

File No. 100263

Committee Item No. 12

Board Item No. 17

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 3/17/10

Board of Supervisors Meeting

Date 3/23/10

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
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#### OTHER

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Completed by: Gail Johnson

Date 3/12/10

Completed by: JG

Date 3/18/10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

14

10/10/10

1 [Authorizing the Filing of an Application for Section 190 Grade Separation Grant Funds -  
2 \$5,000,000]

3 **Resolution authorizing the Department of Public Works to file an application seeking**  
4 **state Section 190 Grade Separation funds, in the amount of \$5,000,000, from the**  
5 **California Department of Transportation for the reconstruction of the Jerrold Avenue**  
6 **railroad bridge grade separation and to enter into a Memorandum of Understanding to**  
7 **pass through the funds to the Peninsula Corridor Joint Powers Board.**

8  
9 WHEREAS; On July 12, 2007, the California Public Utilities Commission ("CPUC") filed  
10 an Order Instituting Investigation ("OII") for the purpose of establishing the Grade Separation  
11 Priority List for Fiscal Years 2008-2009 and 2009-2010; and

12 WHEREAS, The OII requested nominations from interested parties for grade  
13 separation projects involving existing or proposed crossings at-grade of city streets, county  
14 roads or state highways in need of separation, or projects affecting the elimination of grade  
15 crossings by removal or relocation of streets or railroad tracks, or existing separations in need  
16 of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways  
17 Code; and

18 WHEREAS, Section 2454(d) of the Streets and Highways Code states that an agency  
19 that sponsors a nomination for Section 190 Grade Separation Program ("Section 190") funds  
20 in excess of \$5,000,000 for a single project and that subsequently receives an allocation in an  
21 amount in excess of \$5,000,000 for a single project will not be eligible for another allocation in  
22 excess of \$5,000,000 for a single project for a period of ten years; and

23 WHEREAS, The Department of Public Works of the City and County of San Francisco  
24 sponsored a nomination submitted to the CPUC for the reconstruction of the Jerrold Avenue  
25

*Supervisor Elsbend*

Department of Public Works  
BOARD OF SUPERVISORS

1 and Quint Street Grade Separation on behalf of the Peninsula Corridor Joint Powers Board  
2 ("JPB");; and

3 WHEREAS, On June 5, 2009, the CPUC issued a final decision establishing the Grade  
4 Separation Priority List for FY 2009-2010 that included a ranking of 77 for the Jerrold Avenue  
5 and Quint Street Grade Separation; and

6 WHEREAS, At the request of the San Francisco County Transportation Authority, the  
7 scope of the reconstruction of the Jerrold Avenue and Quint Street Grade Separation project  
8 was subsequently modified to close Quint Street to vehicular traffic and replace the Quint  
9 Street bridge with a raised embankment in order not to preclude the potential to provide a  
10 future Oakdale Caltrain station at the Quint Street location; and

11 WHEREAS, The proposed closure of Quint Street would remove the eligibility of the  
12 Quint Street portion of the project for Section 190 funding, leaving the replacement of the  
13 Jerrold Avenue bridge grade separation ("Project") as the remaining eligible component of  
14 work under the Section 190 program; and

15 WHEREAS, Subsequent to the CPUC's issuance of the Grade Separation Priority List,  
16 the California Department of Transportation ("Caltrans") accepts applications for the allocation  
17 of State Section 190 Grade Separation funds for projects included in the Grade Separation  
18 Priority List; and

19 WHEREAS, Requests for the allocation of Section 190 funds require an agreement  
20 between the railroad and the project applicant and a certified resolution from the applicant's  
21 governing body attesting to specified conditions that are further described below; and

22 WHEREAS, The JPB has requested that the Department of Public Works of the City  
23 and County of San Francisco file the allocation request for Section 190 funds with Caltrans  
24 and pass through funding to the JPB for the reimbursement of Project expenses; and  
25

1           WHEREAS, The Department of Public Works of the City and County of San Francisco  
2 and the JPB have negotiated a Memorandum of Understanding ("MOU") to meet the  
3 requirements of the Section 190 program and to further define roles and responsibilities for  
4 implementation of the said Project, and under which JPB obligates itself to complete the  
5 Project and supply the necessary local funds, provided the Section 190 funding is obtained by  
6 the City and County. A copy of the MOU is on file with the Clerk of the Board of Supervisors  
7 in File No. 100263, which is hereby declared to be part of this Resolution as if set forth  
8 fully herein; and

9           WHEREAS, There is no pending or threatened litigation that might adversely affect the  
10 implementation of the Project, or that might impair the ability of the JPB to implement it; and

11           WHEREAS, The Department of Public Works of the City and County of San Francisco  
12 is not legally impeded from filing an allocation request for Section 190 funds, nor is the JPB  
13 legally impeded from undertaking the Project; and

14           WHEREAS, the JPB has determined that the Project is in compliance with the  
15 requirements of the California Environmental Quality Act (CEQA, Public Resources Code  
16 Section 21080) and the Federal Transit Administration has determined the Project is eligible  
17 for a categorical exclusion under its regulations implementing the National Environmental  
18 Policy Act (23 Code of Federal Regulations 771.117(d)(3)); and

19           WHEREAS, the JPB is ready to commence implementation of the Project during the  
20 fiscal year of the requested allocation; and

21           WHEREAS, the JPB agrees to maintain the Project for the continued operation of  
22 Caltrain; now, therefore, be it

23           RESOLVED, That the Board of Supervisors hereby:

24           1.     Authorizes the Director of Public Works, or his designee, to file an application  
25 with the California Department of Transportation in an amount up to \$5,000,000 in Section


1 190 funds for the Project and submit and execute all required grant documents including, but  
2 not limited to, agreements, amendments and payment requests.

3 2. Authorizes the Director of Public Works, or his designee, to enter into a  
4 Memorandum of Understanding with the JPB to pass through Section 190 grant funds in  
5 substantially the form on file with the Clerk of the Board, and in such final form as approved by  
6 the Director and the City Attorney.

7 3. Certifies that all matters prerequisite to the awarding of the construction contract  
8 will be accomplished by the JPB within one year after allocation of the funds for the Project by  
9 the California Transportation Commission.

10 4. Certifies that sufficient local funds will be made available by the JPB as the work  
11 of the project progresses.

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15 Recommended:

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18 Director of Public Works  
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**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**THE PENINSULA CORRIDOR JOINT POWERS BOARD**  
**And**  
**THE CITY AND COUNTY OF SAN FRANCISCO**

This Memorandum of Understanding (“**MOU**”), is effective immediately upon its full execution by and between the Peninsula Corridor Joint Powers Board (“**JPB**”) and the City and County of San Francisco, acting by and through its Department of Public Works (“**City**”).

WHEREAS, on July 12, 2007, the California Public Utilities Commission (“**CPUC**”) filed an Order Instituting Investigation (“**OII**”) for the purpose of establishing the Grade Separation Priority List for Fiscal Years 2008-2009 and 2009-2010; and

WHEREAS, the OII requested nominations from interested parties for grade separation projects involving existing or proposed crossings at-grade of city streets, county roads or state highways in need of separation, or projects affecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways Code; and

WHEREAS, Section 2454(d) of the Streets and Highways Code states that an agency that sponsors a nomination for Section 190 Grade Separation Program (“**Section 190**”) funds in excess of \$5,000,000 for a single project and that subsequently receives an allocation in an amount in excess of \$5,000,000 for a single project will not be eligible for another allocation in excess of \$5,000,000 for a single project for a period of ten years; and

WHEREAS, the City sponsored the nomination submitted to the CPUC for the reconstruction of the Jerrold Avenue and Quint Street Grade Separation on behalf of the JPB; and

WHEREAS, on June 5, 2009, the CPUC issued a final decision establishing the Grade Separation Priority List for FY 2009-2010 that included a ranking of 77 for the Jerrold Avenue and Quint Street Grade Separation; and

WHEREAS, at the request of the City, the scope of the reconstruction of the Jerrold Avenue and Quint Street Grade Separation project was subsequently modified to close Quint Street to vehicular traffic and replace the Quint Street bridge with a raised embankment in order not to preclude the potential to provide a future Oakdale Caltrain station at the Quint Street location;

WHEREAS, the proposed closure of Quint Street would remove the eligibility of the Quint Street portion of the project for Section 190 funding, leaving the replacement of the Jerrold Avenue bridge grade separation (“**Project**”) as the remaining eligible component of work under the Section 190 program; and

WHEREAS, subsequent to the CPUC’s issuance of the Grade Separation Priority List, the California Department of Transportation (“**Caltrans**”) accepts applications for the allocation

of State Section 190 Grade Separation funds for projects included in the Grade Separation Priority List; and

WHEREAS, requests for the allocation of Section 190 funds require an agreement between the railroad and the project applicant and a certified resolution from the applicant's governing body attesting to specified conditions that are further described below; and

WHEREAS, the JPB has requested that the City file the allocation request for Section 190 funds with Caltrans and pass through funding to the JPB for the reimbursement of Project expenses; and

WHEREAS, the City and the JPB desire to enter into the following formal contract to meet the requirements of the Section 190 program and to further define roles and responsibilities for implementation of the said Project.

NOW, THEREFORE, BE IT RESOLVED that City and the JPB agree that implementation of the Project shall be in accordance with the following:

## **I. BACKGROUND**

The Jerrold Avenue railroad bridge in San Francisco is over 100 years old, does not meet current seismic safety standards and is in need of replacement. Replacement of the Jerrold Avenue railroad bridge is included in CPUC's Section 190 Grade Separation Priority List. The JPB has requested that the City file an allocation request for Section 190 funds, in the amount of \$5,000,000, for the Project. The City has agreed to submit the allocation request to the State. Should the City be successful in receiving a funding allocation for the Project, it agrees to pass such funds through to the JPB for reimbursement of Project costs.

## **II. PURPOSE**

The purpose of this MOU is to memorialize the understanding between the City and the JPB pursuant with regard to the requirements of the Section 190 program and the pass through of Section 190 funds to the JPB specifically intended for implementation of the Project in the event the City receives a funding allocation. The City's obligation to pass through funds to the JPB for the foregoing purpose is specifically contingent upon the City's receipt of Section 190 funds. The City will serve as the recipient of Section 190 Grade Separation funds for the Project and the JPB will serve as the Project lead. JPB will be responsible for the Project's implementation, ensure that the Project is fully funded, and ensure that the Project meets any and all other applicable requirements of the Section 190 program.



### III. RESPONSIBILITIES AND COVENANTS

#### A. General Responsibilities:

The JPB will comply with all policies, regulations and requirements of the Section 190 program in its implementation of the Project. In addition, JPB shall keep itself fully informed of the City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this MOU and implementation of the Project, and shall at all times comply with such Charter, codes, ordinances, regulations, rules, and laws.

#### B. Implementation:

1. The City and the JPB control all right of way for construction within the Project limits, as further described in Appendix A to this MOU.
2. The JPB will plan, design, construct and maintain all improvements required for the Project. The JPB shall be responsible for: (i) obtaining and complying with all necessary orders of the CPUC authorizing the construction of the Project; (ii) requesting and complying with encroachment permits and any other approvals required from the City for all work in the Jerrold Avenue street right of way, or other City-controlled property, which the City agrees to issue to the JPB; (iii) accomplishing all other requirements prerequisite to the award of the construction contract for the Project within one year after the allocation of the funds for the Project by the California Transportation Commission ("CTC"); and (iv) performing construction and maintenance work for the Project in compliance with all applicable federal, state and local laws, regulations and requirements.
3. The JPB shall, prior to April 1, 2010, issue a certified resolution: (i) acknowledging that the City will file the application for an allocation of Section 190 funds for the Project ("Application"); (ii) stating that all matters prerequisite to the awarding of the construction contract for the Project can be accomplished by the JPB within one year after the allocation of the funds for the Project by the CTC; and (iii) stating that sufficient local funds will be made available as the work of the Project progresses.
4. The City shall, prior to April 1, 2010, seek a certified resolution from its Board of Supervisors: (i) authorizing the filing of the Application; (ii) stating that all matters prerequisite to the awarding of the construction contract can be accomplished within one year after the allocation of the funds for the project by the CTC; and (iii) stating that sufficient local funds will be made available as the work of the project progresses. **JPB acknowledges that the decision to pass such a resolution is subject to the discretion of the Board of Supervisors.** JPB further acknowledges

that the Board of Supervisors will be acting in reliance on the certified resolution issued by the JPB pursuant to paragraph B(3), above.

5. Should the Board of Supervisors pass the certified resolution referenced in paragraph B(4), above, the City will file the Application, which will be prepared on its behalf by the JPB.

**C. Finance:**

1. The total estimated cost of the Project is \$19,630,000.
2. Should the City be successful in obtaining an allocation of the Section 190 funds for the Project, the JPB will be responsible for and contribute all remaining funding required to implement the planning, design, construction and maintenance of the Project, and the City has no obligation to pass through funds in excess of the \$5,000,000 in Section 190 funds should an allocation be granted by the CTC, unless there is approval of additional Section 190 funding for the Project and both parties execute a written amendment to this MOU to reflect any additional funding. In addition to the Section 190 funding, the JPB has secured the programming of \$14,630,000 in Federal, State and JPB Partner Contributions to fully fund the Project. As a result, the JPB, as the railroad involved in the Section 190 project, has secured at least a 10 percent minimum in funding contribution for the Project.
3. Should an allocation of Section 190 funds be granted to the City, the City shall enter into a funding agreement with Caltrans, on behalf of the Project, to be eligible for the reimbursement of Project expenses. The Parties agree that promptly after the City's execution of a funding agreement with Caltrans, JPB and the City will diligently engage in good faith negotiations to adopt a mutually acceptable written amendment to this MOU defining rights and responsibilities regarding the handling, accounting, disbursement, payment, and pass-through of Section 190 funds, and associated recordkeeping and auditing requirements, consistent with the City's funding agreement with Caltrans. Under the amendment, the JPB will agree to assume all of the City's legal obligations in meeting the requirements of the Section 190 funding agreement between City and Caltrans, and JPB will agree to reimburse the City for expenses associated with the City's administration of Section 190 funds for the duration of the Project, subject to a mutually agreeable and reasonable aggregate reimbursement cap.
4. The JPB shall reimburse the City for expenses associated with its legal review and approval of this MOU, the subsequent funding agreement with Caltrans for receipt of Section 190 funds and any other legal documentation required to receive Section 190 funds. The amount of such reimbursement shall not exceed \$7,500. The City will bill JPB for such

expenses on a monthly basis using a form of invoice that is reasonably acceptable to JPB. JPB shall make a good faith effort to pay all amounts due within thirty (30) days following receipt of a proper invoice from City. JPB shall send all payments by United States Mail to the City's address stated in Paragraph H, below.

5. Should an allocation of Section 190 funds be granted to the City, JPB shall use all pass through Section 190 funds only for eligible expenses as defined by the Section 190 program.
6. Certification of Funds: This MOU is subject to the budget and fiscal provisions of the City's Charter. Should an allocation of Section 190 funds be granted to the City, pass through funds will not be available until prior written authorization certified by the City's Controller. The amount of the City's pass through obligations hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The City is not required to pass through funds which are beyond the scope agreed upon herein and which were not approved by a written amendment to this MOU having been lawfully executed by the City.

**D. Disadvantaged Business Enterprise ("DBE"):**

The JPB has a long-standing policy of ensuring nondiscrimination on the basis of race, color, sex or national origin in the award and administration of contracts, and is committed to and has adopted a DBE Program for the participation of Disadvantaged Business Enterprises in JPB contracting opportunities in accordance with Section 190 program requirements. The contract(s) to be awarded for the Project will be in compliance with the said DBE Program.

**E. Reporting:**

The JPB shall be responsible for the preparation of any and all required reporting, including project close-out documents, within prescribed deadlines of the Section 190 Program and timely transmit them to the City. In addition, JPB shall provide, in a prompt and timely manner, financial, operational and other reports, as reasonably requested by the City, in a form and substance satisfactory to the City. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent practicable.

**F. Records and Auditing:**

The JPB will be solely responsible for maintaining all applicable records in compliance with auditing requirements and any other applicable fiscal responsibilities as stated in the agreement between the City and Caltrans for the receipt of Section 190 funding. JPB acknowledges that, depending on the specific requirements of the agreement between the City and Caltrans, the City may require reasonable recordkeeping and auditing requirements in addition to those

required under the Section 190 program. If necessary, the City will seek to set forth any such additional requirements through a written amendment to this MOU.

JPB agrees to make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by JPB under this MOU and any subsequent amendments to this MOU. JPB shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the City under this Section shall remain in effect so long as JPB has an obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this MOU and any subsequent amendments thereto.

G. **Modification.** This MOU can be amended, modified, or supplemented only in writing signed by both parties.

H. **Notices.** All notices and communications deemed by either party to be necessary or desirable shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the JPB:

San Mateo County Transit District  
Attn: Director, Budgets and Grants  
1250 San Carlos Avenue  
San Carlos, CA 94070-1306

If to the City:

City and County of San Francisco  
Attn: Director, Public Works  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 348  
San Francisco, CA 94102

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

I. **Assignment.** Neither party shall assign, transfer, or otherwise substitute its interest in this MOU, nor its obligations, without the prior written consent of the other party.

J. **Dispute Resolution.** The parties agree that any dispute arising from this MOU that is not resolved within 30 days by the parties' representatives responsible for the administration of this Agreement will be set forth in writing to the attention of the JPB's Director, Budgets and Grants and City's Director, Public Works for resolution. In the event resolution cannot be reached, the parties may submit the dispute to mediation by a neutral party mutually agreed to by the parties hereto prior to initiating any formal action in court.

K. **Termination; Disallowance.** Either party may terminate this MOU upon sixty (60) working days' prior written notice for either party's failure to comply with the requirements of this MOU including the terms and conditions applicable to the use or disbursement of Section 190 grant funds. In the event of early termination, the JPB will return all Section 190 funds attributable to Project costs after the day written notice of termination is given in accordance with the requirements of the Section 190 program.

JPB acknowledges that under the Section 190 program, if a construction contract is not awarded for the Project within one year after an allocation for construction costs, the CTC may order an allocation cancelled and such funds returned to the Section 190 program for allocation to other projects. JPB further acknowledges that under the Section 190 program, all or any part of an allocation for pre-construction costs may be canceled upon a finding by the CTC that insufficient progress is being made to complete the Project. JPB further acknowledges that when CTC cancels an allocation, the local agency must repay any funds received from the Section 190 program.

Accordingly, if the City is successful in obtaining an allocation of Section 190 funds for the Project and the CTC subsequently cancels or disallows the allocation, JPB shall timely repay the City all funds received under the Section 190 program consistent with any repayment schedule developed by the Grade Separation Program Manager.

L. **Eligibility; Changed Circumstances.** JPB certifies that it is not suspended, debarred or otherwise excluded from participation in the Section 190 program. During the term of this MOU, JPB shall notify the City immediately upon any change of circumstances that may affect its eligibility to participate in the Section 190 program.

M. **Conflict of Interest.** Through its execution of this MOU, JPB acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Government Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this MOU.

- N. **Sunshine Ordinance.** JPB acknowledges and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 *et seq.*) apply to this MOU and any and all records, information, and materials submitted to the City in connection with this MOU. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. JPB hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this MOU.
- O. **Nondiscrimination.** In the performance of this MOU, JPB agrees not to discriminate against any employee, City and County employee working with JPB, applicant for employment with JPB, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes. **MacBride Principles--Northern Ireland.** Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. JPB acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.
- P. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.
- Q. **Compliance with ADA.** JPB acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. JPB shall not discriminate against any person protected under the ADA in connection with all or any portion of the MOU and shall comply at all times with the provisions of the ADA.
- R. **Limitations on Contributions.** Through execution of this Agreement, JPB acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the

individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved.

- S. **Prohibition on Political Activity with City Funds.** In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City for this MOU may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.
- T. **Preservative-treated Wood Containing Arsenic.** JPB agrees not to purchase preservative-treated wood products containing arsenic in the performance of the Project unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. JPB may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude JPB from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.
- U. **Protection of Private Information.** JPB agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12M.
- V. **No Waiver.** No waiver by the City of any default or breach of this MOU shall be implied from any failure by the City to take action on account of such default if such default persists or is repeated. No express waiver by the City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the City of any action requiring further consent or approval shall not

be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

- W. **Governing Law; Venue.** The formation, interpretation and performance of this MOU shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this MOU shall be in San Francisco.
- X. **Headings.** All article and section headings and captions contained in this MOU are for reference only and shall not be considered in construing this MOU.
- Y. **Entire Agreement.** This MOU sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.
- Z. **Severability.** Should the application of any provision of this MOU to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this MOU shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- AA. **Successors; No Third-Party Beneficiaries.** Subject to the terms of Paragraph III(J), above, the terms of this MOU shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this MOU, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this MOU or any covenants, conditions or provisions contained herein.
- BB. **Further Assurances.** From and after the date of this MOU, JPB agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this MOU and to carry out the purpose of this MOU in accordance with this MOU.
- CC. **Cooperative Drafting.** This MOU has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the MOU reviewed and revised by legal counsel. No party shall be considered the drafter of this MOU, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this MOU.

#### IV. INDEMNIFICATION AND GENERAL LIABILITY

- A. The JPB shall defend, indemnify, and hold harmless the City, its boards and commissions, and all of their officers, directors, representatives, members, agents, authorized representatives, employees, or any other persons deemed necessary by



any of them acting within the scope of the duties entrusted to them from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), arising out of, connected with or resulting from this MOU, the Project, or any activities performed in connection with this MOU. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of the City.

- B. **Incidental and Consequential Damages.** Losses covered under this Paragraph IV shall include any and all incidental and consequential damages resulting in whole or in part from the acts or omissions of JPB, its officers, directors, employees, agents, or contractors or any of them in connection with this MOU or the Project. Nothing in this MOU shall constitute a waiver or limitation of any rights that the City may have under applicable law with respect to such damages.
- C. **LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS MOU SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF SECTION 190 FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS MOU, THE APPLICATION OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS MOU, THE SECTION 190 FUNDS, THE PROJECT, OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS MOU.
- D. **Construction Contractor Indemnification.** JPB's contract with its construction contractor for the Project shall expand the contractor's indemnification obligation to JPB to include the City and County of San Francisco, its boards and commissions, and all of their officers, directors, representatives, members, agents and employees as additional indemnitees.

## V. INSURANCE

- A. JPB's construction contract for the Project shall require the construction contractor to maintain in force during the course of the Project insurance in the amounts and coverages reasonably acceptable to City and JPB for the construction work associated with the Project. The contractor's liability policies and any excess or umbrella policies shall contain additional insured endorsements naming the City and County of San Francisco, its boards and commissions, and all of their officers, directors, representatives, members, agents and employees, as additional insureds. This insurance coverage shall be evidenced by a certificate of

insurance, in a form reasonably satisfactory to City, which shall be delivered to City before commencement of construction work on the Project.

**VI. TERM; SURVIVAL OF TERMS**

- A. If the City is not successful in obtaining Section 190 funds for the Project, this MOU shall terminate upon the City's written notice to JPB. In the event of such early termination, the provisions of Sections III(C) and IV shall remain in full force and effect until all reimbursement obligations have been satisfied.
- B. If the City is successful in obtaining Section 190 funds for the Project, this MOU shall terminate when all obligations required to be performed by JPB and City have been fulfilled or December 31, 2012, whichever is later, except that Paragraphs III(C)(3), III(E), III(F), III(G), III (H), III(J), III(V), III (W), III(X), III(Y), III(Z), III(AA), III(BB), III(CC) and IV shall remain in effect until terminated or modified, in writing, by mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this MOU on the dates set forth below.

**City and County of San Francisco,  
acting by and through its Department of  
Public Works**

**Peninsula Corridor Joint Powers Board**

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

By: \_\_\_\_\_  
Michael J. Scanlon  
General Manager/CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:  
Dennis J. Herrera, City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Appendix A

### 1. Project Description and Location:

#### 1. Project Summary:

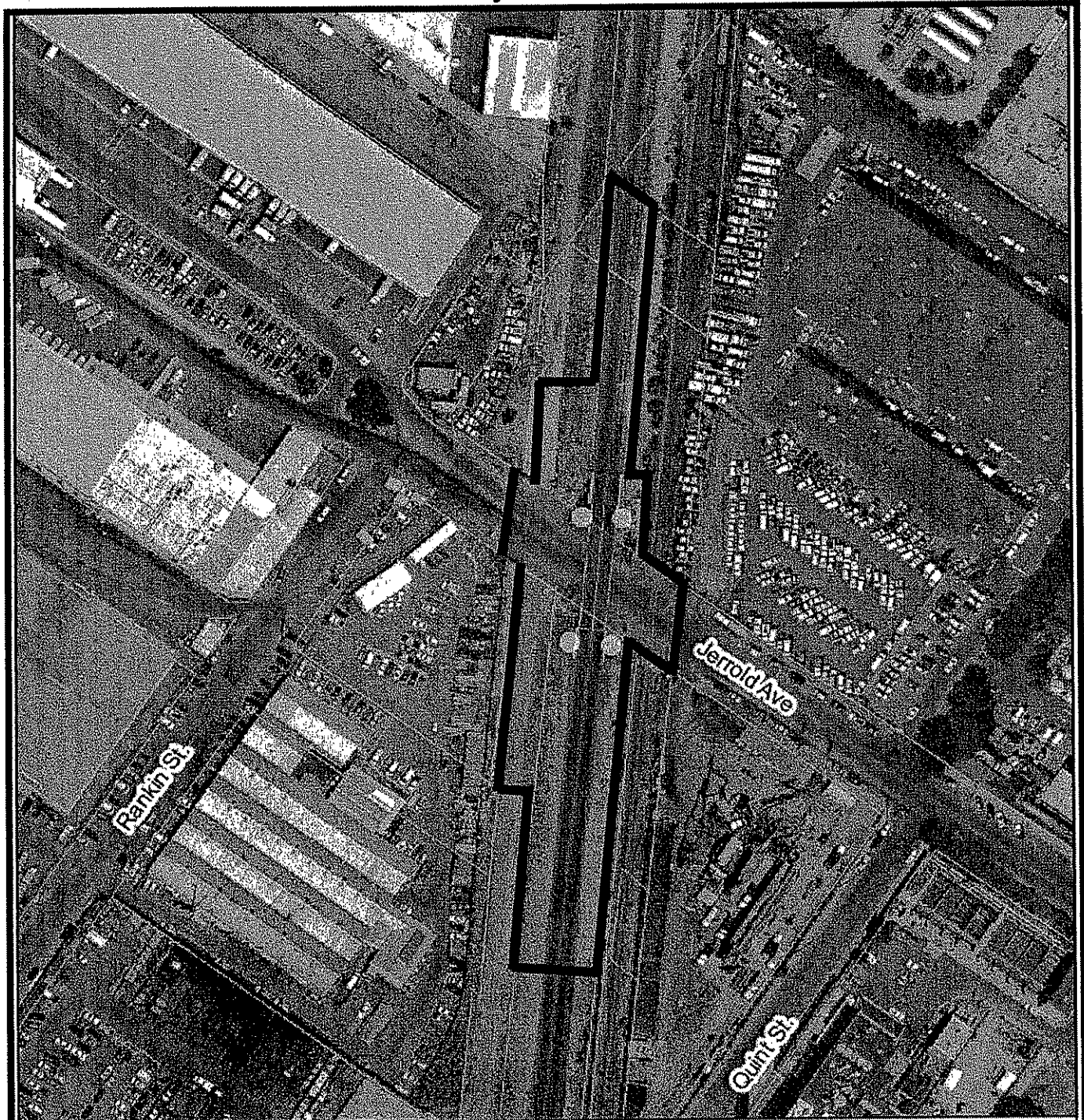
The PCJPB owns a railroad bridges in the City of San Francisco at Jerrold Avenue MP (2.85) that has been prioritized for replacement as determined through inspections. The bridge is reaching the end of its useful life, and has also been determined to be seismically vulnerable. This project will replace the bridge and perform associated track work to maintaining this infrastructure in a "State of Good Repair" and enable JPB to continue to provide reliable commuter rail service.

#### 2. Project Description:

The scope of the project includes:

- a. Removal and replacement of the three existing intermediate steel through-girder spans, and the south-end pre-cast concrete end-span, of the Jerrold Avenue bridge with a single span bridge and two (2) jump-spans to conform to the existing bridge layout.
- b. Reconstruction of tracks impacted by the new structures.
- c. Reconstruction of traveled way and sidewalks.

# Jerrold Avenue Bridge Grade Separation Reconstruction Project Limits



Peninsula Corridor Joint Powers Board  
Project 1917 - Jerrold Avenue Bridge Replacement  
Aerial View of Construction Work Area

