



## STAFF REPORT

**City Council**  
**Meeting Date:** 5/7/2024  
**Staff Report Number:** 24-074-CC

**Consent Calendar:** **Authorize the city manager to execute a memorandum of understanding with Caltrain to develop design and environmental clearance documents for the Middle Avenue Caltrain Crossing project**

### Recommendation

Staff requests that the City Council authorize the city manager to execute a memorandum of understanding (MOU) with Caltrain for \$2,000,000 to develop engineering design and environmental clearance documents for the Middle Avenue Caltrain Crossing Project (Attachment A).

### Policy Issues

The Middle Avenue Caltrain Crossing Project (Project) is consistent with policies stated in the 2016 general plan circulation element, the El Camino Real and Downtown specific plan and is included in the City's capital improvement program (CIP). These policies seek to maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe and active community and quality of life throughout Menlo Park.

### Background

The Middle Avenue Caltrain crossing project involves the design and construction of a new pedestrian and bicycle undercrossing of the Caltrain railroad in the vicinity of Middle Avenue. The project will provide a safer, more comfortable connection for residents, workers, and visitors connecting across the railroad tracks.

On July 20, 2016, the San Mateo County Transportation Authority programmed funds from the Measure A Grade Pedestrian and Bicycle Program in the amount of \$490,000 for the preliminary engineering and environmental clearance phases of the Project. The City hired AECOM Technical Services, Inc. (AECOM) to prepare 30% design documents, complete required environmental analysis, and conduct community engagement. Staff also coordinated with Caltrain on design criteria and the ongoing electrification of the corridor.

On Aug. 27, 2019, the City Council unanimously passed a motion to select a preferred alternative for the crossing. The project will construct an undercrossing approximately 10-12 feet below the street/plaza elevation that generally aligns with a proposed raised crosswalk on Alma Street and is slightly offset from the plaza at 500 El Camino Real (Stanford's Middle Plaza development).

On Jan. 28, 2020, the City Council certified the project environmental document, an addendum to the El Camino Real and Downtown specific plan environmental impact report (EIR), and approved the 30% project plans.

On Jan. 11, 2022, the City Council adopted Resolution No. 6690 authorizing the city manager to execute a purchase and sale agreement (PSA) with Menlo Station Development, LLC, for a portion of 700-800 El Camino Real (APN 071-333-200) to support implementation of the Middle Avenue pedestrian and bicycle rail crossing. The property being purchased by the City is the location of the ramp that connect the tunnel to Middle Plaza. The city manager executed the agreement May 5, 2022. The City has provided the required \$100,000 deposit into escrow and conducted due diligence activities specified in the PSA. As of publication of this staff report, the purchase of the property is scheduled to close May 6.

On May 23, 2023, the City Council approved a modification to the planned development permit for 700-800 El Camino Real to facilitate the purchase of a portion of that property for the ramps for the crossing, as recommended by the Planning Commission May 1, 2023.

On April 4, 2023, the City Council authorized the city manager to sign a service agreement with Caltrain to conduct project development activities, including reviewing the proposed design, developing one or more request for proposals (RFPs) for design, developing an MOU to conduct final design, and selecting a preferred contracting method. These tasks have been completed, and status updates are provided in the Analysis section below.

On Aug. 29, 2023, the City Council approved an update to the proposed crossing design based on comments received from Caltrain (Attachment B). The new concept shifts the tunnel to the south, lowers the tunnel by about 3 feet to facilitate construction without interrupting railroad operations, and extends the length of the tunnel to place the ramps out of the right-of-way. The City Council requested that Caltrain consider an 'uncovered' segment of the tunnel in the part of Caltrain's right-of-way not currently needed for active train service. The City will continue to coordinate with Caltrain on this issue during final design. A link to the City's webpage describing the Project and the latest concepts is provided in Attachment C.

## **Analysis**

With City Council's approval of the proposed crossing design, staff finalized the preliminary design and began coordination with Caltrain on the next steps, which included the selection of the contract delivery method, update of project cost estimates, and the development of an MOU for the engineering design and environmental clearance. In November 2023, staff from the City and Caltrain conducted a workshop and identified the construction manager/general contractor (CMGC) method as the preferred approach. In this method, a general contractor is hired early in the process to improve coordination between design and construction. Staff also focused on completing the purchase of a portion of 700-800 El Camino Real for the Project. The purchase of the property is scheduled to close May 6.

On utilities, staff have been coordinating with California Water Service and West Bay Sanitary Sewer District on the relocation of their utilities. The intent is work with these agencies to relocate their utilities by mid-2025 to reduce the time to complete the construction of the tunnel.

The project cost estimates have been updated a number of times. In September 2023, the construction costs for the project were estimated to range between \$23 and \$35 million. The soft costs (design, environmental clearance, project / construction management) were estimated at \$2.2 million, for a total project cost ranging between \$25.2 and \$37.2 million. In February 2024, the estimate on the construction cost was updated by Caltrain to \$34 million based on a review of recent construction bids from other projects. However, the largest variance in the construction cost is from the potential relocation of fiber lines adjacent to the tracks, which the team will explore the feasibility of options for leaving these lines in place to reduce costs. The soft costs were also updated to \$6.1 million. In March 2024, the construction cost remained at \$34 million, but the total project cost increased to \$62 million, inclusive of construction, soft

costs and contingencies.

In response to the significant increase in total project costs, staff and Caltrain engaged in a number of discussions to review the change in estimates. In an effort to obtain cost certainty on the total project costs and explore opportunities for value engineering, staff is recommending the execution of an MOU with Caltrain for the development of an advanced preliminary engineering design and environmental clearance documents. Upon execution of the MOU, the next steps would follow:

- Initiate the advanced preliminary design effort – Earlier this year, Caltrain updated their agreements for on-call design engineering services. Through a collaborative selection process from this list of on-call firms, the City and Caltrain would obtain the services of an on-call designer to advance the design, engage in value engineering exercises, address utility conflicts (particularity fiber and electrical lines), and provide costs estimates.
- Environmental clearance – Because the Project will receive federal funding, it requires National Environmental Protection Act (NEPA) clearance, in addition to the California Environmental Quality Act (CEQA) clearance approved by the City Council in 2020. Caltrain and the City would obtain NEPA clearance by spring 2025. Following NEPA clearance, the design would proceed to final.
- CMGC – Caltrain would issue the CMGC RFP and obtain proposals from contractors for the initial scope of work of design consultation. With the design and construction teams onboard, opportunities for value engineering, construction duration, and utility work would be evaluated to reduce costs. A box-jacking subcontractor would be brought on to advise on the most efficient design for the crossing.
- Independent cost estimator – Caltrain would issue a work directive for the engagement on a third party cost estimating team to review project schedules, provide cost estimates and assist in contract negotiations.

Following NEPA clearance, the Project costs would be re-assessed and, if approved by City Council, the MOU with Caltrain would be amended for the following phase of the effort – to finalize the design packet for any utility relocations and to progress the crossing design to 65%. Staff anticipates that a second MOU with Caltrain would be required for the actual utility relocation, and a third for the construction of the crossing. The remaining balance from the first MOU would be carried over to the future amendments. To address any funding shortfalls, staff will continue to explore and apply for additional grant funding opportunities.

Caltrain estimates completion of the advanced preliminary design and environmental clearance by spring 2025, with final design completion by summer 2026. Construction would begin in summer 2026 and be completed in summer 2028.

### **Impact on City Resources**

The City's cost estimate for the activities included in the MOU is \$2,000,000. The project has received over \$20 million in City and grant funding to support the design and construction of the undercrossing (Table 1), including federal funding from a member designated project nominated by Representative Eshoo in December 2022 (Federal omnibus budget bill) and a third cycle One Bay Area Grant (OBAG-3) in January 2023. There is currently sufficient funding in the Project budget to initiate the activities in the MOU and additional funding is anticipated to be appropriated through the fiscal year 2024-25 budget process.

Once the design team and contractor are onboard, and NEPA clearance is underway, the City would have more cost certainty on the anticipated costs for Project. Staff will provide updated costs to the City Council as the project works its way through final design and will explore additional grant funding opportunities. In addition, if after more cost certainty is obtained through this next phase of work, the Project cost is too high

to reasonably deliver as proposed, staff would return to the City Council to determine next steps. The MOU terms allow the City to terminate the agreement with 30 days’ notice to Caltrain.

Table 1 – Middle Caltrain crossing funding plan			
Funding	Source	Amount	Phase
Measure A/W Pedestrian/Bicycle Program	San Mateo County Transportation Authority	\$1,130,000	Design
Middle Plaza development agreement contribution	Private, Stanford University	\$5,000,000	Construction
Transportation impact fees	City of Menlo Park	\$5,658,334	Design and construction
Stanford recreational mitigation grant	Santa Clara County	\$1,000,000	Construction
One Bay Area Grant – Third Cycle (OBAG-3)	Metropolitan Transportation Commission	\$5,000,000	Construction
Federal omnibus budget bill	USDOT	\$4,000,000	Construction
<b>Total</b>		<b>\$21,788,334</b>	

**Environmental Review**

This action is not a project within the meaning of CEQA as it will not directly result in a change to the physical environment.

The overall construction of the Middle Avenue pedestrian and bicycle undercrossing project is within the scope of the El Camino Real and Downtown specific plan EIR, State Clearinghouse No. 2009122048 (Specific Plan EIR), certified by City Council June 5, 2012, consistent with CEQA Guidelines §15168. The City prepared an addendum to the Specific Plan EIR because changes and additions to the document were necessary, but none of the conditions described in §15162 of the CEQA Guidelines calling for the preparation of a subsequent EIR occurred. On Jan. 28, 2020, the City Council certified an addendum to the Specific Plan EIR, which analyzed potential impacts from the implementation of the Middle Avenue pedestrian and bicycle rail crossing project as provided for under §15164 of the CEQA Guidelines.

NEPA clearance would also be obtained for the project during the upcoming phase of work covered by the MOU (Attachment A).

**Public Notice**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

**Attachments**

- A. Memorandum of understanding
- B. Adopted preferred concept
- C. Hyperlink – Project latest concepts: [menlopark.gov/Government/Departments/Public-Works/Capital-improvement-projects/Middle-Avenue-Caltrain-crossing](https://menlopark.gov/Government/Departments/Public-Works/Capital-improvement-projects/Middle-Avenue-Caltrain-crossing)

Staff Report #: 24-074-CC

Report prepared by:  
Azalea Mitch, Public Works Director

Report reviewed by:  
Nicole Nagaya, Deputy City Manager

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF MENLO PARK AND THE  
PENINSULA CORRIDOR JOINT POWERS BOARD**

**FOR DESIGN SERVICES  
OF THE MIDDLE AVENUE CALTRAIN CROSSING PROJECT**

This Memorandum of Understanding (MOU) entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2024 (the Execution Date), by and between the CITY OF MENLO PARK, a municipal corporation, whose address is 701 Laurel St. Menlo Park, California, 94025 (hereinafter "CITY"), and the PENINSULA CORRIDOR JOINT POWERS BOARD, a joint exercise of powers agency formed pursuant to Government Code Section 6500, *et seq.*, whose address is 1250 San Carlos Avenue, San Carlos, California, 94070-2468 (hereinafter "JPB"), (CITY and JPB hereinafter collectively "Parties" or individually "Party").

**RECITALS**

A. WHEREAS, JPB is the owner and operator of Caltrain, a commuter service which provides transportation for communities on the Peninsula between San Francisco and Gilroy; and

B. WHEREAS, Middle Avenue is a roadway within the CITY that terminates just west of the Caltrain tracks, meaning there is no access across the Caltrain tracks at this location; and

C. WHEREAS, the CITY identified the Middle Avenue Caltrain crossing project (Project) as a high priority project in their 2019 work plan, approved on March 12, 2019 and reaffirmed the Project as a priority in the 2021 work plan, approved on April 20, 2021; and

D. WHEREAS, the CITY identified an overall priority to develop safe streets in the City, of which the Project is a key element, at a City Council goal setting session conducted on March 18, 2023; and

E. WHEREAS, the City Council approved a final concept design on August 27, 2019 and certified the environmental review for the design on January 28, 2020; and

F. WHEREAS, the City Council approved an updated final concept design to address design changes in response to Caltrain review and the electrification of the Caltrain railroad on August 29, 2023; and

G. WHEREAS, CITY has programmed and allocated a total of \$5.6 million in Fiscal Year 2023-24 for the Project; and

HG. WHEREAS, CITY and JPB have agreed to complete the Scope of Work for the Project, as described in Exhibit A, attached to this MOU and incorporated herein by this reference, and that JPB will serve as the lead agency to complete the Scope of Work; and

I. WHEREAS, CITY is formally notifying JPB of CITY's preference to implement the Project; and

J. WHEREAS, upon completion of the Scope of Work of the Project, the subsequent phases include final design and construction, which will be addressed through a separate agreement.

## **AGREEMENT**

NOW, THEREFORE, the Parties to this MOU agree as follows:

### **A. Project Description and Scope of Work.**

1. Project Description. Project means Middle Avenue Caltrain Crossing, where Middle Avenue is located in the City of Menlo Park, California.
2. Scope of Work. The Scope of Work is the Design Phase and environmental clearance, as described in Exhibit A (Scope of Work information), attached to this MOU and incorporated herein by this reference.
3. Limited to Scope of Work. This MOU is intended to cover only the Scope of Work.

### **B. Funding and Payment.**

1. Funding Commitment. CITY will provide \$2 million of CITY funds to JPB to complete the Scope of Work. The Parties understand and agree that JPB is the lead implementing agency and will complete the Scope of Work on CITY's behalf as requested by CITY, and CITY is solely responsible for, and has the full financial obligation of, the cost of the Scope of Work of the Project, and other expenses related thereto pursuant to the terms of this MOU.

2. Insufficient Funding. CITY has established a budget of \$2 million (Budget) for the Scope of Work for the Project. Should additional funding be required, JPB and CITY will work together to identify potential funding sources, but CITY is solely responsible for all costs and expenses of the Scope of Work incurred by JPB. JPB shall not do any work in excess of this Budget without authorization and approval of CITY.

JPB is not obligated to complete the tasks within the Scope of Work unless reimbursed by CITY.

3. Use of Funds. JPB will use CITY funds provided under this MOU only for purposes of completing the Scope of Work. Allowable uses of CITY funds include staff and consultant costs and other direct expenses (e.g., permits).

a. Costs incurred by JPB in connection with the Scope of Work for Indirect Administration and Capital Administration pursuant to the San Mateo County Transit District's Independent Cost Allocation Plan (ICAP), as approved by the Federal Transportation Administration, will be considered an allowable use of CITY funds.

4. Accounting Procedures. JPB will account for the funds provided by CITY to accomplish the Scope of Work. JPB will maintain all necessary books and records in accordance with generally accepted accounting principles.

5. Invoices; Payments. No more than once a month and no less than once every three (3) months, the JPB must prepare and submit invoices and billing statements with supporting documentation detailing the work done to complete the Scope of Work. Supporting documentation may include, but is not limited to, copies of associated vendor invoices, back-up documentation, checks, and payment advice.

Invoices and supporting documentation to CITY must be submitted by e-mail to:

[PWSupportStaff@menlopark.gov](mailto:PWSupportStaff@menlopark.gov)

or otherwise delivered to:

Azalea Mitch, Public Works Director  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025

CITY will endeavor to remit payment within thirty (30) days.

C. **Term.**

1. Term of MOU. This MOU is effective upon the Execution Date and will terminate upon the earliest of: (a) December 31, 2026 or (b) termination by CITY or JPB pursuant to Subsections C.3, or C.4.

2. Time of Performance. The Project Scope of Work must be completed on or before December 31, 2026.

3. Written Termination. A Party may at any time terminate this MOU by giving thirty (30) days written notice to the other Party. JPB shall submit a final invoice to CITY



for all costs incurred until the date of termination within thirty (30) days of termination date. CITY shall endeavor to remit payment within thirty (30) days of receipt and approval of the final invoice.

4. **Termination by the Parties.** If it is mutually agreed by the Parties that it would be in their mutual best interest to terminate or suspend work under this MOU, none of the Parties may seek, and none of the Parties will be entitled, to receive further reimbursement for any costs or expenses incurred in connection with the Scope of Work following the termination of this MOU, except for closeout costs required by the Parties to document and archive, as well as to close out any open work directives.

D. **JPB Responsibilities.**

1. Serve as the lead implementing agency responsible for delivering the Scope of Work, including, but not limited to:

a. Procuring and administering the consultant/contractor services to complete the Scope of Work; and

b. Managing performance of the Scope of Work, including providing technical oversight, and carrying out the Scope of Work on schedule and within budget.

2. Designate a project manager (JPB Project Manager) to function as a liaison throughout the duration of the MOU.

3. Provide CITY copies of draft professional services agreements, including consultant scope of work for the Project and allow CITY to provide input on final terms of the Agreement between JPB and JPB's selected consultant(s).

4. Lead coordination with any permitting agencies and obtain necessary permits and approvals required for performance of the Scope of Work.

5. Create a technical working group (Technical Working Group) consisting of representatives from major stakeholders, including, but not limited to, CITY and JPB, and establish and lead coordination meetings with the Technical Working Group.

6. Maintain ongoing coordination with CITY and keep CITY apprised of developments, such as award of contracts or potential changes that may affect the scope, schedule, or Budget of the Project or Scope of Work, including outreach efforts pertaining to Caltrain patrons, Caltrain operations, the Caltrain Modernization Program (CalMod Program), and California High-Speed Rail (CHSR) program. Establish meetings as needed to provide project updates to CITY and allow for CITY input so that CITY has necessary information to inform community, stakeholders, and elected officials.

7. Attend and assist in public outreach meetings, as required by CITY.
8. Attend and assist at Menlo Park Complete Streets Commission and City Council meetings to receive Council input and concurrence on design elements and any design changes to CITY's preferred alternative.
9. Provide CITY copies of Project deliverables, including, but not limited to, reports, designs, drawings, plans, specifications, schedules, cost estimates, and other materials. JPB will provide CITY a minimum of thirty (30) days to review and provide comments.
10. Prepare and provide to CITY status reports, including anticipated and expended costs and Scope of Work delivery milestones and schedule forecasts as required for CITY to complete and submit Progress reports and a Final Report.
11. Prepare and submit invoices and supporting documentation to CITY.
12. Submit to CITY, upon completion of the Scope of Work, hard and electronic copies of the Final Design Phase of the Project product and deliverables.

E. **CITY Responsibilities.**

1. Serve as the sponsoring agency responsible for providing funding for delivery and management of Scope of Work.
2. Designate a project manager (CITY Project Manager) who shall be CITY's representative and chief liaison for coordination with JPB throughout the duration of the MOU.
3. Review and provide input within thirty (30) days on any professional services agreements, change orders, and any other agreements that JPB has entered into for the performance of Scope of Work during the term of this Agreement; however, JPB retains ultimate authority over contracting and related decisions.
4. Issue JPB a no-fee encroachment permit for portions of the Project within CITY right-of-way as required for completion of the Scope of Work.
5. Participate in Technical Working Group coordination meetings with JPB and other stakeholders.
6. Provide input and oversight based on local policies and desires regarding the outcome of the deliverables of the Scope of Work.
7. Lead outreach efforts pertaining to the Project to local stakeholders, community members, Complete Streets Commission, and City Council, including coordination of

public meetings, solicitation of public comment, and obtaining concurrence on design and/or design changes, if any.

8. Review and provide comments within thirty (30) days of receipt on the work products and deliverables produced by JPB and/or JPB's contractors/consultants for performance of the Scope of Work, including reports, designs, drawings, plans, specifications, schedules, and other materials; however, JPB retains authority to accept or reject contractor/consultant work.

9. Review progress reports prepared and provided by JPB.

10. Review invoices and supporting documents submitted by JPB and endeavor to remit payment within thirty (30) days of receipt and approval.

11. Coordinate closely with JPB to address the Parties' interests in railroad operations as it relates to the Project, especially regarding the electrification and blended system rail efforts.

12. Accept, in writing, the final deliverables or work products produced by the JPB and/or JPB's contractors/consultants for the Scope of Work.

F. **Insurance.**

1. **Acceptability of Insurers.** Each Party shall maintain insurance or provide a certificate of self-insurance prior to commencement of work. The letter of self-insurance shall state that JPB, CITY, and each of its officers, officials, employees, and volunteers are to be covered as additional insureds.

2. **Consultant Insurance.** JPB will require its consultant and/or contractor to add CITY and CITY's officers, officials, employees, and volunteers as additional insureds from and against all damages and claims, loss, liability, cost, or expense arising out of or in any way connected with the Project to the insurance coverages required in JPB's contract with JPB's consultant and/or contractor.

3. **Other Insurance Provisions:**

a. For any claims related to the Scope of Work, JPB's insurance coverage shall apply when the JPB is obligated to indemnify the City pursuant to Section G of this Agreement. For any claims related to the Scope of Work, the City's insurance shall apply when the City is obligated to indemnify the JPB pursuant to Section G of this Agreement.

b. JPB shall provide thirty (30) days' notice to CITY in the event of cancellation or modification to the stipulated insurance coverage.

c. In the event JPB or JPB's contractor employs subcontractors as part of the work for the Project covered by this MOU, it shall be the responsibility of JPB to ensure that all subcontractors comply with the same insurance requirements as stated in this MOU.

**G. Indemnification.**

1. Each Party shall indemnify, keep, and save harmless the other Party against any and all suits, claims, or actions arising out of any act or omission by the indemnifying Party, its agents, employees, contractors, or subcontractors in connection with the Scope of Work, including the following:

a. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from that Party's performance of the Scope of Work or implementation of this MOU; or

b. Any allegation that materials or services developed, provided, or used by that Party for the Scope of Work infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third Party.

2. In all agreements entered into by JPB for the completion of the Scope of Work for the Project, JPB shall require JPB's consultant and subconsultants for the Project to name CITY and CITY's officers, employees, and agents as additional insureds and indemnitees to the extent permitted by law.

3. In case of any and all suits, claims, or actions arising out of any act or omission by the indemnifying Party, its agents, employees, contractors, or subcontractors, each indemnifying Party further agrees to defend any and all such actions, suits, or claims and pay all charges of attorneys and all other costs and expenses of defenses of the other Party as they are incurred. If any judgment is rendered, or settlement reached, against a Party in any such action, the indemnifying Party will, at its expense, satisfy and discharge the same.

4. This indemnification shall survive termination or expiration of the MOU.

**H. Miscellaneous.**

1. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to JPB or CITY under this MOU, are the joint property of JPB and CITY. Each Party is entitled to copies and access to these materials during the progress of the Scope of Work and upon completion of the Scope of Work or termination of this MOU. All Parties may retain a copy of all material produced under this MOU for use in their general activities.

2. No Waiver. No waiver of any default or breach of any covenant of this MOU by any Party to this MOU can be implied from any omission by any other Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to an action or actions do not imply consent to any future action(s).

3. Assignment. No Party can assign, transfer, or otherwise substitute its interests or obligations under this MOU without the written consent of all the other Parties.

4. Governing Law. This MOU is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

5. Modifications. This MOU may only be modified in writing executed by all Parties.

6. Disputes. If a question arises regarding interpretation of this MOU or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation must give written notice thereof to the other Party. The Parties will promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

7. Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this MOU, the prevailing Party in said proceedings is entitled to its costs, including reasonable attorneys' fees, in addition to such other remedies to which it may be entitled. Reasonable attorneys' fees include fees determined using reasonable market rates for attorneys, even if the attorneys involved are a Party's salaried staff attorneys.

8. Relationship of the Parties. It is understood that this is an MOU by and between independent contractors and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractors.

9. Accessibility of Services to Persons with Disabilities. The implementation of the Scope of Work must comply with, and not subject the Parties to liability under, the Americans with Disabilities Act, the California Disabled Persons Act, or any other State or Federal laws protecting the rights of persons with disabilities.

10. Warranty of Authority to Execute MOU. Each Party to this MOU represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this MOU on behalf of the entity that is a Party to this MOU.

11. Severability. If any portion of this MOU, or the application thereof, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all remaining portions of this MOU, or the application thereof, will remain in full force and effect.

12. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

13. Entire MOU. This MOU constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

14. Nondiscrimination. The Parties and any contractors performing services on behalf of the Parties will not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability, or veteran's status, or in any manner prohibited by Federal, State, or local laws.

15. Compliance with Laws. In performance of this MOU, the Parties must comply with all applicable Federal, State, and local laws, regulations, and ordinances.

16. Notices. All notices affecting any of the clauses of this MOU must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that any Party may designate in written notice to the others. Notices are received upon delivery if personally served, one (1) day after mailing if delivered via overnight courier, or two (2) days after mailing if mailed as provided above. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To JPB: Michelle Bouchard, Executive Director  
Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue—P.O. Box 3006  
San Carlos, CA 94070-1306

To CITY: Azalea Mitch, Public Works Director  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time

by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

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IN WITNESS WHEREOF, this Memorandum of Understanding dated \_\_\_\_\_, 2024 for identification, is executed by the Parties.

“CITY”:  
CITY OF MENLO PARK,  
a California municipal corporation

“JPB”:  
PENINSULA CORRIDOR JOINT POWERS  
BOARD,  
a joint exercise of powers agency

By: \_\_\_\_\_  
Justin I. C. Murphy, City Manager

By: \_\_\_\_\_  
Name: Michelle Bouchard  
Executive Director

By: \_\_\_\_\_  
Judi A. Herren, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: James C. Harrison  
PCJPB Legal Counsel

By: \_\_\_\_\_  
Nira F. Doherty, City Attorney



## EXHIBIT A

### SCOPE OF WORK INFORMATION

#### *Advanced Preliminary Design Phase of the Middle Avenue Caltrain Crossing Project*

To CITY (Sponsoring Agency): City of Menlo Park  
Azalea Mitch, Public Works Director  
701 Laurel Street  
Menlo Park, CA 94025

Contact: Azalea Mitch, Public Works Director  
650-330-6741  
[aamitch@menlopark.gov](mailto:aamitch@menlopark.gov)

To JPB  
(Lead Implementing Agency): Peninsula Corridor Joint Powers Board  
Arul Edwin, Sen. Project Manager, Capital Program Delivery  
1250 San Carlos Avenue, 4th Floor  
San Carlos, CA 94070

Contact: Arul Edwin, Senior Project Manager  
650-339-8845  
[edwina@caltrain.com](mailto:edwina@caltrain.com)

### **OVERALL PROJECT DESCRIPTION**

This Project will construct a pedestrian and bicycle undercrossing of the Caltrain railroad near Middle Avenue, connecting Alma Street near Burgess Park to El Camino Real at the open space plaza. The crossing will improve connectivity and safety for neighborhoods on both sides of the Caltrain tracks to city amenities, schools, shopping areas, public transit and downtown Menlo Park.

The project shall be designed and built without interruption to the Caltrain service. The Caltrain corridor is expected to be an electrified corridor. Therefore, any interruption to service would create significant impact to the railroad operation.

In general, the project will:

- Build a pedestrian and bicycle undercrossing of the Caltrain railroad near Middle Avenue, connecting Alma Street near Burgess Park to El Camino Real at the open space plaza;
- Relocate Utilities;

- Build Retaining walls;
- Implement Landscaping, including mitigation of tree removals, and irrigation, to enhance pedestrian experience; and
- Support public outreach by providing exhibits including at least four renderings, attend community meetings and City Council/committee/commission meetings.

## **SCOPE OF WORK**

The Scope of Work involves advanced preliminary design phase activities including pre-construction task by the Construction Manager General Contractor (CMGC), environmental clearance needed prior to performing construction of the overall Project, value engineering, utility relocation planning, and cost estimating.

Public outreach will be a critical component to the Project. Below are specific roles that the City and JPB shall assume for the public outreach effort:

### **City roles related to public outreach:**

- Direct the overall public outreach effort and be the public face of the Project to provide project updates;
- Conduct any needed outreach to affected property owners once adequate engineering design and environmental assessment have been performed;
- Secure venues for public meetings;
- Promote public meetings through notifications, mailings (including printing of promotional materials), website updates, social media and other forms of notification;
- Prior to the construction phase, inform the public about schedule and potential traffic detours through notifications, website updates, and other forms of notification; and
- Establish and maintain a project website.

### **JPB roles related to public outreach:**

- Provide project materials to the City for public updates;
- Provide project updates and support materials for public meetings conducted by the City (including City Council meetings and workshops), including PowerPoint presentations;
- Support the City in providing technical updates of the Project at public meetings and to City representatives for this Project; and

- Develop content for the Project website to provide the public with schedules and updates prior to and during construction activities.

**Scope of Work Schedule**

Begin                      End

- Design and Environmental Clearance                      mid- 2024                      late-2025

### Middle Avenue Caltrain crossing revised design

The City has revised the design to address Caltrain comments, including:

- Tunnel 3 feet deeper to allow construction without disrupting train service
- Ramps relocated out of Caltrain's right of way resulting in a 28 foot longer tunnel
- Ramps, stairs, and crosswalks reconfigured to align with new ramp locations
- Additional utility relocations required (sewer and water) due to new ramp location

