

**MEMORANDUM OF UNDERSTANDING
AMONG
THE TRANSPORTATION AGENCY OF MONTEREY COUNTY AND
THE CITY OF GILROY AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
REGARDING IMPROVEMENTS NEAR THE GILROY TRAIN STATION
TO SUPPORT THE EXTENSION OF PASSENGER RAIL SERVICE
FROM GILROY TO SALINAS**

Effective Date: _____

This Memorandum of Understanding (hereinafter “MOU”) is made and entered into among the Transportation Agency for Monterey County (hereinafter “TAMC”), and the City of Gilroy (hereinafter “the City”), and the Santa Clara Valley Transportation Authority (hereinafter “VTA”), each a “Party” and collectively hereinafter referred to as the “Parties”, regarding the Monterey County Rail Extension improvements near the Gilroy train station (hereinafter the “Project”).

WHEREAS, the Parties have a cooperative working relationship for planning, development, and implementation of improvements near the Gilroy train station as part of the Monterey County Rail Extension Project, Package 3; and

WHEREAS, through previous transportation planning studies, TAMC and the State of California determined that they needed to invest in a system of premium transit services that could better compete with traveling by automobile and attract new riders from the automobile modes of travel in order to provide additional transportation capacity in the US 101 Corridor, thereby reducing congestion, improving air quality, and saving energy in the Monterey Bay Area and San Francisco Bay Area; and

WHEREAS, the Governor and the Legislature expressed their support and endorsement of this Project by providing funding for the Monterey County Rail Extension project from the Traffic Congestion Relief Act of 2000, the Proposition 116 Rail Bond, the Public Transportation Account, and the Transit and Intercity Rail Capital Program; and

WHEREAS, to provide safe, efficient and effective transportation alternatives to the automobile, TAMC adopted a resolution endorsing the Extension of Rail Service into Monterey County as the Locally Preferred Alternative for the US 101 corridor on January 31, 2007; and

WHEREAS, the City recognizes the benefit and importance to the City of implementing new passenger rail service, as expressed by support letters sent in June 2007 to the Federal Transit Administration and in June 2013 to the California Transportation Commission; and

WHEREAS, VTA endorsed the Monterey County Rail Extension project via a transfer of \$18 million in Traffic Congestion Relief funding to the project in 2015 for improvements pertaining to the Gilroy Caltrain station; and

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WHEREAS, TAMC, as the Lead Agency under the California Environmental Quality Act (CEQA), certified the final Environmental Impact Report (EIR) on August 23, 2006, and adopted an Addendum to the EIR on August 28, 2013, which EIR and Addendum to the EIR contemplate the actions described herein; and

WHEREAS, the California Transportation Commission, as a responsible agency, approved TAMC’s Final EIR on September 7, 2006; and

WHEREAS, AMBAG adopted the Monterey County Rail Extension project as an element of the regional Metropolitan Transportation Plan/ Sustainable Communities Strategy in June 2018; and

WHEREAS, it is recognized that, with respect to some of the provisions set forth herein, numerous actions must be taken pursuant to federal, state and local laws and regulations before such policies can be implemented; and

WHEREAS, the purpose of this MOU is to provide a framework for the Parties’ cooperation, and the respective duties of the Parties will be set forth in subsequent permits and agreements; and

NOW THEREFORE, the Parties hereby agree as follows:

PROJECT FEATURES AND LIMITS

1. To collaborate on the continued development of the Project located in the City of Gilroy along the Union Pacific Railroad (UPRR) Coast Main Line Track, at Milepost (MP) 77.4, generally bordered by US 101 to the south, East 7th Street to the north, Monterey Road to the west, and either Alexander Street (on East 10th Street) or Automall Parkway (on Luchessa Avenue) to the east. Affected local access roadways include Monterey Road, 10th Street, and Luchessa Avenue (See **Exhibit A**, site map).
2. That the Project is intended to facilitate transportation uses, including, but not limited to, an extension of passenger rail service from Gilroy southward toward Salinas.
3. That the full buildout of the Project, as described in the EIR and EIR Addendum, includes, but is not limited to, the following capital improvement projects:
 - a. Extension of track from the Gilroy station and layover facility to connect to the UPRR Coast Main Line Track;
 - b. Construction, relocation, and/or removal of tracks, turnouts, and railroad signaling within the Gilroy layover facility;
 - c. Modification of the rail crossings on East 10th Street and East Luchessa Avenue;
 - d. Improvements to the sidewalk on East 10th Street; and
 - e. Site drainage and stormwater treatment facilities per the City of Gilroy National Pollutant Discharge Elimination System (NPDES) Permit requirements.

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4. To the scope, character and layout of the Project, as defined by the conceptual plan dated October 12, 2021 (**Exhibit B**).
5. That, within the footprint of the approved EIR, the precise limits, locations and/or alignments of Project features may be adjusted to accommodate design refinements, specifically:
 - a. Right-of-way limits;
 - b. Utilities and subsurface constraints, if any;
 - c. Americans with Disabilities Act (ADA) requirements; and
 - d. Environmental impact mitigation, as may be required.

DESIGN STANDARDS AND COORDINATION

The Parties further agree:

6. To cooperate in good faith to develop the Project.
7. TAMC will be primarily responsible for project development, which includes the funding, planning, any further state and any applicable federal environmental review, design, right-of-way acquisition, and construction of the rail and other related elements of the Project (e.g., items identified in Paragraph 3, a-e). TAMC will collect input from the Peninsula Corridor Joint Powers Board (Caltrain), UPRR, Amtrak, California Public Utilities Commission (CPUC), the California High-Speed Rail Authority, and neighboring businesses, residents, property owners, and the general public and will reflect this input, consistent with the design framework described herein.
8. The City will be primarily responsible for maintenance of any project improvements constructed by TAMC for the East 10th Street and East Luchessa Avenue grade crossings within the City property or right-of-way, including, but not limited to, sidewalks, roadway pavement, and stormwater treatment. The City is responsible for issuing encroachment permits and for specifying any City design standards that apply to the Project. The encroachment permits shall address TAMC's construction contractor's indemnification obligations toward the City with respect to construction of improvements in the City's right of way. Following the City's acceptance of the improvements, TAMC and the City shall enter a separate property acceptance agreement that shall include substantially the terms set forth in **Exhibit C** to this Agreement.
9. VTA will be the lead agency for coordinating for the maintenance of any project improvements constructed on VTA property, including, but not limited to, the Caltrain equipment shed, track improvements, and stormwater treatment.

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10. The design of the Project shall be consistent with the following documents, as appropriate:

- a. Peninsula Corridor Joint Powers Board (Caltrain) Draft Design Criteria – Third Edition, August 2020
- b. Union Pacific Railroad (UP) Track Standard Drawings – 2019
- c. City of Gilroy Standard Details and Specifications
- d. City of Gilroy’s Stormwater Management Guidance Manual for Low Impact Development & Post-Construction Requirements - June 2015

11. That the Project must include all mitigations identified or to be identified through CEQA and any applicable National Environmental Policy Act (NEPA) environmental documents, per the adopted Mitigation Monitoring and Reporting Program.

12. That the City or VTA, as appropriate, shall authorize TAMC to act as the City’s or VTA’s agent to effect necessary utility relocations in accordance with the City’s or VTA’s utility franchise agreements with utility owners.

13. That they will coordinate on related projects, including, but not limited to, the California High-Speed Rail project, Caltrain’s service changes, and proposed changes to the VTA-owned yard and parking lot. For greater clarity, the Parties’ commitment to cooperate is a commitment to cooperate in good faith and not a commitment to pursue any particular course of action with respect to such projects.

14. That TAMC is responsible for paying access permit fees but will not be assessed development impact fees as a condition of permit approvals for the Project.

15. That Project implementation is contingent on funding availability.

GENERAL PROVISIONS

A. Terms of this MOU

Should any provision of this MOU prove to be invalid or illegal, the court is authorized and instructed to modify the same to effectuate the original intent of the parties to the extent possible. It is agreed and understood that the paramount purpose for which the Parties have entered into this MOU is to express their mutual intent to cooperate in good faith to realize the Project.

B. Effective Date

This MOU is effective on _____ and will remain in force until December 31, 2025, unless extended or sooner terminated by mutual consent of the Parties. The period of performance may be extended or shortened by written agreement of the Parties.

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Any Party hereto may terminate this MOU at any time by giving 180 days written notice to the other Party.

C. Authority

Any individual executing this MOU on behalf of a Party represents and warrants hereby that he or she has the requisite authority to enter into this MOU on behalf of such Party and bind the party to the terms and conditions of this MOU.

D. Further Actions

Each of the Parties agrees to execute and deliver to the other Party such information and documents, as may reasonably be required to give effect to the terms and conditions of this MOU.

E. Modifications or Amendment

This MOU is not subject to modification or amendment except by a writing signed by all the Parties hereto. This MOU may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same MOU.

F. Interpretations

No Party to this MOU is to be deemed the party which prepared this MOU within the meaning of California Civil Code Section 1654

G. Disputes

In the event of a dispute arising out of the performance of this MOU, each Party must send a written notice of dispute to the other Party. Within fifteen (15) working days of receipt of such notice, the notified Party must respond and agree to a meeting for the purpose of negotiating a settlement or procedure for settlement of the dispute. This is an agreement to cooperate in good faith, and the sole remedy for a breach of any provision of this Agreement (other than a provision for indemnification or defense) is the termination hereof.

H. Indemnification

In lieu of and notwithstanding the pro rata risk allocation that may otherwise be imposed among the parties pursuant to Government Code Section 895.6, each party shall hold harmless, indemnify, and defend the other parties (including their respective elected and appointed officials, agents, and employees), from all claims, liabilities, fines or other penalties, costs, or attorneys' fees arising from the indemnifying party's omissions, negligence, or willful misconduct in the performance of this Agreement. TAMC shall also hold harmless, indemnify, and defend the City and VTA (including their respective elected and appointed officials, agents,

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and employees) in any action or proceeding challenging the Project or any approval for it. For greater clarity, TAMC and its construction contractor(s) are responsible for the construction of the project, and after accepting improvements constructed as part of the Project, the City and VTA are responsible for the ongoing maintenance of such improvements. Therefore, these provisions for indemnification are not intended to make either the City or VTA liable or responsible for any aspect of construction, excepting for their own sole and active negligence or willful misconduct, and nothing herein is intended to make TAMC liable or responsible for any maintenance obligation assumed by the City or VTA, excepting for its own negligence or willful misconduct. This section shall survive the termination of the agreement.

I. Records

Each Party to this MOU must maintain books, accounts, records and data related to this MOU in accordance with federal and/or state requirements and shall maintain those books, accounts, records and data for three (3) years after termination of this MOU. For the duration of this MOU, and for a period of three (3) years thereafter, each Party's representatives and representatives of the California Department of Transportation, the Auditor General of the State of California shall have the right to examine these books, accounts, records, data and other information relevant to this MOU for the purpose of auditing and verifying statements, invoices, bills and revenues pursuant to this MOU.

J. Notices and Correspondence

Any notice required to be given to any Party must be in writing and deemed given if personally delivered upon the other party or deposited in the United States mail, and sent certified mail, return receipt requested, postage prepaid and addressed to the other party at the address set forth below, or sent via email transmission to the party to which notice is given:

If to TAMC: Todd A. Muck
 Executive Director
 Transportation Agency for Monterey County
 55-B Plaza Circle
 Salinas, CA 93901-2902
 Telephone: (831) 775-0903
 Email: todd@tamcmonterey.org

If to the City: Jimmy Forbis
 City Administrator
 City of Gilroy
 7351 Rosanna Street
 Gilroy, CA 95020

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Telephone: (408) 846-0250
Email: jimmy.forbis@cityofgilroy.org

If to VTA: Carolyn Gonot
General Manager
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA, 95134
Telephone: (408)321-5559
Email: Carolyn.Gonot@vta.org

K. Applicable Law

California law governs this MOU.

Attachments:

- Exhibit A: Site Map
- Exhibit B: Monterey County Rail Extension Package 3 Conceptual Plan, dated October 12, 2021
- Exhibit C: Draft Terms of Property Acceptance Agreement to be Entered by Subsequent Agreement between the City and TAMC

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IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the Effective Date and as set forth herein:

DocuSigned by:
Todd Muck
88CC801196D74DB...
Todd A. Muck, Executive Director
Transportation Agency for Monterey County

Dated 6/28/2022

DocuSigned by:
Susan Blitch
21DF1FBF04694CB...
As to Form: Katherine A. Hansen
TAMC Counsel

6/28/2022

DocuSigned by:
Jimmy Forbis
CC6458EE9B054DC...
Jimmy Forbis, City Administrator
City of Gilroy

Dated 6/8/2022

DocuSigned by:
Andy Faber
4B98480E252C420...
As to Form: Andy Faber
Gilroy City Counsel

6/8/2022

DocuSigned by:
Carolyn M Gonot
D2267F28DC0541E...
Carolyn Gonot, General Manager
Santa Clara Valley Transportation Authority

Dated 5/27/2022

Shannon Smyth-Mendoza
As to Form: Shannon Smyth-Mendoza (Mar 30, 2022 15:49 PDT)
Shannon Smyth-Mendoza
Sr. Assistant Counsel for VTA

GILROY STATION TRACK PROJECT

Salinas Rail Extension



DESCRIPTION

- New track work to connect the Gilroy yard/station track to the Union Pacific mainline track
- Improved vehicle/pedestrian grade crossing improvements at Luchessa Avenue and 10th Street

SERVICE PLAN

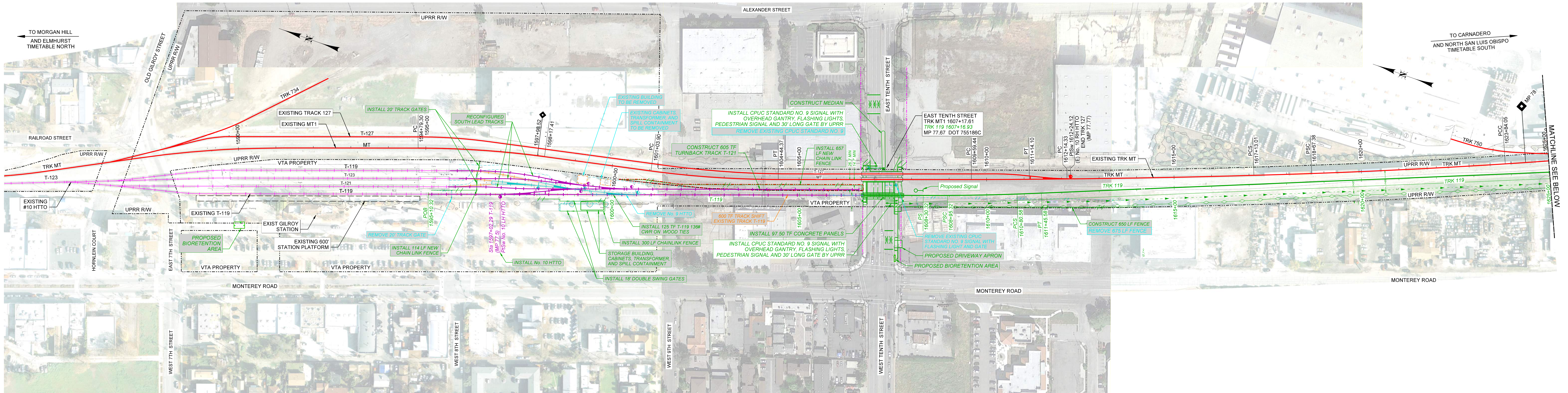
- Extends passenger rail service from Gilroy in Santa Clara County to Salinas in Monterey County
- At least two commute-oriented round trips every weekday at the start of service, with the opportunity to expand

DELIVERY STATUS

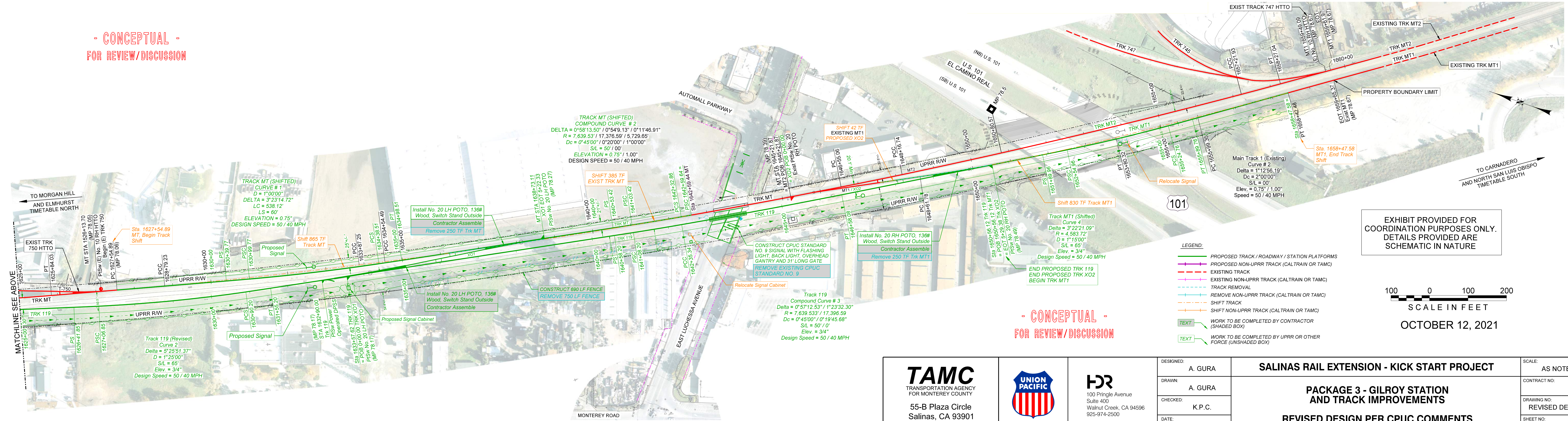
- California Environmental Quality Act document is completed
- Design is at 75%
- Scope of construction and schedule needs to be approved by Union Pacific Railroad
- Construction could start as early as 2021

COST ESTIMATE

- \$16 million



- CONCEPTUAL -
FOR REVIEW/DISCUSSION



- CONCEPTUAL -
FOR REVIEW/DISCUSSION

EXHIBIT PROVIDED FOR COORDINATION PURPOSES ONLY. DETAILS PROVIDED ARE SCHEMATIC IN NATURE



OCTOBER 12, 2021

| | | | | | |
|--|------------------|---|-------------------|--|---|
| <p>TAMC TRANSPORTATION AGENCY FOR MONTEREY COUNTY 55-B Plaza Circle Salinas, CA 93901</p> | | <p>100 Pringle Avenue Suite 400 Walnut Creek, CA 94596 925-974-2500</p> | DESIGNED: A. GURA | SALINAS RAIL EXTENSION - KICK START PROJECT | SCALE: AS NOTED |
| | | | DRAWN: A. GURA | | PACKAGE 3 - GILROY STATION AND TRACK IMPROVEMENTS REVISED DESIGN PER CPUC COMMENTS |
| CHECKED: K.P.C. | DATE: 10/12/2021 | DRAWING NO.: REVISED DESIGN | SHEET NO.: 1 OF 1 | | |

EXHIBIT C
DRAFT TERMS OF PROPERTY ACCEPTANCE AGREEMENT
TO BE ENTERED BY SUBSEQUENT AGREEMENT BETWEEN THE CITY AND TAMC

1. Pursuant to that certain Memorandum of Understanding among the City of Gilroy (“City”), the Transportation Agency for Monterey County (“TAMC”), and the Santa Clara Valley Transportation Authority (“VTA”) dated _____, relating to the Monterey County Rail Extension Project, Package 3, TAMC has constructed certain improvements for the East 10th Street and East Luchessa Avenue grade crossings within the City property or right-of-way, including, but not limited to, sidewalks, roadway pavement, and stormwater treatment (the “Improvements”). The Improvements are depicted in plans attached hereto as **Attachment 1**.
2. The City hereby accepts the Improvements, and TAMC’s construction contractor warrants that the Improvements shall be free from material defect, wear and tear excepted, for a period of one year from the date of this agreement. Should the City identify any material defect in the improvements within one year of this agreement, it shall notify TAMC’s construction contractor of the same, and TAMC’s construction contractor shall correct the defect at its own cost and expense.
3. From the date of this agreement, TAMC is no longer responsible for ordinary maintenance of the Improvements. The City shall hold harmless, indemnify, and defend TAMC and its elected and appointed officials, agents, and employees from any and all claims of damage or other liability arising from any failure to maintain the Improvements, including, without limitation, any claim arising for damages due to damage to any public or private property or because of the death or bodily injury of any person
4. From the date of this agreement, City shall maintain the stormwater treatment Improvements to standard and consistent with the City’s municipal stormwater improvement.
5. For one year from the date of this agreement, TAMC shall hold harmless, indemnify, and defend the City and its elected and appointed officials, agents, and employees from any and all claims of damage or other liability arising from any defect in the construction of the Improvements, including, without limitation, any claim arising for damages due to damage to any public or private property or because of the death or bodily injury of any person.
6. The indemnification and defense obligations set forth herein are intended in lieu of, and notwithstanding, the pro rata risk allocation that may otherwise be imposed between the Parties pursuant to Government Code Section 895.6, or any other statute, regulation or rule that may otherwise affect the terms of this agreement.
7. [Insert any other terms negotiated between the parties here.]