flood Control District, a public agency ("District"). Railroad and District are collectively referred to herein as "Parties."

RECITALS

A. JPB and SamTrans are co-owners, within San Mateo County, of the Peninsula Corridor Railroad right-of-way ("Right of Way") and specifically those certain real property and fixtures which are located in the City of South San Francisco, County of San Mateo, State of California, at Railroad MP 9.72, as depicted on Exhibit A attached to this Agreement and incorporated into it by this reference (the "Property"). JPB operates a commuter rail service ("Caltrain") over the Right of Way.

B. District proposes to widen Colma Creek in the vicinity of the Property for flood control purposes and to construct related improvements and facilities adjacent to the Right-of-Way. Railroad desires to replace the existing railroad bridge over Colma Creek with a new bridge and, in cooperation with the District, desires to construct a span that is sufficient to cross the widened creek channel. In order to reduce the Parties' costs and to minimize the disruption of Railroad's service, the parties desire to cooperate in effecting the design and construction of the widened creek channel and the new railroad bridge.

C. District's proposed work includes modification of the existing creek channel and

the construction of the widened creek channel outside the Railroad's Right of Way (the "District Creek Work") as well as the relocation and/or rearrangement of all necessary utilities and pipelines outside of the Railroad's Right of Way ("District Utility Work"). The District Creek Work and the District Utility Work collectively referred to herein as the "District Work".

D. Railroad's proposed work on the Project includes the demolition of the present bridge, and the construction of the new railroad bridge (the "Railroad Bridge Work"). Railroad's proposed work on the Project also includes the construction of the widened creek channel outside of the footprint of the new railroad bridge and within the Railroad's Right of Way ("Railroad Creek Work"), as well as the relocation and or rearrangement of all necessary utilities and pipelines within the Railroad right-of-way ("Railroad Utility Work"). In addition, Railroad will be providing oversight, inspection and flagging for the District Work (the "Railroad Support Work"). The Railroad Bridge Work, Railroad Creek Work, and Railroad Utility Work, are collectively referred to herein as the "Railroad Work". The District Work, the Railroad Work, and the Railroad Support Work shall be collectively referred to as the "Project."

E. District has or will be entering into contracts with contractors for the performance of the District Work and Railroad has or will be entering into contracts with contractors for the Railroad Work and the Railroad Support Work.

F. District and Railroad acknowledge that it will be necessary to develop procedures to ensure careful and continued cooperation between the Parties, including: (1) the allocation of costs for the Railroad Work; (2) procedures for finalizing any necessary design and construction options for the District Work and the Railroad Work; (3) procedures for protecting in place and/or relocating utilities and certain Railroad-owned facilities; (4) procedures to avoid unnecessary delays to either Party's contracting or construction process; (5) procedures to avoid

unnecessary delay to Railroad operations; and (6) the acquisition and granting of property rights necessary to construct the Project.

G. District and JPB previously entered into Agreement No. 46000-97-11162 for the Project, dated April 27, 1997 ("Services Agreement"), which agreement provides for the District to reimburse Railroad's costs for design review, permitting, flagging and inspection during the design phase of the District Work.

H. District and JPB previously entered into agreement for the Project, dated June 6, 2000 ("Cooperative Agreement"), which agreement provides for the District to reimburse certain Railroad's costs for the design of the new bridge, utility relocation coordination, flagging and inspection during the design phase of the Railroad Work.

I. The Parties now wish to set forth herein their understandings and agreements relating to construction and maintenance of the Project, as defined in Section 1.A. of this Agreement, and its elements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows:

1. Scope of Agreement.

A. General. This Agreement shall apply to relations between the Parties respecting the construction phase of the Project. Except for the District Work, no other work may be undertaken by District, or by any contractor retained by District ("District Contractor") on the Property, unless and until this Agreement is amended by the Parties hereto or a separate construction and maintenance agreement is entered into for such work by the Parties.

B. Role of Railroad. JPB's responsibilities under this Agreement shall include performance of the Railroad Support Work, including, without limitation, and as more specifically described herein, the review and approval of plans and specifications for the District

Work where such work affects the Railroad, required flagging and engineering inspection to support the District Work; support activities related to the rearrangement and relocation of utilities and Railroad facilities; and any other design, construction and construction management services performed by JPB for the benefit of the District Work. In addition, Railroad shall undertake the Railroad Work, including the design and construction of a new bridge over the creek. This section sets forth a general statement of the role of the Railroad and is not intended to either add to or detract from the specific obligations of Railroad as set forth in other sections of this Agreement.

C. Role of District. District's responsibilities under this Agreement shall include, without limitation and as more specifically described herein, acting as lead agency with respect to the environmental review of the Project, performing the design, engineering and construction of the widened creek channel outside of the Railroad's Right of Way; modification of the existing creek channel outside of the Railroad's Right of Way; accomplishment of all utility relocations required by the District Work; compliance with all JPB rules and regulations applicable to work done within or adjacent to Railroad's Right of Way; assuring compliance with Railroad Standards with respect to work performed by District's Contractors; any relocation of railroad tracks, signals and communications necessary to perform the District Work; and maintenance of certain facilities constructed as part of the District Work. District shall cooperate with Railroad and exercise reasonable efforts to the end that Railroad's operations and facilities will not be adversely impacted by District Work. This section sets forth a general statement of the role of District and is not intended to either add to or detract from the specific obligations of District as set forth in other sections of this Agreement.

2. Construction Costs.

District shall furnish, or cause to be furnished, at its sole cost and expense, all labor, materials, tools, and equipment needed to complete the District Work. District shall be responsible under this agreement for one-half (1/2) of: (1) the construction costs needed to complete the Railroad Bridge Work; and (2) the costs needed to complete the Railroad Utility Work. District shall be responsible under this agreement for one hundred percent (100%) of the construction costs needed to complete the Railroad Creek Work. In addition, Railroad, at District's sole cost and expense, shall furnish all labor, materials, tools and equipment needed to perform the Railroad Support Work, as defined herein. Railroad shall be responsible under this agreement for one-half (1/2) of: (1) the construction costs needed to complete the Railroad Bridge Work; and (2) the costs needed to complete the Railroad Utility Work.

3. Design and Construction Standards. The design and construction for elements of the Project that directly involve Railroad facilities shall comply with (1) the applicable rules and regulations of the Federal Railroad Administration ("FRA") and the California Public Utilities Commission ("CPUC") regarding railroad facilities including, but not limited to, CPUC's General Order 26D ("FRA/CPUC Standards"), (2) the applicable specifications and design, construction, safety and operational standards used by the JPB in its normal practice, including but not limited to JPB Standards Volume I and Volume II, dated July 1994, as amended ("JPB Standards"), and (3) the applicable American Railway Engineering and Maintenance-of-Way Association Standards ("AREMA"). The FRA/CPUC Standards, JPB Standards, and AREMA Standards are collectively referred to as "Railroad Standards." The design and construction for the Project elements that directly involve Railroad facilities shall be subject to JPB's approval to the extent specified in, and in accordance with, Section 6 of this Agreement. The design and

construction for the Project elements that directly involve District facilities shall be subject to District's approval to the extent specified in, and in accordance with, Section 6 of this Agreement.

4. Real Property Transfers/Utility Relocations.

4.1 Real Property Transfers. The parties agree to effect and abide by the following real property transactions and understandings in connection with the Project. Nothing in this Agreement shall preclude the parties from entering into additional real property arrangements in connection with the Project or otherwise by separate written agreement.

A. Consent to Widened Creek Channel. JPB hereby consents to the construction and maintenance of the widened Colma Creek channel on the Property subject to the terms and conditions established in this Agreement. Nothing herein shall be construed to limit JPB's exercise of all of its railroad easement rights over the Property, including without limitation JPB's rights to improve and/or reconfigure existing trackage or to add new trackage to meet JPB's future operating needs.

B. Right of Entry. JPB shall grant to District's Contractor a right of entry over the Property as necessary to complete the District Work in the form of a Right of Entry Agreement in the form attached hereto as Exhibit B.

C. Permanent Easement. After completion of the District work, Railroad shall directly grant to District a non-exclusive, permanent easement to maintain the widened creek. District shall prepare at its sole cost and expense all legal descriptions that may be needed to effect the real property arrangements provided for in this Agreement and shall pay all escrow and title costs. All such descriptions shall be subject to JPB's approval.

D. Encroachment Permits. The District shall issue and encroachment permit, in the form attached hereto as Exhibit C, to allow the Railroad to access the property in the locations shown as Areas 1 2, and 3 on Exhibit D attached hereto. The parties agree that the District may not cancel the encroachment permit until after completion of the Railroad Work except in case of emergency.

E. Temporary Construction Easements. The District shall grant Railroad a Temporary Construction Easement, in the form attached hereto as Exhibit E, to access the property shown as Area 4 on Exhibit D. Such temporary construction easement will automatically terminate upon completion of the Railroad Work.

F. Additional Property. The District is currently negotiating to purchase the property show as Area 5 on attached Exhibit D. Should the District complete the purchase of this property prior to completion of the Railroad Work, the District shall grant Railroad a Temporary Construction Easement in the form shown on Exhibit E. Such Temporary Construction Easement will automatically terminate upon completion of the Railroad Work.

4.2 Utility Relocations. District shall be solely responsible, at its own cost and expense, for identifying the location of all pipelines (including, without limit, gas, petroleum and water pipelines), fiber optic lines and all other utilities of whatever nature, both overhead and underground, outside of the Railroad's Right of Way, in the vicinity of the Project (collectively, "Facilities") and for relocating or arranging for the relocation of all said Facilities outside of the Railroad's Right of Way which would interfere with construction of the Project. Notwithstanding the above, Railroad agrees to make available to District all available information concerning the location of the Facilities or other information regarding third party rights in the property that it may have in its possession, upon request and at the cost of

duplicating the information; provided that Railroad shall not warrant or otherwise be responsible for the accuracy of such information. All such relocations shall comply with all applicable Railroad Standards. The design and construction for the relocation of such Facilities if performed by District's Contractor shall be subject to JPB's approval in accordance with Section 5 of this Agreement.

5. JPB Scope of Services. The JPB agrees to provide the Railroad Support Work in support of the District Work, as further described below, which were not included in the Services Agreement. The scope of services set forth herein does not preclude the imposition of any other conditions or restrictions in any licenses, easements, or right-of-way entry permit agreements which may be granted by the Railroad to District or third parties, as needed, allowing the Project to be constructed within the Right of Way, all of which have been or will be covered in other agreements between the Parties hereto. The JPB shall provide the following services as part of the Railroad Support Work under this Agreement:

A. The JPB shall review, comment upon, and/or approve, as appropriate, in accordance with Section 6, the construction documents produced by District or its Contractors or consultants during the design or construction phases of the District Work Project (the "District Construction Documents") and any other documents requested by the JPB that are related to the Project and that may directly involve or impact Railroad facilities.

B. The JPB shall review, comment upon, and/or approve, as appropriate, site specific work plans ("SSWPs") for each component of the District Work that is within the JPB's "Zone of Influence," as defined in JPB Standards, Vol. II, section 8, or that is within the JPB's "Operating Envelope," as defined in JPB Standards, Vol. I, Section 3.

C. The JPB shall issue permits to District and third parties as needed for the District Work and utility relocations, if required.

D. The JPB shall provide marketing and scheduling of the JPB's Caltrain Service in connection with construction of the District Work, as determined by the JPB in its reasonable discretion.

E. The JPB shall provide administration, construction oversight, engineering, inspection, and flagging required by the District Work as further described in the description of the Railroad Support Work.

F. The JPB shall designate a Resident Engineer who shall be the principal contact for the JPB and shall act as a liaison with the District with regard to Project-related issues. The Resident Engineer shall provide oversight of engineering services provided by the JPB engineering staff and JPB consultants or contractors performing work on the Project, as well as necessary administration of those services, including scheduling, budgeting and cost containment.

6. JPB Review of District Construction Documents. In order to assure the protection, safety, integrity and utility of Railroad facilities and operations, all plans and designs of the District Work related to Railroad facilities shall be subject to the prior approval of Railroad.

A. Initial Review of District Construction Documents. JPB shall not review any District Construction Documents until District performs an initial review of such documents and determines that the documents are in compliance with applicable Railroad Standards. In the event District rejects District Construction Documents for non-compliance with Railroad Standards, District shall promptly provide the JPB with a copy of all correspondence from

District to the Contractor or consultant related to the rejection of the submittal and, if requested, a copy of the rejected submittal.

B. JPB Approval Required. District Construction Documents for elements of the Project which may directly involve or impact Railroad facilities shall be reviewed and approved by the JPB in accordance with the terms set forth in this Section 6.B. The JPB shall use reasonable efforts to apprise District of all applicable Federal, State, and/or local laws, codes, regulations, and/or professional engineering and design standards related to the District Construction Documents. However, JPB approval of the District Construction Documents shall not constitute a representation or warranty by the JPB that such District Construction Documents conform to such laws, codes, regulations, and/or professional engineering and design standards relating to such District Construction Documents. Where JPB's approval is required, such approval shall not be unreasonably withheld.

1. District Construction Documents for elements of the Project which directly involve Railroad facilities shall be subject to JPB approval, shall comply with Railroad Standards and shall be developed in accordance with the highest professional standards.

2. District Construction Documents for elements of the Project other than those which directly involve Railroad facilities shall initially be reviewed by JPB to determine whether any portion of the proposed work has the potential to impact Railroad facilities.

(a) If, based on its initial review, the JPB determines that the work to be performed under the District Construction Documents does not directly involve, but has the potential to impact, Railroad facilities, such District Construction Documents shall be subject to JPB approval. Work to be performed under such District Construction Documents

shall be deemed to have the potential to impact Railroad facilities if the JPB determines (a) that the work to be performed is within the JPB's "Zone of Influence," as defined in JPB Standards, Vol. II, section 8, or (b) that the work is within the JPB's Operating Envelope, as defined in JPB Standards, Vol. I, Section 3, or (c) that the work may otherwise impact Railroad facilities or operations.

(b) If, based on its initial review, the JPB determines (a) that none of the work to be performed is within the JPB's Zone of Influence and (b) that none of the work is within the JPB's Operating Envelope, and (c) that none of the work has the potential to otherwise impact Railroad facilities or operations, District shall not be required to obtain further approval, review or comment.

C. Non-Approval by JPB. If JPB withholds its approval of District's Construction Documents in whole or in part, in instances where such approval is required, pursuant to Section 6.B. of this Agreement, JPB shall provide to District and its Contractor in writing the identity of the element of the Project for which approval is withheld, and the reasons therefore, and shall specifically state if approval is being withheld due to non-compliance with Railroad Standards or due to JPB's safety concerns. Thereafter, District will have the option to either resubmit documentation relating to any unapproved portion of the Project or to initiate the Dispute Resolution procedure in Section 16 below. Notwithstanding anything set forth in Section 16 of this Agreement, or any other provision of this Agreement to the contrary, in cases where JPB's approval is withheld on grounds of non-compliance with either Railroad Standards and/or JPB's safety concerns, the written determination of JPB's Chief Engineer shall be final.

D. Delivery of District Construction Documents. When in District's judgment the District Construction Documents for a portion of Project meet Railroad Standards,

District shall submit such documents to the JPB, at location(s) to be designated by JPB in writing. In order to facilitate JPB review of District Construction Documents for particularly complex or significant portions of the Project, District will submit such documents to the JPB as they become available. District and the JPB will mutually agree as to which portions of the Project, and related documents, shall be subject to such preliminary review. District acknowledges that, in those instances contemplated by this Section 6.D., any failure to provide submittals to the JPB, as design progresses, may result in significant redesign of an element of the Project in order to obtain JPB's approval.

E. Submittal Schedule. For submittals of District Construction Documents pursuant to this Section 6, the proposed submittal schedule furnished to District by District's Construction Contractor will be provided to JPB for review and approval. In the event of any proposed change to an approved submittal schedule, District will advise JPB immediately and thereupon the Parties will meet and confer as to what modifications, if any, should be made to the approved submittal schedule. JPB will make reasonable efforts to enable District to achieve a thirty (30) calendar day turnaround cycle for District's submittal review process. This cycle will begin with receipt of the submittal from the Contractor and will end with return of the submittal to the Contractor.

7. Project Construction Work.

7.1 Emergency Work. The Parties hereto acknowledge that, during the course of the work on the Project, Emergency Situations may arise that require an immediate response in order to protect the public health or safety and/or to protect the persons or property of the Parties or third parties. The Parties hereto further acknowledge that the occurrence of an emergency has the potential of impacting or disrupting JPB's Caltrain Service. The Parties

hereto also acknowledge that the need to provide an appropriate and timely response to an emergency may preclude compliance with procedural and/or substantive requirements set forth in this Agreement. The following protocol is established to ensure a prompt, orderly and effective response to Emergency Situations when they arise:

A. Definition of "Emergency Situation". For purposes of this section, "Emergency Situation" shall mean any situation existing within or adjacent to the Railroad's Right of Way which (1) presents an immediate threat of injury to persons or property, and/or an immediate threat to health or safety, and which (2) has the potential to impact or disrupt JPB's Caltrain Service.

B. Identification and Notification of Emergency Situation. Railroad and District shall be responsible for identifying Emergency Situations that arise within or adjacent to the Railroad Right of Way. Any party which discovers an Emergency Situation shall immediately notify the other party of the existence of the situation.

C. First Response. The party that discovers the Emergency Situation shall take whatever steps that, in its judgment, are necessary to prevent injury to persons or property. These steps include, but are not limited to, contact with appropriate emergency service agencies, and clearing and posting of the area affected. If possible, any such actions will be taken in consultation with the other party.

D. Second Response. As soon as possible after being informed of the Emergency Situation, the JPB will assume responsibility for responding to the Emergency Situation, and will take such additional steps which, in its judgment, are necessary to prevent injury to persons or property and/or a threat to the public health or safety.

E. Emergency Response Team. An Emergency Response Team, consisting of designated emergency contact representatives from the JPB, District and appropriate Contractor(s), will be convened as soon as possible after notification of the existence of an Emergency Situation. The Emergency Response Team will develop a mutually acceptable plan for addressing the Emergency Situation that takes into account the construction, operational and maintenance requirements and priorities of the Parties. The Emergency Response Team will allocate such materials, labor and equipment from the available resources of the Parties as are necessary to implement the Emergency Response Plan. Until such time as a mutually acceptable Emergency Response Plan is agreed to and implemented, JPB's Chief Engineer will have the authority and responsibility to direct response efforts.

F. Allocation of Emergency Situation Response Costs. Within seven (7) days of the date the Emergency Situation is determined to no longer exist, District and JPB will meet to initiate discussions concerning the proper allocation of costs required to respond to the Emergency Situation. If agreement cannot be reached concerning a proper allocation of such costs within thirty (30) days of the initial meeting, the Parties shall initiate dispute resolution procedures under Section 16 of this Agreement. Railroad shall not be responsible for any claim for damages or extra compensation by District or its Contractor(s) in the event its work is subjected to delay or disruption on account of the response to an Emergency Situation, as set forth in Section 9.1 of this Agreement.

G. Continuity of Caltrain Services. In developing and taking actions in response to an Emergency Situation, all efforts shall be made to avoid or minimize any disruption of JPB's Caltrain Service.

H. Post Emergency Actions. When the Emergency Situation is determined to no longer exist, any and all work performed in response to the Emergency Situation will, to the maximum extent feasible, be subject to the procedural and substantive requirements of this Agreement, including but not limited to the review of Construction Documents related to any construction activities undertaken to respond to the emergency.

7.2 Third Party Access During Construction.

A. Access of Third Parties with Prior Rights in Right of Way. District acknowledges that third parties possessing prior rights to install, maintain or repair facilities on the Right of Way may demand access to the Right of Way and that JPB, as owner of the Right of Way, may not have the legal right to bar such parties from entering the Right of Way, even if such entry would interfere with the District Work or District's Contractor(s) and that JPB may not receive notice from such third parties of their intent to access the Right of Way. The responsibilities of the Parties regarding third party utility facilities are set forth in Section 4, above. JPB will notify District when it learns of proposed work by third parties having prior rights in the Right of Way that may affect District or District's Contractor(s) and will provide District with an opportunity to review and comment on such proposed work, but shall not be liable to District or its Contractor(s) as the result of any such failure to notify District. As used herein, "prior rights" shall mean any right to install, maintain or repair facilities on Right of Way granted prior to the date of this Agreement.

B. Other Third-Party Requests for Access to the Right of Way. During the period of construction, JPB shall promptly notify District of any requests by third parties not possessing prior rights in the Right of Way who seek entry onto the property. JPB shall be responsible for coordination of work of third parties not holding prior rights in areas not subject

to effective rights of entry in favor of District. District shall be responsible for the coordination of the work of third parties not holding prior rights in areas that are subject to effective rights of entry in favor of District. Each party shall be responsible for recovery of any costs from third parties for coordination of work in respective areas.

8. Railroad System Activities. The Parties shall perform their responsibilities with respect to the Project in a diligent, timely and cost-effective manner. However, the Parties acknowledge that work performed under this Agreement may be subject to delays related to Railroad operating system, maintenance and life/safety emergencies, such as earthquakes, derailments, or injuries, emergencies involving major property damage; safety of Railroad operations, maintenance-of-way or construction operations, including Federal Railroad Administration or California Public Utilities Commission requirements; delay and disruptions of the JPB's Caltrain Service; Union Pacific Railroad Company activities and activities of Railroad's tenants and licensees; performance of JPB capital projects; and third party projects (collectively, the "Railroad System Activities"). District will reimburse JPB for the additional cost of Railroad Support Work (i.e., the cost in excess of that shown in Exhibit F), if any, attributable to delay due to Railroad System Activities, provided and to the extent that such delay is proximately caused by one or more of the Railroad System Activities identified above. JPB and District agree to consult on ways to minimize the impact of Railroad System Activities on the Project.

8.1 No Delay Claims. Railroad will cooperate with District to the end that the work, including the design and construction work, may be handled in an efficient manner, but neither District nor District's Contractors shall have any claim for damages or extra compensation against Railroad in the event its work is subjected to delay or disruption on

account of work by Railroad forces or as a result of Railroad operations, Railroad System Activities, maintenance or construction activities, including without limitation the review of design and construction documents, or as a result of the failure or inability of Railroad to provide necessary flaggers or inspectors.

9. Cost Reimbursement.

A. Construction. District shall reimburse or provide for reimbursement to Railroad JPB as provided in Subsection 9.B. below, of any and all costs and expenses incurred by JPB in connection with the Railroad Support Work, relocation of signal and communication facilities, signal work and rehabilitation of existing tracks and flagging, if necessary. The work expected to be performed by JPB and paid for by District, and the anticipated cost(s) therefor, are identified in Exhibit F attached to this Agreement and incorporated by reference. The Parties hereto acknowledge that Exhibit F is not reflective of all work which may be performed under this Agreement, and further acknowledge that the estimate(s) shown therein may be revised in the future. Notwithstanding any variance of the actual costs incurred by JPB from the estimate(s) set forth in Exhibit F, District shall be responsible for paying all actual costs incurred by JPB or its contractor in performing Railroad Support Work, provided such costs are reasonable and necessary or otherwise reimbursable under this Agreement.

B. Procedure for Reimbursement. JPB services will be billed on a monthly basis and District agrees to process invoices and make payment in full to JPB, subject to deduction from future invoice payments as provided in Section 9E below, within thirty (30) calendar days of the date of receipt by District. All invoices shall be made in writing. Railroad and its contractors and consultants shall establish and maintain records pertaining to the fiscal

activities of the Railroad Support Work under this Agreement. Unless approved otherwise by District, all invoices shall be delivered or mailed to District as follows:

San Mateo County, Dept. of Public Works
 555 County Center, 5th Floor
 Redwood City, CA 94063
 Attention: Walt Callahan

C. Revision of Estimate. Except for items negotiated in accordance with Section 9.B., in the event JPB determines that it will incur reimbursable costs in excess of the Cost Estimate attached to this Agreement as Exhibit F, JPB shall revise its estimate accordingly and notify District of the revised estimate within sixty (60) days of JPB's determination. Within thirty (30) days of notification of the revised estimate, District shall advise JPB that it agrees with the revised estimate, or, if District disagrees, shall inform JPB of the reasons therefor. In the event of disagreement, the Parties shall meet and confer within fifteen (15) days, and negotiate in good faith a revised estimate.

D. JPB Traffic Delay Costs. In the event construction of that portion of the Project for which District or its Contractor is responsible causes delays to JPB's Caltrain Service, other than delays that have been pre-approved by JPB, District or its Contractor will be assessed the damage charges listed below which pertain to the contract specified. The charges cover such costs as: 1) Additional train crew labor costs; 2) Additional railroad inspector costs; 3) Costs of establishing any bus bridges; 4) Lost passenger revenues; and 5) Customer rebate costs.

Minor Train Delay Charges

Maximum Delay Per Train 120 Per Day (minutes/seconds)	Charges per Train (12YU-110)		Charges per Train (12YC-12YS-140)
	Weekday	Weekend Day	Weekday or Weekend Day
1'01" to 2'00"	\$2,500	\$1,000	\$2,500
2'01 to 5'00"	\$6,500	\$2,500	\$6,500
5'01" to 10'00"	\$13,000	\$5,000	\$13,000
10'01" to 15'00"	\$20,000	\$7,500	\$20,000

Major Train Delay Charges

No. of Trains Delayed More Than 15 Minutes in Any Calendar Month	Charges per Train (12YU-110, 12YC-120 and 12&S-140)
1 to 2	\$20,000
3 to 4	\$40,000
5 to 6	\$60,000
7 or More	\$80,000

Any JPB invoice to District for liquidated damages shall be accompanied by a statement setting forth the basis for the claim of liquidated damages. District shall pay to JPB the sums set forth above within 45 days of receipt of invoice from JPB.

E. Invoice Dispute Resolution. With respect to any exceptions or discrepancies subsequently noted by District for which District requires additional justification, District may so advise JPB and request additional justification for such costs. The request for additional justification shall be delivered or mailed to JPB as follows: San Mateo County Transit District, 1250 San Carlos Avenue, P.O. Box 3006, San Carlos, CA 94070, Attention: Finance Director. JPB will provide such justification within 45 days of such request. If such justification is not provided within 45 days or if the justification is not satisfactory to District, such disagreements shall be dealt with in accordance with the Dispute Resolution process, as provided in Section 16, subject to the following:

1. At the Third Level, the other Party shall respond within three working days of receipt of the request from the initiating Third Level person, or within such other period as the Third Level persons may agree, but in no event more than fifteen working days from the date on which the Dispute Resolution procedure was initiated at the First Level.
2. If the dispute is not resolved at the Third Level, the Parties may participate in Alternative Dispute Resolution, as set forth in Section 16.D.

3. The issue to be submitted shall be what portion of the amount in dispute, if any, District is obligated to pay under this Agreement. The arbitrator, mediator or other person shall render a decision ("Decision") within a time agreed to by the Parties. If the decision-maker determines that District has no obligation under the Agreement to pay some or all of the disputed costs billed by JPB, District shall have the right, in its sole discretion, to deduct the amount so determined from future invoice payments. District shall not have the right to deduct from future invoice payments any amounts the decision-maker determines District is obligated to pay under this Agreement.

4. Notwithstanding the foregoing, the Parties shall retain all of their rights to seek reimbursement or payment of amounts in dispute through court action at the conclusion of the Project, after first exhausting the administrative remedy outlined above. In any judicial proceeding under this Section 9.E., the Decision rendered shall be non-binding on the ultimate issue of whether the amount in dispute, or any portion thereof, is subject to payment by District.

5. The Parties shall share in the costs of retaining an arbitrator, mediator or other person, and costs incidental thereto, in a manner as may be agreed upon by the Parties or, in the case of a submission under Section 9.E.3 above, in direct proportion to the amounts as allocated in the Decision.

F. Audit and Inspection of Records. Railroad shall, and shall require any contractors and/or consultants under this Agreement, to, establish and maintain records pertaining to the fiscal activities of the work under this Agreement, which records shall show the actual time devoted and the costs incurred by the Railroad with respect to the performance of services under this Agreement. The accounting systems of the Railroad, and its contractors

and/or consultants under this Agreement, if any, shall conform to generally accepted accounting principles, and all records shall provide a breakdown of total costs charged to the work under the Agreement, including properly executed payrolls, time records, invoices and vouchers.

Upon written request, the Railroad shall, at a mutually convenient time, permit District and their authorized representatives to inspect, examine, re-examine, and copy the Railroad's books, records, accounts, and any and all data relevant to this Agreement for the purpose of auditing and verifying statements, invoices or bills submitted by the Railroad pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection. The Railroad agrees to provide District with relevant cost data necessary to assist these entities in evaluating costs submitted by the Railroad's contractors and/or consultants.

District reserves the right to examine and re-examine such books, records, payrolls, accounts and data during the three (3) year period after the final payment under this Agreement and until all pending matters are closed, and the Railroad shall in no event dispose of, destroy, alter or mutilate said books, records, payrolls, accounts and data in any manner whatsoever for three (3) years after the final payment under this Agreement or until all pending matters are closed, whichever is later.

Pursuant to California Government Code Section 8546.7, the Parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of District by the State Auditor, for a period of three (3) years after the final payment under the Agreement. The examination and audit shall be confirmed to those matters connected with the performance of the Agreement including, but not limited to, the cost of administering the Agreement.

10. Quality of Work. All work contemplated in this Agreement shall be performed in a good and worker like manner, and in accordance with the plans and specifications, and each portion shall be promptly commenced by the party obligated to do the same and thereafter diligently prosecuted to completion in its logical order and sequence.

11. Maintenance.

A. Work Related to District Work. Upon completion of the construction related to the District Work and at all times thereafter, District, at its sole expense, shall maintain all portions of the District Work and Railroad Creek Work, and Railroad, at its sole cost and expense, shall maintain all portions of the Railroad Bridge Work. Specifically, District shall maintain the Railroad Creek Work, and Railroad shall maintain the Railroad Bridge Work.

The Parties hereto acknowledge that the maintenance responsibilities prescribed herein are those normal maintenance activities associated with District's and Railroad's ongoing operations. This section is not intended to, and shall not, be construed to limit any rights either of the Parties may have to seek redress for damages to their respective facilities caused by the acts or omissions of the other party or third persons, or to affect in any way the risks insured against through insurance required by Section 14 of this Agreement.

12. Indemnification. A. District shall fully indemnify, defend and hold harmless the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacities capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and the National Railroad Passenger Corporation ("Amtrak"), and/or their respective officers, directors, employees, contractors and agents (collectively, "JPB Indemnitees") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, the passengers, employees and contractors of JPB), and

damage to or loss of property (including, but not limited to, property owned, leased, occupied or used or in the care, custody or control of JPB) ("Liabilities"), arising out of or resulting from any negligent act or omission by District, its agents, employees, contractors or subcontractors (a) in the design, construction and/or maintenance of the Project or (b) in the performance of any other obligation in the Agreement, including without limitation those set forth in Sections 7 and 8 above. District shall also fully indemnify, defend and hold harmless the JPB Indemnitees and each of them against any and all Liabilities that may be brought by any District Contractor or subcontractor performing work in connection with or related to the Project. District's obligation to defend shall include the payment of all other costs and expenses of suit, and if any judgment is rendered against any JPB Indemnitee, District shall, at its expense, satisfy and discharge the same.

B. JPB shall fully indemnify, defend and hold harmless District, its directors, officers, agents and employees (collectively "District Indemnitees") from and against all Liabilities arising out of or resulting from any negligent act or omission by JPB, its agents, employees, contractors or subcontractors (a) in the design, construction and/or maintenance of any facilities designed, constructed and/or maintained by JPB, or (b) in the performance of any other obligation under this Agreement including without limitation those set forth in Sections 7 and 8 above. JPB shall also fully indemnify, defend and hold harmless District Indemnitees against any and all Liabilities that may be brought by any consultant, subconsultant, contractor or subcontractor to JPB performing work in connection with or related to the Project. JPB's obligation to defend shall include the payment of all other costs and expenses of suit, and if any judgment is rendered against any District Indemnitee, JPB, at its own expense, shall satisfy and discharge the same.

C. Notwithstanding Sections 12.A. and 12.B above, in the event of the concurrent negligence of District, and/or its officers, directors, employees, contractors or agents, and of JPB and/or its officers, directors, employees, contractors, or agents then the liability of District and JPB shall be apportioned under the California theory of comparative negligence, as presently established, or as it may be hereafter modified.

D. Hazardous Materials. As each Party will be performing work on its own property, this Agreement does not address the potential allocation of responsibility for any costs incurred as a result of the discovery or presence of hazardous materials in the course of the project.

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

13. Insurance. Any person, firm or corporation District authorizes to work upon the Property, including any Contractor or consultant, shall be deemed to be District's agent for purposes of the Work. Prior to entry upon the Property by such agents, District shall provide Railroad with satisfactory evidence (e.g., in the form of a Certificate of Insurance) that it and its Contractors, consultants or other agents who will obtain access to the Property are insured in accordance with the following, which insurance shall remain in effect throughout the term of the work authorized under this Agreement or until the commencement of District revenue operations, whichever is later and shall be at no cost or expense to Railroad. Prior to commencing work or entering onto the Property, District shall file a Certificate(s) of Insurance with the Risk Manager of the JPB evidencing coverage. Said Policy shall stipulate that the insurance company(ies) issuing such policy(ies) shall give written notice to the Risk Manager of

the JPB of any material alteration, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation. Prior to the start of the Work or entry onto the Property, District agrees to require its Contractor(s) and consultants to procure and maintain, at no cost or expense to Railroad and to prove to Railroad's reasonable satisfaction that it remains in effect throughout the course of the Project, the kinds of insurance described below:

A. Workers' Compensation and Employers' Liability Insurance. District, its Contractors and consultants shall, at no cost or expense to Railroad, provide to their respective employees Workers' Compensation Coverage as required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

Workers' Compensation shall be in accordance with the provisions of Section 3700 of the California Labor Code (and any amendments thereto or successor acts or statutes) and District shall furnish the Risk Manager of the JPB with a certificate evidencing such coverage.

District, its Contractors and consultants shall also maintain Employer's Liability coverage with minimum limits of one million dollars (\$1,000,000). The policy shall contain a waiver of subrogation in favor of the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak, and their respective directors, officers, employees, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally. Prior to commencing work or entering onto the Property, District shall file a Certificate(s) of Insurance with the Risk Manager of the JPB evidencing coverage.

B. Commercial General Liability Insurance. District, its Contractors and consultants shall, at no cost or expense to Railroad, also procure and maintain Commercial General Liability insurance which shall include, as additional insureds, the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak, and their respective directors, officers, employees and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

The insurance shall provide bodily injury and property damage coverage with a combined single limit of at least one million dollars (\$1,000,000). This insurance shall include but not be limited to premises and operations; contractual liability, personal injury; explosion, collapse, and underground coverage, completed operations, and broad form property damage (and shall include advertising injury and products liability insurance coverage once operations are commenced on the Property).

Prior to commencing work or entering onto the Property, District shall file a Certificate(s) of Insurance with the Risk Manager of the JPB evidencing coverage. Said Policy shall stipulate:

1. The insurance company(ies) issuing such policy(ies) shall give written notice to the Risk Manager of the JPB of any material alteration, or reduction in aggregate limits if such limits apply, and provide at least thirty (30) days' notice of cancellation.
2. The policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which District (or its agents) is liable for under this section, up to and including the total

limit of liability, without right of contribution from any of the insurance effected or which may be effected by the JPB, the City and County of San Francisco, the Santa Clara County Transit District, SamTrans, the Union Pacific Railroad Company, and Amtrak.

3. Inclusion of the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak as named insureds shall not in any way affect the rights of any of these named insureds, either as respects any claim, demand, suit or judgment made, brought or recovered against District (or its agents). Said policy shall protect District, the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase limits of the insurance company's liability.

District hereby agrees to waive subrogation in favor of the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak's respective directors, officers, employees, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally.

C. Automobile Liability Insurance. District, its Contractors and consultants shall, at no cost or expense to Railroad, procure and maintain Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least one million dollars (\$1,000,000) per occurrence not subject to an annual aggregate for all owned, non-owned and hired automobiles, as well as any other vehicle involved in the construction project that is on

the Property during the term of this Agreement. This insurance shall provide liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance. Such insurance shall include, as additional insureds, the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak, and their respective directors, officers, employees and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly or severally. District's OCIP policy shall include a waiver of subrogation in favor of the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak, and their respective directors, officers, employees, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally. Prior to commencing work or entering onto the Property, District shall file a Certificate(s) of Insurance with the Risk Manager of the JPB evidencing coverage, and upon request, a certified duplicate original of the policy.

D. Property Insurance. District, its Contractors and consultants shall, at their own cost and expense, provide property insurance sufficient to protect Railroad's interest in materials or property to be installed, covering all risks of physical loss or damage to such materials or property. District shall also, at its own cost and expense, maintain Builder's Risk Insurance sufficient to cover its interest in the materials or property constructed on the Property. The coverage under such policies shall have limits of liability adequate to protect the value of the materials or property to be installed. The policies shall contain a waiver of subrogation in favor of the City and County of San Francisco and the Santa Clara County Transit District in these

agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak, and their respective directors, officers, employees, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally. If District's property is self-insured, District hereby agrees to waive subrogation in favor of the City and County of San Francisco and the Santa Clara County Transit District in these agencies' capacity as members of the JPB, the JPB, SamTrans, the Union Pacific Railroad Company, and Amtrak, and their respective directors, officers, employees, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally.

E. General Insurance Provisions. All policies will be issued by insurers acceptable to the Railroad. Upon evidence of financial capacity satisfactory to Railroad, District's obligation hereunder may be satisfied in part (up to the amount of \$10 million) by adequately funded self-insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of District's personnel and equipment have been removed from the railroad property, and the work has been formally accepted.

In addition to the requirements described above, any additional coverages required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be complied with.

In the event it is necessary to dispose of hazardous materials, District shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to JPB. (Coverage of the disposal facility must include Pollution Liability Insurance with limits of not less than \$10 million per occurrence and \$10 million annual aggregate, including pollution coverage.)

F. Claims-Made Insurance. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. Policy retroactive date coincides with or precedes the District's start of work (including subsequent policies purchased as renewals or replacements).
2. District will make every effort to maintain similar insurance for at least three (3) years following Project completion, including the requirement of adding all named insureds.
3. If insurance is terminated for any reason, District agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

G. Performance Bond. District shall require its Contractors to maintain a performance bond or bonds covering the work on the Project in the full amount of the Contractor's contract price. Each bond shall name District as a beneficiary thereon. The bond shall be maintained in full force and effect during the entire period that work is performed by the Contractor until such work is accepted by District. With respect to Railroad Facilities, District shall not accept the work related to such Facilities for purposes of this section until it has received notice from JPB that such work is acceptable.

14. Construction on Railroad Property. The Parties acknowledge that any entry onto the Property by District or its Contractors shall occur pursuant to a Right of Entry Permit Agreement ("ROE"), to be issued by Railroad, which shall set forth the specific conditions for

entry onto the Property. Prior to performing work on the Property, District and its Contractors shall execute a ROE.

District shall not enter, and shall assure that its Contractors do not enter, onto the Property for any purpose until:

- (a) the party entering the Property has signed the appropriate ROE; and
- (b) District has furnished to JPB's Chief Engineer an executed ROE and a certificate of insurance evidencing the procurement of the insurance required in said ROE; and
- (c) The Risk Manager of the JPB has advised District in writing that the limits, form, and wording of said insurance certificate are satisfactory to Railroad.

District and its Contractor(s) shall give ten (10) working days notice to Railroad's authorized engineer before commencing any work in connection with the Project upon or adjacent to the Property, and shall observe Railroad's rules and regulations with respect thereto, including those stated in the ROE. Any and all of the work to be undertaken by Catellus pursuant to this Agreement shall be subject to JPB's review and approval which approval shall not be unreasonably withheld, conditioned or delayed, and the instructions of the representatives of JPB or the operator of JPB's commuter rail service. All work shall be done in conformance with the Operating Envelope PCJPB Interface and, except as may be authorized by the JPB, at such times and in such manner as not to interfere with or endanger the operations of JPB.

The ROE's referenced in this Section 15 are subject to the specific terms and conditions of this Agreement, and the specific terms of this Agreement will prevail in the event of any conflicts between the terms of the ROE and those of this Agreement.

15. As-Built Plans. District and JPB shall provide to each other two (2) sets of as-built plans and electronic computer aided design (CAD) files for their respective elements of the Project which are located within the Right of Way.

16. Dispute Resolution. With respect to disagreements between the JPB and District on design and construction issues, as well as such other issues or groups of issues as may be designated for this procedure by the Parties, such disagreements shall be dealt with as described below. This procedure may be initiated by either party.

A. First Level. Each party will designate a project staff person to be the initial person or persons to discuss any apparent dispute or disagreement between the Parties and initiate this procedure. Each such designated First Level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the Project. For the JPB the First Level person, unless the JPB shall designate otherwise in writing, shall be the JPB Director of Capital Project Management, Elizabeth Wiecha. For District, the First Level person, unless District shall designate otherwise in writing, shall be Robert Frame.

1. Urgent Matters. For any matter designated by the initiating party as "urgent," the other party shall make its first response within twenty-four hours, or within such other period as the First Level persons may agree.

2. Non-Urgent Matters. Unless a matter is designated "urgent" by the initiating party, the other party shall respond within five working days, or within such other period as the First Level persons may agree.

B. Second Level. Each party will designate an individual to whom matters not resolved at the First Level shall be referred. Each such designated Second Level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement

related to the Project. For the JPB the Second Level person, unless the JPB shall designate otherwise in writing, shall be the Deputy Executive Director, Planning and Engineering, currently Howard Goode. For District, the Second Level person, unless District shall designate otherwise in writing, shall be its Director of Public Works, currently Neil Cullen.

1. Urgent Matters. For any matter designated by the initiating party as "urgent," the other party shall make its first response within twenty-four hours, or within such other period as the Second Level persons may agree.

2. Non-Urgent Matters. Unless a matter is designated "urgent" by the initiating party, the other party shall respond within three working days, or within such other period as the Second Level persons may agree.

C. Third Level. Each party will designate an individual to whom matters not resolved at the Second Level shall be referred. These designated Third Level persons shall constitute the final internal level within the JPB and District for resolution of issues between the Parties. For the JPB the Third Level person, unless the JPB shall designate otherwise in writing, shall be the Executive Director, currently Michael J. Scanlon. For District, the Third Level person, unless District shall designate otherwise in writing, shall be the District Manager, currently John Maltby. Each such designated Third Level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the Project.

1. Response. The initiating Third Level person will request a response from his or her counterpart, and that response will be made within a time period agreed between the Third Level persons.

D. Alternative Dispute Resolution. If the dispute is not resolved at the Third Level, the Executive Director of the JPB and the General Manager of District may agree to a method of non-binding, alternative dispute resolution, including, but not limited to, mediation or non-judicial arbitration.

E. Authority of JPB's Chief Engineer. Notwithstanding the above, in matters involving review of District's Construction Documents where JPB approval is withheld (a) due to non-compliance with Railroad Standards or (b) due to JPB's safety concerns, the written determination of JPB's Chief Engineer, currently Darrell Maxey, shall be final.

F. Judicial Remedies. Nothing herein shall foreclose or limit the ability of either Party to pursue judicial remedies.

17. Notices. All notices, payments, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

To District: San Mateo County, Dept. of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Walt Callahan

With a copy to: Office of the District Counsel
County of San Mateo
Hall of Justice and Records, 3rd Floor
400 County Center
Redwood City, CA 94063-1662
Attn: Milt Mares

To Railroad: Peninsula Corridor Joint Powers Board
San Mateo County Transit District
1250 San Carlos Avenue
P.O. Box 3006

San Carlos, CA 94070-1306
Attn: Executive Director/General Manager

With a copy to: Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105
Attention: David Miller

And a copy to: Peninsula Corridor Joint Powers Board
San Mateo County Transit District
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Supervising Engineer

18. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

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

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

21. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any prior or contemporaneous oral or written understandings on the same subject. The Parties intend this Agreement to be an integrated agreement.

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

23. Definitions.

The following terms in this Agreement are defined in the section indicated.

A. Agreement. Railroad Construction and Maintenance Agreement between the Peninsula Corridor Joint Powers Board ("JPB"), the San Mateo County Transit District ("SamTrans"), and the County of San Mateo ("District"). Preamble.

- B. AREMA Standards. Section 3.
- C. District Construction Documents. Section 5.A.
- D. District Contractor. Section 1.A.
- E. District Indemnites. Section 12.B.
- F. District Work. Recital C.
- G. Decision. Section 9.F.3.
- H. Emergency Situations. Section 7.1.A.
- I. Facilities. Section 4.2.
- J. FRA/CPUC Standards. Section 3.
- K. JPB Indemnites. Section 12.A.
- L. JPB's Operating Envelope. Section 5.B.
- M. JPB Standards. Section 3.
- N. JPB's Zone of Influence. Section 5.B.
- O. Liabilities. Section 12.A.
- P. Project. Recital D.
- Q. Property. Recital A.
- R. Railroad Standards. Section 3.
- S. Railroad Support Work. Recital D.
- T. Railroad System Activities. Section 8.
- U. Railroad Work. Recital D.

- V. Right of Way. Recital A.
- W. Services Agreement. Recital G.
- X. SSWP. Section 5.B.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date first written above with the intent to be intentionally bound.

**PENINSULA CORRIDOR JOINT
POWERS BOARD**

By: _____
Michael J. Scanlon, Executive Director

APPROVED AS TO FORM

Attorney

**SAN MATEO COUNTY TRANSIT
DISTRICT**

By: _____
Michael J. Scanlon, General Manager

APPROVED AS TO FORM

By: _____
Attorney

**SAN MATEO COUNTY FLOOD
CONTROL DISTRICT**

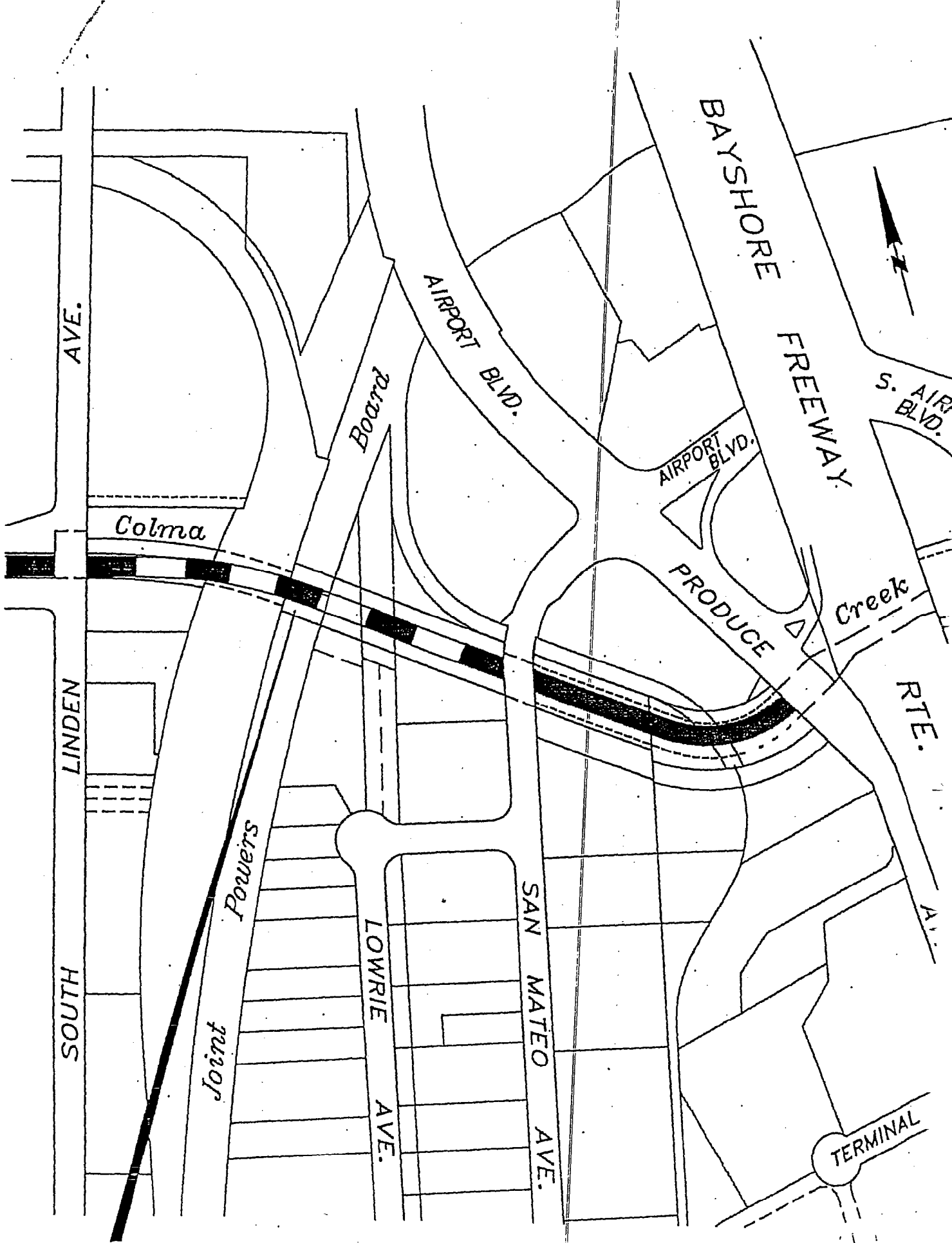
By: _____

APPROVED AS TO FORM

By: _____

EXHIBIT A

(Site Map)



NEW MAINLINE BRIDGE
RAILROAD MP 9.72

EXHIBIT A
LOCATION MAP
SCALE: 1 INCH = 250 FEET

COLMA CREEK FLOOD CONTROL
IMPROVEMENTS AND FOR
REPLACEMENT OF THE CAL
COLMA CREEK BRIDGE.
APP. BY: SAN MATEO COUNTY
FLOOD CONTROL DISTRICT

EXHIBIT B
(Right-of-Entry Form)

SAMPLE

RIGHT OF ENTRY PERMIT AGREEMENT

(San Mateo County)

This Right of Entry Permit Agreement ("Agreement" or "Permit") is entered into as of _____, _____ ("Effective Date"), by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a public agency ("JPB"), the SAN MATEO COUNTY TRANSIT DISTRICT, a public agency ("SamTrans") collectively referred to herein as "Railroad," or "Permitior" and _____ ("Permittee").

RECITALS:

A. Railroad is the owner of the peninsula corridor right-of-way ("Right-of-Way"), and specifically that certain real property which is located in the County of San Mateo, State of California, in the vicinity of MP ____, as depicted on Exhibit A which is attached to this Agreement and incorporated into it by this reference [*OPTION WHEN STATION PARCELS ARE INVOLVED - and JPB is the owner of that certain real property which is located in the County of San Mateo, State of California, and is depicted on Exhibit A-1 which is attached to this Agreement and incorporated into it by this reference*] (the "Property"). The National Railroad Passenger Corporation ("Operator"), under Agreement with Railroad, operates the Peninsula Commute Service on the Right-of-Way, and oversees maintenance of the Right-of-Way, including the Property.

B. Permittee has entered into a contract with _____ ("Agency") for the purpose of _____

_____ ("Work") upon Railroad's property.

C. Permittee desires to obtain a right of entry permit from Railroad that will permit Permittee to enter onto and work on Railroad's Property in connection with the Work.

D. Railroad is willing to grant the Permit to Permittee on the terms and conditions hereinafter set forth for the purposes of performing said Work.

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the parties agree as follows:

1. Grant of Permit. Subject to the conditions, covenants and restrictions of this Agreement, Railroad grants to Permittee a personal, revocable right of entry permit for the purposes of performing the Work on the Property together with necessary rights of ingress and egress over the Property for these purposes in the location described in the print of the drawing

attached and incorporated as Exhibit B.

2. No Permanent Improvements Allowed. Permittee shall not construct any permanent improvements on the Property unless Permittee has entered into a separate agreement with Railroad allowing such improvements.

3. Permit Fee. Permittee shall pay the permit fee of \$ _____.

4. Service Agreement. (3 Options: i. *The estimated cost of providing the materials and labor described above for this project is \$ _____. Prior to entering upon the Property to perform any work, Permittee shall deposit this amount with Railroad. In addition, should Railroad's costs of providing the above-described material and labor exceed the amount deposited with Railroad, Railroad shall reasonably notify Permittee of the same. Railroad may require the deposit of additional funds matching the amount by which the estimated costs exceed the amount previously deposited. If such funds are not deposited with Railroad, Railroad reserves the right to halt the Work or terminate this permit.* ii. *As a condition precedent to the effectiveness of this Agreement, Permittee shall enter into a Service Agreement with Railroad which shall provide for payment by Permittee for services provided by Railroad necessary for the Permittee to conduct the Work.* iii. *This Agreement does not require the Permittee to enter into a Service Agreement with Railroad.*)

5. Condition to Effectiveness. As a condition precedent to the effectiveness of this Agreement, Permittee shall have paid the permit fee indicated in Section 3 above, made any deposit indicated in Section 4, above and provided to Railroad insurance certificates that certify that Permittee has the kinds of insurance described in Exhibit C-2, attached hereto and by this reference made a part hereof.

6. Work Procedures. All Work performed by Permittee shall be performed in accordance with the Railroad's Operating Systems Interface, Exhibit C and the Work Procedures described in Exhibit C-1, both of which are attached hereto and by this reference made a part hereof.

7. Nonexclusiveness of Permit. This permit is nonexclusive and nonpossessory. Permittee must allow access to the Property by other parties possessing prior rights, unless separate arrangements are made with such parties.

8. Prior Rights. This Permit is made subject and subordinate to the prior and continuing right and obligation of Railroad, its successors and assigns, to use the Right-of-Way in the performance of its transportation operations. There is reserved unto Railroad, its successors and assigns, the right to construct, reconstruct, maintain and use existing and future facilities and appurtenances, including, without limitation, existing and future transportation, communication, railroad tracks and pipeline facilities and appurtenances in, upon, over, under, across and along the Right-of-Way.

This grant is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Right-of-Way. The word "grant" shall not be construed as a covenant against the existence of any of these or

establish any ownership interest in the Right-of-Way.

9. Term of Permit. The term of this Permit shall commence upon the start of the Work upon the Property and shall continue until the Work is completed or this Permit is terminated or suspended as set forth herein:

(a) Either party may terminate this Agreement without cause by giving thirty (30) calendar days' written notice.

(b) Railroad may immediately terminate the Permit by notice to Permittee upon Permittee's discontinuance of the Work for one continuous year or the abandonment of any facilities installed on the Property.

(c) Railroad may immediately suspend the Permit by notice to Permittee if Permittee defaults with respect to any covenant or condition of this Agreement; Railroad may immediately terminate this Permit by notice to Permittee if Permittee fails to correct the default within thirty (30) days after receipt of notice from Railroad to do so.

(d) Railroad may immediately terminate or suspend this Permit by notice to Permittee upon any failure of Permittee (or Agency) to reimburse Railroad for any amount owing as and when due as provided any agreement with Railroad.

(e) The Permit shall lapse and become void if Work is not commenced within one year of the date of this Agreement.

Upon suspension of the Permit, Permittee shall immediately vacate the Property and refrain from entering onto it until the Permit is reinstated in writing by Railroad. Upon termination of the Permit for any reason established in this Section 9, Railroad may, at its sole election, at any time thereafter either complete the Work or remove the improvements placed on the Property or any portion thereof and restore the Property to its original condition, at Permittee's sole cost and expense. Permittee acknowledges and agrees that the performance of the Work or the installation of any improvements on the Property pursuant to this Agreement shall not in any way whatsoever limit Railroad's right to terminate this Permit pursuant to the terms hereof or any of Railroad's rights hereunder. Permittee's indemnity obligations set forth in Sections 11, 12 and 13 shall survive termination of this Permit for any reason.

10. Fiber Optics Systems. The rights granted by this Agreement are subject to the rights of Railroad (or anyone acting with the permission of Railroad) to construct, reconstruct, maintain and operate fiber optic and other telecommunications systems ("Systems") in, upon, along, across and beneath the Right-of-Way, including the Property upon which the Work shall be conducted.

Permittee agrees to reimburse Railroad and/or the owner of the Systems for all expenses which would not have been incurred except by reason of the use of the Property by Permittee, its agents, employees or invitees, including relocation costs or any damages incurred by such owner due to injury to the Systems.

11. Assumption of Risk/Waiver of Claims. Permittee shall assume all risk of damage

to any and all improvements constructed as part of the Work and appurtenances and to any other property of Permittee, or any property under the control or custody of Permittee while upon or near the Property of Railroad incident to the performance of the Work, caused by or contributed to in any way by the construction, operation, maintenance or presence of Railroad's operations at the Property and Railroad shall not be liable therefor.

(a) Neither Railroad nor any of its directors, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by Permittee.

(b) Permittee acknowledges that this Permit is freely revocable by Railroad and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Indemnitees (as defined in Section 12 below) under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that Railroad exercises its right to revoke or terminate this Permit.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Indemnitees under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from Railroad under federal and state relocation assistance laws.

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of Railroad for any consequential or incidental damages including, but not limited to, lost profits and arising out of disruption to the facilities or Permittee's uses hereunder. Railroad would not be willing to give this Permit in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of Railroad or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits and covenants not to sue Indemnitees for such damages arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of Railroad Indemnitees, except for the gross negligence and willful misconduct of Railroad.

(e) As part of Permittee's agreement to accept the Permit Area in its existing condition, and without limiting such agreement, Permittee on behalf of itself and its successors

and assigns, waives its right to recover from, and forever releases and discharges, Railroad Indemnites, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Property and any related improvements or any law or regulation applicable thereto or the suitability of the Permit Area for Permittee's intended use.

(f) Permittee hereby releases Railroad from any liability, including any claims for damages or extra compensation (i) arising from construction delays due to work by Railroad forces or Railroad operations, (ii) as the result of the failure or inability of Railroad to provide necessary flaggers or inspectors, (iii) due to the presence of Hazardous Materials on the Property, (iv) any failure by Railroad to investigate or identify the presence of such materials, (v) for work done by Railroad forces, or (vi) for Railroad operations.

(g) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

12. Indemnity. Permittee shall release, defend (with counsel reasonably satisfactory to Railroad) and indemnify the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority and the San Mateo County Transit District, the Union Pacific Railroad Company and the National Railroad Passenger Corporation, and all of their respective officers, directors, employees, volunteers and agents, the successors and assigns of any of them, (all of the above hereinafter collectively known as "Indemnites"), from and against all claims, causes of action, proceedings, losses, damages, liability, cost, and expense (including, without limit, any fines, penalties, judgments, litigation costs, attorneys' fees and consulting, engineering and construction costs) for damage to natural resources or other loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") when arising or resulting from the use of the Property or performance of the Work by Permittee, its agents, employees, contractors, subcontractors, or invitees or Permittee's breach of the provisions of this Agreement. The duty of Permittee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Permittee will indemnify and hold harmless Indemnites from any and all claims, suits or actions arising from any cause whatsoever as set forth above regardless of the existence or degree of fault or negligence on the part of Indemnites, Permittee, or any subcontractor or

employee of any of these, except to the extent the Liability was attributable to the gross negligence, willful misconduct or criminal acts of a particular Indemnatee, it being understood and agreed that any Indemnatee not acting in such a manner shall still be entitled to the benefits of this indemnity. Permittee waives any and all rights to any type of express or implied indemnity against Indemnitees. This indemnity shall survive termination of this Agreement. It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.

13. Hazardous Materials. No Hazardous Materials (as defined below) shall be created, stored, used, disposed of, brought to or handled at any time upon the Property, except Hazardous Materials contained in or used in connection with construction equipment necessary for the operation of such equipment or vehicle being used for work which is authorized on the Property under this Permit. In conducting its operations on the Property, and in arranging for the handling, transport and disposal of any materials known (whether or not hazardous), Permittee shall at all times comply with all applicable laws, statutes, ordinances, rules, regulations or orders of whatever kind or nature and pay all costs of such compliance. Permittee shall immediately notify Railroad when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Property. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that a Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to Railroad and in accordance with all laws and regulations, return the Property to the condition immediately prior to the release. In connection therewith, Permittee shall afford Railroad a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material.

Any Hazardous Materials introduced onto the Property by Permittee, its agents, employees, contractors, subcontractors or invitees, shall remain the property of Permittee, its agents, employees, contractors, subcontractors or invitees, which shall be responsible for disposing of these materials at no cost to Railroad or any Indemnatee, and Permittee shall be obligated to defend, indemnify and hold Indemnitees harmless from any and all Liability arising from it, regardless of whether such Liability arises during or after the term of this Permit. This indemnity shall not extend to Liability arising from the presence of any Hazardous Materials on the Property, unless (i) such Hazardous Materials were introduced onto the Property by Permittee, its agents, employees, contractors, subcontractors or invitees, in which case this indemnity shall apply, or (ii) Hazardous Materials are present on the Property, and Permittee's handling, excavation, relocation, investigation, disposal or other exercise of control over the Property imposes on the Railroad new or additional liability, which the Railroad would not otherwise have incurred in the absence of Permittee's activities or project. (In such event, Permittee shall pay for and defend and indemnify Indemnitees from and against such additional liability to the extent it exceeds that liability which the Railroad would have incurred in the

absence of Permittee's activities or project.)

Any Hazardous Materials not introduced onto the Property by Permittee, its agents, employees, contractors, subcontractors or invitees shall remain the property of the Railroad (or other responsible third parties) and shall not be deemed property of Permittee.

For purposes of this Agreement, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) or pursuant to Section 25316 of the California Health and Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property or are naturally occurring substances on the Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. This indemnity shall survive termination of this Agreement. It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.

14. Compliance with Laws. Permittee shall comply, at Permittee's expense, with all applicable laws, regulations, rules and orders with respect to the use of the property, regardless of when they become or became effective, including, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, hazardous materials, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance upon request of Railroad. Before beginning work on the Property, Permittee shall also obtain, at Permittee's expense, any and all permits, licenses and approvals required for construction and operation of the Work and shall provide Railroad with copies of such approvals. Under no circumstances shall Permittee damage, harm or take any rare, threatened or endangered species on or about the Property.

15. Notices. All notices required or permitted to be given under this Agreement shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or by overnight courier, to the appropriate address indicated below or at such other place or places as either Railroad or Permittee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served four (4) days after the date of mailing or upon personal delivery.

To Permittee: _____

To Railroad: Peninsula Corridor Joint Powers Board
San Mateo County Transit District
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: General Manager/Executive Director

With a copy to: Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attn: David J. Miller, Esq.

To Amtrak: National Railroad Passenger Corp.
510 W. San Fernando Street
San Jose, CA 95110
Attn: General Manager

Day-to-day communications shall be directed to JPB's Chief Engineer (Tel: (650) 508-7922; Fax: (650) 508-7938) and to Permittee's _____ (Tel: _____; Fax: _____).

16. Relocation of Permit. In the event Railroad shall at any time so require, Permittee, at Permittee's expense, shall reconstruct, alter, make changes in the location of its facilities on the Property, within 30 calendar days of receipt of written notice from Railroad so to do or such longer period as approved by Railroad. The Railroad shall designate the location for the Permittee to relocate its permit, if on property owned by Railroad. Any necessary property interests shall be obtained at Permittee's sole cost and expense.

Permittee shall perform the work in a manner and at times satisfactory to Railroad. If Permittee fails to perform such work, Railroad may perform the work at the expense of Permittee, which expense shall, upon demand, be paid by the Permittee. The provisions of this Agreement shall apply to all work Permittee performs under this section.

17. Successors and Assigns. Permittee shall not assign nor sublet, in whole or in part, any rights covered by this Agreement, or permit any other person, firm or corporation to use, in whole or in part, any of the rights or privileges granted pursuant to this Agreement, without first obtaining the written consent of the Railroad.

18. No Waiver. No waiver of any default or breach of any covenant of this Agreement by either party shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then the waiver shall be operative, only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

19. Severability. Each provision of this Agreement is intended to be severable. If any term of provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall

not affect the validity of the remainder of this Agreement.

20. Attorneys' Fees. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.

21. Condemnation. In the event all or any portion of the Property is condemned for public use, Permittee shall receive compensation only in the amount awarded for the taking and damaging of Permittee's facilities related to the Work. Any compensation for damages for taking the Property or Permittee's permit interest thereon awarded to Permittee shall be assigned to Railroad.

22. Governing Law. The rights and obligations of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

23. Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions

24. Integration. This Agreement constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement, which are not fully expressed in this Agreement. The parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be in writing signed by both parties.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Permit as of the day and year first above written by their duly authorized representatives.

PENINSULA CORRIDOR JOINT
POWERS BOARD

PERMITTEE

By: _____
Title: Executive Director

*By: _____
Title: _____

APPROVED AS TO FORM:

*By: _____
Title: _____

Attorney

SAN MATEO COUNTY TRANSIT
DISTRICT

By: _____
Title: General Manager

RECOMMENDED FOR APPROVAL:

Real Estate Officer

Real Estate Department Manager

APPROVED AS TO FORM:

Attorney

* NOTE: If Permittee is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the President, Vice President or Chair of the Board, and (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, or by any person authorized by the corporation to execute written contracts.

EXHIBIT C
(Encroachment Permit Form)

DEPARTMENT OF PUBLIC WORKS



Department of Public Works
555 County Center, 5/FI.
Redwood City, CA 94063
(650) 363-4100

NEIL R. CULLEN
Director of Public Works

ENCROACHMENT PERMIT

As requested by the above addressee, hereinafter known as the "PERMITTEE," the County of San Mateo, hereinafter known as the County, HEREBY GRANTS AN ENCROACHMENT PERMIT TO:

Project Description: _____

Project Location: _____

The work authorized by this Permit, hereinafter known as the "ENCROACHMENT," shall be subject to all the terms, conditions, and restrictions set forth herein. This permit consists of the **Special Provisions** attached and made a part hereof and the Drawings referenced above. The project, as specifically described, is to be strictly construed and no other activity shall be permitted. **Notify County 24 hrs prior to starting work.**

The Permittee and/or his contractor shall indemnify and save harmless the **County**, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work authorized or required by this Permit of Permittee and/or his contractor, their officers, agents, employees and/or servants.

A SURETY DEPOSIT OF \$ -0- or INSPECTION DEPOSIT OF \$ -0-, and INSURANCE for P/L of \$ _____ and P/D of \$ _____ IS A CONDITION OF THIS PERMIT.

THIS PERMIT IS VALID FOR THE PERIOD _____ to _____

Applicant Complete:
"USA" Inquiry

Neil R. Cullen
Director of Public Works

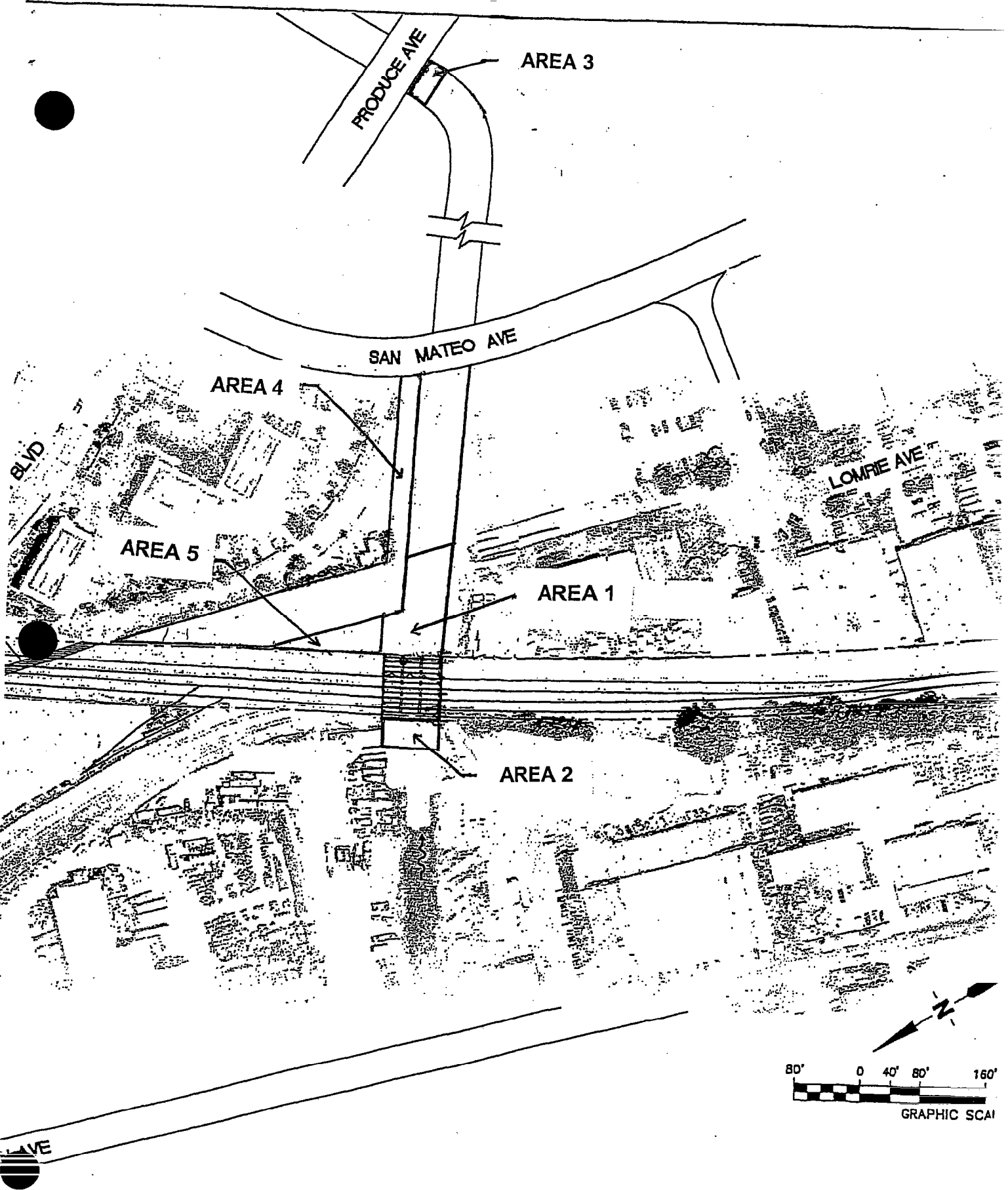
_____ Date _____ Number _____

NRC:KSA
Encl: Permittee Request/Sketch _____

Special Provisions _____

EXHIBIT D

(Site Map Showing Areas 1, 2, 3, 4, 5)



PRODUCE AVE

AREA 3

SAN MATEO AVE

AREA 4

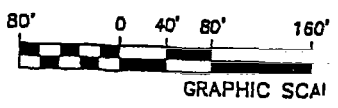
BLVD

AREA 5

LOMPIE AVE

AREA 1

AREA 2



GRAPHIC SCALE

PENINSULA CORRIDOR JOINT POWERS BOARD
COLMA CREEK BRIDGE REPLACEMENT
EXHIBIT D

EXHIBIT E
(Temporary Construction Easement Form)

_____, California

Parcel No.

Colma Creek JPB RR Bridge
Reconstruction Project

_____, 2002

***SAN MATEO COUNTY FLOOD CONTROL DISTRICT
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT***

This Document, in the form of a TEMPORARY CONSTRUCTION EASEMENT covering the property described in Section 3 below, is made by and between the **SAN MATEO COUNTY FLOOD CONTROL DISTRICT** (herein referred to as "District") and the **PENINSULA CORRIDOR JOINT POWERS BOARD**, a public agency ("JPB"), the **SAN MATEO COUNTY TRANSIT DISTRICT**, a public agency ("SamTrans") collectively referred to herein as "Railroad," or ("Permittee"). This Temporary Construction Easement Agreement has been executed by District and delivered to the Railroad. The Temporary Construction Easement is required for construction related activities necessary for the **COLMA CREEK FLOOD CONTROL IMPROVEMENTS AND THE REPLACEMENT OF THE CALTRAIN COLMA CREEK BRIDGE Project** ("Project"). In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the District of all further obligations or claims on this account, or on account of the location, grade, or construction of the proposed public improvement.
2. Payment: NONE.
3. Permission is hereby granted to the Railroad, and its authorized agents or contractors to enter upon District's land where necessary within that certain area described and shown in Exhibit "___" (Temporary Construction Easement) attached hereto and made a part hereof, for the purpose of constructing Project in the adjoining right-of-way for the term described in Section 4 below.
4. This Temporary Construction Easement shall be in effect for a period of ____ () year(s) commencing ____ , 200_ , and terminating ____ , 200_ , or upon completion of construction, whichever occurs first. Both parties shall make any extension of the term of this Temporary Construction Easement in writing.
5. The undersigned District warrants that it is the owner in fee simple of the property affected by this Temporary Construction Easement as described in Clause 3 above and that it has the exclusive right to grant this Temporary Construction Easement.
6. District warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the District further agrees to hold the Railroad harmless and reimburse the Railroad for any and all losses and expenses occasioned by reason of any lease of said property held by any tenant of District for a period exceeding one month.

7. District acknowledges and understands that the improvements to be constructed include reconstruction of the existing railroad bridge over Colma Creek and Creek within the Railroad's property. District hereby grants permission to Railroad to enter onto District's said property to perform construct railroad and creek improvements as described and performed under the RAILROAD CONSTRUCTION AND MAINTENANCE AGREEMENT FOR COLMA CREEK FLOOD CONTROL IMPROVEMENTS AND THE REPLACEMENT OF THE CALTRAIN COLMA CREEK BRIDGE. Said permission shall terminate upon completion of the Project and is granted in consideration of the benefits that may accrue to District's property.

8. With the exception of the items listed in Section 2, if any, the Railroad agrees that any damage to the Temporary Construction Easement area or District's adjoining property caused by Railroad's use of the Temporary Construction Easement area during the period of Railroad's use will be repaired/corrected. The Railroad shall inspect the condition of the easement area prior to commencement of construction and agrees to use reasonable care during the term of this Temporary Construction Easement. Any and all repairs to damaged areas shall be performed in such a manner as to return the damaged areas to the same condition as exists at the commencement of the term of the Temporary Construction Easement.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED.

Recommended for Acceptance:

DISTRICT

Real Property Acquisition Agent

By: _____

Printed Name

Title: _____

ATTEST:

By: _____

Printed Name

Title: _____

Signatures continue on Page 3

District Mailing Address:

San Mateo County Flood Control District
555 County Center, 5th Floor
Redwood City, CA 94063-1665

County of San Mateo

By:

ATTEST:

EXHIBIT F
(Cost Sharing Breakdown)

**EXHIBIT F
COST SHARING BREAKDOWN**

PROJECT SCOPE OF WORK TO BE PERFORMED BY PCJPB

As part of the Colma Creek Bridge Replacement project, District shall reimburse PCJPB for performing the following work:

Item No.	Description	Total Estimated Cost	District's Estimated Share	PCJPB's Estimated Share
Construction Costs (Includes 10% Contingency, See Note 1)				
1	Railroad Bridge Work	\$2,655,500.00	\$1,327,750.00	\$1,327,750.00
2	Railroad Creek Work	\$58,100.00	\$58,100.00	\$0.00
	<i>Subtotal Construction Costs</i>	<i>\$2,713,600.00</i>	<i>\$1,385,850.00</i>	<i>\$1,327,750.00</i>
Construction Management Costs (See Note 2)				
3	Construction Management	\$370,100.00	\$189,000.00	\$181,100.00
	<i>Subtotal Construction Management Costs</i>	<i>\$370,100.00</i>	<i>\$189,000.00</i>	<i>\$181,100.00</i>
SSWP/Flagging/Signal/Work Train/Bus Bridge/Other Costs (See Note 3)				
4	Flagging, Signal, and Work Train (Amtrak)	\$370,100.00	\$189,000.00	\$181,100.00
5	Bus Bridge/Other	\$235,900.00	\$120,500.00	\$115,400.00
	<i>Subtotal SSWP/Flagging/Signal/Work Train/Bus Bridge/Other Costs</i>	<i>\$606,000.00</i>	<i>\$309,500.00</i>	<i>\$296,500.00</i>
Administrative Costs				
6	PCJPB Staff Costs	\$246,700.00	\$126,000.00	\$120,700.00
	<i>Subtotal Administrative Costs</i>	<i>\$246,700.00</i>	<i>\$126,000.00</i>	<i>\$120,700.00</i>
Railroad Utility Work				
7	Fiber Optic Relocation	\$10,000.00	\$5,000.00	\$5,000.00
8	Fuel Pipeline Relocation	\$10,000.00	\$5,000.00	\$5,000.00
	<i>Subtotal Railroad Utility Work Costs</i>	<i>\$20,000.00</i>	<i>\$10,000.00</i>	<i>\$10,000.00</i>
Railroad Support Work				
9	Railroad Support Work	\$50,000.00	\$50,000.00	\$0.00
	<i>Subtotal Railroad Support Work Costs</i>	<i>\$50,000.00</i>	<i>\$50,000.00</i>	<i>\$0.00</i>
Total Estimated Cost		\$4,006,400.00	\$2,070,350.00	\$1,936,050.00

Note 1. North CTX Construction Contract C-60685JPB, Colma Creek Bridge

Note 2. Construction Mangement for Colma Creek Bridge

Note 3. Colma Creek Bridge prorata share of entire costs

file: ExhibitF.xls