cog
Council of Governments

cta
County Transportation Authority

AGENDA

Board of Directors Meeting

July 3, 2024
10:00 a.m.

LOCATION
San Bernardino County Transportation Authority
First Floor Lobby Board Room
1170 W. 3rd Street, San Bernardino, CA 92410

TELECONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

Big Bear Lake Civic Center
Training Room
39707 Big Bear Boulevard
Big Bear Lake, CA 92315

Board of Directors

President
Ray Marquez, Council Member
City of Chino Hills

Vice-President
Rick Denison, Council Member
Town of Yucca Valley

Daniel Ramos, Mayor Pro Tem
City of Adelanto

Art Bishop, Mayor Pro Tem
Town of Apple Valley

Carmen Hernandez, Council Member
City of Barstow

Rick Herrick, Council Member
City of Big Bear Lake

Eunice Ulloa, Mayor
City of Chino

Frank Navarro, Mayor
City of Colton

Acquanetta Warren, Mayor
City of Fontana

Bill Hussey, Mayor
City of Grand Terrace

Rebekah Swanson, Mayor Pro Tem
City of Hesperia

Larry McCallon, Mayor Pro Tem
City of Highland

Ronald Dailey, Mayor Pro Tem
City of Loma Linda

John Dutrey, Mayor
City of Montclair

Janet Jernigan, Mayor
City of Needles

Alan Wapner, Council Member
City of Ontario

L. Dennis Michael, Mayor
City of Rancho Cucamonga

Paul Barich, Mayor Pro Tem
City of Redlands

Deborah Robertson, Mayor
City of Rialto

Helen Tran, Mayor
City of San Bernardino

Joel Klink, Mayor Pro Tem
City of Twentynine Palms

Rudy Zuniga, Council Member
City of Upland

Debra Jones, Council Member
City of Victorville

Bobby Duncan, Council Member
City of Yucaipa

Paul Cook, Supervisor
County of San Bernardino

Jesse Armendarez, Supervisor
County of San Bernardino

Dawn Rowe, Supervisor
County of San Bernardino

Curt Hagman, Supervisor
County of San Bernardino

Joe Baca, Jr., Supervisor
County of San Bernardino

Catalino Pining, Caltrans
Ex-Officio Member

Ray Wolfe, *Executive Director*

Julianna Tillquist, *General Counsel*

San Bernardino County Transportation Authority
San Bernardino Council of Governments

AGENDA

Board of Directors

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Items listed on the agenda are intended to give notice to members of the public of a general description of matters to be discussed or acted upon. The posting of the recommended actions does not indicate what action will be taken. The Board may take any action that it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional ***"Meeting Procedures"*** and agenda explanations are attached to the end of this agenda.

CALL TO ORDER

(Meeting Chaired by Ray Marquez)

i. Pledge of Allegiance
ii. Attendance
iii. Announcements
Calendar of Events Pg. 19
iv. Agenda Notices/Modifications

Public Comment

Opportunity for members of the public to speak on any subject within the Board's jurisdiction.

Possible Conflict of Interest Issues

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

1. Information Relative to Possible Conflict of Interest Pg. 20

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

This item is prepared monthly for review by Board and Committee members.

INFORMATIONAL ITEMS

Items listed are receive and file items and are expected to be routine and non-controversial. Unlike the Consent Calendar, items listed as Informational Items do not require a vote.

2. May 2024 Procurement Report Pg. 24

Receive the May 2024 Procurement Report.
Presenter: Jeffery Hill

This item was received by the General Policy Committee on June 12, 2024.

3. Transit and Rail Programs Contract Change Orders to On-Going Contracts Pg. 31

Receive and file Change Order Report.
Presenter: Victor Lopez

This item was received by the Transit Committee on June 13, 2024.

4. Project Delivery Contract Change Orders to On-Going Contracts Pg. 33

Receive and file Change Order Report.
Presenter: Kristi Harris

This item was received by the Board of Directors Metro Valley Study Session on June 13, 2024.

5. Board Presidential Appointments to the SBCOG Ad Hoc Committee and Vacancy for Legislative Policy Committee Pg. 39

A. Note the presidential appointments made to the San Bernardino Council of Governments Ad Hoc Committee with a term through June 30, 2025: representing the West Valley subarea, Mayor John Dutrey, City of Montclair, and Mayor L. Dennis Michael, City of Rancho Cucamonga; representing the East Valley subarea, Mayor Pro Tem Larry McCallon, City of Highland, and Mayor Helen Tran, City of San Bernardino; representing the High Desert area, Mayor Pro Tem Rebekah Swanson, City of Hesperia; representing the Morongo Basin area, Council Member Rick Denison, Town of Yucca Valley; representing the Mountain area, Council Member Rick Herrick, City of Big Bear Lake; and representing the County of San Bernardino, Supervisor Joe Baca Jr.

B. Note the vacancy for one Mountain/Desert Board Member to serve on the Legislative Policy Committee for the remainder of the two-year legislative session, with a term ending December 31, 2024. **Presenter: Marleana Roman**

This item is informational only. Per SBCTA Policy No. 10001, all Presidential appointments shall be announced at the Board of Directors meeting immediately following the appointments for the purpose of advising the Board of Directors of the status of committee membership and representation.

CONSENT CALENDAR

The Consent Calendar will be acted upon as a single motion. Items listed on the Consent Calendar are expected to be routine and non-controversial. These items have been discussed at Policy Committee meetings and made available for public review as noted in the agenda. No public comment will be allowed on the Consent Calendar, unless the item was not previously reviewed at a policy committee. Items on the Consent Calendar may be removed for discussion by Board Member Request. Items pulled from the consent calendar will be brought up immediately following the vote on the Consent Calendar.

Consent - Administrative Matters

6. **Resolution No. 24-026 Authorizing Placement of Assessments on the Tax Roll and Agreement for Collection of Special Taxes Related to the Property Assessed Clean Energy Program** Pg. 41

That the Board, acting as the San Bernardino Council of Governments:

A. Approve Resolution No. 24-026, authorizing the placement of assessments related to the Property Assessed Clean Energy Program on the tax roll for Fiscal Year 2024/2025.

B. Approve Agreement No. 24-1003168 with the San Bernardino County Auditor-Controller/Treasurer/Tax Collector, authorizing the Collection of Special Taxes, Fees, and Assessments. **Presenter: Lisa Lazzar**

This item was received and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCOG General Counsel has reviewed this item, the draft resolution, and the draft agreement.

7. **Purchase and Sale Agreement No. 24-1003169 for Property Assessed Clean Energy Assessment Receivables with FNA California, LLC** Pg. 49

That the Board, acting as the San Bernardino Council of Governments:

A. Approve Purchase and Sale Agreement No. 24-1003169 with FNA California, LLC, to grant their first right of refusal and to allow them to advance funds to cover the Property Assessed Clean Energy Assessment delinquencies for the 2015-2016 through 2023-2024 tax years, and authorize the Executive Director, or his designee, with the approval of General Counsel as to legal form, to finalize the terms of the agreement, including the final amount and the delinquent properties to be included, and to execute the final agreement.

B. Defer the judicial foreclosure proceedings for the delinquent properties.
Presenter: Lisa Lazzar

This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel has reviewed this item and the draft agreement.

8. **Award Contract No. 24-1003085 for Professional Audit Services** Pg. 82

That the Board, acting as the San Bernardino County Transportation Authority:

Approve Contract No. 24-1003085 with Crowe LLP for Professional Audit Services for a five-year term, and a not-to-exceed amount of $900,000, to be funded with Local Transportation Fund – Administration funds and Indirect funds.
Presenter: Hilda Flores

This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel and Procurement Manager have reviewed this item and the draft contract.

9. **Appointment to the Independent Taxpayer Oversight Committee** Pg. 113

That the Board, acting as the San Bernardino County Transportation Authority:

Approve the appointment of Chad Logan and Alex Artiaga to the Independent Taxpayer Oversight Committee, with a term ending June 30, 2028.
Presenter: Hilda Flores

This item was reviewed and recommended for approval (8-0-1; Abstained: Rowe) by the General Policy Committee on June 12, 2024. The Executive Board reviewed and approved the applicants appointment to the ITOC on May 14, 2024 and May 29, 2024.

10. **Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429 Local Agency Formation Commission** Pg. 115

That the Board, acting as the San Bernardino County Transportation Authority:

Approve Surrender of Lease, Amendment No. 4 to Contract No. 16-1001429, of the Local Agency Formation Commission's lease of Unit 150, effective September 23, 2024.
Presenter: Colleen Franco

This item was reviewed and recommended for approval (8-0-1; Abstained: Denison) by the General Policy Committee on June 12, 2024. SBCTA General Counsel has reviewed this item and the draft agreement.

11. **Approve License and Use Agreement No. 23-1002901 with National Railroad Passenger Corporation** Pg. 142

That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve License and Use Agreement No. 23-1002901 with the National Railroad Passenger Corporation (Amtrak) for access and use of the Santa Fe Depot for the period of July 3, 2024, through July 2, 2039, with the option to renew for two five-year terms.

B. Authorize the Executive Director, or his/her designee, to approve License and Use Agreement No. 23-1002901 for a total estimated revenue not-to-exceed $374,692 through July 2, 2039, or $646,095 including the two option terms.
Presenter: Colleen Franco

This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel and Enterprise Risk Manager have reviewed this item and the draft agreement.

12. **Biennial Review of Conflict of Interest Code Policy No. 10102** Pg. 155

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Perform the biennial review of SBCTA's Policy No. 10102 Conflict of Interest Code and amend Appendix A with updated employee job titles and disclosure categories, as outlined in the attachment.

B. Direct the SBCTA Clerk of the Board to submit the Policy and Appendix A to the San Bernardino County Board of Supervisors for approval.
Presenter: Marleana Roman

This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel has reviewed this item and the policy revisions.

13. **Fiscal Year 2023/2024 Budget Action Plan - Fourth Quarter Report** Pg. 166

Receive the Fiscal Year 2023/2024 Budget Action Plan – Fourth Quarter Report.
Presenter: Raymond Wolfe

This item was received by the General Policy Committee on June 12, 2024.

Consent - Air Quality/Traveler Services

14. Agreement No. 23-1002942 with the California Highway Patrol for Call Box Liaison Services Pg. 178

That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve Agreement No. 23-1002942 between the California Highway Patrol (CHP) and San Bernardino County Transportation Authority for Call Box Liaison Support Services beginning July 1, 2024 through June 30, 2027, in an amount not to exceed $14,400.

B. Authorize the Executive Director, or his designee, to execute Agreement No. 23-1002942 with CHP for call box liaison support services.
Presenter: Kelly Lynn

This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreement.

15. Update on the Commuter and Motorist Assistance Call Box Program Pg. 199

Receive information on the status of the San Bernardino County Transportation Authority Call Box Program.
Presenter: Kelly Lynn

This item was received by the General Policy Committee on June 12, 2024.

Consent - Project Delivery

16. Interstate 215 Bi-County/Segment-5 Landscape Project Release of Invitation for Bids No. 24-1003062 Pg. 219

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

Authorize the Executive Director, or his designee, to release Invitation for Bids No. 24-1003062 for the construction of Interstate 215 Bi-County/Segment-5 Landscape Project, subject to final approval of the Plans, Specifications, and Estimates package, Federal Funding Authorization (E-76 approval), and approval as to form by SBCTA General Counsel, or her designee.
Presenter: Juan Lizarde

This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024. SBCTA Procurement Manager and Enterprise Risk Manager have reviewed this item.

17. Pine Avenue Extension and Widening Project in the City of Chino Hills and the City of Chino Pg. 221

Receive and file an update on the Pine Avenue Extension and Widening Project
Presenter: Sal Chavez

This item was received by the Board of Directors Metro Valley Study Session on June 13, 2024.

18. **State Route 60 Central Avenue Interchange Improvement Project Amendment No. 4 to Contract No. 18-1001811 with Dynamic Engineering Services, Inc.** Pg. 225

That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve an exception to Contracting and Procurement Policy No. 11000 to extend the termination date of Contract No. 18-1001811 with Dynamic Engineering Services, Inc. (DESI), for Construction Management services for the State Route 60 Central Avenue Interchange Improvement Project beyond the five-year maximum term.

B. Approve Amendment No. 4 to Contract No. 18-1001811 to extend the contract termination date to October 3, 2025, to allow DESI sufficient time to perform inspections during the one-year plant establishment period, support closeout activities, and increase the contract amount by $60,000.00 for a revised contract total of $4,098,342.63.
Presenter: Sal Chavez

This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024. SBCTA General Counsel, Enterprise Risk Manager, and Procurement Manager have reviewed this item and the draft amendment.

Consent - Regional/Subregional Planning

19. **Contract No. 24-1003170 with WattEV Inc. for Zero-Emission Truck Charging Station Expansion in San Bernardino** Pg. 231

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to finalize and execute Contract No. 24-1003170 with WattEV SB1, Inc., for construction of a Zero-Emission Truck Charging Station Expansion in San Bernardino, subject to approval as to form by SBCTA General Counsel.

B. Authorize an exception to SBCTA Contracting and Procurement Policy No. 11000 Section IV.B.4, to allow for a six-year contract term, given that the policy limits contracts to a five-year term, absent SBCTA Board approval.
Presenter: Steve Smith

This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024. SBCTA General Counsel and Enterprise Risk Manager have reviewed this item and the draft agreement.

Consent - Transit

20. **Fiscal Year 2024/2025 Transit Operator Allocations** Pg. 268

That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve the Fiscal Year 2024/2025 Transit Operator Funding Allocations to the City of Needles, Morongo Basin Transit Authority, Mountain Area Regional Transit Authority, Omnitrans, and Victor Valley Transit Authority.

B. Approve revisions to the transit agencies' Short Range Transit Plan revenue assumptions to reflect the final allocation amounts.

C. Approve the revised Congestion Mitigation and Air Quality Allocation Plan through Fiscal Year 2032/2033.
Presenter: Nancy Strickert

This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024.

21. Fiscal Year 2024/2025 State of Good Repair Program Allocations Pg. 278

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Allocate $4,546,650 of State of Good Repair Program – Population Share and Operator Share funding to the following projects:

i. Onboard Passenger Information Systems – Morongo Basin Transit Authority - $136,782
ii. Crestline Transit Center Facility Project – Mountain Area Regional Transit Authority - $92,900
iii. Preventative Maintenance – City of Needles - $8,906
iv. Preventative Maintenance – Omnitrans - $389,306
v. Replacement of HVAC System – Omnitrans $2,500,000
vi. Service Vehicles – Victor Valley Transit Authority (VVTA) - $310,000
vii. Paratransit Vehicles – VVTA - $170,000
viii. Regional Bus Replacements – VVTA – $402,666
ix. Metrolink Rehabilitation Program – Southern California Regional Rail Authority - $304,246
x. Metrolink Station Improvements – SBCTA - $231,844

B. Adopt Resolution No. 24-009, authorizing the Executive Director, or his designee, to submit project nominations to the California Department of Transportation for Fiscal Year 2024/2025 State of Good Repair Program funds for the projects listed above.
Presenter: Nancy Strickert

This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024. SBCTA General Counsel has reviewed this item and the draft resolution.

22. ONT Connector Project Update and Shortlist of Operating System Providers and DB Teams Pg. 288

That the Board, acting as the San Bernardino County Transportation Authority:

A. Receive an update on the Ontario International Airport (ONT) Connector Project, including the current funding plan, and seek direction from the Board to proceed with submitting grant applications given the large funding gap, and the potential of having to return grant awards, prior to expending any of them, should we be unable to close the funding gap.

B. Pre-qualify Glydways, Inc., Oceaneering International, Inc., and Ohmio, Inc., as the prospective Operating System Providers for the ONT Connector Project, pursuant to Request for Qualifications (RFQ) No. 23-1002878.

C. Shortlist joint ventures ONTheMove JV and Ontario Tunnel Constructors as the prospective Design-Build contractors for the ONT Connector Project, pursuant to RFQ No. 23-1002870.

D. Authorize the Executive Director, or his designee, to execute Pre-Proposal Works Agreements with the two shortlisted Design-Build firms, ONTheMove Joint Venture and Ontario Tunnel Contractors, for the ONT Connector project, for a not-to-exceed amount of $3,000,000 per agreement, upon General Counsel's approval as to form.

E. Authorize the Executive Director, or his designee, to release the Request for Proposals (RFP) and future addenda to the shortlisted Design-Build teams for the ONT Connector Project. **Presenter: Victor Lopez**

This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024. SBCTA General Counsel has reviewed this item. Special Counsel prepared and reviewed the RFP and draft agreement.

23. Dedicated Law Enforcement for Metrolink Service Pg. 490

That the Board, acting as the San Bernardino County Transportation Authority:

Direct staff to continue seeking dedicated law enforcement services provided by the San Bernardino County Sheriff's Department for Metrolink service within San Bernardino County, up to the county line**, and return to the Board with a report on how the law enforcement resources are being used.**
Presenter: Victor Lopez

This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024.

Consent - Transportation Programming and Fund Administration

24. Measure I 2024 Population Estimates Pg. 545

That the Board, acting as the San Bernardino County Transportation Authority:

Adopt the 2024 Population Estimates in Attachment B for use in the allocation of Measure I Local Street Projects Program and Transportation Development Act funds and in the apportionment of shares of certain State and Federal funds.
Presenter: Marc Lucius

This item was reviewed and recommended for approval by the General Policy Committee on June 12, 2024.

25. Victor Valley Subarea Major Local Highway Projects Program Proposed Project List Pg. 554

Receive information and provide direction on the proposed Victor Valley Subarea Major Local Highway Projects Program Proposed Project List for the 2024 Update to the 10-Year Delivery Plan. **Per direction provided by the Mountain/Desert Policy Committee, direct staff to prioritize Operational Improvements to State Route 18 West of US 395 as the next regional/interregional priority project to be implemented for the Victor Valley Subarea.**
Presenter: Andrea Zureick

This item was received by the Mountain/Desert Policy Committee on June 14, 2024.

26. Rural Mountain/Desert Subareas Major Local Highway Projects Program Proposed Project List Pg. 565

Receive information and provide direction on the proposed Rural Mountain/Desert Subareas Major Local Highway Projects Program Proposed Project List for the 2024 Update to the 10-Year Delivery Plan.
Presenter: Andrea Zureick

This item was received by the Mountain/Desert Policy Committee on June 14, 2024.

27. **National Trails Highway Bridge Replacements Project Funding Allocation and Agreement** Pg. 571

That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve the allocation of $5.775 million of Senate Bill 1 Local Partnership Program (LPP) Formula funds to San Bernardino County for the National Trails Highway Bridge Replacements Project.

B. Approve Agreement No. 24-1003172 with San Bernardino County for the National Trails Highway Bridge Replacements Project in the amount of $61,004,382 to be funded with LPP, Surface Transportation Block Grant Program, and State Transportation Improvement Program funds.
Presenter: Andrea Zureick

This item was reviewed and recommended for approval by the Mountain/Desert Policy Committee on June 14, 2024. SBCTA General Counsel has reviewed this item and the draft agreement.

28. **Capital Project Needs Analysis Submittals and Funding Allocations for the Measure I Valley Major Street Program/Arterial Sub-program for Fiscal Year 2024/2025** Pg. 582

That the Board, acting as the San Bernardino County Transportation Authority:

Approve the Project List for the Measure I Valley Major Street Program/Arterial Sub-program allocations for Fiscal Year 2024/2025.
Presenter: Marc Lucius

This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024.

Consent - Legislative/Public Outreach

29. **State Legislative Update** Pg. 588

Receive and file the June 2024 State Legislative Update **and report of action taken by the Legislative Policy Committee on June 12, 2024.**
Presenter: Otis Greer

This item was reviewed and unanimously recommended for approval by the Legislative Policy Committee on June 12, 2024.

30. **Federal Legislative Update** Pg. 638

Receive and file the June 2024 Federal Legislative Update.
Presenter: Otis Greer

This item was received by the Legislative Policy Committee on June 12, 2024.

Consent Calendar Items Pulled for Discussion

Items removed from the Consent Calendar shall be taken under this item in the order they were presented on the agenda.

DISCUSSION ITEMS

Discussion - Administrative Matters

31. Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs Pg. 640

That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve Contract No. 24-1003086 with Crowe LLP for Auditing Services for Transportation Development Act Funds and Measure I Local Pass-Throughs in an amount not-to-exceed $2,563,700, for a three-year term with two one-year options to extend for a total not-to-exceed amount of $4,223,500, to be funded with Local Transportation Fund and Measure I.

B. Approve Contract No. 24-1003173 with Vasquez and Company LLP for Auditing Services for Transportation Development Act Funds and Measure I Local Pass-Throughs in an amount not-to-exceed $590,184, for a three-year term with two one-year options to extend for a total not-to-exceed amount of $1,018,882, to be funded with Local Transportation Fund and Measure I.
Presenter: Lisa Lazzar

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Enterprise Risk Manager, and Procurement Manager have reviewed this item and the draft agreements. Due to the timing of the procurement and associated interviews, staff did not have time to present to the committee. These services are needed to start as soon as possible so the audit reports can be issued timely.

32. Contract No. 24-1003175 with CalHFA Homeowner Relief Corp for PACE Borrowers Pg. 715

That the Board, acting as the San Bernardino Council of Governments:

A. Approve Contract No. 24-1003175 with California Housing Finance Agency Homeowner Relief Corporation for Property Assessed Clean Energy (PACE) Assistance Program beginning July 3, 2024, and extending through June 30, 2025, in an amount not-to-exceed $100,000.

B. Approve budget amendment of $100,000 in PACE Fund 2911 for Fiscal Year 2024/2025 to record the activity with the assistance program's trustee.
Presenter: Hilda Flores

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Enterprise Risk Manager, and Interim Procurement Manager have reviewed this item. This item is being presented directly to the Board of Directors since the funds for assisting PACE lienholders is exhausted.

33. Rescind Award Contract No. 24-1003046 - U.S. Bank Global Corporate Trust Pg. 729

That the Board, acting as the San Bernardino County Transportation Authority:

Rescind authorization of Executive Director, or his designee, to finalize and execute Contract No. 24-1003046 with U.S. Bank Global Corporate Trust for Trustee Services.
Presenter: Hilda Flores

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel and Procurement Manager have reviewed this item. This item is going directly to the board to explain the agreement is unnecessary since the relationship with the bank is governed by SBCTA's indentures.

Discussion - Project Delivery

34. **Award Contract No. 24-1003027 for the State Route 210 Waterman Avenue Interchange Project** Pg. 730

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to award and execute Contract No. 24-1003027 to the lowest responsive responsible bidder for construction of the State Route 210 Waterman Avenue Interchange Project subject to meeting the requirements of Invitation for Bids No. 24-1003027, and approval as to form by SBCTA General Counsel, or her designee.

B. Authorize the Executive Director, or his designee, to approve a contingency amount, supplemental items, and agency furnished allowance, subject to award of Contract No. 24-1003027.

Presenter: Paul Melocoton

This item has not received prior policy committee or technical advisory committee review. This item is being presented directly to the Board at its July 3, 2024 meeting pursuant to Contracting and Procurement Policy No. 11000, Section V.B.2.d, as this is a construction contract award to the lowest responsive responsible bidder. SBCTA Procurement Manager and Enterprise Risk Manager have reviewed this item.

35. **Award Contract No. 23-1002955 for the Interstate 215 University Parkway Interchange Project and Amendment No. 3 to Cooperative Agreement No. 19-1002205** Pg. 733

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to execute Amendment No. 3 to Cooperative Agreement No. 19-1002205 with the City of San Bernardino (City), subject to approval as to form by SBCTA General Counsel, or her designee, and final approval at the July City Council meeting, for the Interstate 215 University Parkway Interchange Project (Project), to increase the total Project costs by $2,555,333 consisting of an additional receivable amount from the City in the amount of $403,743 and additional Measure I Valley Freeway Interchange Program funds of $2,151,590.

B. Authorize the Executive Director, or his designee, to award and execute Contract No. 23-1002955 to the lowest responsive responsible bidder for construction of the Project, subject to meeting the requirements of Invitation for Bids No. 23-1002955, and approval as to form by SBCTA General Counsel, or her designee.

C. Authorize the Executive Director, or his designee, to approve a contingency amount, supplemental items, and agency furnished allowance, subject to award of Contract No. 23-1002955.

Presenter: Paul Melocoton

This item has not received prior policy committee or technical advisory committee review. This item is being presented directly to the Board at its July 3, 2024 meeting pursuant to Contracting and Procurement Policy No. 11000, Section V.B.2.d, as this is a construction contract award to the lowest responsive responsible bidder. SBCTA Procurement Manager and Enterprise Risk Manager have reviewed this item.

Discussion - Transit

36. **Agreements with DesertXpress Enterprises, LLC (d/b/a Brightline West): Local Rail Service Agreement No. 24-1003091; Amendment No. 4 to the Disposition and Development Agreement No. 23-1002894; and Conditions, Covenants, Restrictions and Easements related to No. 23-1002894** Pg. 736

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Receive and file a status update from DesertXpress Enterprises, LLC (d/b/a Brightline West).

B. Approve the Local Rail Service Agreement No. 24-1003091 with Brightline West, for the provision of local rail service between Hesperia and Rancho Cucamonga as part of the consideration received by SBCTA for Lease No. 22-1002723.

C. Approve Amendment No. 4 to Disposition and Development Agreement No. 23-1002894 (DDA) which replaces, and updates exhibits containing descriptions of the property interests being sold to Brightline West and property interests retained and reserved by the City of Rancho Cucamonga and SBCTA and the Inspector of Record process.

D. Approve Covenants, Conditions, Restrictions, and Easements further describing the rights and obligations Brightline West, the City of Rancho Cucamonga, and SBCTA will have with respect to the property after the transaction is complete, and additional easement rights which are to be recorded as an encumbrance upon the properties with the close of escrow of the DDA.

Presenter: Ryan Aschenbrenner

This item has not received prior policy committee or technical advisory committee review. This item is presented directly to the Board without prior committee review to ensure timely approval by all parties which allows Brightline to move forward with overall project development. SBCTA General Counsel, Procurement Manager and Enterprise Risk Manager have reviewed this item and the draft agreements.

Discussion - Legislative/Public Outreach

37. **Legislative Recommendation to Support House Resolution 7650** Pg. 978

That the Board, acting as the San Bernardino County Transportation Authority:

Approve a support position on House Resolution (H.R.) 7650, by Representative Earl Carter and co-sponsored by Representative Jay Obernolte, regarding facilitation of efficient State implementation of National Ambient Air Quality Standards.

Presenter: Otis Greer

This item has not received prior policy committee or technical advisory committee review. At the request of the Legislative Policy Committee, this item is being brought directly to Board for consideration.

Comments from Board Members

Brief Comments from Board Members

Executive Director's Comments

Brief Comments from the Executive Director

ADJOURNMENT

Additional Information

Attendance Pg. 1003
Acronym List Pg. 1005

Agency Reports

Mobile Source Air Pollution Reduction Review Committee Agency Report Pg. 1008

Committee Membership

Representatives on SCAG Committees Pg. 1011
Appointments to External Agencies Pg. 1012
Committee Membership Pg. 1014

Mission Statement

Mission Statement Pg. 1019

Meeting Procedures and Rules of Conduct

Meeting Procedures - The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility & Language Assistance - The meeting facility is accessible to persons with disabilities. If assistive listening devices, other auxiliary aids or language assistance services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk can be reached by phone at (909) 884-8276 or via email at clerkoftheboard@gosbcta.com and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Accesibilidad y asistencia en otros idiomas - Las instalaciones para las reuniones son accesibles para las personas con discapacidades. Si se necesitan dispositivos de escucha asistida, otras ayudas auxiliares o servicios de asistencia en otros idiomas para participar en la reunión pública, las solicitudes deben ser presentados a la Secretaria de la Junta al no menos de tres (3) días de apertura antes de la reunión de la Junta. La Secretaria esta disponible por teléfono al (909) 884-8276 o por correo electrónico a clerkoftheboard@gosbcta.com y la oficina se encuentra en 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Agendas – All agendas are posted at www.gosbcta.com/board/meetings-agendas/ at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed online at that web address. Agendas are also posted at 1170 W. 3rd Street, 1st Floor, San Bernardino at least 72 hours in advance of the meeting.

Agenda Actions – Items listed on both the "Consent Calendar" and "Discussion" contain recommended actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken as provided in the Ralph M. Brown Act Government Code Sec. 54954.2(b).

Closed Session Agenda Items – Consideration of closed session items excludes members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the President of the Board or Committee Chair ("President") will announce the subject matter of the closed session. If reportable action is taken in closed session, the President shall report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item, except Board agenda items that were previously considered at a Policy Committee meeting where there was an opportunity for public comment. Individuals in attendance at SBCTA who desire to speak on an item may complete and turn in a "Request to Speak" form, specifying each item an individual wishes to speak on. Individuals may also indicate their desire to speak on an agenda item when the President asks for public comment. When recognized by the President, speakers should be prepared to step forward and announce their name for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The President or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations. Any individual who wishes to share written information with the Board may provide 35 copies to the Clerk of the Board for distribution. If providing written information for distribution to the

Board, such information must be emailed to the Clerk of the Board, at clerkoftheboard@gosbcta.com, no later than 5:00 pm the day before the meeting in order to allow sufficient time to distribute the information. Information provided as public testimony is not read into the record by the Clerk. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda. Any consent item that is pulled for discussion shall be treated as a discussion item, allowing further public comment on those items.

Public Comment –An opportunity is also provided for members of the public to speak on any subject within the Board's jurisdiction. Matters raised under "Public Comment" will not be acted upon at that meeting. See, "Public Testimony on an Item," above.

Disruptive or Prohibited Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the President may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive or prohibited conduct includes without limitation addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, bringing into the meeting any type of object that could be used as a weapon, including without limitation sticks affixed to signs, or otherwise preventing the Board from conducting its meeting in an orderly manner.

Your cooperation is appreciated!

General Practices for Conducting Meetings

of

Board of Directors and Policy Committees

Attendance.

- The President of the Board or Chair of a Policy Committee (Chair) has the option of taking attendance by Roll Call. If attendance is taken by Roll Call, the Clerk of the Board will call out by jurisdiction or supervisorial district. The Member or Alternate will respond by stating his/her name.
- A Member/Alternate who arrives after attendance is taken shall announce his/her name prior to voting on any item.
- A Member/Alternate who wishes to leave the meeting after attendance is taken but before remaining items are voted on shall announce his/her name and that he/she is leaving the meeting.

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on "Request to Speak" forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee. Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.
- The "aye" votes in favor of the motion shall be made collectively. Any Member who wishes to oppose or abstain from voting on the motion shall individually and orally state the Member's "nay" vote or abstention. Members present who do not individually and orally state their "nay" vote or abstention shall be deemed, and reported to the public, to have voted "aye" on the motion.
- Votes at teleconferenced meetings shall be by roll call, pursuant to the Brown Act, or, at any meeting, upon the demand of five official representatives present or at the discretion of the presiding officer.

The Vote as specified in the SBCTA Administrative Code and SANBAG Bylaws.

- Each Member of the Board of Directors shall have one vote. In the absence of the official representative, the Alternate shall be entitled to vote. (Note that Alternates may vote only at meetings of the Board of Directors, Metro Valley Study Session and Mountain/Desert Policy Committee.)

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the Chair shall ask the maker of the original motion if he or she would like to amend the motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is voted upon first, and if it fails, then the original motion is considered.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a Member of the Board/Committee may "Call for the Question."
- Upon a "Call for the Question," the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively, and at the Chair's discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair's direction.
- These general practices provide guidelines for orderly conduct.
- From time to time, circumstances may require deviation from general practice (but not from the Brown Act or agency policy).
- Deviation from general practice is at the discretion of the Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

Adopted By SANBAG Board of Directors January 2008
Revised March 2014
Revised May 4, 2016
Revised June 7, 2023

Important Dates to Remember…

July 2024

SBCTA Meetings – Cancelled: None

SBCTA Meetings – Scheduled:			
General Policy Committee			Next Meeting: Aug 14 9:00 am
Legislative Policy Committee			Next Meeting: Aug 14 9:30 am
Transit Committee			Next Meeting: Aug 15 9:00 am
Metro Valley Study Session			Next Meeting: Aug 15 9:30 am
Mountain/Desert Committee			Next Meeting: Aug 16 9:30 am

DARK

Other Meetings/Events:			
None			

SBCTA Offices will be CLOSED:

- **July 4th and 5th, Fourth of July**

For additional information, please call SBCTA at (909) 884-8276

Minute Action

AGENDA ITEM: 1

Date: July 3, 2024

Subject:
Information Relative to Possible Conflict of Interest

Recommendation:
Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

Background:
In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than $250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
6	24-1003168	San Bernardino County Auditor-Controller/Treasurer/Tax Collector	None
7	24-1003169	FNA California, LLC *John Eisinger*	None
8	24-1003085	Crowe LLP *Bradley T. Schelle*	None
9	N/A	C. Logan Incorporated Logan Construction Premier Property Maintenance Next Level Snow Services Prime Consulting and Construction Management *Chad Logan*	None
		LIUNA – Local 783 *Alex Artiaga*	None
10	16-1001429-04	Local Agency Formation Commission (LAFCO)	None
11	23-1002901	National Railroad Passenger Corporation (Amtrak) *Louis Wolfowitz*	None
14	23-1002942	California Highway Patrol	None

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

Item No.	Contract No.	Principals & Agents	Subcontractors
18	18-1001811-04	Dynamic Engineering Services, Inc. *Chia-Chi Wang*	David Evans and Associates, Inc. Transystems Corporation Twining, Inc. ZT Consulting Group, Inc.
19	24-1003170	WattEV SB1, Inc. *Salim Youssefzadeh*	None
20	Allocation	City of Needles	None
		Morongo Basin Transit Authority	None
		Mountain Area Regional Transit Authority	None
		Omnitrans	None
		Victor Valley Transit Authority	None
21	Allocation	Morongo Basin Transit Authority	None
		Mountain Area Regional Transit Authority	None
		City of Needles	None
		Omnitrans	None
		Victor Valley Transit Authority	None
		Southern California Regional Rail Authority	None
22	23-1002878	Glydways, Inc. *Gokul Hemmady*	Turner Engineering Corporation Roush Industries Khosla Ventures
		Oceaneering International, Inc. *Kiel Clasing*	2getthere
		Ohmio, Inc. *Dean Zabrieszach*	EXP Drive Engineering Drive Integration AUTOCRYPT Iteris ACE Applications Mindshop Transnnovation Inc. Via

Item No.	Contract No.	Principals & Agents	Subcontractors
22 (cont.)	23-1002870	Ontario Tunnel Constructors, a Joint Venture - Skanska USA Civil West California District Inc., and Obayashi Corporation *James Bailey*	Michael Baker International Earth Mechanics
		ONTheMove JV, a Joint Venture - Civil & Building North America, Inc., with BESSAC, Nicholson Construction Company, and Colas Construction USA *Giuseppe (Joe) Folco*	None
23	N/A	San Bernardino County Sheriff's Department	None
27	24-1003172	San Bernardino County	None
31	24-1003086	Crowe LLP *Jennifer Richards*	None
	24-1003173	Vasquez and Company LLP *Roger A. Martinez*	None
32	24-1003175	California Housing Finance Agency Homeowner Relief Corporation *Rebecca Franklin*	None
33	24-1003046	U.S. Bank Global Corporate Trust *Linda Verstuyft*	None
34	24-1003027	Not Yet Known	None
35	19-1002205-03	City of San Bernardino	None
	23-1002955	Not Yet Known	None
36	24-1003091	DesertXpress Enterprises, LLC (dba Brightline West) *Sarah Watterson*	None
	23-1002894	DesertXpress Enterprises, LLC (dba Brightline West) *Sarah Watterson*	None
		City of Rancho Cucamonga	None

Financial Impact:
This item has no direct impact on the budget.

Reviewed By:
This item is prepared monthly for review by Board and Committee members.

Responsible Staff:

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Minute Action

AGENDA ITEM: 2

Date: July 3, 2024

Subject:
May 2024 Procurement Report

Recommendation:
Receive the May 2024 Procurement Report.

Background:
The Board of Directors adopted the Contracting and Procurement Policy (Policy No. 11000) on January 3, 1997, and approved the last revision on January 4, 2023. The Board of Directors authorized the Executive Director, or his designee, to approve: a) contracts and purchase orders up to $100,000; b) Contract Task Orders (CTO) up to $500,000 and for CTOs originally $500,000 or more, increasing the CTO amount up to $250,000; c) amendments with a zero dollar value; d) amendments to exercise the option term if the option term was approved by the Board of Directors in the original contract; e) amendments that cumulatively do-not-exceed 50% of the original contract or purchase order value or $100,000, whichever is less; f) amendments that do-not-exceed contingency amounts authorized by the Board of Directors; and g) release Request for Proposals (RFP), Request for Qualifications (RFQ), and Invitation for Bids (IFB) for proposed contracts from which funding has been approved and the solicitation has been listed in the Annual Budget, and are estimated not-to-exceed $1,000,000.

The Board of Directors further authorized General Counsel to award and execute legal services contracts up to $100,000 with outside counsel as needed, and authorized Department Directors to approve and execute Contingency Amendments that do-not-exceed contingency amounts authorized by the Board of Directors.

Lastly, the Board of Directors authorized CityCom Real Estate Services, Inc. (CityCom) to issue contracts and purchase orders.

Below is a summary of the actions taken by SBCTA authorized staff:

- One new contract was executed.
- One contract amendment was executed.
- No CTO's were executed.
- Three CTO amendments were executed.
- Four contingency amendments were executed.
- Three purchase orders were executed.
- One purchase order amendment was executed.
- No IFB's were released.

Below is a summary of the actions taken by CityCom:

- No new contracts were executed.
- One new purchase order was executed.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

A list of all Contracts and Purchase Orders that were executed by the Executive Director, Department Director, and/or General Counsel during the month of May 2024 are presented herein as Attachment A, all RFPs and IFBs are presented in Attachment B, and all CityCom's contracts and purchase orders are presented in Attachment C.

Financial Impact:
This item is consistent with the adopted Budget for Fiscal Year 2023/2024 and proposed Budget for Fiscal Year 2024/2025. Presentation of the monthly procurement report demonstrates compliance with the Contracting and Procurement Policy.

Reviewed By:
This item was received by the General Policy Committee on June 12, 2024.

Responsible Staff:
Jeffery Hill, Project Controls Analyst III

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Attachment A - 1
May 2024 Contract/Amendment/CTO Actions

Type	Contract Number	Amendment/CTO	Vendor Name	Contract Description	Original Amount	Prior Amendments	Current Amendment	Total Amount	Total On-Call Contract Amount*
New Agreement	24-10030112		Verizon Wireless CALNet	Verizon Wireless NASPO CALNET Cellular Voice and Data Services Agreement	$ 75,000.00	$ -	$ -	$ 75,000.00	N/A
Contract Amendment	20-1002339	2	GCAP Services, Inc.	To exercise the second option term for a new contract expiration date of June 30, 2025 for Disadvantaged Business Enterprise Consulting Services	$ 100,000.00	$ -	$ -	$ 100,000.00	N/A
CTO Amendment	23-1002904	CTO No. 7.1	Mott MacDonald Group, Inc.	To increase the not-to-exceed amount for the Zero-Emission Multiple Unit Program Management Services	$ 500,000.00	$ -	$ 250,000.00	$ 750,000.00	$20,000,000.00 (available $9,085,973.99)
CTO Amendment	19-1002189	CTO No. 21.2	Dudek	To increase the amount for on-call services associated with Grant Writing and Management	$ 100,000.00	$ 147,000.00	$ 50,000.00	$ 297,000.00	$6,460,390.00 (available $11,436.73)
CTO Amendment	19-1002203	CTO No. 3.1	Trapeze Software Group, Inc.	To increase the not-to-exceed amount to add additional tasks to the existing scope of work for Metrolink Ridership Recovery/Free Rail Pass Program	$ 87,863.00	$ -	$ 4,950.00	$ 92,813.00	N/A

*Total amount authorized for the associated on-call services bench which is typically shared with multiple vendors and controlled via contract task orders (CTO).

Attachment: May 2024 Procurement Report - PDF (10724 : May 2024 Procurement Report)

Attachment A - 2
May 2024 Contingency Released Actions

Contract No. & Contingency No.	Reason for Contingency Amendment (Include a Description of the Contingency Amendment)	Vendor Name	Original Contract Amount	Prior Amendments	Prior Contingencies	Current Contingencies	Amended Contract Amount
22-1002722 No. 0C	Additional studies/updates to the SPR and ER to cover the status of on-going Contract 1 as well as the future planning of Contracts 3A and 3B for the I-10 Corridor Freight and Express Lanes Project - Contract 2 PS&E	Associated Civil & Transportation Consulting Engineer, Inc. dba Advanced Civil Technologies	$ 57,791,176.04	$ -	$ 333,406.40	$ 131,912.39	$ 58,256,494.83
22-1002722 No. 0D	Additional coordination with Contract 1 designer to incorporate their landscaping design in the exhibits, prepare the exhibits for Contract 2 design, and additional conceptual design and preparation of exhibits for Contract 3 for I-10 Corridor Freight and Express Lanes Project - Contract 2 PS&E	Associated Civil & Transportation Consulting Engineer, Inc. dba Advanced Civil Technologies	$ 57,791,176.04	$ -	$ 465,318.79	$ 183,936.17	$ 58,440,431.00
16-1001378 No. 2B	Additional work identified for unforeseen incidents and extended schedule for the I-215 Segments 1, 2, 3 & 5 Landscape Construction Management Services	TRC Engineers, Inc. (Vali Cooper & Associates, Inc.)	$ 2,547,556.38	$ -	$ 52,000.00	$ 38,344.83	$ 2,637,901.21
17-1001681 No. 2B	Additional work identified to complete the SR-210 Lane Addition and Baseline Interchange Project Construction Management Services	Jacobs Project Management Co.	$ 20,607,080.00	$ -	$ 293,461.94	$ 145,449.30	$ 21,045,991.24

Attachment: May 2024 Procurement Report - PDF (10724 : May 2024 Procurement Report)

Attachment A - 3
May 2024 Purchase Order and Purchase Order Amendment Actions

Type	PO No.	PO Posting Date	Vendor Name	Description of Services	Original Purchase Order Amount	Prior Amendments	Current Amendment	Total Purchase Order Amount
New PO	4002470	5/6/24	Igoodz, Inc. Magnet Graphix, Inc.	100 Freeway Magnet Signs FSP	$ 2,895.00	$ -	$ -	$ 2,895.00
New PO	4002473	5/10/24	Intelli-Tech	Additional GIS Workstation	$ 8,122.54	$ -	$ -	$ 8,122.54
New PO	4002474	5/16/24	CDW Government, LLC	MS Office 365 G3 Renewal	$ 33,958.83	$ -	$ -	$ 33,958.83
PO Amendment	402365	5/9/24	LH Productions	Super Chief Equipment Rental for Closed Session	$ 3,560.12	$ 6,439.88	$ 5,600.00	$ 15,600.00

Attachment: May 2024 Procurement Report - PDF (10724 : May 2024 Procurement Report)

Attachment B
May 2024 RFP's, RFQ's and IFB's

Release Date	RFP/RFQ/IFB No.	Anticipated Dollar Amount	Anticipated Award Date	Description of Overall Program and Program Budget
None				

Attachment: May 2024 Procurement Report - PDF (10724 : May 2024 Procurement Report)

Attachment C
May 2024 CityCom's Issued Purchase Orders/Contracts

PO/Contract No.	Vendor Name	Description of Services	Total Amount
SBCTA4997	Weatherite	Completed Maintenance & Repairs	$4,056.00

Attachment: May 2024 Procurement Report - PDF (10724 : May 2024 Procurement Report)

Minute Action

AGENDA ITEM: 3

Date: July 3, 2024

Subject:
Transit and Rail Programs Contract Change Orders to On-Going Contracts

Recommendation:
Receive and file Change Order Report.

Background:
The San Bernardino County Transportation Authority has three ongoing construction contracts and one vehicle procurement contract related to Transit and Rail Programs.

A. Contract No. 23-1002891 with Griffith Company for the West Valley Connector Project Mainline Construction has had no CCOs executed since the last report.

B. Contract No. 23-1002961 with Proterra Builders, Inc. for the Arrow Maintenance Facility (AMF) Hydrogen Fuel Upgrade: Equipment Procurement has had no CCOs executed since the last report.

C. Contract No. 23-1002922 with Metro Builders & Engineers Group, Ltd. for the AMF Hydrogen Fuel Upgrade: AMF Retrofit has had no CCOs executed since the last report.

D. Contract No. 20-1002310 with Stadler US, Inc. for Zero Emission Multiple Unit Rail Vehicle Procurement has had no CCOs executed since the last report.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was received by the Transit Committee on June 13, 2024.

Responsible Staff:
Victor Lopez, Director of Transit & Rail Programs

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Entity: San Bernardino County Transportation Authority

Transit and Rail Programs Contracts Executed Change Orders		
Number	**Description**	**Amount**
West Valley Connector Mainline Construction Griffith Company (23-1002891)		
	CCO Total	$0.00
	Approved Contingency	$11,995,991.00
	Remaining Contingency	$11,995,991.00
ZEMU - Arrow Maintenance Facility (AMF) Proterra Builders, Inc. (23-1002961)		
Number	Description	Amount
	CCO Total	$0.00
	Approved Contingency	$56,280.21
	Remaining Contingency	$56,280.21
ZEMU - Arrow Maintenance Facility (AMF) Metro Builders & Engineers Group, Ltd. (23-1002922)		
Number	Description	Amount
	CCO Total	$0.00
	Approved Contingency	$962,657.10
	Remaining Contingency	$962,657.10
ZEMU - Vehicle Procurement Stadler (20-1002310)		
Number	Description	Amount
	CCO Total	$2,592,169.12
	Approved Contingency	$3,487,482.12
	Remaining Contingency	$895,313.00

Attachment: Contract Change Order 10172 May 2024 (10697 : Transit and Rail Programs Contract Change Orders to On-Going Contracts)

Minute Action

AGENDA ITEM: 4

Date: July 3, 2024

Subject:
Project Delivery Contract Change Orders to On-Going Contracts

Recommendation:
Receive and file Change Order Report.

Background:
San Bernardino County Transportation Authority Department of Project Delivery has 12 on-going construction contracts, of which seven have had Construction Change Orders (CCO) approved since the last reporting to the Board of Directors Metro Valley Study Session on May 9, 2024. The CCOs are listed below:

A. Contract No. 19-1002181 with Granite Construction Company, for the Archibald Avenue Improvement Project at State Route (SR) 60: There are no newly executed CCOs since last report.

B. Contract No. 19-1002078 with Guy F. Atkinson Construction, LLC, for the SR 210 Lane Addition, Base Line Interchange and Pavement Rehabilitation Project:

1) CCO 32.1: Change in treated wood waste management. (-$78,533.60)

2) CCO 52.2: Grind existing pavement, resolution of time. ($0)

3) CCO 58.2: De-obligation of funds from expansion joint pavement markings. (-$63,739.61)

4) CCO 64.3: Resolution of time for rock and debris removal for irrigation trenching. ($0)

5) CCO 90.1: De-obligation of funds from sound wall 955 gap. (-$14,197.52)

6) CCO 99.2: De-obligation of funds from sign changes. (-$48,753.42)

C. Contract No. 19-1002196 with Security Paving Company, Inc., for the SR 60 Central Avenue Interchange Project: There are no newly executed CCOs since last report.

D. Contract No. 19-1002026 with Diversified Landscape Company, for the Interstate 215 (I-215) Segments 1, 2 and 3 Establish Existing Planting Project: There are no newly executed CCOs since last report.

E. Contract No. 17-1001599 with Lane-Security Paving Joint Venture, for the Interstate 10 (I-10) Corridor Contract 1 Design Build Contract:

1) CCO 134: Additional work due to failing drainage system. ($124,216)

2) CCO 135: Additional scope of work for Frontier Communications conflict. ($12,115)

3) CCO 136: Relocation of charter line. ($12,100)

F. Contract 23-1002869 with SEMA Construction, Inc., for I-10 Eastbound Truck Climbing Lane:

1) CCO 3: Maintain traffic control. ($100,000)

2) CCO 5: Storm water maintenance. ($30,000)

3) CCO 6: Partnering. ($25,000)

G. Contract 16-1001461 with Pulice Construction, Inc., for the Monte Vista Avenue Grade Separation Project: There are no newly executed CCOs since last report.

H. Contract No. 18-1001966 with Traylor-Granite Joint Venture, for the Mount Vernon Avenue Viaduct Project Design Build:

1) CCO 30: Notice to Proceed No. 3 excusable delay costs. ($9,136,700.18)

I. Contract No. 20-1002290 with SEMA Construction, Inc., for the I-10 University Street Interchange Improvements Project: There are no newly executed CCOs since last report.

J. Contract No. 21-1002620 with Ortiz Enterprises, Inc., for the I-10 Alabama Street Interchange Improvements Project:

1) CCO 18: Repair of irrigation controller. ($16,894.73)

K. Contract No. 22-1002784 with Security Paving Company, Inc., for the I-10 Cedar Avenue Improvement Project:

1) CCO 20: Changes to on-ramp structural section. ($2,662,359.50)

2) CCO 22: Additional light poles on westbound off-ramp. ($80,097.05)

3) CCO 29: Westbound off-ramp revised traffic handling plan. ($239,983.95)

4) CCO 31: Restaging and traffic handling revisions. ($345,986)

5) CCO 35: Bridge abutment pile ground monitoring. ($80,000)

6) CCO 42: Differing site condition on-ramp pavement thickness. ($40,000)

L. Contract No. 22-1002780 with Skanska USA Civil West California District, Inc., for the North 1st Avenue Bridge Over BNSF Project:

1) CCO 20: Furnish and install hinge rebar couplers. ($39,452.06)

Financial Impact:
This item imposes no financial impact, as all CCOs are within previously approved contingency amounts under: Task No. 0830 Interchange Projects and Task No. 0820 Freeway Projects, Sub-Task No. 0887 SR 210 Lane Addition, Sub-Task No. 0823 I-10 Corridor Contract 1, Sub-Task No. 0827 Mount Vernon Viaduct, Sub-Task No. 0854 I-10 Eastbound Truck Climbing Lane, Sub-Task No. 0897 I-10 Cedar Avenue, Sub-Task No. 0895 I-10 Alabama Street, and Sub-Task No. 0813 North 1st Avenue Bridge over BNSF.

Reviewed By:
This item was received by the Board of Directors Metro Valley Study Session on June 13, 2024.

Responsible Staff:
Kristi Harris, Director of Project Delivery

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Project Delivery Contracts
Executed Change Orders

Number	Description	Amount
Archibald Avenue Improvement Project at SR 60 (19-1002181)		
	CCO Total	$1,723,232.91
	Approved Contingency	$2,122,333.00
	Remaining Contingency	$399,100.09
SR 210 Lane Addition, Base Line Interchange and Pavement Rehabilitation (19-1002078)		
Number	Description	Amount
32.1	Change in treated wood waste management.	($78,533.60)
52.2	Grind existing pavement, resolution of time.	$0.00
58.2	De-obligation of funds from expansion joint pavement markings.	($63,739.61)
64.3	Resolution of time for rock and debris removal for irrigation trenching.	$0.00
90.1	De-obligation of funds from sound wall 955 gap.	($14,197.52)
99.2	De-obligation of funds from sign changes.	($48,753.42)
	CCO Total	$24,426,731.64
	Approved Contingency	$34,927,790.07
	Remaining Contingency	$10,501,058.43
SR 60 Central Avenue Interchange (19-1002196)		
Number	Description	Amount
	CCO Total	$1,407,424.91
	Approved Contingency	$2,912,039.00
	Remaining Contingency	$1,504,614.09
I-215 Segments 1, 2 & 3 Establish Existing Planting (19-1002026)		
Number	Description	Amount
	CCO Total	$70,000.00
	Approved Contingency	$1,451,300.00
	Remaining Contingency	$1,381,300.00
I-10 Corridor Contract 1 (17-1001599)		
Number	Description	Amount
134	Additional work due to failing drainage system.	$124,216.00
135	Additional scope of work for Frontier Communications conflict.	$12,115.00
136	Relocation of charter line.	$12,100.00
	CCO Total	$25,118,201.39
	Approved Contingency	$51,369,000.00
	Remaining Contingency	$26,250,798.61

Attachment: MVSS CCO Log Project Delivery Projects (10700 : Project Delivery Contract Change Orders to On-Going Contracts)

Project Delivery Contracts
Executed Change Orders

Number	Description	Amount
I-10 Eastbound Truck Climbing Lane (23-1002869)		
Number	Description	Amount
3	Maintain traffic control.	$100,000.00
5	Storm water maintenance.	$30,000.00
6	Partnering.	$25,000.00
	CCO Total	$403,574.07
	Approved Contingency	$3,731,253.00
	Remaining Contingency	$3,327,678.93
Monte Vista Avenue Grade Separation (16-1001461)		
Number	Description	Amount
	CCO Total	$869,302.95
	Approved Contingency	$2,498,958.60
	Remaining Contingency	$1,629,655.65
Mount Vernon Avenue Viaduct (18-1001966)		
Number	Description	Amount
30	NTP No. 3 excusable delay costs.	$9,136,700.18
	CCO Total	$14,328,096.89
	Approved Contingency	$17,230,000.00
	Remaining Contingency	$2,901,903.11
I-10 University Street Interchange Improvements (20-1002290)		
Number	Description	Amount
	CCO Total	$1,211,825.51
	Approved Contingency	$1,500,590.00
	Remaining Contingency	$288,764.49
I-10 Alabama Street Interchange Improvements (21-1002620)		
Number	Description	Amount
18	Repair of irrigation controller.	$16,894.73
	CCO Total	$992,860.27
	Approved Contingency	$1,338,886.33
	Remaining Contingency	$346,026.06

Attachment: MVSS CCO Log Project Delivery Projects (10700 : Project Delivery Contract Change Orders to On-Going Contracts)

Project Delivery Contracts
Executed Change Orders

Number	Description	Amount
I-10 Cedar Avenue Improvement (22-1002784)		
Number	Description	Amount
20	Changes to on-ramp structural section.	$2,662,359.50
22	Additional light poles on westbound off-ramp.	$80,097.05
29	Westbound off-ramp revised traffic handling plan.	$239,983.95
31	Restaging and traffic handling revisions.	$345,986.00
35	Bridge abutment pile ground monitoring.	$80,000.00
42	Differing site condition on-ramp pavement thickness.	$40,000.00
	CCO Total	$4,977,954.26
	Approved Contingency	$8,098,400.00
	Remaining Contingency	$3,120,445.74
North 1st Avenue Bridge Over BNSF (22-1002780)		
Number	Description	Amount
20	Furnish and install hinge rebar couplers.	$39,452.06
	CCO Total	$1,044,048.77
	Approved Contingency	$3,561,922.00
	Remaining Contingency	$2,517,873.23

Attachment: MVSS CCO Log Project Delivery Projects (10700 : Project Delivery Contract Change Orders to On-Going Contracts)

Minute Action

AGENDA ITEM: 5

Date: July 3, 2024

Subject:
Board Presidential Appointments to the SBCOG Ad Hoc Committee and Vacancy for Legislative Policy Committee

Recommendation:
A. Note the presidential appointments made to the San Bernardino Council of Governments Ad Hoc Committee with a term through June 30, 2025: representing the West Valley subarea, Mayor John Dutrey, City of Montclair, and Mayor L. Dennis Michael, City of Rancho Cucamonga; representing the East Valley subarea, Mayor Pro Tem Larry McCallon, City of Highland, and Mayor Helen Tran, City of San Bernardino; representing the High Desert area, Mayor Pro Tem Rebekah Swanson, City of Hesperia; representing the Morongo Basin area, Council Member Rick Denison, Town of Yucca Valley; representing the Mountain area, Council Member Rick Herrick, City of Big Bear Lake; and representing the County of San Bernardino, Supervisor Joe Baca Jr.

B. Note the vacancy for one Mountain/Desert Board Member to serve on the Legislative Policy Committee for the remainder of the two-year legislative session, with a term ending December 31, 2024.

Background:
This item is to apprise the Board of the presidential appointments to the San Bernardino Council of Governments (SBCOG) Ad Hoc Committee. On May 1, 2024 the Board approved the establishment of an Ad Hoc Committee of the SBCOG Board to review and update SBCOG Bylaws and policies. The committee shall be representative of the County, to include 2 West Valley representatives, 2 East Valley representatives, 1 High Desert representative, 1 Morongo Basin representative, 1 Mountain representative, and 1 San Bernardino County Supervisor. This Ad Hoc has a term through June 30, 2025.

In addition, Recommendation B is to apprise the Board of a vacancy for one Mountain/Desert Board Member to serve on the Legislative Policy Committee for the remaining duration of the State and Federal two-year legislative session. According to Policy No. 10002, the Committee shall be composed of the President, Vice-President, Immediate Past President and four Board Members appointed by the President: one East Valley member, one West Valley member, one Mountain/Desert member and one County member. Members of this Committee shall serve for the duration of the State and Federal two-year legislative session in which they were appointed, with terms expiring December 31 of even-numbered years. Per Policy No. 10050, no stipend shall be paid for attendance at Legislative Policy Committee meetings.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item is informational only. Per SBCTA Policy No. 10001, all Presidential appointments shall be announced at the Board of Directors meeting immediately following the appointments for the purpose of advising the Board of Directors of the status of committee membership and representation.

Entity: San Bernardino Council of Governments

Responsible Staff:
Marleana Roman, Clerk of the Board

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Minute Action

AGENDA ITEM: 6

Date: July 3, 2024

Subject:
Resolution No. 24-026 Authorizing Placement of Assessments on the Tax Roll and Agreement for Collection of Special Taxes Related to the Property Assessed Clean Energy Program

Recommendation:
That the Board, acting as the San Bernardino Council of Governments:

A. Approve Resolution No. 24-026, authorizing the placement of assessments related to the Property Assessed Clean Energy Program on the tax roll for Fiscal Year 2024/2025.

B. Approve Agreement No. 24-1003168 with the San Bernardino County Auditor-Controller/Treasurer/Tax Collector, authorizing the Collection of Special Taxes, Fees, and Assessments.

Background:
On March 6, 2013, the San Bernardino Associated Governments (SANBAG) (now known as San Bernardino Council of Governments or SBCOG) Board of Directors held a public hearing and then adopted Resolution No. 13-044, creating the Home Energy Renovation Opportunity (HERO) Program, a Property Assessed Clean Energy (PACE) Program, that allows a jurisdiction and an interested property owner to enter into a contractual agreement to finance the installation of eligible renewable energy, energy efficiency, or water efficiency improvements that are permanently affixed to the property. SANBAG loaned the property owner the funds for the improvements. The amount of the loan plus a fixed interest amount is repaid through an assessment on the property tax bill for the property. SANBAG obtained the funds to loan by selling bonds to private investors secured by the property tax assessments paid by the property owners.

The HERO Program, administered by SBCOG, ended on June 30, 2017. However, during the four (4) years of the program, more than 15,000 assessments were created and SBCOG has a continuing obligation to bond holders to see that those existing assessments are collected.

The table below summarizes the assessments outstanding.

As of May 16, 2024				
Settlement Year	Original Assessments	Prepaid	Matured	Active
2013	477	340	26	111
2014	5,043	3,791	275	977
2015	5,097	3,760	322	1,015
2016	4,962	3,629	251	1,082
2017	2,318	1,646	67	605
Total	17,897	13,166	941	3,790

Resolution No. 24-026 requests the San Bernardino County Auditor-Controller/Treasurer/Tax Collector to enter the special assessments on the tax roll consistent with the obligations agreed to by the property owners that participated in the HERO Program and with SBCOG's obligations to the trustee and bondholders. The complete list of properties to be included on the tax roll is on file with the Clerk of the Board and available for review.

Additionally, the San Bernardino County Auditor-Controller/Treasurer/Tax Collector requests that each agency sign their Agreement for Collection of Special Taxes, Fees, and Assessments each year. This agreement is required by San Bernardino County (County) and covers the expectations and responsibilities of the agency requesting the collection of the assessment or special tax and the County in the collection of that assessment or special tax.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was received and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCOG General Counsel has reviewed this item, the draft resolution, and the draft agreement.

Responsible Staff:
Lisa Lazzar, Chief of Fiscal Resources

Attachment: SANBAG - 2024-25 Levy Resolution-c1 (10693 : Resolution 24-026 Authorizing Placement of Assessments on the Tax Roll Related

RESOLUTION NO. 24 - 026

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO COUNCIL OF GOVERNMENTS (FORMERLY KNOWN AS SAN BERNARDINO ASSOCIATED GOVERNMENTS) MAKING CERTAIN REPRESENTATIONS AND AUTHORIZING THE PLACEMENT OF ASSESSMENTS ON THE TAX ROLL IN SAN BERNARDINO COUNTY

WHEREAS, pursuant to Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California ("Chapter 29"), the Joint Exercise of Powers Agreement of the San Bernardino Associated Governments ("SANBAG"), originally made and entered into October 17, 1975, as further amended to date, and each separate Memorandum of Understanding by and between SANBAG and those parties to the Joint Exercise of Powers Agreement (each, a "Participating Party") that have elected to participate in the implementation of a property assessed clean energy ("PACE") program to finance the installation of distributed generation renewable energy sources, energy or water efficiency improvements or electric vehicle charging infrastructure, SANBAG has undertaken proceedings to establish and has established such a PACE program known as the "SANBAG HERO Program" (the "HERO Program"), to assist commercial and residential property owners within the jurisdictional boundaries of each Participating Party (the "Program Area") with the costs of installing distributed generation renewable energy sources, energy or water efficient improvements or electric vehicle charging infrastructure (the "Authorized Improvements") that are permanently fixed to their commercial and residential property; and

WHEREAS, the aforementioned Joint Powers Agreement was amended by Amendment No. 4, effective May 9, 2024, by which amendment the Joint Powers Authority changed its name from San Bernardino Associated Governments (SANBAG) to San Bernardino Council of Governments (SBCOG); and

WHEREAS, SBCOG has by previous resolutions declared its intent to levy assessments for the purpose of financing Authorized Improvements under the provisions of Chapter 29; and

WHEREAS, assessment contracts have been entered into for properties located within the jurisdictional boundaries of San Bernardino County (the "County"); and

WHEREAS, the special assessments levied against the real property within the County are not levied with regard to property values but rather are fixed special assessments based upon the costs of the Authorized Improvements and the financing of such improvements; and

WHEREAS, SBCOG has determined and hereby certifies that the assessments are exempt from the provisions of Proposition 218, which was passed by the voters in November 1996; and

WHEREAS, SBCOG has further determined that the assessments are in compliance with all applicable laws; and

WHEREAS, SBCOG requests that the Auditor-Controller of the County enter those special assessments identified in Exhibit A on the tax roll for collection by the Auditor-Controller for the 2024-25 fiscal year.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Bernardino Council of Governments as follows:

Section 1. The above recitals are true and correct.

Section 2. SBCOG orders the levy and collection of such special assessments identified on Exhibit A within the jurisdictional boundaries of each Participating Party within the County for the 2024-25 fiscal year, and in each subsequent fiscal year in which the charges may validly be levied; that a copy of this resolution shall be delivered to the Auditor-Controller of the County for placement of such assessments on the 2024-25 Tax Roll of the County, and in each subsequent fiscal year in which the charges may validly be levied.

Section 3. The special assessments are in compliance with all applicable laws and are exempt from the provisions of Proposition 218.

Section 4. In the event of delinquencies, SBCOG will pursue the removal of the delinquent special taxes from the delinquent secured tax roll in accordance with the provisions of the Master Indenture.

Section 5. The Deputy Executive Director, the Chief of Fiscal Resources or any designee of the Deputy Executive Director (each, an "Authorized Representative"), is hereby authorized and directed to take any other actions in the judgment of the Deputy Executive Director or such Authorized Representative necessary to place the special assessments on the 2024-25 Tax Roll of the County, including, but not limited to making additions, deletions and modifications to Exhibit A attached hereto.

Section 6. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the San Bernardino Council of Governments held on July 3, 2024.

_____
Ray Marquez, President

ATTEST:

_____
Marleana Roman, Clerk of the Board

Attachment: SANBAG - 2024-25 Levy Resolution-c1 (10693 : Resolution 24-026 Authorizing Placement of Assessments on the Tax Roll Related

EXHIBIT A

Attachment: SANBAG - 2024-25 Levy Resolution-c1 (10693 : Resolution 24-026 Authorizing Placement of Assessments on the Tax Roll Related

SAN BERNARDINO COUNTY

AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR
AGREEMENT FOR COLLECTION OF SPECIAL TAXES, FEES, AND ASSESSMENTS
FISCAL YEAR 2024-25

THIS AGREEMENT is made and entered into this _____ day of _____, 2024, by and between the COUNTY OF SAN BERNARDINO, hereinafter referred to as "County" and the_____, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, Government Code Sections 29304 and 51800 authorize the County to recoup its collection costs when the County collects taxes, fees, or assessments for any city, school district, special district, zone or improvement district thereof; and

WHEREAS, the District and County have determined that it is in the public interest that the County, when requested by District, collect on the County tax rolls the special taxes, fees, and assessments for District.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. County agrees, when requested by District as hereinafter provided to collect on the County tax rolls the special taxes, fees, and assessments of District, and of each zone or improvement District thereof.

2. When County is to collect District's special taxes, fees, and assessments, District agrees to notify in writing the Auditor-Controller (268 W. Hospitality Lane, 4TH floor, San Bernardino, CA 92415) of the County on or before the 10th day of August of each fiscal year of the Assessor's parcel numbers and the amount of each special tax, fee, or assessment to be so collected. Any such notice, in order to be effective, must be received by the Auditor-Controller by said date.

3. County may charge District an amount per parcel for each special tax, fee, or assessment that is to be collected on the County tax rolls by the County for the District, not to exceed County's actual cost of collection.

4. District warrants that the taxes, fees, or assessments imposed by District and collected pursuant to this Agreement comply with all requirements of state law, including but not limited to, Articles XIIIC and XIIID of the California Constitution (Proposition 218).

5. District hereby releases and forever discharges County and its officers, agents, and employees from any and all claims, demands, liabilities, costs and expenses, damages, causes of action, and judgments, in any manner arising out of District's responsibility under

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Attachment: FY 2024-25 Special Assessments Web Packet (10693 : Resolution 24-026 Authorizing Placement of Assessments on the Tax Roll

this agreement, or other action taken by District in establishing a special tax, fee, or assessment and implementing collection of special taxes, fees or assessments as contemplated in this agreement.

6. The County Auditor-Controller has not determined the validity of the taxes or assessments to be collected pursuant to this contract, and the undersigned District hereby assumes any and all responsibility for making such a determination. The undersigned District agrees to indemnify, defend, and hold harmless the County and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract or the imposition of the taxes or assessments collected pursuant to this contract, and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law. If any judgment is entered against County or any other indemnified party as a result of action taken to implement this Agreement, District agrees that County may offset the amount of any judgment paid by County or by any indemnified party from any monies collected by County on District's behalf, including property taxes, special taxes, fees, or assessments. County may, but is not required to, notify District of its intent to implement any offset authorized by this paragraph.

7. District agrees that its officers, agents and employees will cooperate with County by answering inquiries made to District by any person concerning District's special tax, fee, or assessment, and District agrees that its officers, agents, and employees will not refer such individuals making inquiries to County officers or employees for response.

8. District shall not assign or transfer this agreement or any interest herein and any such assignment or transfer or attempted assignment or transfer of this agreement or any interest herein by District shall be void and shall immediately and automatically terminate this agreement

9. This agreement shall be effective for the 2024-25 fiscal year.

10. Either party may terminate this agreement for any reason upon 30 days written notice to the other party. The County Auditor-Controller shall have the right to exercise County's right and authority under this contract including the right to terminate the contract.

11. County's waiver of breach of any one term, covenant, or other provision of this agreement, is not a waiver of breach of any other term, nor subsequent breach of the term or provision waived.

12. Each person signing this agreement represents and warrants that he or she has been fully authorized to do so.

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Attachment: FY 2024-25 Special Assessments Web Packet (10693 : Resolution 24-026 Authorizing Placement of Assessments on the Tax Roll

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

District: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

ENSEN MASON CPA, CFA,
AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR
SAN BERNARDINO COUNTY

By Authorized Deputy: _____

Printed Name: Franciliza Zyss

Title: Chief Deputy, Property Tax

Date: _____

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Attachment: FY 2024-25 Special Assessments Web Packet (10693 : Resolution 24-026 Authorizing Placement of Assessments on the Tax Roll

Minute Action

AGENDA ITEM: 7

Date: July 3, 2024

Subject:
Purchase and Sale Agreement No. 24-1003169 for Property Assessed Clean Energy Assessment Receivables with FNA California, LLC

Recommendation:
That the Board, acting as the San Bernardino Council of Governments:

A. Approve Purchase and Sale Agreement No. 24-1003169 with FNA California, LLC, to grant their first right of refusal and to allow them to advance funds to cover the Property Assessed Clean Energy Assessment delinquencies for the 2015-2016 through 2023-2024 tax years, and authorize the Executive Director, or his designee, with the approval of General Counsel as to legal form, to finalize the terms of the agreement, including the final amount and the delinquent properties to be included, and to execute the final agreement.

B. Defer the judicial foreclosure proceedings for the delinquent properties.

Background:
Under the Master Indentures that outline how San Bernardino Council of Governments (SBCOG) (formerly known as San Bernardino Associated Governments or SANBAG) will issue bonds for the Property Assessed Clean Energy (PACE) Program, any property owner that is delinquent in their tax bill on October 1st of each year will be subject to SBCOG starting a judicial foreclosure process. The Master Indentures provide that SBCOG may elect to defer the judicial foreclosure proceedings if SBCOG has received or advanced funds to cover the delinquent amounts.

In May 2024, SBCOG's Special Tax Consultant, David Taussig & Associates (DTA), reported that there were 125 properties considered delinquent for the 2023-2024 tax year and 109 properties delinquent from the 2016-2017 through 2022-2023 tax years combined. DTA transmits delinquency notices to the delinquent property owners after the 1st and 2nd tax installments are not paid. The delinquencies by tax year are shown in the table below.

Tax Year	Amount of Tax Levy	Number of Properties	Amount Delinquent	Number of Delinquent Properties	Delinquency Rate by Value
14/15	$7,856,008.93	3,160	$0.00	0	0.00%
15/16	$19,058,514.63	7,103	$0.00	0	0.00%
16/17	$29,734,139.75	10,557	$2,745.98	1	0.01%
17/18	$35,736,978.72	12,384	$12,315.19	6	0.03%
18/19	$31,123,600.04	10,731	$35,053.28	12	0.11%
19/20	$25,179,345.70	8,766	$44,802.21	14	0.18%
20/21	$19,906,970.38	7,062	$34,179.89	14	0.17%
21/22	$14,356,417.31	5,275	$51,046.54	22	0.36%
22/23	$10,831,868.07	4,082	$90,569.90	40	0.84%
23/24	$9,714,788.26	3,679	$232,595.49	125	2.39%

In order for the Board of Directors to defer the judicial foreclosure process, the delinquent amounts must be advanced to the Trustee--either by SBCOG or by a third party, such as FNA California, LLC, pursuant to an agreement with SBCOG allowing that third party to advance the

funds and to be reimbursed for such advance when the delinquent assessments are brought current. Purchase and Sale Agreement No. 24-1003169 accomplishes this task.

This contract allows FNA California, LLC, to exercise its right of first refusal to purchase the PACE assessment delinquencies as of June 30, 2024, as outlined in Purchase and Sale Agreement No. 21-1002484 approved by SANBAG and dated October 27, 2020. FNA California, LLC, will pay a fee equal to 7.5% of the delinquent assessments, which is the same rate as prior years, at a cost of $17,444.66 based on current delinquencies, to be used by SBCOG to cover its administrative costs as well as the additional costs incurred by the Special Tax Consultant. FNA California, LLC, is providing a similar service with the same fee for Western Riverside Council of Governments for their local and statewide PACE programs.

Staff recommends that it is in the best interest of SBCOG and property owners to defer the judicial foreclosure process and to approve the agreement with FNA California, LLC, and allow them to advance the delinquent amounts. These actions will provide property owners more time to become current on their assessments and will allow SBCOG to meet the conditions of the Master Indentures for the bonds.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel has reviewed this item and the draft agreement.

Responsible Staff:
Lisa Lazzar, Chief of Fiscal Resources

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Contract Summary Sheet

General Contract Information

Contract No: 24-1003169 Amendment No.:

Contract Class: Receivable Department: Council of Governments

Customer ID: 03543 Customer Name: FNA California, LLC

Description: Fees related to purchase of PACE Program Delinquent Assessments

List Any Accounts Payable Related Contract Nos.:

Dollar Amount

Original Contract	$	17,444.66	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**17,444.66**	**Total Contingency Value**	**$**	**-**
		Total Dollar Authority (Contract Value and Contingency)		**$**	**17,444.6**

Contract Authorization

Board of Directors Date: 07/03/2024 Board # Item # 10694

Contract Management (Internal Purposes Only)

Local Services

Accounts Receivable

Total Contract Funding: $ 17,444.66 Funding Agreement No: 24-1003169

Beginning POP Date: 08/15/2024 Ending POP Date: 06/30/2025 Final Billing Date: 06/30/2025

Expiration Date: 06/30/2025

	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL:	2911	10	0111	0708	48007000	17,444.66
GL:						-
GL:						-
GL:						-
GL:						-

	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-

Hilda Flores
Project Manager (Print Name)

Hilda Flores
Task Manager (Print Name)

Additional Notes: Final terms and listing of delinquent properties will be finalized and approved by Executive Director

Attachment: CSS 24-1003169 Purchase and Sale Agreement Delinquent PACE Assessments (10694 : Purchase and Sale Agreement for PACE

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

Dated as of August 15, 2024

between

SAN BERNARDINO ASSOCIATED GOVERNMENTS,

as Seller

and

FNA CALIFORNIA, LLC,

as Purchaser

Regarding
Assessment Installment Receivables
for the 2023-2024 Tax Year

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TABLE OF CONTENTS

Page

Purchase and Sale Agreement 1
Background 1
Article I Definitions 2
Section 1.01 Definitions 2
Section 1.02 Other Definitional Provisions 6
Section 1.03 Term of this Agreement 7
Article II Purchase and Sale of Assessment Installment Receivables 7
Section 2.01 Purchase and Sale of Assessment Installment Receivables; Assignment of Rights 7
Section 2.02 Closing Conditions 8
Section 2.03 Right to Terminate 9
Section 2.04 Pledge 9
Section 2.05 Release of Collateral upon Repurchase of Assessment Installment Receivables 10
Article III The Assessment Installment Receivables 10
Section 3.01 Representations, Warranties and Covenants as to the Assessment Installment Receivables 10
Section 3.02 Enforcement and Collection; Assignment of Rights 14
Article IV SANBAG 16
Section 4.01 Representations of SANBAG 16
Section 4.02 Additional Representations and Agreements 18
Section 4.03 Representations of Company 19
Article V Miscellaneous 20
Section 5.01 Amendment 20
Section 5.02 Entire Agreement 20
Section 5.03 Notices 21
Section 5.04 No Assignment by SANBAG 21
Section 5.05 Limitations on Rights of Others 21
Section 5.06 Severability 21
Section 5.07 Separate Counterparts 21
Section 5.08 Headings 21
Section 5.09 Governing Law and Venue 22
Section 5.10 Nonpetition Covenants 23

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Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

TABLE OF CONTENTS
(continued)

Page

Section 5.11 Successor Is Deemed Included In All References To Predecessor 23
Section 5.12 Waiver of Personal Liability.....23
Section 5.13 Exclusive Right of First Refusal 23
EXHIBIT "A" ASSESSMENT INSTALLMENT RECEIVABLES SCHEDULE .A-**Error! Bookmark not defined.**
EXHIBIT "B" LIST OF MASTER INDENTURES B-1
EXHIBIT "C" EXCLUSION CRITERIA C-1

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Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of August 15, 2024, between San Bernardino Council of Governments ("SBCOG"), formerly known as San Bernardino Associated Governments ("SANBAG"), a joint exercise of powers authority existing under the Joint Exercise of Powers Act, being Chapter 5 of Division 7, Title 1 of the Government Code of the State of California and a Joint Exercise of Powers Agreement originally made and entered into as of March 15, 1973, as further amended to date, and FNA California, LLC, an Illinois limited liability company ("Company").

BACKGROUND

SANBAG has levied assessments under Chapter 29 (as defined below) payable in installments under the 1915 Act (defined below) on properties participating in the SANBAG HERO Program (as defined below) which are collected on the secured property tax roll of the County (as defined below) in which the participating properties are located.

Certain installments of such assessments are delinquent (the "Assessment Installment Receivables") as of the Cut-off Date (as defined below).

SANBAG has determined that it is in the best interests of SANBAG at this time to sell to the Company the Assessment Installment Receivables it is entitled to receive arising from the collection of certain delinquent assessments for the tax years specified in this Agreement, upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

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Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

Article I
Definitions

Section 1.01 Definitions. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

"1915 Act" means the Improvement Bond Act of 1915, Division 10 of Part I (commencing with Section 8500) of the California Streets and Highways Code.

"Agreement" means this Purchase and Sale Agreement, as originally executed or as it may from time to time be supplemented, modified or amended in accordance with the provisions hereof.

"Assessment" means each "Assessment" as defined in an Assessment Contract and levied pursuant to such Assessment Contract against a Property (as defined below) to which such Assessment Contract is subject.

"Assessment Administrative Fee" means, as to each Property, the assessment administrative fee due and payable pursuant to the applicable Assessment Contract that shall be collected on the property tax bill pertaining to such Property.

"Assessment Administrator" means David Taussig & Associates, and its successors, or any financial consultant or firm of such financial consultants judged by SANBAG to have experience in the administration for and on behalf of public agencies of assessments similar to the Assessments levied by such public agencies in the State of California.

"Assessment Contract" shall have the meaning given such term in the applicable Master Indenture.

"Assessment Installment" means, as to each Property, the portion of the principal amount of an Assessment, together with the interest on the Assessment, due and payable pursuant to an Assessment Contract that shall be collected on the property tax bill for a particular Tax Year pertaining to such Property.

"Assessment Installment Receivable" means, with respect to a Property for a particular Tax Year, the Assessment Installment and the related Assessment Administrative Fee on the secured tax roll of the County that:

(i) was levied by SANBAG on one of the Properties listed on the Assessment Installment Receivables Schedule for such Tax Year in accordance with the Chapter 29, the 1915 Act and the applicable Assessment Contract and is payable to SANBAG if and when collected,

(ii) was levied on account of the applicable Purchased Tax Year, was delinquent as of the Cut-off Date and was shown as such on the Delinquent Tax Roll maintained by the County for the applicable Purchased Tax Year,

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(iii) had not been received by SANBAG or the Trustee, on behalf of SANBAG, as of the Cut-off Date,

(iv) is due and owing to SANBAG in an amount equal to the amount of such Assessment Installment and Assessment Administrative Fee, penalties and accrued interest set forth on the Assessment Installment Receivables Schedule,

(v) includes, to the extent permitted by law and the terms of the applicable Master Indenture, all penalties and accrued interest thereon to the date of collection, and

(vi) has not become a Defective Assessment Installment Receivable.

"Assessment Installment Receivable Balance" means, with respect to an Assessment Installment Receivable as of a particular date, the sum of

(i) an amount equal to the delinquent Assessment Installments and Assessment Administrative Fees levied by or on behalf of SANBAG and payable to the SANBAG with respect to such Assessment Installment Receivable as shown on the Assessment Installment Receivables Schedule,

(ii) to the extent permitted by law and the applicable Master Indenture, the ten percent (10%) penalty payable on the Assessment Installment Receivable in accordance with Sections 2617 and 2618 of the California Revenue and Taxation Code, and

(iii) to the extent permitted by law and the applicable Master Indenture, interest accrued on the amount in clause (A) from the July 1 of the Tax Year following the Tax Year in which such Assessment Installment Receivable first became delinquent through the date of determination at the rate of one and half percent (1.5%) per month in accordance with Section 4103 of the California Revenue and Taxation Code.

"Assessment Installment Receivables Schedule" means the schedule attached as (or incorporated by reference in) EXHIBIT A hereto, as such schedule may be amended from time to time in accordance with Section 3.01(e) hereof, with respect to the Assessments levied on the Properties described on EXHIBIT A hereto.

"Assessment Installments Purchased" has the meaning set forth in Section 2.01(a) hereof.

"Assessment Lien" means any lien that attaches, by operation of Section 2187 of the California Revenue and Taxation Code, to the fee interest in real property.

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

"Bond Counsel" means Best Best & Krieger LLP or any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to public financing in the State.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banking institutions in New York or California are authorized or obligated by law or executive order to be closed.

"Chapter 29" means Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.12 et seq.)

"Closing Date" means August 15, 2024.

"Collections" means, with respect to an Assessment Installment Receivable, the amount collected by the County (whether as payments by the related Property Owner in a lump sum, payments by the related Property Owner pursuant to an installment payment plan, as proceeds of sale of the related tax-defaulted Property, or otherwise) on the Assessment Installment Receivable. Collections include but are not limited to the following:

(i) the delinquent Assessment Installments payable for the Tax Year to which the Assessment Installment Receivable is related,

(ii) the ten percent (10%) penalty payable thereon in accordance with Sections 2617 and 2618 of the California Revenue and Taxation Code,

(iii) interest accruing at the rate of one and half percent (1.5%) per month in accordance with Section 4103 of the California Revenue and Taxation Code, and

(iv) all Assessment Administrative Fees levied in connection therewith that are distributable to SANBAG, if any.

"Company" means FNA California, LLC, a limited liability company organized and existing under the laws of the state of Illinois or any successor thereto.

"County" means the County of San Bernardino, California.

"Cut-off Date" means August 10, 2024.

"Defective Assessment Installment Receivable" has the meaning set forth in Section 3.01(c) hereof.

"Defective Assessment Installment Receivable Purchase Amount" means, as to any Defective Assessment Installment Receivable, an amount equal to the Purchase Price and Premium of such Defective Assessment Installment Receivable set forth on the Assessment Installment Receivables Schedule reduced by the amount, if any, of Collections on such Defective Assessment Installment Receivable which have been

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

applied to the recovery of such Purchase Price and Premium and paid to the Company as of the date of calculation.

"Delinquent Tax Roll" means the delinquent tax roll which is delivered by the Treasurer-Tax Collector of the County to the Auditor-Controller of the County pursuant to Section 2627 of the Revenue and Taxation Code of the State, or such other report, file or data of the Treasurer-Tax Collector or Auditor-Controller of the County as may be available from the County and mutually satisfactory to SANBAG and the Company.

"Master Indenture" means, as applicable, each of the master indentures listed on EXHIBIT B, incorporated herein by reference.

"Opinion of Counsel" means one or more written opinions of counsel, who may be an employee of or counsel to SANBAG, which counsel shall be acceptable to the recipient of such opinion or opinions.

"Person" any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental body or other entity.

"Premium" has the meaning set forth in Section 2.01(a) hereof.

"Property" means, with respect to an Assessment Installment Receivable, the real property that is encumbered by the Assessment Lien of such Assessment Installment Receivable.

"Property Owner" means, with respect to an Assessment Installment Receivable, the fee owner or owners of the related Property.

"Purchase Price" has the meaning set forth in Section 2.01(a) hereof.

"Purchased Tax Year" means, for a given Assessment Installment Receivable, the Tax Year ending on June 30 of the applicable calendar year, as set forth in EXHIBIT A hereto.

"Purchased Receivables" means the Assessment Installment Receivables listed on the Assessment Installment Receivables Schedule and purchased by the Company pursuant to this Agreement.

"Responsible Officer" means, with respect to SANBAG, the Executive Director, and the Deputy Executive Director, or any other official of SANBAG customarily performing functions similar to those performed by any of the above designated officials, and also with respect to a particular matter, any other official of SANBAG to whom such matter is referred because of such official's knowledge of and familiarity with the particular subject.

"SANBAG" means San Bernardino Associated Governments, a joint exercise of powers authority organized and existing under the laws of the State, including any entity with which it may be consolidated or which otherwise succeeds to the interests of

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

SANBAG and includes San Bernardino Council of Governments, or SBCOG, the current name of aforementioned joint exercise of powers authority, pursuant to Amendment No. 4 to the Joint Exercise of Powers Agreement referenced in the Preamble.

"SANBAG HERO Program" means the SANBAG HERO Program established by SANBAG pursuant to Chapter 29 and the 1915 Act.

"State" means the State of California.

"Tax Year" means the 12-month period beginning on July 1 in any year and ending on the following June 30. Whenever in this Agreement reference is made to the Tax Year of a certain year, such reference is to the Tax Year ending June 30 of that year.

"Trustee" shall mean Deutsche Bank National Trust Company, a national banking association duly organized and existing under the laws of the United States of America, acting as trustee and not in its individual capacity, its successors and assigns, and any other corporation or association which may be at any time substituted in its place, as provided in the applicable Master Indenture.

Section 1.02 Other Definitional Provisions.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article, Section, Schedule and Exhibit references contained in this Agreement are references to Articles, Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; and the term "including" shall mean "including without limitation."

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement,

DRAFT

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instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

Section 1.03 Term of this Agreement.

This Agreement shall remain in full force and effect for the period during which any of the Assessment Installment Receivables purchased under this Agreement remains outstanding.

Article II
Purchase and Sale of Assessment Installment Receivables

Section 2.01 Purchase and Sale of Assessment Installment Receivables; Assignment of Rights.

(a) *Purchase and Sale.* In consideration of the Company's promise to deliver on the Closing Date to or upon the order of SANBAG the sum of $_____ (the "Purchase Price"), which is equal to the principal amount of $_____ of the delinquent Assessment Installments included in Assessment Installment Receivables to be purchased ("Assessment Installments Purchased"), plus a premium equal to seven and a half percent (7.5%) of the Assessment Installments Purchased (the "Premium") in the amount of $_____, SANBAG does hereby sell, transfer, assign, set over and otherwise convey to the Company, without recourse (but subject to the obligations herein), all right, title and interest of SANBAG on the Closing Date, free and clear of all liens, claims and interest, whether now owned or hereinafter acquired, in and to:

(i) the Assessment Installment Receivables;

(ii) all Collections in respect of the Assessment Installment Receivables since the Cut-off Date; and

(iii) the proceeds of any and all of the foregoing.

(b) *Collections.* The Company shall be entitled, from and after the Closing Date, to receive all Collections with respect to the Assessment Installment Receivables.

(c) *Payment and Application of Purchase Price.* On the Closing Date, the Company shall pay or cause to be paid the Purchase Price, together with the Premium thereon, in immediately available funds by federal funds wire to or upon the order of SANBAG. SANBAG covenants that (i) it shall treat the Purchase Price as Assessments or Assessment Administrative Fees, as applicable, for all purposes under the terms of the applicable Master Indenture or other document by which any bonds, notes or other evidences of indebtedness were issued and secured by the Assessments to which the Assessment Installment Receivables relate, and (ii) it shall apply the Purchase Price to the payment of the bonds secured by the Assessments to which the Assessment

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

Installment Receivables relate, and to the other authorized purposes to which the Assessments or the Assessment Administrative Fees may be applied (including without limitation replenishment of reserve funds and payment of administrative expenses), to the same extent that the proceeds of the Assessments and Assessment Administrative Fees constituting the Assessment Installment Receivables would have been required to be applied had they been paid by the respective property owner before delinquency and received by SANBAG.

Section 2.02 Closing Conditions. The obligation of the Company to purchase the Assessment Installment Receivables and pay the Purchase Price, together with the Premium thereon, will be subject to the accuracy of the representations and warranties of SANBAG herein, to the accuracy of statements to be made by or on behalf of SANBAG, to the performance by SANBAG of its obligations hereunder and to the following additional conditions precedent:

(a) *Executed Agreement.* At the Closing Date, this Agreement must have been authorized, executed and delivered by the respective parties thereto, and this Agreement and all official actions of SANBAG relating thereto must be in full force and effect and not have been amended, modified or supplemented.

(b) *Closing Documents.* The Company must receive the following opinions and certificates (which may be consolidated into a single certificate for convenience), dated the Closing Date and acceptable to the Company:

(i) *Legal Opinion of Bond Counsel.* An approving opinion of Bond Counsel to the effect that the obligations of SANBAG under this Agreement are valid, binding and enforceable, and as to certain other matters, addressed to, and in form and substance satisfactory to, SANBAG and the Company.

(ii) Certificate *of SANBAG.* A certificate signed by an appropriate official of SANBAG to the effect that:

(A) SANBAG is duly organized and validly existing as a joint exercise of powers authority under the Joint Exercise of Powers Act, being Chapter 5 of Division 7, Title 1 of the Government Code of the State of California and a Joint Exercise of Powers Agreement originally made and entered into as of March 15, 1973, as further amended to date,

(B) the representatives of SANBAG who executed this Agreement have been duly authorized to do so on behalf of SANBAG,

(C) the representations, agreements and warranties of SANBAG herein are true and correct in all material respects as of the Closing Date,

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

(D) SANBAG has complied with all the terms of this Agreement which are required to be complied with by SANBAG prior to or concurrently with the Closing Date, and

(E) the execution and delivery of this Agreement have been approved by the governing board of SANBAG, which approval was duly and regularly adopted in accordance with all applicable legal requirements.

Section 2.03 Right to Terminate. If SANBAG is unable to satisfy the conditions set forth in Section 2.02(a) and (b) hereof, as reasonably determined by the Company, this Agreement may be canceled either in part or in its entirety by the Company at any time. Notice of such cancellation shall be given to SANBAG in writing, or by telephone call confirmed in writing. Upon receipt of a notice of cancellation pursuant to this Section 2.03, SANBAG shall remit the full Purchase Price, together with the Premium thereon, to and upon the order of the Company.

Section 2.04 Pledge. Although the parties hereto intend that the sale of the Assessment Installment Receivables by SANBAG to the Company be characterized as an absolute sale rather than a secured borrowing, if the sale of the Assessment Installment Receivables is deemed to be a secured borrowing, then in order to secure SANBAG's obligations to the Company hereunder, SANBAG takes the actions set forth below.

(a) SANBAG hereby pledges, assigns and grants a lien to the Company on the following (the "Collateral"):

(i) the Assessment Installment Receivables;

(ii) the Collections; and

(iii) all proceeds of the foregoing.

(b) SANBAG represents and warrants to the Company that:

(i) this Agreement creates a valid and continuing lien on the Collateral in favor of the Company, which is prior to all other liens, and is enforceable as such as against creditors of and purchasers from SANBAG;

(ii) SANBAG owns and has good and marketable title to the Collateral free and clear of any lien, claim or encumbrance of any person subject to the provisions of the applicable Master Indenture;

(iii) other than the lien granted to the Company pursuant to this Agreement, SANBAG has not pledged, assigned, sold, granted a lien on, or otherwise conveyed any of the Collateral; and

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

(iv) SANBAG is not aware of any judgment or tax lien filings against SANBAG.

These representations and warranties shall survive the Closing and may not be waived.

Section 2.05 Release of Collateral upon Repurchase of Assessment Installment Receivables. Any Assessment Installment Receivable that is repurchased by SANBAG in accordance with this Agreement shall be released from the Collateral when the required payment is made pursuant to Section 3.01(e) of this Agreement. Promptly upon such release, the Company shall amend the Assessment Installment Receivables Schedule to reflect the release of such Assessment Installment Receivable from the terms of this Agreement. Such Assessment Installment Receivable shall cease to be a part of the Collateral and be released from, and no longer be subject to, the pledge of this Agreement. The Company agrees to take or cause to be taken such actions and to execute, deliver and record such instruments and documents as may be set forth in a written request of SANBAG to release such Assessment Installment Receivable from the lien of this Agreement.

Article III
The Assessment Installment Receivables

Section 3.01 Representations, Warranties and Covenants as to the Assessment Installment Receivables.

(a) *Representations and Warranties.* SANBAG hereby represents and warrants to the Company that to SANBAG's knowledge (1) as of the Closing Date for the Assessment Installment Receivables, the information set forth in the Assessment Installment Receivables Schedule will be correct in all material respects, and (2) as to each Assessment Installment Receivable transferred hereunder, as of the Closing Date:

(i) SANBAG was the sole owner of such Assessment Installment Receivable;

(ii) SANBAG has full right and authority to sell such Assessment Installment Receivable as provided in this Agreement;

(iii) SANBAG sold such Assessment Installment Receivable free and clear of any and all liens, pledges, charges, security interests or any other statutory impediments to transfer created by or imposed upon SANBAG encumbering such Assessment Installment Receivable (but subject to the right of redemption by the related Property Owner), except for liens that will be discharged by the application of the proceeds of the sale thereof;

(iv) the sale of such Assessment Installment Receivable by SANBAG did not contravene or conflict with any laws, rules or regulations applicable to SANBAG;

DRAFT

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(v) the Assessment Installments and Assessment Administrative Fees of which the Assessment Installment Receivable constitutes a portion were validly levied by SANBAG and, to the best knowledge of SANBAG and its agents and representatives, also validly levied and collected by the County on the secured property tax roll on behalf of SANBAG, in accordance with all applicable provisions of the laws, rules and regulations of the State, the County and of the United States;

(vi) the amount of the Assessment Installment Receivable includes Assessment Installments and Assessment Administrative Fees on the secured tax roll which have been levied by SANBAG and by the County on the secured property tax roll on behalf of SANBAG during the applicable Purchased Tax Year which were delinquent as of the Cut-off Date;

(vii) the Assessment Installment Receivable was secured by a legal, valid, binding and enforceable lien on the related Property;

(viii) the lien of the Assessment Installment Receivable represented a valid, proper and enforceable lien on the related Property, the priority of which was subject only to other Assessment Liens on such Property and to certain other priorities prescribed by statute;

(ix) the amount of such Assessment Installment Receivable includes a ten percent (10%) penalty imposed pursuant to Revenue & Taxation Code Section 2617 and/or 2618 on the portion of such Assessment Installment Receivable consisting of the delinquent Assessment Installment(s) and the delinquent Assessment Administrative Fee(s);

(x) interest payable by the related Property Owner has accrued and will continue to accrue on the delinquent Assessment Installments and Assessment Administrative Fees of which the Assessment Installment Receivable constitutes a portion from July 1 of the Tax Year following the Tax Year in which such Assessment Installment Receivable first became delinquent to the date of payment of such Assessment Installments Receivable at the rate of one and a half percent (1.5%) per month (not compounded) as provided in California Revenue and Taxation Code Section 4103;

(xi) such Assessment Installment Receivable had not been discharged or disallowed (in whole or in part) in a bankruptcy proceeding;

(xii) such Assessment Installment Receivable had not been compromised, adjusted or modified (including by the granting of any discounts, allowances or credits, but not including installment payment plans in accordance with law);

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

(xiii) such Assessment Installment Receivable was not subject to a foreign government's diplomatic immunity from enforcement or treaty with the United States of America;

(xiv) there existed no fact, condition or circumstance that would prevent the County from being able to sell the related Property in a tax sale upon the expiration of a period of five years from July 1 of the Tax Year after the Tax Year in which the Assessment Installments became delinquent;

(xv) no right of rescission, setoff, counterclaim or defense had been asserted with respect to such Assessment Installment Receivable;

(xvi) SANBAG has not received notice that such Assessment Installment Receivable relates to a Property owned by a Property Owner that is subject to any bankruptcy proceeding commenced prior to the Closing Date;

(xvii) such Assessment Installment Receivable does not relate to a Property owned by a federal, state, or local governmental entity;

(xviii) SANBAG had not waived any penalties or interest with respect to such Assessment Installment Receivable;

(xix) each of the requirements included in the definition of "Assessment Installment Receivable" is satisfied with respect to such Assessment Installment Receivable; and

(xx) none of the exclusion criteria set forth in EXHIBIT C are applicable to such Assessment Installment Receivable unless, as of the Closing Date, any such criteria has been expressly waived in writing by the Company.

(b) Survival of Representations and Warranties; Liability of SANBAG.

(i) It is understood and agreed that the representations and warranties set forth in this Section 3.01, Section 2.04 Section 4.01 and Section 4.02 shall survive the consummation of the sale of the Assessment Installment Receivables on the Closing Date and shall inure to the benefit of the Company.

(ii) It is understood and agreed that the representations and warranties made by SANBAG in Section 3.01(a) hereof are made solely for the purpose of determining the existence of a Defective Assessment Installment Receivable, and in no case shall SANBAG or any of its officers or employees have any liability if it was subsequently discovered that such representations and warranties were in fact false at the time they were made, other than the obligation of SANBAG to repurchase Defective Assessment Installment Receivables as provided in this Agreement.

DRAFT

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(c) *Defective Assessment Installment Receivables.* Upon discovery by SANBAG or the Company (based on information provided by the County, examination of the Delinquent Tax Roll, or otherwise) of a breach of any of the foregoing representations and warranties (without regard to any knowledge qualifier) that materially and adversely affects the value of any Assessment Installment Receivable (such Assessment Installment Receivable, a "Defective Assessment Installment Receivable"), the party making such discovery shall immediately notify SANBAG or the Company of such discovery and describe in reasonable detail the representations and warranties that were breached.

The Company may, at its option, require SANBAG to repurchase the Defective Assessment Installment Receivable. Under no circumstances will SANBAG have the right to require the resale of a Defective Assessment Installment Receivable to the Company. SANBAG shall have no right to substitute another Assessment Installment Receivable for a Defective Assessment Installment Receivable.

If the Company elects to require SANBAG to repurchase a Defective Assessment Installment Receivable, the Company shall give written notice to SANBAG. Such notice must (i) identify the Defective Assessment Installment Receivable, (ii) if the Assessment Installment Receivable Balance as of the Closing Date is determined to be less than the amount thereof shown on the Assessment Installment Receivables Schedule, state the amount of such deficiency and (iii) be accompanied by documentation from the County which reasonably establishes the factual basis for the determination of the breach. SANBAG shall fully cooperate (at its own expense), or utilize all reasonable efforts to cause the County to cooperate, as reasonably requested by the Company in the investigation and reporting of the foregoing matters.

For purposes of clause (ii) of the preceding paragraph, if the adjustments to the Assessment Installment Receivable Balance result from adjustments to the Delinquent Tax Roll provided by the County, the Company will use its best reasonable efforts to obtain the reason(s) for the adjustments from the County, but if the Company is unable to obtain such reasons despite using its best reasonable efforts to do so, such inability shall not be grounds for rejection or disallowance of the adjustment.

(d) *Effect of Reduced Assessment Installment Receivable Amount.* If any Assessment Installment Receivable becomes a Defective Assessment Installment Receivable solely as a result of the determination that the Assessment Installment Receivable Balance as of the Closing Date (or applicable repurchase date) was less than the amount set forth on the Assessment Installment Receivables Schedule, then only the amount of the reduction of such Assessment Installment Receivable shall be deemed to be repurchased and such Assessment Installment Receivable, at its reduced Assessment Installment Receivable Balance, shall continue to be an Assessment Installment Receivable for all purposes of this Agreement.

(e) *Cure or Purchase of Defective Assessment Installment Receivables.* As to any Defective Assessment Installment Receivable, on or prior to the next date on which SANBAG receives the normal payments of Assessment Installments and

DRAFT

Attachment: Purchase and Sale Agreement - SANBAG - FY 2023-2024 w_ FNA California LLC-c1-PDF (10694 : Purchase and Sale Agreement

Assessment Administrative Fees from the County following the day on which it is discovered that what was supposed to be an Assessment Installment Receivable is, in fact, a Defective Assessment Installment Receivable, SANBAG shall, at its option, either (A) cure or cause to be cured such breach or (B) pay to the Company, in immediately available funds, the Defective Assessment Installment Receivable Purchase Amount.

If any Assessment Installment Receivable is determined to be a Defective Assessment Installment Receivable prior to the Closing Date, the Defective Assessment Installment Receivable Purchase Amount shall be subtracted from the Purchase Price and Premium payable to SANBAG on the Closing Date.

The obligations of SANBAG under this Section 3.01(e) shall constitute the sole remedies available to the Company with respect to a Defective Assessment Installment Receivable and SANBAG shall not incur any other liability to the Company or any other Person because of any inaccuracy of any representation or warranty made under this Section 3.01 with respect to the Assessment Installment Receivables. Upon the repurchase of a Defective Assessment Installment Receivable by SANBAG, the Company shall cause the Assessment Installment Receivables Schedule to be amended to delete the Defective Assessment Installment Receivable, and SANBAG shall have no further liabilities or obligations with respect to such Defective Assessment Installment Receivable.

(f) *Company's Calculation of Defective Assessment Installment Receivables.* The Company shall cause the Company's calculations and/or recalculations of any adjustments made under this Section 3.01 (herein, "Adjustments") to be delivered to SANBAG. SANBAG shall have ten (10) Business Days after delivery thereof to review the Adjustments and submit to the Company any objections and deliver revised Adjustments to SANBAG. If SANBAG does not respond to any such Adjustments (as they may be revised) within ten (10) Business Days after delivery, such Adjustments shall be deemed final and binding on SANBAG, and SANBAG shall remit any payment required by Section 3.01(e).

Section 3.02 Enforcement and Collection; Assignment of Rights.

(a) *Enforcement Rights of the Company.* Except as provided herein, the Company shall be entitled to assert all right, title, and interest of SANBAG in the enforcement and collection of the Purchased Receivables, including but not limited to SANBAG's lien priority, and SANBAG's right to receive the Collections on the Purchased Receivables. Notwithstanding the foregoing, the Company acknowledges that Streets & Highways Code Section 5898.28(b)(2) provides that (i) the Company is not authorized to initiate and prosecute a judicial foreclosure action upon the Properties securing the payment of the Purchased Receivables and (ii) prosecution of such a judicial foreclosure action remains the responsibility of SANBAG.

From and after the receipt by SANBAG of the Purchase Price on the Closing Date, SANBAG shall have no rights whatsoever in and to the Purchased Receivables, including but not limited to the right to receive any Collections in respect of the Purchased

DRAFT

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Receivables, except with respect to Defective Assessment Installment Receivables repurchased by SANBAG in accordance with Section 3.01 hereof.

SANBAG shall cooperate fully with the Company as may be reasonably required by the Company to exercise any enforcement rights granted to the Company under this Agreement. SANBAG shall take all actions as may be reasonably required by law, including but not limited to the initiation of judicial foreclosure proceedings upon the request of the Company upon the Properties securing the payment of the Purchased Receivables upon behalf of the Company as provided for herein, fully to preserve, maintain, defend, protect and confirm the interests of the Company in the Purchased Receivables and the Collections. Any such enforcement actions, including judicial foreclosure proceedings, required to be undertaken by SANBAG at the Company's request shall be at the sole expense of the Company. If the cost of any such enforcement action is recovered by SANBAG such funds shall first be used to reimburse SANBAG for any such costs that have not been paid by the Company and, upon reimbursement of SANBAG for all such costs, such remaining funds shall be used to reimburse the Company for such costs as have been paid by the Company.

The Company and SANBAG agree that the primary means of enforcement of the payment of a Purchased Receivable shall be a tax sale by the County in which the Property securing such Purchased Receivable is located pursuant to the applicable provisions of Part 6 of Division 1 of the California Revenue and Taxation Code (the "R&T Code"). The Company shall initially forebear from requesting SANBAG to initiate judicial foreclosure proceedings upon any Property securing the payment of a Purchased Receivable for a period of nine (9) years from the date of the original delinquency of the Purchased Receivable. If the County fails to attempt to sell such Property as required pursuant to R&T Code Section 3692 within nine (9) years from the date such Property can be sold at a tax sale, the Company may request that SANBAG initiate judicial foreclosure proceedings to secure the payment of the Purchased Receivable. Following receipt of such request from the Company, SANBAG may, at its sole discretion, (1) initiate such foreclosure proceedings or (2) repurchase such Purchased Receivable from the Company for an amount equal to the Purchase Price and Premium of such Purchased Receivables set forth in the Assessment Installment Receivables Schedule reduced by the amount, if any of Collections on such Purchased Receivables which have been applied to the recovery of such Purchase Price and Premium and paid to the Company as of the date of calculation.

(b) *Change of Records; Further Actions and Assurances.* On or before the Closing Date, SANBAG shall mark its appropriate records so that, from and after the Closing Date, records of SANBAG shall indicate that such Purchased Receivables have been sold. SANBAG hereby agrees to (i) execute, deliver and cause to be approved and/or recorded all documents, and take all actions, as may be required to assign the Purchased Receivables and the Collections to the Company under this Agreement, and to notify the County of the assignments made under this Agreement, and (ii) execute, deliver and cause to be approved all amendments to any documents under which bonds or other debt secured by the Purchased Receivables were issued as may be required to assign the Purchased Receivables and the Collections to the Company under this

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Agreement, and to notify any applicable bond trustee, fiscal agent or payment agent of the assignments made under this Agreement.

(c) *Administration and Remittances of Collections.* SANBAG shall take all commercially reasonable best efforts as may be required to cause the Collections, when remitted by the County to SANBAG, to be remitted as soon as reasonably possible, and in any event not less frequently than once per calendar year, by or on behalf of SANBAG to the Company by federal funds wire transfer to the following account:

CIBC Bank USA
ABA 071006486
Acct Number: 2202292
Acct Name: Elm Limited LLC

If the Company becomes aware of Collections that have been remitted by the County to SANBAG and not paid to the Company, the Company may notify SANBAG in writing and SANBAG agrees to take all actions required to remit those Collections to the Company as soon as reasonably possible. If any Collections received by SANBAG from the County are not remitted to the Company within ten (10) business days of such notice, SANBAG agrees to pay to the Company upon demand interest on the amount of such unpaid Collections at the rate of ten percent (10%) per annum for each day such Collections remain unpaid after such date.

SANBAG shall cause all notices and reports relating to the Purchased Receivables to be provided to the Company as and when they are available from SANBAG, the Trustee or the Assessment Administrator. In addition, SANBAG shall provide, or cause the Assessment Administrator to provide monthly reporting to the Company on the status of Assessment Installment Receivables, cash reconciliations, and such other similar reports as the Company may reasonably request to enable the Company to account for the Assessment Installment Receivables. The costs of providing such notices and reports as described in this paragraph shall be borne by SANBAG.

(d) *Covenant Not to Waive Penalties.* SANBAG agrees not to waive all or any portion of delinquency penalties and redemption penalties as permitted by any provision of applicable law with respect to any delinquent Assessment Installments included within the Purchased Receivables.

Article IV
SANBAG

Section 4.01 Representations of SANBAG. SANBAG makes the following representations on which the Company is deemed to have relied in acquiring the Assessment Installment Receivables. The representations speak as of the Closing Date, and shall survive the sale of the Assessment Installment Receivables to the Company and the pledge thereof to the Company pursuant to this Agreement.

(a) *Due Organization, Existence and Company.* SANBAG is a joint exercise of powers authority, duly organized and validly existing under the Joint Exercise

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of Powers Act, being Chapter 5 of Division 7, Title 1 of the Government Code of the State of California and a Joint Exercise of Powers Agreement originally made and entered into as of March 15, 1973, as further amended to date, has full legal right, power and authority under the Constitution and laws of the State to enter into this Agreement, to sell the Assessment Installment Receivables and the Collections to the Company, and to carry out and consummate all transactions contemplated hereby.

(b) *Due Execution.* By all necessary official action of the governing board of SANBAG, SANBAG has duly authorized and approved the execution and delivery of, and the performance by it of the obligations contained in this Agreement, and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded.

(c) *Valid, Binding and Enforceable Obligations.* This Agreement constitutes the legal, valid and binding obligation of SANBAG, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights, generally.

(d) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of SANBAG or of the voters of SANBAG's member jurisdictions, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental agency, is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(e) *No Conflicts.* The authorization, execution and delivery of this Agreement and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which SANBAG (or any of its officers in their respective capacities as such) are subject, or by which it or any of its properties are bound; nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be provided by this Agreement.

(f) *No Litigation.* No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending with service of process accomplished or, to the knowledge of SANBAG, pending or threatened, that:

(i) in any way questions the legal existence of SANBAG or the titles of the officers of SANBAG to their respective offices that would have

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any material likelihood of affecting the obligations of SANBAG under this Agreement;

(ii) contests the validity or the power and authority of SANBAG to sell or pledge the Assessment Installment Receivables to Company;

(iii) affects, contests or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement, the sale or pledge of the Assessment Installment Receivables by SANBAG to Company, or the payment of Collections on the Assessment Installment Receivables to the Company;

(iv) in any way contests or affects the validity of this Agreement, the power or authority of SANBAG to enter into this Agreement and perform its obligations hereunder or the consummation of the transactions contemplated hereby; or

(v) may result in any material adverse change relating to SANBAG's ability to comply with its obligations under this Agreement or to the Assessment Installment Receivables.

Section 4.02 Additional Representations and Agreements. SANBAG makes the following additional representations and agreements as of the Closing Date, on which the Company is deemed to have relied in acquiring the Assessment Installment Receivables:

(a) SANBAG has transferred the Assessment Installment Receivables to the Company pursuant to this Agreement for the Purchase Price, together with the Premium thereon, specified in this Agreement in cash. The consideration paid to SANBAG represents the fair market value of the Assessment Installment Receivables. This consideration was agreed upon as the result of arm's length negotiations. SANBAG has determined that the transactions contemplated by this Agreement and the related documents provide the maximum available financial benefits to SANBAG consistent with other objectives and requirements of SANBAG.

(b) SANBAG properly treats the transfer of the Assessment Installment Receivables to the Company as a sale pursuant to generally accepted accounting principles.

(c) There are no other agreements between SANBAG and the Company relating to or affecting the Assessment Installment Receivables, other than this Agreement.

(d) SANBAG does not receive any payments with respect to the Assessment Installment Receivables, except pursuant to this Agreement.

(e) SANBAG will mark its appropriate records so that they indicate the Assessment Installment Receivables have been sold and that the Company is the owner

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of such Assessment Installment Receivables. Such records of SANBAG may be in the form of a computer tape, microfiche, or other electronic or computer media.

(f) Sales of assets to the Company by SANBAG, including but not limited to the Assessment Installment Receivables, at all times have constituted and will constitute absolute transfers and conveyances, for fair and reasonably equivalent consideration, of all of the seller's right, title and interest in, to and under those assets for all purposes.

(g) SANBAG at no time has taken or will take any action that is inconsistent with any of the foregoing assumptions and that has given or will give (i) any creditor or future creditor of the Company cause to believe mistakenly that any obligation incurred by SANBAG has been or will be not only the obligation of SANBAG, but also of the Company, or (ii) any creditor or future creditor of either SANBAG or the Company cause to believe mistakenly that SANBAG and the Company have not been or will not continue to remain separate and distinct entities.

Section 4.03 Representations of Company. Company makes the following representations as of the Closing Date on which the SANBAG is deemed to have relied in selling the Assessment Installment Receivables to Company.

(a) *Due Organization, Existence and Company.* Company is a limited liability company, duly organized and validly existing under the laws of the State of Illinois, has full legal right, power and authority under the Constitution and laws of the State to enter into this Agreement, to purchase the Assessment Installment Receivables and the Collections from SANBAG, and to carry out and consummate all transactions contemplated hereby.

(b) *Due Execution.* By all necessary official action of Company, Company has duly authorized and approved the execution and delivery of, and the performance by it of the obligations contained in this Agreement, and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded.

(c) *Valid, Binding and Enforceable Obligations.* This Agreement constitutes the legal, valid and binding obligation of Company, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights, generally.

(d) *No Conflicts.* The authorization, execution and delivery of this Agreement and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which Company (or any of its officers in their respective capacities as such) are subject, or by which it or any of its

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properties are bound; nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be provided by this Agreement.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of Company and no consent, permission, authorization, order or license of, or filing or registration with, any governmental agency, is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending with service of process accomplished or, to the knowledge of Company, pending or threatened, that:

(i) in any way questions the legal existence of Company or the titles of the officers of Company to their respective offices that would have any material likelihood of affecting the obligations of Company under this Agreement;

(ii) contests the validity or the power and authority of Company to purchase the Assessment Installment Receivables from SANBAG;

(iii) affects, contests or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement, the purchase of the Assessment Installment Receivables by Company from SANBAG, or the payment of Collections on the Assessment Installment Receivables to the Company;

(iv) in any way contests or affects the validity of this Agreement or the consummation of the transactions contemplated hereby; or

(v) may result in any material adverse change relating to Company's ability to comply with its obligations under this Agreement.

Article V
Miscellaneous

Section 5.01 Amendment. This Agreement may be amended by an instrument in writing signed by SANBAG and the Company.

Section 5.02 Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and is made solely for the benefit of the parties hereto. No other person shall acquire or have any right hereunder by virtue hereof, except as provided herein.

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Section 5.03 Notices. All notices or communications to be given under this Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon actual receipt after deposit in the United States mail, postage prepaid, or (b) in the case of personal delivery to any person, upon actual receipt. The Company or SANBAG may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Company: FNA California, LLC
c/o First National Assets
120 N. LaSalle, Suite 1220
Chicago, IL 60602
Attn: General Counsel

If to SANBAG: San Bernardino Council of Governments
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410
Attn: Raymond Wolfe, Executive Director

Section 5.04 No Assignment by SANBAG. Notwithstanding anything to the contrary contained herein, this Agreement may not be assigned by SANBAG.

Section 5.05 Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of SANBAG and the Company, and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 5.06 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 5.07 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 5.08 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

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Section 5.09 Governing Law and Venue.

(a) This Agreement shall be construed in accordance with the laws of the State, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

(b) To the extent permitted by law, the parties hereto agree that any and all claims asserted against the Company arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in Riverside, California or in the California State Courts located in San Bernardino, California.

(c) If SANBAG commences any action against the Company in a court located other than in Riverside or San Bernardino, California, upon request of the Company, SANBAG shall either consent to a transfer of the action to a court of competent jurisdiction located in Riverside (federal) or San Bernardino (State), California or, if the court where the action is initially brought will not or cannot transfer the action, SANBAG shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in Riverside (federal) or San Bernardino (State), California.

(d) To the extent permitted by law, the parties hereto agree that any and all claims asserted against SANBAG arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in Riverside County, California or in the California State Courts located in San Bernardino County, California.

(e) If the Company commences any action against SANBAG in a court located other than in Riverside (federal) or San Bernardino (State) County, California, upon request of SANBAG, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in Riverside (federal) or San Bernardino (State) County, California or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in Riverside (federal) or San Bernardino (State) County, California.

(f) With respect to any action between SANBAG and the Company in California State Court brought in accordance with the provisions of this Section, SANBAG and the Company each hereby expressly waives and relinquishes any rights either might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a California State Court outside the county in which it is pending.

(g) With respect to any action between SANBAG and the Company in Federal Court brought in accordance with the provisions of this Section, SANBAG and the Company each hereby expressly waives and relinquishes any right either might otherwise have to move to transfer the action to another United States Court.

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Section 5.10 Nonpetition Covenants. Notwithstanding any prior termination of this Agreement, SANBAG shall not, prior to the date which is one (1) year and one (1) day after the termination of this Agreement with respect to the Company, acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or government against Company for the purpose of commencing or sustaining a case against the Company under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or any substantial part of its property, or ordering the winding up or liquidation of the affairs of the Company.

Section 5.11 Successor Is Deemed Included In All References To Predecessor. Whenever in this Agreement either SANBAG or the Company is named or referred to, such reference shall be deemed to include the successors thereof, and all the covenants and agreements in this Agreement by or for the benefit of SANBAG and Company shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 5.12 Waiver of Personal Liability. No member, officer, agent or employee of the Company or SANBAG shall be individually or personally liable for the payment of any amount due hereunder or be subject to any personal liability or accountability by reason of the transactions described herein; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

Section 5.13 Exclusive Right of First Refusal. SANBAG hereby grants to the Company an exclusive right of first refusal to purchase, upon similar and mutually agreeable terms in this Agreement, *mutatis mutandis*, Assessment Installment Receivables that become delinquent with respect to the Tax Years ending on June 30, 2025, June 30, 2026 and June 30, 2027 as follows:

(a) With respect to Assessment Installment Receivables secured by Properties that also secure Assessment Installment Receivables that were previously purchased by the Company, such purchases shall be documented by the execution of an agreement in the form of this Agreement, *mutatis mutandis*, with the purchase price and premium calculated in the same manner as this Agreement; and

(b) With respect to all other Assessment Installment Receivables, such purchases shall be documented by the execution of an agreement in the form of this Agreement, *mutatis mutandis*, with the purchase price and premium calculated in the same manner as this Agreement, modified as the parties mutually agree.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By _____
Name: Raymond W. Wolfe
Title: Executive Director

Approved as to Form

BEST BEST & KRIEGER LLP, as Bond Counsel

By: _____
Name: Mrunal M. Shah
Title: Partner

FNA CALIFORNIA, LLC

By _____
Name: John Eisinger
Title: CEO

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EXHIBIT "B"

LIST OF MASTER INDENTURES

(a) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of November 1, 2013, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (First Residential Property Tranche – Phase One);

(b) Amended and Restated Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 3, 2014, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (First Residential Property Tranche – Phase One);

(c) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 3, 2014, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Second Residential Property Tranche – Phase One);

(d) Amended and Restated Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of March 4, 2015, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Second Residential Property Tranche – Phase One);

(e) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of March 4, 2015 relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Third Residential Property Tranche – Phase One);

(f) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of July 1, 2015, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Fourth Residential Property Tranche – Phase One);

(g) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of October 1, 2015, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Fifth Residential Property Tranche – Phase One);

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(h) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of January 1, 2016, relating to the San Bernardino Associated Governments Limited Obligation Improvements Bonds (SANBAG HERO Program) (Sixth Residential Property Tranche – Phase One);

(i) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of May 1, 2016 relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Seventh Residential Property Tranche – Phase One);

(j) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 1, 2016, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Eighth Residential Property Tranche – Phase One);

(k) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of January 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Ninth Residential Property Tranche – Phase One);

(l) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of March 1, 2017, relating to the San Bernardino Associated Governments Limited Subordinate Obligation Improvement Bonds (SANBAG HERO Program) (First Residential Property Tranche – Phase One), as amended;

(m) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of May 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Tenth Residential Property Tranche – Phase One);

(n) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Eleventh Residential Property Tranche – Phase One);

(o) Amended and Restated Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of November 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Eleventh Residential Property Tranche – Phase One).

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EXHIBIT "C"
EXCLUSION CRITERIA

1. On the Closing Date, an Assessment Installment Receivable that is not lawfully collectable or no longer constitutes a valid and existing lien on the subject Property.

2. On the Closing Date, an Assessment Installment Receivable where the subject Property (i) has been or is expected to be designated as a CERCLA or government designated environmental cleanup site or (ii) is subject to environmental contamination that could materially decrease the market value thereof.

3. On the Closing Date, a subject Property that is described as, owned by, or used for (a) vacant land, (b) a church or religious organization, (c) orphanages or other non-profit or charitable services, (d) sanitariums, convalescent and rest homes, (e) military properties, (f) forests parks or recreational areas, (g) public schools, (h) public colleges (i) public hospitals, (j) county properties, (k) state properties, (l) federal properties, (m) municipal properties, (n) utility properties (e.g., gas, electric, telephone, water, sewage, railroads, pipelines, canals, radio/tv/mobile communications towers), (o) subsurface rights, (p) right-of-way, streets, roads, irrigation channels and ditches, (q) rivers, lakes or other submerged lands, (r) sewage, disposal, solid waste disposal, borrow pits, drainage reservoirs, waste lands, marshes, sand dunes, or swamps or (s) heavy manufacturing or mineral processing.

4. At the time of origination, a subject Property, including improvements thereon, has an assessed value or market value of less than $75,000.

5. On the Closing Date, an Assessment Installment Receivable where the original date of delinquency is greater than three hundred sixty-five (365) days prior to the Cut-off Date.

6. An Assessment Installment Receivable that was not originated by a SANBAG or any of its authorized program administrators.

7. On the Closing Date, an Assessment Installment Receivable that has been (a) challenged as to amount, enforceability or validity, (b) the subject of litigation, (c) subject to right of rescission, right of setoff or counterclaim, or (d) subjected to the assertion of defenses with respect to any of the foregoing.

8. At the time of origination, an Assessment Installment Receivable where (a) the loan to value ratio of the existing mortgage is greater than ninety percent (90%) or (b) the ratio of the aggregate amount of debt secured by any lien on the related Property to the market value of the Property is greater than ninety-five percent (95%).

9. On the Closing Date, an Assessment Installment Receivable that is subordinate to other valid claims on the subject Property or that otherwise does not have a first lien.

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Minute Action

AGENDA ITEM: 8

Date: July 3, 2024

Subject:
Award Contract No. 24-1003085 for Professional Audit Services

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Approve Contract No. 24-1003085 with Crowe LLP for Professional Audit Services for a five-year term, and a not-to-exceed amount of $900,000, to be funded with Local Transportation Fund – Administration funds and Indirect funds.

Background:
On February 6, 2024, San Bernardino County Transportation Authority (SBCTA) released Request for Proposals (RFP) No. 24-1003085, for professional audit services, which was sent electronically to approximately 444 consultants registered on PlanetBids. Additionally, the RFP was posted on the SBCTA website and published in the Daily Journal. Fourteen firms downloaded the solicitation.

On March 5, 2024, five proposals were received and found to be responsive by the procurement analyst. The Evaluation Committee was comprised of three staff from SBCTA. Evaluators concluded their individual review of the proposals and convened to review and discuss the proposals. The committee members individually scored the proposals based on the following evaluation criteria: Qualifications, Related Experience and References--25 points; Proposed Staffing and Project Organization--30 points; Work Plan--30 points; and Price--15 points. Technical Proposals not meeting at least the minimum technical score of 70% of the maximum number of points were eliminated from further consideration. Only four firms met the 70% requirement and were included in the interviews.

On March 26, 2024, the Evaluation Committee interviewed the four short-listed firms. After the interviews, the Evaluation Committee separately scored the interviews. The assigned weights for the technical proposal were 60% and 40% for the interview scores, for a total of 100%.

The Evaluation Committee considered all firms qualified to perform the work specified in the RFP. Based on the combined scoring of the technical proposal and interview, the highest-ranked firm is Crowe LLP. This firm was selected because they clearly demonstrated a thorough understanding of the scope of work, proposed a qualified and experienced team, and had a clear, concise, and innovative approach to completing the audit on schedule and within budget. In addition, Crowe LLP demonstrated extensive transportation experience and specific experience with the Transportation Infrastructure Finance and Innovation Act program, single audit requirements, and implementation of new Generally Accepted Accounting Principles.

Financial Impact:
Audit services are included in the proposed Budget for Fiscal Year 2024/2025 and funded with Indirect and Transportation Development Act funds in Program 01.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel and Procurement Manager have reviewed this item and the draft contract.

Entity: San Bernardino County Transportation Authority

Responsible Staff:
Hilda Flores, Chief Financial Officer

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Contract Summary Sheet

General Contract Information

Contract No: 24-1003085 Amendment No.:

Contract Class: Payable Department: Finance

Vendor No.: 03291 Vendor Name: Crowe LLP

Description: Professional Auditing Services for SBCTA

List Any Related Contract Nos.: 17-1001615 (prior agreement)

Dollar Amount					
Original Contract	$	900,000.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**900,000.00**	**Total Contingency Value**	**$**	**-**
			Total Dollar Authority (Contract Value and Contingency)	**$**	**900,000.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10695

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? No N/A

Local Services N/A

Accounts Payable

Estimated Start Date: 07/03/2024 Expiration Date: 06/30/2029 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 900,000.00	Total Contingency: $ -
GL:	7001	01	0400	0000	52100	43001000		Indirect	675,000.00	-
GL:	1030	01	0400	0000	52100	43001000		LTF Admin	225,000.00	-
GL:									-	-
GL:									-	-
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Lisa Lazzar
Project Manager (Print Name)

Hilda Flores
Task Manager (Print Name)

Additional Notes:

Attachment: CSS - Revised - 08-25-2022 10.11am (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

CONTRACT NO. 24-1003085

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CROWE LLP

FOR

PROFESSIONAL AUDIT SERVICES

This contract ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and Crowe LLP ("CONSULTANT"), whose address is 650 Town Center Drive, Suite 740, Costa Mesa, California 92626-7192. SBCTA and CONSULTANT are each a "Party" and are collectively the "Parties."

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract; and

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work") in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein, and in the sequence, time, and manner defined herein. The word "Work" includes, without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

1.2 The Project Manager for this Contract is Lisa Lazzar, or such other designee as shall be designated in written notice to CONSULTANT from time to time by the Department Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including, without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst, and shall continue in full force and effect through **June 30, 2029** until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

ARTICLE 3. COMPENSATION

3.1 Total compensation to CONSULTANT for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a Time & Materials basis for all obligations incurred in, or application to, CONSULTANT's performance of Work, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.

3.2 The total Contract Not-To-Exceed Amount is Nine Hundred Thousand Dollars ($900,000.00). All Work provided under this Contract is to be performed as set forth in Exhibit A "Scope of Work," and shall be reimbursed pursuant to Exhibit B "Price Proposal for Time and Materials." The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amounts identified in Exhibit B. Any travel expenses must be pre-approved by SBCTA and shall be reimbursed for per diem expenses at a rate not to exceed the currently authorized rates for state employees under the State Department of Personnel Administration rules. SBCTA will not reimburse CONSULTANT for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.

3.3 Intentionally Omitted.

3.4 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.

3.4.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards..

3.4.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or

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2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONSULTANT to SBCTA.

3.5 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.

3.6 All subcontracts in excess of $25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA prepared in accordance with the instructions below. Payment shall not be construed to be an acceptance of Work.

4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, which shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA's contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice except for the month of June, which will require the invoice to be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com

For large files over 30 megabytes, invoices can be submitted using this link:
https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission

4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

4.4 Intentionally Omitted.

4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA's Awarding Authority takes action.

4.6 CONSULTANT agrees to promptly pay each subconsultant for the satisfactory completion of all Work performed under this Contract no later than ten (10) calendar days from the receipt of payment from SBCTA. CONSULTANT also agrees to return any retainage payments to each subconsultant within ten (10) calendar days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval by SBCTA. SBCTA reserves the right to request documentation from CONSULTANT showing payment has been made to its subconsultants. SBCTA also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subconsultant(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract. This clause applies to both DBE and non-DBE subconsultants.

4.7 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31 are subject to repayment by CONSULTANT to SBCTA.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT; and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONSULTANT, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

8.1 CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a

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period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA access to Consultants' records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA and its representatives or agents to reproduce any materials as reasonably necessary.

8.2 The cost proposal and/ or invoices for this Contract are subject to audit by SBCTA and/ or any state or federal agency funding this Work at any time. After CONSULTANT receives any audit recommendations, the cost or price proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract, except to the extent CONSULTANT's refusal to incorporate such recommendations is based upon CONSULTANT's reasonable judgment that such recommendations would impair CONSULTANT's independence required by professional standards. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review of any recommendations by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report.

8.3 Subcontracts in excess of $25,000 shall contain this provision.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.

9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONSULTANT shall immediately document such matters and notify SBCTA in writing. CONSULTANT shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, or potential failure, or any situation that exceeds assumptions and could precipitate a failure of any part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

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ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SBCTA to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager, identified in Section 1.2, upon issuance of the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:

11.1.1 Directions to CONSULTANT which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the Scope of Work.

11.1.2 Provision of written information to CONSULTANT which assists in the interpretation of reports or technical portions of the Scope of Work described herein.

11.1.3 Review and, where required by the Contract, approval of technical reports and technical information to be delivered by CONSULTANT to SBCTA under the Contract.

11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications are limited to: substitutions of personnel identified in the Contract, including Key Personnel and subconsultants; modifications to classifications, hourly rates and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All such modifications will be documented in writing between the Parties.

11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

11.2.1 Increases or decreases the Scope of Work;

11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;

11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

11.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;

11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract, unless identified herein;

11.2.6 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract unless identified herein; or

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11.2.7 Approves any demand or claims for additional payment.

11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of the "DISPUTES" Article herein.

11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, SBCTA shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.

11.5.2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.

12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

12.3 Notwithstanding anything herein this Agreement to the contrary, if, at any time during the Term, after being notified of a change to the Work, CONSULTANT determines in CONSULTANT's sole discretion that implementation of such a change would impair CONSULTANT's independence in accordance with professional standards, and CONSULTANT declines to so comply with the change in Work, CONSULTANT shall provide SBCTA with timely written notice of such election. SBCTA may then timely choose to waive in writing the requirement for compliance with the change to CONSULTANT, or to terminate the applicable this Agreement, for convenience, without liability or penalty to either party.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin,

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ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military or veteran status. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 The CONSULTANT and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONSULTANT and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Project. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SBCTA's Project Manager. CONSULTANT shall not substitute any key personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of key personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
Bradley Schelle	Partner/Lead Partner
Kathy Lai	Partner/Concurring Review
Tony Boras	Partner/National Office
Joseph Widjaja	Senior Manager/Project Manager
Cassandra Taylor	Senior Manager/Project Manager
Kathleen San Andres	Senior/Senior in Charge
Liam Darwin	Senior Staff

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

ARTICLE 16. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

17.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original copies of audit opinions and working papers of all such Products, which shall become the sole property of SBCTA; provided, however, CONSULTANT's working papers and audit opinions shall remain the property of CONSULTANT.

17.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SBCTA.

17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA, or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article which are produced by CONSULTANT shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine and shall be confidential.

17.4 CONSULTANT shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA. CONSULTANT shall not release any reports, information or promotional material related to this Contract for any purpose without prior written approval of SBCTA.

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17.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.

17.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 18. TERMINATION

18.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.

18.1.1 CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.

18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.

18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT, or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finished Work by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONSULTANT shall not be considered to

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

18.4 CONSULTANT's termination for cause. If CONSULTANT determines that auditors' professional standards would be violated by CONSULTANT's continuing Work for SBCTA due to action or inaction by SBCTA, CONSULTANT shall provide SBCTA written notice of such determination including the specific facts or circumstances and standards underlying and supporting such determination. Immediately, SBCTA shall commence curing such action or inaction to enable CONSULTANT to avoid violating such professional standards, and shall diligently prosecute such cure to completion within a reasonable time under the circumstances. If SBCTA fails to commence or prosecute such cure in accordance with this section, CONSULTANT may give SBCTA written notice of termination of this Contract specifying the date of Contract termination.

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with section “Termination” above.

ARTICLE 20. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, subject to the provisions of Article 21.2 “General Provisions”, and at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT and all sub-consultants of every tier performing any Work under this contract shall, at CONSULTANT’s and sub-consultant's sole expense, procure and maintain broad form insurance coverage at least as broad as the following minimum requirements specified below:

21.1.1 Professional Liability. The policies must include the following:

- A limit of liability not less than $5,000,000 per claim
- An annual aggregate limit of not less than $5,000,000
- Coverage shall be appropriate for the CONSULTANT’s profession and provided

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

services to include coverage for errors and omissions arising out of the CONSULTANT's professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.

- If Coverage is on a claims made basis:
  - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
  - CONSULTANT shall secure and maintain "tail" coverage for a minimum of three (3) years after Contract completion.

21.1.2 Worker's Compensation/Employer's Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - $1,000,000 per accident
- Bodily Injury by disease - $1,000,000 policy limit/$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONSULTANT or any subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

21.1.3. Commercial General Liability. The policy must include the following:

- Consultant shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **$3,000,000 each occurrence**
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations , duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
  - $3,000,000 per occurrence limit for property damage or bodily injury
  - $1,000,000 per occurrence limit for personal injury and advertising injury
  - $3,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

- If a general aggregate applies, it shall apply separately to this project/location. The contract number and brief explanation of the project/work must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: $1,000,000
- General aggregate limit: $2,000,000
- Personal injury and advertising limit $1,000,000
- Products-completed operations aggregate limit $2,000,000

All subconsultants' and sub-subconsultants' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

21.1.4 Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
    - The umbrella or excess policy shall follow form over the CONSULTANT's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
    - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
    - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
    - The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

21.1.5 Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **$1,000,000** each accident. This total limit of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONSULTANT services.

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

- Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

21.1.6 Pollution Liability Intentionally Omitted

21.1.7 Technology Professional Liability Errors and Omissions Insurance. Appropriate to the Consultant's profession and work hereunder, with limits not less than $1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA that will be in the care, custody, or control of CONSULTANT.

21.1.8 Railroad Protective Liability. Intentionally Omitted

21.2. General Provisions

21.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better, and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by SBCTA's Risk Manager.

21.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 43, or if not available, then the ISO Form most closely similar, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, and agents, as additional insureds (" Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580. 04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.

21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate.

21.2.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-consultants to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's express written approval, no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than $10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The CONSULTANT's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any CONSULTANT's deductible or SIR.

21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant, with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants' pollution, automobile, general liability will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article, excluding Technology/Cyber, to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.

21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at insurance@gosbcta.com, to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

21.2.8 Non-Limitation of Insurance Requirements. The insurance coverage provided and limits required under this Contract are minimum requirements and are not intended to limit the CONSULTANT's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status. To the extent required by Law in connection with Work to be performed, the CONSULTANT shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law and any other agreements with which the CONSULTANT is required to comply, including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the CONSULTANT arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to SBCTA approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONSULTANT acknowledges and will at all times comply with the provisions of Labor Code Section 3700 which require every employer in the State to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code.

21.2.9 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT or any subconsultant of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract.

21.2.10 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

21.2.11 Project Specific Insurance. – Intentionally Omitted

21.2.12 No Representations or Warranties. SBCTA makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this contract are adequate to protect the CONSULTANT against its undertakings under this Contract or its liability to any third party, nor will they preclude SBCTA from taking any actions as are available to it under this Contract or otherwise at law.

21.2.13 Review of Coverage. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONSULTANT to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. SBCTA may change the insurance coverages and limits required under this contract by notice to the CONSULTANT, whereupon the CONSULTANT will, within sixty (60) days of such notice date, procure the additional and/or modified insurance coverages. Upon such change any additional cost (at actual cost) from such change will be paid by SBCTA and any reduction in cost will reduce the Contract Price pursuant to a Contract amendment.

21.2.14 Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants to cover their services performed under this Contract. CONSULTANT may reduce types and the amounts of insurance limits provided by subconsultant(s) to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by the subconsultant. CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.

21.2.15 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

21.2.16 Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

ARTICLE 22. INDEMNITY

22.1 Intentionally omitted.

22.2 CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA, the San Bernardino Council of Governments ("SBCOG"), SBCOG's Entities, and their authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of the CONSULTANT's negligent, grossly negligent, reckless, or willful acts or omissions under this Contract resulting in personal injury, death, or property damage, including for any costs or expenses incurred by any Indemnitee(s) on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to Indemnitees' "active" as well as "passive" negligence, but does not apply to the "sole negligence" or "willful misconduct," within the meaning of Civil Code section 2782, of any Indemnitee.

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including, but not limited to, any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract, subject to section 17.1, shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 25. SUBCONTRACTS

25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in CONSULTANT's proposal, without first notifying SBCTA in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.

25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.

25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have sole responsibility for managing all of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. RECORD INSPECTION AND AUDITING

SBCTA or any of its designees, representatives, or agents shall at all times have access during normal business hours to CONSULTANT's financial, time and expense data related to this project wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 27. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCTA shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 28. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

ARTICLE 31. PRECEDENCE

31.1 The Contract consists of the following: Contract Articles, Exhibit A "Scope of Work," Exhibit B "Price Proposal," SBCTA's Request for Proposal and CONSULTANT's proposal, all of which are incorporated into this Contract by this reference.

31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request for Proposal; and last, CONSULTANT's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.

31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 32. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONSULTANT shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To CROWE LLP	**To SBCTA**
650 Town Center Drive, Suite 740	**1170 W. 3rd Street, 2nd Floor**
Costa Mesa, California 92626-7192	**San Bernardino, CA 92410-1715**
Attn: Bradley Schelle	**Attn: Lisa Lazzar**
Email: brad.schelle@crowe.com	**Email:llazzar@gosbcta.com**
Phone: (317) 208-2551	**Phone: (909) 884-8276**
2nd Contact: Kathy Lai	**Copy: Procurement Manager**
Email: kathy.lai@crowe.com	**Email: procurement@gosbcta.com**

ARTICLE 33. DISPUTES

33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after notice thereof in writing, which notice shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute may be reviewed by a court of competent jurisdiction.

DRAFT

Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence, however, CONSULTANT may suspend performance at any time, without liability or penalty, if doing so is, in CONSULTANT's reasonable judgment, required by professional standards or its continued performance would result in an independence violation thereunder.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review or to discover defective work shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCTA upon completion of all Work.

ARTICLE 36. CONFIDENTIALITY

See Article 17.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Scope of Work and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with all safety instructions issued by SBCTA or their representatives.

ARTICLE 39. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq, the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 41. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 42. PREVAILING WAGES

INTENTIONALLY OMITTED.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT covenants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. ENTIRE DOCUMENT

46.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.

46.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

46.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 47. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 48. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

----------SIGNATURES ARE ON THE FOLLOWING PAGE----------

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

CROWE LLP

By: _____

Bradley T. Schelle
Partner

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Ray Marquez
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Julianna K. Tillquist
General Counsel

Date: _____

CONCURRENCE

By: _____

Jeffery Hill
Interim Procurement Manager

Date: _____

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Attachment: 24-1003085-PDF (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

EXHIBIT “A”
“SCOPE OF WORK”

Attachment: 24-1003085 - Exhibit A - SOW (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

General:

San Bernardino County Transportation Authority (SBCTA) is requesting proposals from qualified certified public accounting firms to audit its financial statements beginning with the Fiscal Year ending June 30, 2024 through Fiscal Year 2026, and two additional option years for Fiscal Year 2027 and Fiscal Year 2028. SBCTA requires an audit of its Annual Comprehensive Financial Report in accordance with generally accepted accounting principles and the governmental auditing standards as promulgated by the Comptroller General of the United States. Additionally, this audit should include compliance with covenants and related testing as required by indenture for SBCTA's Sales Tax Revenue Bonds and testing of expenditures on federal grants.

Auditing Standards to be Followed –

The audit shall be performed to satisfy the audit requirements in accordance with the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO) Government Auditing Standards
- The federal Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards, 2 CFR Part 200
- San Bernardino County Transportation Authority Ordinance 04-01, San Bernardino Valley Subarea Expenditure Plan (Section F and H), Mountain Desert Expenditure Plan (Section C and E)
- Transportation Development Act Regulations. CA Code Section 6664 discusses the fiscal and compliance audits of all claimants. Section 6666 provides the compliance audit tasks for non-transit claimants, and Section 6667 provides the compliance audit tasks for transit claimants.
- Proposition 1B Compliance Requirements. Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA) funds received through Caltrans
- California Transit Security Grant Program - California Transit Assistance Funds (CTSGP-CTAF) funds received through CalEMA or any other State agency.

Reports to be Issued –

Following the completion of the audit of the fiscal year's financial statements, the Auditor shall issue the following reports and letters:

1. Independent Auditor's Report on Annual Comprehensive Financial Report (ACFR);
2. Independent Auditor's Report on the Single Audit;
3. Local Transportation Fund (LTF) Financial and Compliance Report
4. State Transit Assistance Fund (STAF) Financial and Compliance Report
5. Report on Applying Agreed Upon Procedures for Appropriations Limit Calculation
6. Annual State Controller's Report
7. Management Letter (if required)
8. State Transportation Improvement Program (STIP) Planning, Programing, and Monitoring (PPM) Program fund Compliance Report
9. Transportation Development Act (TDA) Conformance Auditing Guide and the Public

Attachment: 24-1003085 - Exhibit A - SOW (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Guidelines and Low Carbon Transit Operations Program (LCTOP) Final Guidelines Compliance Report

Additional Considerations –

1. It is expected that the Auditor shall keep SBCTA informed of new state and Federal Developments affecting municipal and local government finance. Additionally, reporting standards and trends including changes in federal or state grant program accounting and reporting requirements shall be communicated to SBCTA.
2. SBCTA may require other generalized auditing requirements as needed by SBCTA.

SCHEDULE –
Annual audit schedule, subject to change:

Interim field work	April to June (later depending on award date)
Year-end field work	October to November
Financial Statements	November
Executive Board Presentation	Early December
SBCTA Board of Directors Presentation	Early January

* Note: Auditors should be prepared to attend meetings as requested:

- Executive Board meetings (Normally held twice a year – end of interim work and end of year-end to present financial reports),
- General Policy Committee meetings, *if necessary* (Held after the Executive Board meetings. The meetings are held on the second Wednesday of the month), and
- Board of Directors meetings (held on the first Wednesday of the month).

Attachment: 24-1003085 - Exhibit A - SOW (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

Price Proposal for Time and Materials No. 24-1003085

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Brad Schelle	Partner	Lead Partner	$ 330	75	$ 24,750
Kathy Lai	Partner	Concurring Review	$ 330	15	$ 4,950
Tony Boras	Partner	National Office	$ 330	10	$ 3,300
Joseph Widjaja	Senior Manager	Project Manager	$ 250	100	$ 25,000
Cassandra Taylor	Senior Manager	IT Audit Manager	$ 250	35	$ 8,750
Kathleen San Andres	Senior	Senior In-Charge	$ 180	190	$ 34,200
Liam Darwin	Senior	Senior	$ 180	170	$ 30,600
Staff	Staff	Staff	$ 130	270	$ 35,100
				TOTAL	$ 166,650

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$
	$	$
	$	$
	$	$
	TOTAL	$

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 166,650
FY25/26	$ 172,510
FY26/27	$ 179,730
FY27/28	$ 186,910
FY28/29	$ 194,200
	$
TOTAL	$ 900,000

GRAND TOTAL	$ 900,000

Fees for each additional Federal major program (if applicable):

FY24 - $23,500
FY25 - $24,400
FY26 - $25,400
FY27 - $26,400
FY28 - $27,500

Attachment: 24-1003085 - Exhibit B - Price Proposal (10695 : Award Contract No. 24-1003085 for Professional Audit Services)

Minute Action

AGENDA ITEM: 9

Date: July 3, 2024

Subject:
Appointment to the Independent Taxpayer Oversight Committee

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Approve the appointment of Chad Logan and Alex Artiaga to the Independent Taxpayer Oversight Committee, with a term ending June 30, 2028.

Background:
The Independent Taxpayer Oversight Committee (ITOC) was authorized as part of the Measure I Ordinance approved by the voters. The ITOC is a five-member body with particular experience and expertise that would aid them in reviewing the implementation of the Measure I expenditure plan.

One of two current vacant positions on the ITOC is for a member who is a current or retired manager of a major *privately* financed development or construction project, who by training and experience would understand the complexity, costs, and implementation issues in building large scale transportation improvements. Staff received one application from Chad Logan who owns construction, construction management, and property management businesses in Blue Jay, California. He wants to be part of the bigger picture in what is happening in his community.

The second of two vacant positions on the ITOC is for a member who is a current or retired manager of a major *publicly* financed development or construction project, who by training and experience would understand the complexity, costs, and implementation issues in building large scale transportation improvements. Staff received one application from Alex Artiaga who is a business manager of LIUNA Local 783 for over 27 years and oversees San Bernardino, Inyo, and Mono Counties. He negotiates, manages, and enforces collective bargaining agreements for the heavy highway and construction industry. He understands the nature of compliance, budgeting, and costs of large-scale public works projects. He is also an Executive Board Member of the Southern California District Council of Laborers, and as a Board Member he oversees all of the business for all of Southern California. He also serves as a trustee for the health and welfare, pension, vacation, and training trust within the region. He is an Executive Board Member of a California Political Action Committee who manages political activities throughout the state, who seeks legislators who understand the importance of building and maintaining our states infrastructure.

Normally the General Policy Committee would appoint an ad hoc committee to select ITOC member(s), but since only one application was received for each vacancy, staff instead conferred with the San Bernardino County Transportation Authority Executive Board and is recommending the appointment of Mr. Logan and Mr. Artiaga to the ITOC.

Information on the ITOC, including the ITOC application and credentials or experience required to be a member, is available on the SBCTA website at Independent Taxpayer Oversight Committee (ITOC) - SBCTA (gosbcta.com).

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and recommended for approval (8-0-1; Abstained: Rowe) by the General Policy Committee on June 12, 2024. The Executive Board reviewed and approved the applicants appointment to the ITOC on May 14, 2024 and May 29, 2024.

Responsible Staff:
Hilda Flores, Chief Financial Officer

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Minute Action

AGENDA ITEM: 10

Date: July 3, 2024

Subject:
Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429 Local Agency Formation Commission

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Approve Surrender of Lease, Amendment No. 4 to Contract No. 16-1001429, of the Local Agency Formation Commission's lease of Unit 150, effective September 23, 2024.

Background:
The San Bernardino County Transportation Authority (SBCTA) and the City of San Bernardino (City), as tenants-in-common of the Santa Fe Depot (Depot), share the responsibilities for the Depot as defined in Cooperative Agreement No. 04-040 (Cooperative Agreement). Pursuant to the Cooperative Agreement, SBCTA retains the exclusive right to enter into, amend, or terminate all leases at the Depot.

On July 6, 2016, the SBCTA Board of Directors (Board) approved Contract No. 16-1001429 (Contract) with the Local Agency Formation Commission (LAFCO) for the purpose of leasing Unit 150 at the Depot, consisting of approximately 3,513 rentable square feet. The term of the lease was five years, beginning June 1, 2017; the Contract also provided for two optional five-year extensions.

On September 29, 2017, the Executive Director approved Amendment No. 1 to the Contract regarding property improvements. The square footage was also updated to 2,970.

On July 1, 2020, the Board approved Amendment No. 2 to exclude certain costs from LAFCO's Common Area Maintenance (CAM) charges that provided no direct benefit to LAFCO, resulting in a reduction in lease revenue, estimated at $42,792 for the duration of the contract term.

On June 1, 2022, the Board approved Amendment No. 3 to restructure the Contract eliminating LAFCO's CAM and increasing Base Rent to be inclusive of all CAM-type elements. With Amendment No. 3, LAFCO also exercised its first five-year option, extending the lease through July 23, 2027.

On May 8, 2024, LAFCO expressed its intent to surrender the lease effective September 23, 2024, as their operation no longer requires use of the unit. LAFCO has agreed to leave the custom-designed furniture within the unit.

LAFCO's current total monthly rent is $5,041.40 and includes a 3% annual Consumer Price Index escalation. Terminating the lease will result in a reduction of lease revenue estimated at $176,906.65 for the duration of the contract term, which was anticipated to run through July 23, 2027.

Once the unit becomes vacant, the expenses to maintain the non-leased space will be co-shared equally between SBCTA and the City, according to the terms of the Cooperative Agreement. Examples of these expenses include a portion of common area maintenance, utilities, security, perimeter landscaping and lighting.

If the surrender of lease is approved, staff will consult with the City and immediately begin working with the Depot Property Management Firm, CityCom Commercial Real Estate, to market the vacant space and find a new tenant.

Financial Impact:
The recommended action to approve the Surrender of Lease equates to an annual decrease in the fiscal year budgeted revenue of approximately $50,413.97. A budget amendment is required due to the increased cost as described in the Background section of this item. The budget amendment will be presented in a consolidated budget adjustment item presented at a later date.

Reviewed By:
This item was reviewed and recommended for approval (8-0-1; Abstained: Denison) by the General Policy Committee on June 12, 2024. SBCTA General Counsel has reviewed this item and the draft agreement.

Responsible Staff:
Colleen Franco, Director of Management Services

Contract Summary Sheet

General Contract Information

Contract No: 16-1001429 Amendment No.: 4

Contract Class: Receivable Department: Administration

Customer ID: 02471 Customer Name: Local Agency Formation Commission (LAFCO)

Description: Surrender of Lease for Unit 150 at the Depot, consisting of approximately 2,970 sf.

List Any Accounts Payable Related Contract Nos.: 16-1001574

Dollar Amount

Original Contract	$	474,241.00	Original Contingency	$	-
Prior Amendments	$	295,550.88	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	(176,906.65)	Current Amendment	$	-
Total/Revised Contract Value	**$**	**592,885.23**	**Total Contingency Value**	**$**	**-**
			Total Dollar Authority (Contract Value and Contingency)	**$**	**592,885.23**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10709

Contract Management (Internal Purposes Only)

Local Lease N/A

Accounts Receivable

Total Contract Funding: $ 592,885.23 Funding Agreement No: 16-1001429

Beginning POP Date: 06/01/2017 Ending POP Date: 09/23/2024 Final Billing Date: 09/23/2024

Expiration Date: 09/23/2024 Fund Admin: N/A

	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL:	7001	01	0805	0980	43011000	592,885.23
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-

	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-

Colleen Franco
Project Manager (Print Name)

Colleen Franco
Task Manager (Print Name)

Additional Notes: Terminating the lease will result in a reduction of lease revenue estimated at $176,906.65 for the duration of the contract term, which was anticipated to run through July 23, 2027.

Attachment: CSS -Amendment No. 4 Revised - 08-25-2022 10.11am (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-

SURRENDER OF LEASE
Amendment No. 4 to Contract No: 16-1001429

THIS SURRENDER OF LEASE (the "Surrender") is entered into and is effective as of September 23, 2024, by and between San Bernardino County Transportation Authority (SBCTA) ("Landlord"), and Local Agency Formation Commission for San Bernardino County (LAFCO) ("Tenant"), on the basis of the following:

RECITALS

A. Landlord and Tenant previously entered into a Lease agreement and Amendments (collectively, the "Lease") for the rental of approximately 2,970 rentable square feet described as 1170 W. 3rd Street, Unit 150, San Bernardino, California, also identified as Contract No. 16-1001429.

B. Tenant expressed an interest to surrender the Lease prior to its scheduled Expiration Date of July 23, 2027.

AGREEMENT

IT IS HEREBY AGREED by Landlord and Tenant on the basis of the foregoing and in consideration of the premises contained herein, as follows:

1. **Cancellation of Lease.** For good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, Tenant and Landlord do hereby mutually agree to terminate and cancel said Lease, effective September 23, 2024 ("Termination Date"), and all rights and obligations under said Lease shall thereupon be canceled excepting only for any obligations under the Lease accruing prior to the effective Termination Date.

2. **Condition of Premises**. This Surrender is conditional upon Tenant vacating the Premises no later than the Termination Date of September 23, 2024, and leaving the Premises is good, clean, operable condition as set forth in the Lease. The Surrender is further conditioned upon completion of a walk-through inspection by Landlord and Tenant, and Landlord's acceptance of the condition of the Premises as satisfactory. In addition, Tenant shall leave in place and surrender to Landlord the existing furniture in the Premises.

3. **Mutual Release and Waiver**. As of the Termination Date, except for obligations of Tenant which accrue prior to the Termination Date or survive termination of the Lease, Tenant and Landlord discharge and release each other, and their respective agents, employees, representatives, attorneys, officers, directors, predecessors, successors, and assigns, from all actions, claims, liabilities, debts, obligations, promises, damages, costs, expenses, and demands arising under the Lease ("Released Claims"). Landlord and Tenant agree to waive the Released Claims and all benefits and protections of California Civil Code Section 1542, which states:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

----------SIGNATURES ARE ON THE FOLLOWING PAGE----------

DRAFT

Attachment: 16-1001429 LAFCO revised 5-23-24 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Surrender as of the date first set forth above.

Landlord:
San Bernardino County Transportation Authority (SBCTA)

By:_____
Ray Marquez
President, Board of Directors

Date:_____

Tenant:
Local Agency Formation Commission for San Bernardino County (LAFCO)

By: _____
Acquanetta Warren
Chair

Date: _____

APPROVED AS TO FORM

By: _____
Julianna K. Tillquist
General Counsel

Date:_____

By: _____
Paula de Sousa
LAFCO Legal Counsel

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Attachment: 16-1001429 LAFCO revised 5-23-24 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

CONTRACT NO: 16-1001429

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

AND

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY (LAFCO)

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

TABLE OF CONTENTS

Section #		Page #
1	Summary of Lease Provisions	3
2	Premises	3
3	Common Areas	3
4	Parking	4
5	Term	4
6	Rent	4
6	Common Area Operating Expenses	4
7	Rent Increase	5
8	Security Deposit	5
9	Use	5
10	Maintenance & Repairs	5
11	Utilities & Services	6
12	Alterations & Additions	6
13	Insurance & Indemnity	7
14	Property Taxes	8
15	Assignment & Subletting	8
16	Default; Breach; Remedies	8
16	Late Charges	9
17	Estoppel Certificate	9
18	Surrender; Move-out	9
19	Holding Over	9
20	Substituted Premises	9
21	Landlord's Access	9
22	Security	10
23	Signs	10
24	Subordination	10
25	Options	10
26	Damage or Destruction	11
27	General Lease Terms	12
28	Additional Terms	13
	Signatures	13
Exhibit "A"	Rules & Regulations	
Exhibit "B"	[intentionally omitted]	
Exhibit "C"	Space Plan	

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

1. Summary of Lease Provisions

1.01 **Parties:** This Lease, dated, for reference purposes only, October 5, 2015, is made by and between **San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission (SANBAG)** (herein called "Landlord") and **Local Agency Formation Commission for San Bernardino County (LAFCO)** (herein called "Tenant").

1.02 **Premises:** Unit Number(s) 150, consisting of **3,513** rentable square feet, more or less, as defined in Section 2 (the "Premises").

1.03 **Building:** Commonly described as being located at **1170 West 3rd Street** in the City of **San Bernardino,** County of **San Bernardino,** State of California.

1.04 **Term: Five (5) years,** commencing **June 1, 2017** ("Commencement Date") and ending **March 31, 2022**, as defined in Section 5.

1.05 **Base Rent: $.95** per rentable square foot of Premises per month, payable quarterly in advance on the **first** calendar day of each quarter , per Section 6.

1.06 **Base Rent Increase:** Annually, the monthly Base Rent payable under Section 1.05 shall be adjusted as provided in Section 7.

1.07 **Late Charges: 6%** if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord within **five (5)** business days after the first day of each month.

1.08 **Security Deposit: $0.00.**

1.09 **Tenant's Share of Common Area Operating Expenses: 9.3%** as defined in Section 6.

1.10 **Parking:** Maximum **fourteen (14)** unreserved and unassigned vehicle parking spaces for Tenant's employees and visitors (who shall not utilize any spaces reserved for other occupants of the Depot), as provided for in Section 4.

1.11 **Use: LAFCO Offices.**

1.12 **Utilities:** Provided by Landlord (subject to reimbursement as may be provided for in this Lease): **Water/Sewer/Gas/Trash** Provided by Tenant: **Electricity/Phone/Data**, as further defined and subject to the provisions in Section 11.

1.13 **Maintenance & Repairs:** Interior of Premises maintained by **Tenant**; Exterior of Building maintained by **Landlord** subject to and in accordance with Section 10.

1.14 **Insurance: $1,000,000** liability policy required to be carried by Tenant prior to Occupancy - see Section 13.

1.15 **Options to Extend:** Tenant has **two (2)** Options to Extend the term of this Lease for a period of **five (5) years** each, as provided for in Section 25.

1.16 **Tenant Improvements:** (check one)

- ☐ Tenant to accept Premises in as-is condition.
- ☒ Landlord to provide Tenant Improvements as provided for in Paragraph 28.
- ☐ Tenant to provide Tenant Improvements as provided for in Paragraph ___.

1.17 **Notices:**

To Landlord:

San Bernardino Associated Governments (SANBAG)

c/o City Commercial Management
10722 Arrow Route - Suite 500
Post Office Box 548
Rancho Cucamonga, CA 91729-0548

To Tenant:

Local Agency Formation Commission for San Bernardino County (LAFCO)

215 N. D Street, Suite 204
San Bernardino, CA 92415-0490

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

Telephone: (909) 948-1662
FAX : (909) 948-1349
Email: mike@city-commercial.com

(909) 388-0480
(909) 885-8170 fax
Email: lafco@lafco.sbcounty.gov

2. Premises.

Landlord hereby leases to Tenant for the term, at the rental, and upon all of the conditions set forth herein, the Premises as defined in Section 1.02. The Premises, the Building(s), the Common Areas, and the land upon which the same are located, are collectively referred to as the "Depot" (as per the attached Site Plan). It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Landlord and Tenant agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises.

Tenant hereby accepts the Premises and the Depot in their condition existing as of the Lease Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that it has satisfied by its own independent investigation that the Premises are suitable for its intended use, and that neither Landlord nor Landlord's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Depot for the conduct of Tenant's business. LANDLORD HEREBY DISCLOSES THAT PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1938, THE PREMISES, COMMON AREAS, AND THE BUSINESS PARK HAS NOT UNDERGONE INSPECTION BY "CERTIFIED ACCESS SPECIALIST" (A CASp), AND THUS HAS NOT BEEN VERIFIED TO MEET ALL APPLICABLE CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS.

3. Common Areas.

"Common Areas" are defined as all areas outside the confines of the Premises, including but not limited to parking areas, loading and unloading zones, trash enclosures, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas, and that are within the Depot that are provided and designated for the general non-exclusive use of Landlord, Tenant, and all other Tenants of the Depot. Tenant, Tenant's employees, visitors, and invitees hereby agree to abide by and conform to all rules and regulations, which Landlord shall have the right in its sole reasonable discretion to modify from time to time. Landlord shall have the exclusive control and management of the Common Areas; however, Landlord shall not be responsible for the non-compliance of said rules and regulations by other tenants, employees, and invitees to the Depot. Landlord shall have the right in its sole discretion to (1) make changes to the Building exterior and/or Common Areas; (2) close temporarily any of the Common Areas for maintenance purposes so long as reasonable access remains available; and (3) to add additional improvements to the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

4. Parking.

Tenant shall be entitled to use the vehicle parking spaces as provided for in Section 1.10 on those portions of the Common Areas designated by Landlord for parking. Tenant shall not use more spaces than said maximum number, and spaces shall be used only for vehicles no larger than full-sized passenger vehicles, pick-up trucks, or sport utility vehicles. Any vehicle loading or unloading shall only be permitted in areas and at times designated by Landlord for such activities. Landlord shall have the right, without notice, to tow any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors) that are in violation of any parking rules and regulations, the cost of which shall be the sole responsibility of Tenant.

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

5. Term.

"Possession" of the Premises shall be deemed tendered to Tenant when (1) improvements, if any, are substantially completed, and (2) Tenant has been given reasonable access to the Premises, including delivery by Landlord of keys to the Premises. If for any reason Landlord cannot deliver possession of the Premises on the Commencement Date as provided for in Section 1.04, the Commencement Date and ending dates shall be correspondingly extended in relation to the Term of this Lease, and Landlord shall not be subject to any liability, nor shall such delay in commencement affect the validity of this Lease or the obligations of Tenant hereunder (except that Tenant shall not be obligated to pay rent until possession of the Premises has been delivered as provided for herein). However, there shall be no abatement of rent or adjustment of the Commencement Date if such delays are caused by actions of Tenant, Tenant's agents or contractors.

6. Rent.

Rent and Base Rent. Any and all amounts from time to time payable to Landlord by Tenant hereunder shall be referred to herein as Rent, including, but not limited to, Base Rent, and shall be paid in full when due without right of offset, setoff or deduction. Tenant shall pay to Landlord the Base Rent for the Premises as provided of in Section 1.05. Base Rent for any period less than one month shall be prorated based upon the actual number of days in the calendar month involved. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to any such other persons or at any such other places as Landlord may designate in writing.

Common Area Maintenance Expenses ("CAM"). Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share as provided for in Section 1.09 and hereinafter defined, of all Common Area Maintenance Expenses, as herein defined, during each calendar year, also referred to as "CAM Charges", in accordance with the following provisions:

(a) "Common Area Maintenance Expenses" are defined, for purposes of this Lease, as all costs incurred by Landlord, relating to the ownership and operation of the Depot, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, of the following:

(aa) The Common Areas, including parking areas, loading and unloading areas, trash areas, public restrooms, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, escalators, and roof;

(bb) Exterior signs and any tenant directories.

(cc) Fire detection (including monitoring costs) and sprinkler systems.

(ii) The cost of water, gas, electricity, and telephone to service the Common Areas.

(iii) Trash disposal, property management, security services, association fees, and the costs of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas.

(v) Real Property Taxes (as defined in Section 14) for the Building and the Common Areas.

(vi) The cost of the premiums for the insurance policies maintained by Landlord under Section 13.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Any other services to be provided by Landlord that are stated elsewhere in this Lease to be a Common Area Maintenance Expense.

(ix) Any management fees incurred by Landlord in connection with the operation of the Depot or, at Landlord's option, in lieu of any such management fees, 15% of CAM Charges as computed without regard to this clause (ix).

(b) Any Common Area Maintenance Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Depot or to the operation, repair, and maintenance thereof, shall be allocated entirely to the building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair, and maintenance thereof, shall be equitably allocated by Landlord to all buildings in the Depot.

(c) The inclusion of the improvements, facilities, and services set forth in this Section shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Depot already has the same or Landlord already provides the services.

(d) Tenant's Share of Common Area Operating Expenses (CAM Charges) shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

Tenant by Landlord's agent. At Landlord's option, however, an amount may be estimated by Landlord from time to time of Tenant's Share of annual CAM Charges and the same shall be payable monthly or quarterly, as Landlord shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Landlord shall deliver to Tenant within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual CAM Charges incurred during the preceding year (the "Reconciliation"). If Tenant's payments during said preceding year exceed Tenant's Share as indicated on said Reconciliation, Landlord shall be credited the amount of such overpayment against Tenant's Share of CAM Charges next becoming due. If Tenant's payments during said preceding year were less than Tenant's Share as indicated on said Reconciliation, Tenant shall pay to Landlord the amount of the deficiency within ten (10) days after delivery by Landlord to Tenant of said Reconciliation.

7. Rent Increase.

On each anniversary date of this Lease, the Base Rent shall be increased by CPI Adjustment (see subsection "A" below) or fixed rental adjustment (see subsection "B" below).

A. CPI Rental Adjustment ("CPI"): At the times set forth in paragraph 1.06 of the Basic Lease Provisions, the monthly Base Rent shall be adjusted by the increase, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers, (1982-84=100), "All Items", for the City nearest the location of the Building, herein referred to as "CPI.", since the date of this Lease. The monthly Base Rent shall be calculated as follows: the Base Rent payable for the first month of the term of this Lease shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month during which the adjustment is to take effect, and the denominator of which shall be the CPI for the calendar month in which the original Lease term commences. The sum so calculated shall constitute the new monthly Base Rent hereunder, but, in no event, shall such new monthly Base Rent be more than one hundred three percent (103%) of the Base Rent payable for the month immediately preceding the date for the rent adjustment. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculations. Tenant shall continue to pay the rent at the rate previously in effect until the increase, if any, is determined. Within ten (10) days following the date on which the increase is determined, Tenant shall make such payment to Landlord as will bring the increased rental current. Thereafter the rental shall be paid at the increased rate.

8. Security Deposit – Intentionally Omitted

9. Use.

The Premises shall be used and occupied only for the purpose as provided for in Section 1.11 and for no other purpose. Tenant shall conduct its business in a lawful manner (including obtaining and maintaining any required governmental permits and licenses) and shall not use or permit use of the Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Depot.

10. Maintenance and Repairs.

Landlord's Obligations: Landlord shall keep the Office Building Project, including the Premises, interior and exterior walls, roof, and common areas, replacement of light bulbs, tubes, and ballasts, and the equipment whether used exclusively for the Premises or in common with other premises, in good condition and repair; provided, however, Landlord shall not be obligated to paint, repair, or replace wall coverings, or to repair or replace any improvements that are not ordinarily a part of the Building or are above the Building standards. There shall be no abatement of rent or liability of Tenant on account of any injury or interference with Tenant's business with respect to any improvements, alterations, or repairs made by Landlord to the Office Building Project or any part thereof. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition, and repair.

Tenant's Obligations: Tenant shall be responsible for payment to Landlord as additional rent of the cost for all repairs to the Premises to the extent such cost is attributable to causes beyond normal wear and tear, including the cost of any maintenance and repair of any equipment (wherever located) that serves

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

only Tenant or the Premises. Tenant shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any Premises improvements that are not ordinarily a part of the Building or that are above the Building standards.

Hazardous Substances. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material, or waste whose presence, nature, quantity, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety, or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Tenant shall not engage in any activity in or about the Premises which constitutes a use of Hazardous Substances without the express written consent of Landlord and compliance in a timely matter (at Tenant's sole cost and expense) with all governmental requirements (including but not limited to compliance with all laws, rules, regulations, ordinances, directives, covenants, easements, and restrictions of record, permits, and the requirements of any applicable fire insurance underwriter or rating bureau). Landlord may (but without any obligation to do so) condition its consent, if granted, to Tenant's use of any Hazardous Substance upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises, and the environment against damage, contamination, or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises and/or the deposit of an additional Security Deposit. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

Tenant shall indemnify, protect, defend, and hold Landlord, its agents, employees, lenders, and ground Landlord, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of and involving and Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations under this subsection shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration, and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation, or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

11. Utilities & Services.

Landlord shall be responsible for the payment of the following utilities and services that serve the Premises, subject to reimbursement of same as provided for herein (check those that apply):

- ☐ Electricity
- ☒ Gas
- ☒ Water/Sewer
- ☐ Telephone & Data Service
- ☒ Trash
- ☐ Security Alarm Monitoring
- ☐ Janitorial Service & Supplies

Tenant shall be responsible for the direct payment or reimbursement to Landlord of the following utilities and services that serve the Premises (check those that apply):

- ☒ Electricity
- ☐ Gas
- ☐ Water/Sewer
- ☒ Telephone & Data Service
- ☐ Trash
- ☒ Security Alarm Monitoring
- ☒ Janitorial Service & Supplies

In the event any of Tenant's afore-mentioned utilities are not separately metered to the Premises,

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

Tenant shall pay at Landlord's option, either Tenant's Share or a reasonable proportion to be determined by Landlord of all charges jointly metered with other Premises in the Building.

Said services and utilities shall be provided during generally accepted business days and hours or such other days or hours as may hereafter be set forth. Utilities and services required at other times shall be subject to advance request and reimbursement by Tenant to Landlord of the cost thereof. Tenant shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting, or power, or suffer or permit any act that causes extra burden upon the utilities or services. Landlord shall require Tenant reimburse Landlord for any excess expenses or costs that may arise out of a breach of this subparagraph by Tenant at actual cost or at a predetermined rate of **$50.00** per hour of usage. Landlord may, in its sole discretion, install at Tenant's expense supplemental equipment and/or separate metering applicable to Tenant's excess usage or loading.

There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption, or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair, or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

Promptly upon request from Landlord,, Tenant shall provide monthly electricity and other utility usage data for the Premises to Landlord for the period of time requested by Landlord in electronic or paper format, or, at Landlord's sole option, provide any written authorization or other documentation required for Landlord to request information regarding Tenant's electricity and other utility usage data with respect to the Premises directly from the appropriate utility company.

12. Alterations and Additions.

Tenant shall not without Landlord's prior written consent make any alterations, improvements, additions, or repairs (hereinafter collectively referred to as "Alterations") in, on or about the Premises or the Depot. Should Landlord permit Tenant to make its own Alterations, Tenant shall use only contractors that are properly and adequately licensed and insured, and Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's and materialmen's liens and to ensure completion of the work. Any Alterations in or about the Premises or the Depot that Tenant shall desire to make shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent to making such Alteration, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from the applicable governmental agencies, furnishing of a copy thereof to Landlord prior to the commencement of the work, and compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises, the Building, or the Depot, or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in the Premises by Tenant, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Building as provided by law.

All Alterations which may be made on the Premises by Tenant shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be the property of Landlord and shall remain upon and be surrendered with the Premises at the expiration of the Lease term, unless Landlord requires their removal pursuant to Section 18.

Tenant further acknowledges that the Depot is an historical landmark and thus cannot be altered or modified in any way (including hanging anything on the walls or puncturing wall surfaces with any nail, screw, etc.) without the express written consent of Landlord.

13. Insurance and Indemnity.

Liability and Property Insurance -Tenant: Tenant shall provide a certificate of self insurance to Landlord of not less than $1,000,000 per occurrence of bodily injury and property damage, or Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive General Liability insurance in an amount of not less than $1,000,000 per occurrence of bodily injury and property damage combined and damage to premises rented by Tenant or in a greater amount as

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

reasonably determined by Landlord and shall insure Tenant with Landlord as additional insured against liability arising out of the use, occupancy, or maintenance of the Premises. The policy shall be endorsed to provide: "This insurance will be primary and noncontributory with any other insurance of the additional insureds." Compliance with the above requirement shall not, however, limit the liability of Tenant hereunder. Tenant shall also maintain insurance coverage on all of Tenant's personal property, trade fixtures, and alterations and improvements in, on, or about the Premises similar in coverage to that carried by Landlord (such insurance shall be full replacement cost coverage with a deductible not to exceed $2,500 per occurrence, and the proceeds from any such insurance shall be used exclusively for the replacement of personal property and the restoration of trade fixtures, alterations, and improvements). To the fullest extent permitted by law, Tenant hereby waives all rights of recovery under subrogation against the Additional Insured, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SANBAG, in connection to the Depot. Tenant shall deliver to Landlord certificates evidencing the existence and amounts of such insurance within seven (7) days after the Commencement Date of this Lease, and shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals thereof.

The cost of the premiums for the insurance policies maintained by Landlord hereinafter shall be a Common Area Operating Expense.

Liability Insurance - Landlord: Landlord shall obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Broad Form Property Damage Insurance, plus coverage against such other risks Landlord deems advisable from time to time, insuring Landlord, but not Tenant, against liability arising out of the ownership, use, occupancy, or maintenance of the Depot in an amount not less than $1,000,000 per occurrence.

Property Insurance: Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Depot improvements, but not Tenant's personal property, fixtures, equipment, or tenant improvements, in an amount of the full replacement cost thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, plate glass, and such other perils as Landlord deems advisable or may be required by a lender having a lien on the Depot. In addition, Landlord shall obtain and keep in force, during the term of this Lease, a policy of rental value insurance covering a period of one year, with loss payable to Landlord, which insurance shall also cover all Operating Expenses for said period. Tenant shall not be named in any such policies carried by Landlord and shall have no right to any proceeds therefrom. In the event that the Premises shall suffer any insured losses, the deductible amounts under the applicable insurance policies shall be deemed an Operating Expense. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies carried by Landlord. Tenant shall pay the entirety of any increase in the property insurance premium for the Depot over what it was immediately prior to the commencement of the term of this Lease if the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy or any act or omission of Tenant.

Waiver of Subrogation: Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors, and/or invitees.

Indemnity: Tenant shall indemnify and hold harmless Landlord and its agents, Landlord's master or ground|Landlord, partners and lenders, from and against any and all claims for damage to the person or property of anyone or any entity arising from Tenant's use of the Depot, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims, costs and expenses arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, employees, or invitees, and from and against all costs, attorney's fees, expenses and liabilities incurred by Landlord as the result of any such use, conduct, activity, work, things done, permitted or suffered, breach, default, or negligence, and in dealing reasonably therewith, including but not limited to the defense or pursuit of any claim or any action or proceeding involved therein; and in case any action or proceeding be brought against Landlord by reason of any such matter. Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified.

Exemption of Landlord from Liability: Tenant hereby agrees the Landlord shall not be liable to Tenant's

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage results from conditions arising upon the Premises or upon other portions of the Depot, or from other sources or places, or from new construction or the repair, alteration, or improvement of any part of the Depot, or of the equipment, fixtures, or appurtenances applicable thereto, and regardless of whether the cause of such damage or the means or repairing the same is inaccessible. Landlord shall not be liable for any damages arising from any act or neglect of any other Tenant, occupant or user of the Depot, nor from the failure of Landlord to enforce the provisions of any other lease of any other Tenant of the Depot.

14. Property Taxes.

Real Property Taxes: Landlord shall pay real property taxes and associated assessments applicable to the Depot, subject to reimbursement as a Common Area Operating Expense by Tenant in accordance with the provisions of Sections 1.09 and 6. Tenant shall also pay to Landlord the entirety of any increase in real property tax if assessed solely by reason of additional improvements placed upon the Premises by Tenant or at Tenant's request. Real property taxes shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Depot or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agriculture, sanitary, fire, street, drainage or other improvement district thereof.

Personal Property Taxes: Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere.

15. Assignment & Subletting.

Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, without Landlord's prior written consent, which Landlord shall not unreasonably withhold (however, Landlord reserves the right to condition any approval to assign or sublet upon Landlord's determination that (a) the proposed assignee or subtenant shall conduct a business on the Premises of a quality substantially equal to that of Tenant and consistent with the general character of the other occupants of the Depot and not in violation of any exclusives or rights then held by other tenants, and (b) the proposed assignee or subtenant be at least as financially responsible as Tenant was expected to be at the time of the execution of this Lease or of such assignment or subletting, whichever is greater). Regardless of Landlord's consent, no assignment or subletting shall release Tenant of Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent and other sums due Landlord hereunder including Tenant's Share of Operating Expense Increase, and to perform all other obligations to be performed by Tenant hereunder. If Tenant's obligations under this Lease have been guaranteed by third parties, then an assignment or sublease, and Landlord's consent thereto, shall not be effective unless said guarantors give their written consent to such sublease and the terms thereof. The consent by Landlord to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Tenant or to any subsequent or successive assignment or subletting by the subtenant. Landlord shall be a party to, and have the right to review, any proposed subleases and associated documents. If Tenant shall request the consent of Landlord for a proposed assignment or subletting, then Tenant shall pay Landlord's reasonable costs and expenses incurred in connection therewith, including attorneys', architects', engineers', or other consultants' fees.

In the event of any default under this Lease, Landlord may proceed directly against Tenant, any guarantors or anyone else responsible for the performance of this Lease, including the subtenant, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord or Tenant. The discovery of the fact that any financial statement relied upon by Landlord in giving its consent to an assignment or subletting was materially false shall, at Landlord's election, render Landlord's said consent null and void.

16. Default; Breach; Remedies.

Tenant's Default/Breach: The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

(a) The breach by Tenant of any of the covenants, conditions or provisions contained within this Lease, where such breach is of an incurable nature.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, and as when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(c) The failure of Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, where such failure is curable in nature and continues for a period of three (3) business days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than three (3) business days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said three (3) business day period and thereafter diligently pursues such cure to completion. Such three (3) business day notice shall constitute the sole and exclusive notice required to be given to Tenant under applicable Unlawful Detainer statutes.

(d) The discovery by Landlord that any financial statement given to Landlord by Tenant, or its successor in interest or by any guarantor of Tenant's obligation hereunder, was materially false.

Landlord's Default/Breach: Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than three (3) business days after written notice by Tenant to Landlord; provided, however, that if the nature of Landlord's obligation is such that more than three (3) business days are required for performance then Landlord shall not be in default if Landlord commences performance within such three (3) business day period and thereafter diligently pursues the same to completion.

Remedies: In the event of any material default or breach of this Lease by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, recapture of any inducement such as abated rent periods, reasonable attorneys' fees, and any real estate commission actually paid; the worth at the time of award of the court having jurisdiction thereof the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

Late Charges: Tenant hereby acknowledges that the late payment by Tenant to Landlord of Base Rent, Tenant's Share of Operating Expense Increase or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within **five business (5)** days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to **six percent (6%)** of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

17. Estoppel Certificate.

Each party (as "responding party') shall at any time upon not less than ten (10) days' prior written notice from the other party ("requesting party") execute, acknowledge, and deliver to the requesting party a

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Depot or of the business of Tenant. At the requesting party's option, the failure to deliver such statement within such time shall be conclusive upon such party that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Landlord is the requesting party, not more than one month's rent has been paid in advance.

18. Surrender; Move-out.

On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord, which shall include the return of all keys and access control devices, in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by reasonable maintenance practices by Tenant. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, alterations, furnishings and equipment, and shall leave the HVAC equipment, power panels, electrical distribution systems, lighting fixtures and lamps, window coverings, wall and floor coverings, ceilings, plumbing fixtures, and all other building systems in the Premises in good operating condition.

19. Holding Over.

If Tenant, with Landlord's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, except that the rent payable shall be **125%** of the rent immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

20. Substituted Premises - Intentionally Omitted

21. Landlord's Access.

Landlord and Landlord's agents shall have the right to enter the Premises at reasonable time for the purpose of inspecting the same, performing any services required of Landlord, showing the same to prospective purchasers, lenders, or tenants, making such alterations, repairs, improvements, or additions to the Premises or to the Depot as Landlord may reasonably deem necessary or desirable and the erecting, using, and maintaining of utilities, services, pipes, and conduits through the Premises and/or other premises as long as there is no unreasonable interference with Tenant's property or business use of the Premises. Landlord may at any time place on or about the Premises or the Building any ordinary "For Sale" signs and Landlord may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All activities of Landlord pursuant to this paragraph shall be without abatement of rent, nor shall Landlord have any liability to Tenant for the same.

Landlord shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults, and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. This Section shall in no event constitute a waiver of Tenant's right to quiet enjoyment of the Premises.

22. Security.

Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Depot. Tenant assumes all responsibility for the protection of Tenant, its agents, and invitees and the property of Tenant and of Tenant's agents and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Depot or any part thereof, in which event the cost thereof shall be included within the definition of Common Area Operating Expenses.

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

Tenant shall not permit anyone, except in emergency or with Landlord's prior approval, to go upon the roof of the building nor to access electrical, utility, elevator, machinery or equipment rooms.

23. Signs.

Tenant shall not place any sign upon the Premises or the Depot without Landlord's prior consent. Under no circumstances shall Tenant place a sign on any roof of the Depot. Lettering on directory or monument signs, if applicable and which must be expressly approved herein, shall be provided by ☐ Landlord ☒ Tenant, and shall conform to the Depot sign criteria. In the event Tenant is permitted signage on the Building exterior, such signage shall be subject to the Depot sign criteria and in accordance with applicable codes, requirements, and governmental approval of the City in which the Building is located. The installation, maintenance, repair, and removal (including any underlying damage caused by removal) of such exterior signage shall be provided by Tenant, at Tenant's sole cost and expense. Failure to maintain such signage shall, at Landlord's option, result in forfeiture of the sign position(s) and removal of existing signage (at Tenant's cost).

24. Subordination.

This Lease, and any Option or first refusal granted hereby, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Depot. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless otherwise terminated pursuant to its terms. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder without further notice to Tenant or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

25. Options.

As used in this paragraph the word "Option" means the right or option to extend the term of this Lease or to renew this Lease;

Each Option granted to Tenant in this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises. In the event that Tenant has multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised. All rights of Tenant under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, during the term of this Lease, (i) Tenant fails to pay Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Tenant fails to commence to cure any curable default or breach of any other provision of this Lease within thirty (30) days after the date that Landlord gives notice to Tenant of such default and/or Tenant fails thereafter to diligently prosecute said cure to completion, or (iii) Landlord gives to Tenant three or more notices of default for the non-payment of rent, whether or not the defaults are cured, or (iv) if Tenant has committed any non-curable breach or is otherwise in default of any of the terms, covenants, and conditions of this Lease.

Any and all Options granted to Tenant, if any, are hereby prescribed as follows:

Option to Extend: So long as Tenant is not in default of this Lease, and has not been habitually in default during the initial or any previously extended Term as determined by Landlord in its sole discretion, Landlord hereby grants Tenant the right to extend the term of this Lease for two (2) additional periods of five (5) years each. Each successive option shall be deemed to have been automatically exercised by Tenant unless Tenant notifies Landlord, in writing, no later than ninety (90) days prior to the expiration of the preceding term, of its intent not to exercise the Option to Extend. The monthly Base Rent for these Option periods granted herein, if exercised, shall be increased annually in accordance with Section 7(a) of this Lease.

26. Damage or Destruction.

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

In the event the Premises sustains damages of less than fifty percent (50%) of its then replacement value, then Landlord shall repair such damage (except for Tenant's improvements, trade fixtures and equipment) as soon as reasonably possible, and this Lease shall continue in full force and effect, and Rent and other charges shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. In the event such damages are uninsured, Landlord may elect not to restore and repair the Premises, in which case this Lease shall be terminated. In either case, if such damages or destruction was caused by a negligent or willful act of Tenant, then Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent.

In the event the Premises sustains damages of more than fifty percent (50%) of its then replacement value, (unless caused by a negligent or willful act of Tenant in which case Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent), this Lease shall terminate effective on the date of such damage or destruction.

27. Eminent Domain.

Eminent domain proceedings resulting in the condemnation of part of the Premises herein that leave the remaining portion usable by Tenant for purposes of the business for which the Premises are leased will not terminate this Lease. If Tenant determines that the remaining portion is not reasonably usable, Tenant may terminate this Lease by giving written notice of termination to Landlord no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should Tenant not terminate this Lease, will be to terminate this Lease as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Rent and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall belong to Landlord (including damages for the bonus value of Tenant's leasehold improvements), except to the extent that part of the award is allocated as damages to fixtures of the Depot which were furnished by Tenant, or expenses for Tenant's relocation.

28. General Lease Terms:

Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

Additional Rent. All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to Tenant's Share of Operating Expense Increase and any other expenses payable by Tenant hereunder shall be deemed to be rent.

Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter, including but not limited to Letters of Intent, Proposals to Lease, and other documentation associated with the negotiation of this tenancy, shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker on this transaction nor the Landlord or any employee or agents of any said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Premises or the Depot and Tenant acknowledges that Tenant assumes all responsibility regarding the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease, including but not limited to the Occupational Safety Health Act and the Americans with Disabilities Act ("ADA"); However, Tenant shall not be responsible for ADA and/or CAL OSHA related requirements which may or may not have been addressed prior to the initiation of this Lease.

Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Tenant or to Landlord at the address noted in Section 1.17. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

hereafter designate by notice to Tenant.

Waivers. No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjusted that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as if it was not legally required to pay under the provisions of this Lease.

Covenants and Conditions. Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

Binding Effect; Jurisdiction. This Lease shall bind the parties, their personal representatives, successors, and assigns. This Lease shall be governed by the laws of the State where the Depot is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Depot is located.

Attorney's Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal thereon, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit, and whether or not such action is pursued to decision or judgment. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notice of default (including but not limited to notices required under the Unlawful Detainer statutes) and consultations in connection therewith, whether or not a legal transaction is subsequently commenced in connection with such default. The costs, salary and expenses of the City Attorney and members of his office in enforcing this contract on behalf of the City of San Bernardino shall be considered as "attorney's fees" for the purposes of this paragraph".

Consents. Wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld or delayed.

Guarantor. In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Tenant under this Lease.

Authority. The individuals executing this Lease on behalf of the Landlord represent and warrant to Tenant that they are fully authorized and legally capable of executing this Lease on behalf of Landlord and that such execution is binding upon all parties holding an ownership interest in the Depot. If Tenant is a corporation, trust, or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity represent and warrant that such individual is duly authorized to execute and deliver this Lease on behalf of such entity.

Conflict. Any conflict between the printed provisions, Exhibits, or Addenda of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

Multiple Parties. If more than one person or entity is named as either Landlord or Tenant herein, except as otherwise expressly provided herein, the obligations of the Landlord or Tenant herein shall be the joint and several responsibility of all persons or entities named herein as such Landlord or Tenant, respectively.

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

ATTACHMENTS:

Attached hereto are the following documents which constitute a part of this Lease:

Exhibit "A" - Rules and Regulations
Exhibit "B" - [Intentionally omitted]
Exhibit "C" - Space Plan

ADDITIONAL TERMS:

29. Tenant Improvements. Landlord shall provide tenant improvements and other site improvements for the Premises based upon working drawings and specifications mutually agreed upon by Landlord and Tenant and prepared in accordance with the Space Plan and Specifications, attached hereto as Exhibit "C". The cost of such improvements, including but not limited to architects ' and engineers' fees, cost of permits, materials, labor, general contractor's fees, overhead, Landlord's construction management fee, and other costs related to the construction of the improvements (but shall not include costs for Tenant's cabling, furniture, fixtures, or equipment) shall be paid for by Landlord initially, and Tenant shall reimburse Landlord for such costs, with $100,000 paid up front in a lump sum due at the beginning of construction, and the remaining balance amortized over the initial term of the Lease and payable monthly concurrent to other rents due. The cost of the tenant improvements is currently estimated to be approximately $230,000. In addition to the tenant improvements, the parties have identified and estimated the cost of certain necessary site improvements outside of the Tenant's actual leased space that are necessary or beneficial to Tenant's use and occupancy of the Premises. Landlord has agreed to contribute $45,000 toward the cost of these site improvements, which will not be reimbursed by Tenant. By way of example only using estimated figures (which may not be accurate and are dependent upon the final scope of work and actual costs incurred):

Total improvements costs:	$275,000.00
Less site improvement costs paid by Landlord:	$45,000.00
Total tenant improvement costs reimbursed by Tenant:	$230,000.00
Up front lump sum due from Tenant:	$100,000.00
Balance owed by Tenant:	$130,000.00

Amortized monthly over 5 years: $2,166.67 per month (Amortization Payment)

The Amortization Payment each month shall be paid separately and directly to SANBAG regardless of any agent relationship SANBAG may have for collection of rents.

In the event

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE REAL ESTATE BROKERS, OR ANY OF THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVISE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

---------- Signatures on next page ----------

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

San Bernardino Associated Governments

By: _____

Raymond W. Wolfe, Ph.D.
Executive Director

Date: 8/1/16

Local Agency Formation Commission for San Bernardino County (LAFCO)

By: _____

Name: Kimberly Cox
Title: Commission Chair

Date: 7-20-16

APPROVED AS TO FORM

By: _____

Robert D. Herrick
Assistant General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Procurement Manager

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

EXHIBIT "A"
RULES AND REGULATIONS

GENERAL RULES

1. Tenant shall not suffer or permit the obstruction of any Common Areas.

2. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Depot or its occupants.

3. Tenant shall not make or permit any noise or odors that annoy or interfere with other Tenants or persons having business within the Depot.

4. Tenant shall not keep animals or birds within the Depot (unless a part of approved use as per Section 9 of this Lease), and shall not bring bicycles, motorcycles, or other vehicles into areas not designated as authorized for same.

5. Tenant shall not make, suffer, or permit litter except in appropriate receptacles for that purpose. All garbage and refuse shall be placed in containers designated for refuse collection, and such items must fit entirely within the receptacles. All large boxes and other refuse shall be broken down prior to placing in the containers. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord.

6. Tenant shall not alter any exterior lock or install new or additional locks or bolts on exterior doors without providing Landlord copies of same.

7. Tenant shall not deface the walls, partitions, or other surfaces of the premises or the Depot.

8. Tenant shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Landlord.

9. Tenant shall return all keys, including duplicates, at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.

10. No window coverings, shades, or awnings shall be installed or used by Tenant without Landlord's prior approval.

11. No Tenant, employee, or invitee shall go upon the roof of the Building without Landlord's prior approval.

12. Smoking shall be restricted to designated smoking areas, if any, and then not near, doors, windows, or other entrances, exits, or openings to other units within the Depot

13. Tenant shall not install, maintain, or operate any vending machines upon the Premises without Landlord's written consent.

14. The premises shall not be used for lodging or manufacturing, cooking, or food preparation, except as an approved Use per Section 9 of this Lease.

15. Tenant shall comply with all safety, fire protection, and evacuation regulations established by Landlord or any applicable governmental agency.

16. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular Tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Tenant.

17. Tenant assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.

18. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Depot and its occupants. Tenant agrees to abide by these and such rules and regulations.

19. Signs shall conform to sign criteria established by Landlord and shall not exceed the quantity or dimensions authorized by Landlord. No signs (other than signs that strictly conform to sign criteria), placards, pictures, advertisements, names, or notices shall be inscribed, displayed, painted, or affixed on or to any part of the outside or inside of the Building or within the Common Areas of the Depot. Landlord shall have the right to remove any such non-conforming signs without notice to Tenant, at the expense of Tenant.

20. Tenant shall not disturb, solicit, or canvass any other Tenant within the Depot.

21. Tenant, its contractors, employers, or invitees, shall not loiter in the Common Areas of the Depot or in any way obstruct the entrances and driveways.

22. No antenna, aerial, discs, satellite dishes, or other such device shall be erected on the roof or exterior walls of the Building without Landlord's express consent.

PARKING RULES

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles, non-commercial pick-up trucks, and sport utility vehicles herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles".

2. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities.

3. Parking stickers or identification devices shall be the property of Landlord and be returned to Landlord by the holder thereof upon termination of the holder's parking privileges. Tenant will pay such replacement charge as is reasonably established by Landlord for the loss of such devices.

4. Landlord reserves the right to refuse the sale or issuance of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws, and/or agreements.

5. Landlord reserves the right to relocate all or a part of parking spaces, and to reasonable allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances, and regulations.

6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.

7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons, or loss of property, all of which risks are assumed by the party using the parking area. No overnight parking shall be permitted.

8. The maintenance, washing, waxing, or cleaning of vehicles in the parking structure or Common Areas is prohibited.

9. Tenant shall be responsible for seeing that all of its employees, agents, and invitees comply with the applicable parking rules, regulations, laws, and agreements.

10. Landlord reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.

11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

12. Violation of any of the parking rules or regulations may result, without notice, in the towing of any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors), the cost of which (including impound fees) shall be the sole responsibility of Tenant.

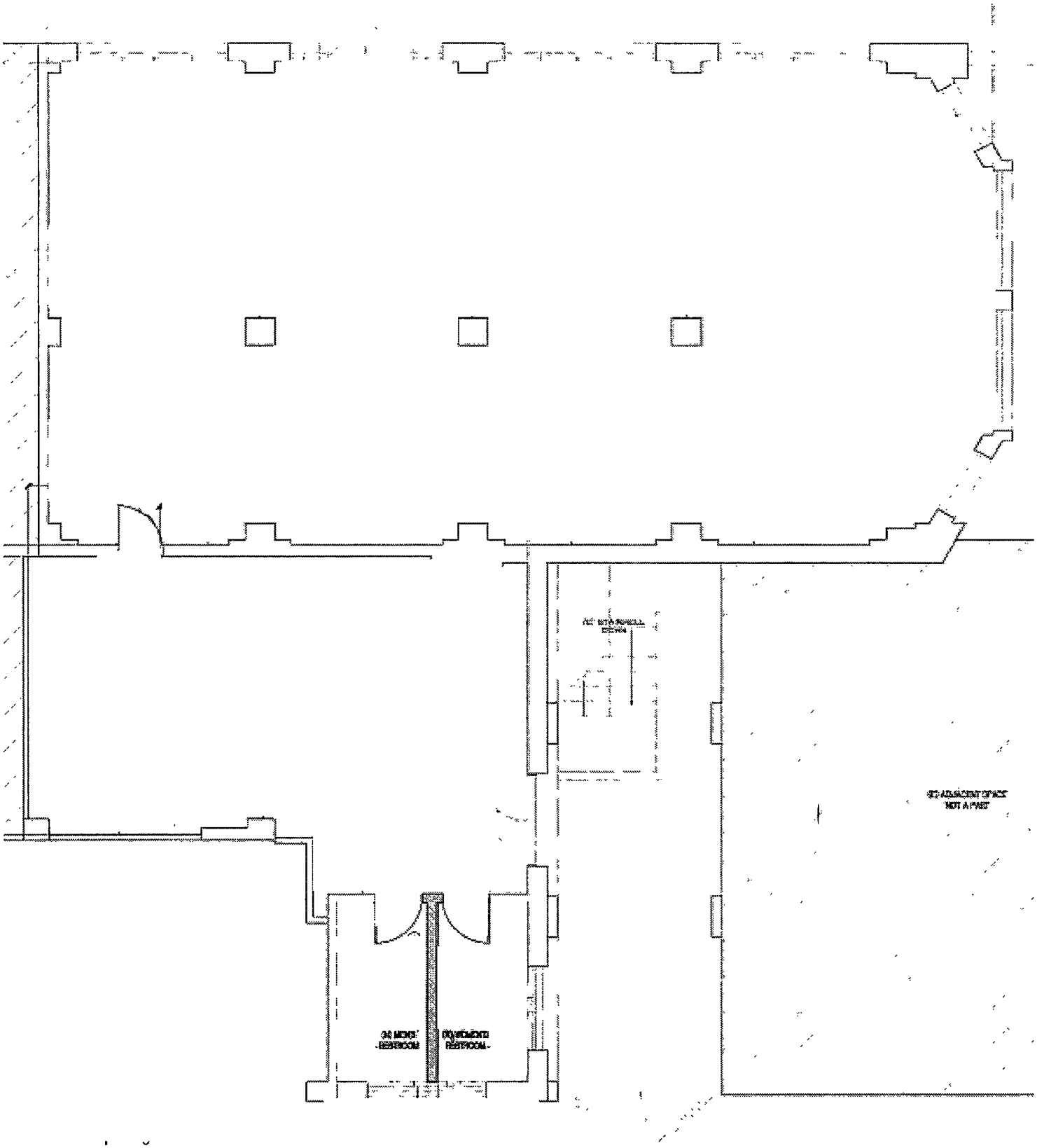
Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

EXHIBIT "B"

[Intentionally omitted]

Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

EXHIBIT "C"
SPACE PLAN



Attachment: 16-1001429 (10709 : Surrender of Lease - Amendment No. 4 to Contract No. 16-1001429)

Minute Action

AGENDA ITEM: 11

Date: July 3, 2024

Subject:
Approve License and Use Agreement No. 23-1002901 with National Railroad Passenger Corporation

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve License and Use Agreement No. 23-1002901 with the National Railroad Passenger Corporation (Amtrak) for access and use of the Santa Fe Depot for the period of July 3, 2024, through July 2, 2039, with the option to renew for two five-year terms.

B. Authorize the Executive Director, or his/her designee, to approve License and Use Agreement No. 23-1002901 for a total estimated revenue not-to-exceed $374,692 through July 2, 2039, or $646,095 including the two option terms.

Background:
The San Bernardino County Transportation Authority (SBCTA) and the City of San Bernardino (City), as tenants-in-common of the Santa Fe Depot (Depot), share the responsibilities for the Depot as defined in the Cooperative Agreement No. 04-040 (Cooperative Agreement). Pursuant to the Cooperative Agreement, SBCTA retains the exclusive right to enter into, amend, or terminate all leases and station use agreements at the Depot.

On October 19, 2007, the SBCTA Board of Directors (Board) approved Contract No. C08100 (00-1000369) with Amtrak for the purpose of providing Amtrak customers access to the San Bernardino Santa Fe Depot Main Lobby located at 1170 W. 3rd Street, San Bernardino. The agreement established a Station Host program developed at the request of Amtrak to provide services which would directly benefit passengers of the Amtrak Southwest Chief trains. The agreement was for a 15-year term commencing on December 1, 2007 and ending on November 30, 2022.

On April 2, 2007, Amendment No. 1 was approved amending the commencement date to March 1, 2008, with term ending February 28, 2023.

On February 1, 2023, Amendment No. 2 was approved extending the term of the existing lease an additional eight months from February 28, 2023 to October 31, 2023, to provide additional time for SBCTA and Amtrak staff to negotiate a new use agreement. Ultimately, negotiations continued to be delayed and a new agreement was not reached before the contract expiration date; however, Amtrak has continued paying the monthly fee of $1,000.

New Proposed License and Use Agreement
Staff continued to work with Amtrak past the expiration of the prior agreement and has prepared a new License and Use Agreement No. 23-1002901 with Amtrak for the Board's approval. The terms of the agreement are generally:

1. Term: 15 years, commencing on July 3, 2024, with two five-year options to extend.
2. Fee: $2,000 monthly to be increased by 2% every three years on the anniversary of the Commencement Date.
3. The total estimated revenue for the length of the initial agreement term is $374,692.
4. The parties acknowledge that the base amount represents an allocated portion of the cost for having the main lobby opened to Amtrak's customers during required station opening times and for the maintenance and repair of the station as required.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025 as the Amtrak revenue for the Station Host program was already accounted for in the budget.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel and Enterprise Risk Manager have reviewed this item and the draft agreement.

Responsible Staff:
Colleen Franco, Director of Management Services

Contract Summary Sheet

General Contract Information

Contract No: 23-1002901 Amendment No.:

Contract Class: Receivable Department: Management Services

Customer ID: AMTRAK NRP Customer Name: Amtrak

Description: License and Use of the Main Lobby of the San Bernardino Santa Fe Depot

List Any Accounts Payable Related Contract Nos.: 00-1000249

Dollar Amount

Original Contract	$	374,692.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment			Current Amendment		
Total/Revised Contract Value	**$**	**374,692.00**	**Total Contingency Value**	**$**	**-**
			Total Dollar Authority (Contract Value and Contingency)	**$**	**374,692.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10707

Contract Management (Internal Purposes Only)

Local Lease N/A

Accounts Receivable

Total Contract Funding: $ 374,692.00 Funding Agreement No: 23-1002901

Beginning POP Date: 07/03/2024 Ending POP Date: 07/02/2039 Final Billing Date: 07/02/2039

Expiration Date: 07/02/2039 Fund Admin: Yes

Parent Contract 23-1002901 PM Description Amtrak Santa Fe Depot Lobby License and Use Agreement

Z-Related Contracts Z23-1002901

	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL:	1091	01	0805	0000	43012000	374,692.00
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-

	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-
GL:						-

Colleen Franco
Project Manager (Print Name)

Colleen Franco
Task Manager (Print Name)

Lease revenues for 1st option to extend = $133,550.05. Lease revenues for 2nd option to extend = $137,853.53. Total revenue if both options excercised = $646,094.75.

Attachment: CSS Amtrak (10707 : Approve Agreement 23-1002901 with the National Railroad Passenger Corporation)

Attachment: San Bernardino - License and Use Agreement (2023-2038)_DRAFT_v16 (Amtrak edits) 3 26 2024 (10707 : Approve Agreement 23-

LICENSE AND USE AGREEMENT
(Santa Fe Depot)

This License and Use Agreement ("**Agreement**") is made and entered into as of this 3rd day of July 2024, ("**Effective Date**"), by and between San Bernardino County Transportation Authority, a public agency ("**LICENSOR**"), and National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq*. and the laws of the District of Columbia, ("**AMTRAK**"). LICENSOR and AMTRAK are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, LICENSOR owns that certain real property located in the City of San Bernardino, San Bernardino County, California located at 1170 W. 3rd Street, San Bernardino, California 92410, which property is commonly known as Santa Fe Depot **("Depot")**; and

WHEREAS, AMTRAK desires to access and use, and SBCTA desires to permit AMTRAK access to and use of, a portion of the Depot for AMTRAK's continued use as a rail station, as defined in Section 1 (*Premises*) below, under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to incorporate the above Recitals into this Agreement and further agree as follows:

1. PREMISES

a. LICENSOR hereby grants to AMTRAK, and its employees, agents, licensees, contractors, passengers and invitees, a license for access to and use of the portion of the Depot, as delineated on the plan shown in **Exhibit A** attached hereto and made a part hereof, including the sidewalks, plazas, parking areas, driveways, public bathrooms, common entrances, lobbies (to the extent owned by LICENSOR), and any other public areas of the Depot which includes the right to place an AMTRAK ticket machine thereon (collectively, the "**Premises**"), and pursuant to the terms and conditions set forth herein. This Agreement does not alter or modify AMTRAK's rights to access and use the platforms and the pedestrian footbridge which connect the Depot to the platforms pursuant to the terms of the agreement between AMTRAK, Southern California Regional Rail Authority, Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, Riverside County Transportation Commission, Ventura County Transportation Commission, and LICENSOR, dated March 1, 1994 ("**Operating Agreement**").

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2. TERM

a. The initial term of this Agreement shall commence on the 3rd day of July 2024 ("**Commencement Date**") and shall remain in effect for fifteen (15) years ("**Initial Term**"), unless (a) sooner terminated: (i) by ninety (90) days' prior written notice by either Party to the other Party; or (ii) in the event LICENSOR elects not to rebuild the Depot, as provided Section 11 (*Damage and Destruction*) and Section 12 (*Eminent Domain*) of this Agreement; or (b) extended pursuant to Section 2.b below.

b. The Parties agree that AMTRAK shall have the option to extend the Initial Term of this Agreement for two (2) additional five (5) year term(s). AMTRAK shall give LICENSOR notice of its intent to extend the term by giving written notice at least ninety (90) days before the end of the then-current term **("Renewal Term(s)"** and collectively with the Initial Term, the **"Term")**.

c. Any Renewal Term shall be upon the same terms and conditions as set forth in this Agreement, except that the Fee shall be adjusted, as pursuant to Section 3.b below (*Fee*).

3. FEE

a. Beginning upon the Commencement Date of the License, and continuing for the entirety of the Initial Term, AMTRAK shall pay to LICENSOR a fee in the amount of TWO THOUSAND DOLLARS AND NO CENTS ($2,000.00) per month, payable on the first day of each month during the Term **("Fee")**. Fee for Renewal Terms shall be set as provided in 2.c. above (*Term*). The Fee shall be paid to LICENSOR at the address set forth in Section 19 (*Notices*), or such other address as LICENSOR may advise AMTRAK in writing from time to time.

b. The Fee shall be increased by two percent (2%) every (3) years of the Term, commencing on the third anniversary of the Commencement Date.

4. USE

AMTRAK may access and use the Premises for any lawful purpose reasonably related to AMTRAK's business operations, including use: (i) as a waiting area for passengers; (ii) for ticket machine area, including the repair, replacement or removal of the ticket machine.

5. HOURS OF OPERATION

LICENSOR shall ensure the Premises will be open to Amtrak passengers arriving or departing on Amtrak trains and buses. The regular hours for the Premises shall be Monday thru Friday, 3:16 a.m. – 11:46 p.m., and Saturday and Sunday, 6:11a.m. – 11:46 p.m ("**Regular Hours**"). AMTRAK shall have the right to request to LICENSOR to keep the Premises open outside of the Regular Hours by providing prior written notice to LICENSOR, and in such event, AMTRAK shall pay the actual costs incurred by LICENSOR in connection therewith.

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6. UTILITIES

LICENSOR shall make all arrangements and installations for the provision of and pay for all utilities necessary for AMTRAK's access to and use of the Premises.

7. COMPLIANCE

LICENSOR represents that the Depot and all improvements thereon were constructed more than one hundred (100) years ago, and the Depot is listed on the *National Register of Historic Places*. LICENSOR shall maintain and operate the Depot in accordance with all applicable statutes, laws, rules, regulations, ordinances and codes, including without limitation, the *Americans with Disabilities Act of 1990*, as amended (42 USC 12101 et seq.) ("**ADA**"), the *Rehabilitation Act of 1973*, as amended (29 USC 794 et seq.) ("**Rehabilitation Act**") and the implementing regulations, including but not limited to those set forth at 49 CFR parts 27, 37 and 38 ("**Regulations**").

8. SIGNS

AMTRAK's existing business signs and signs needed for either passenger information display system, including audio and visual components, ADA compliance or other signs required for AMTRAK to be in compliance with any applicable laws, statutes, regulations or government requirements are deemed approved by LICENSOR ("**Business Signs**"). AMTRAK may keep and maintain said Business Signs at the Depot throughout the Term of this Agreement. All other signs shall not be erected without the prior approval of LICENSOR, which approval shall not be unreasonably denied, delayed, or conditioned.

9. MAINTENANCE, REPAIR AND SERVICES

a. Except as otherwise specifically provided herein, LICENSOR, at its sole cost and expense, shall be responsible for the reasonable maintenance, repair and upkeep of the Depot, including the maintenance, repair, replacement and alteration of the interior and exterior of the Depot and all fixtures, equipment, components and systems that are a part of the Depot or necessary to and for the operation of the Depot and AMTRAK's access to and use of the Premises, including structural and roof repairs and maintenance and exterior landscaping, paving and maintenance.

b. LICENSOR shall pay all reasonable costs, expenses, fees, taxes, and sums related to its ownership, operation and maintenance of the Depot.

c. LICENSOR shall provide at its expense:

i. heating, ventilation, and air conditioning ("**HVAC**") for the Depot, including the Premises, during the Depot Hours to maintain temperatures in the interior portions of the Depot at commercially reasonable levels.

ii. janitorial services to the Depot;

iii. water sufficient for drinking, lavatory, toilet and routine janitorial and cleaning services, which shall be drawn from LICENSOR's fixtures in the Premises;

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iv. electricity to the Premises sufficient to provide lighting of uniform illumination;
v. replacement of lighting tubes, lamp ballasts, starters and bulbs, as needed;
vi. extermination and pest control as often as may be deemed necessary in the exercise of prudent management practices, and in no event less than semi-annually. To the greatest extent possible, such work shall be performed at times other than when passenger train and bus operations are scheduled;
vii. reasonable maintenance, cleaning, and upkeep of Premises in a commercially reasonable manner appropriate for a train Depot. Such maintenance shall include, without limitation, cleaning, HVAC, illumination, repairs, replacements, and landscaping;
viii. security at the level and standard currently maintained in the Depot.

d. LICENSOR shall cause utilities (e.g., electricity, water, sewer, etc.) to be supplied to the Depot sufficiently for the operation of a transit facility, including provision of such utilities to the Premises at levels and in amounts sufficient for AMTRAK's access to and use of the Premises, as provided in Section 4 (*Use)* and Section 6 (*Utilities*) of this Agreement.

e. AMTRAK shall be responsible for the maintenance and repair of any equipment (specifically the ticket machine and signage) or any other personal property of AMTRAK located on or within the Premises and charges for any services for AMTRAK's sole use and benefit arranged for by AMTRAK separately from the services provided by or to be provided by LICENSOR under this Agreement. Amtrak shall have the right to access the Depot and the Premises at all times to repair, replace or remove the ticket machine and Business Signs.

10. INSURANCE AND INDEMNIFICATION

a. LICENSOR and AMTRAK shall indemnify defend and hold harmless the other Party, their officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the sole and direct negligence or willful misconduct of the indemnifying Party, its officers, officials, directors, its employees or agents in connection with this Agreement.

b. AMTRAK and LICENSOR shall, at their own expense, either maintain and carry in full force and effect commercial insurance coverages or the appropriate levels of self-insurance in lines with and in amounts sufficient to cover their respective potential liabilities during the Term of this Agreement.

11. DAMAGE OR DESTRUCTION

a. LICENSOR shall notify AMTRAK, within a reasonable time after such damages or destruction, of LICENSOR's decision to either rebuild the Depot or not. If LICENSOR does not provide an alternative area for AMTRAK's use, AMTRAK shall have no obligation to pay the Fee or any costs or expenses associated with the Depot.

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12. EMINENT DOMAIN

If eminent domain proceedings result in the condemnation of any part of the Premises or Depot that leaves the remaining portion usable by AMTRAK for its purposes of business for which this license permits and as provided in this Agreement, as reasonably determined by AMTRAK, AMTRAK will not terminate this Agreement. If AMTRAK reasonably determines that the remaining portion of the Premises or the Depot is not usable by AMTRAK, AMTRAK may terminate this Agreement by giving written notice of termination to LICENSOR no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should AMTRAK not terminate this Agreement, will be to terminate this Agreement as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Fee and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall be that of LICENSOR, except to the extent that part of the award is allocated as damages to the ticket machine located in the Premises, which were furnished by AMTRAK, which compensation shall be the property of AMTRAK.

13. DEFAULT

In the event a Party fails to perform any covenant or obligation required to be performed under this Agreement, and such failure continues for more than thirty (30) days after notice from the other Party identifying such failure, such failure shall constitute an event of default (**"Event of Default"**). If an Event of Default occurs, the non-defaulting Party, at its sole option and discretion, may: (1) perform such covenant or obligation on behalf of the defaulting Party, in which event the defaulting Party shall reimburse the non-defaulting Party all costs and expenses associated with non-defaulting Party's performance (including reasonable attorneys' fees) within one hundred twenty (120) days after non-defaulting Party presents an invoice to the defaulting Party for such performance; or (2) pursue any and all rights and remedies available at law or in equity.

14. TAXES

Pursuant to 49 U.S.C. §24301(l), AMTRAK is exempt from all state and local taxes, surcharges, or fees.

15. COMPLIANCE WTH LAWS, ORDINANCES, AND RULES

a. AMTRAK agrees to comply with all applicable laws, ordinances, rules, regulations, and requirements of Federal, State or local authorities now existing or hereinafter created in its use of the Premises, including the ADA with respect to any equipment or other personal property of AMTRAK, specifically the ticketing machine and signage, located on or within the Premises, and which AMTRAK deems are applicable and which are not the responsibility of LICENSOR.

b. LICENSOR agrees to comply with all applicable laws, ordinances, rules, regulations, and requirements of Federal, state, county, or other governmental authorities (including, without limitation, the ADA, the Rehabilitation Act and Regulations) now existing or hereinafter created in connection with LICENSOR's ownership, maintenance, and use of the Depot.

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c. LICENSOR represents and warrants that the Depot and improvements thereon, including but not limited to parking areas and paths of travel, comply with the ADA, the Rehabilitation Act, and Regulations. If any noncompliance therewith is found to exist, LICENSOR shall, at its sole cost, immediately make repairs, replacements, or alterations necessary to comply with such.

d. Upon request from any governmental authority, including, but not limited to, the Federal Railroad Administration ("**FRA**"), LICENSOR shall provide an accessibility plan(s), including proposed ADA-related scope(s) of work, schedule(s), and source(s) or proposed source(s) of funding for bringing the Depot into compliance.

e. Nothing in this Agreement shall be interpreted as making AMTRAK a "responsible person" under the ADA and responsible for any ADA compliance of the Premises or Depot, except as otherwise specifically provided herein.

16. NON-WAIVER

Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either Party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver. Any waiver shall not operate to bar or prevent the waiving Party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

17. PARTNERSHIP DISCLAIMER

It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed in any way as creating or establishing the relationship of partners or joint venturers between the Parties hereto, or as constituting AMTRAK as an agent or representative of LICENSOR for any purpose or in any manner whatsoever.

18. PARTIES BOUND

Except as otherwise specifically provided in this Agreement, this Agreement shall bind and inure to the benefit of the Parties hereto and their respective administrators, legal representatives, successors, and assigns.

19. NOTICES

Notices given under the terms of this Agreement must be in writing and shall be deemed properly served if such notice is hand delivered or mailed by certified mail, return receipt requested, or sent by an established overnight commercial courier for delivery on the next business day with delivery charges prepaid, addressed to the other Party at the following address, or such other address as either Party may, from time to time, designate in writing:

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If to LICENSOR: San Bernardino County Transportation Authority
Attn: Management Services
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

If to AMTRAK: National Railroad Passenger Corporation
Real Estate Department
30th Street Station, 5th Floor South
2955 Market Street
Philadelphia, PA 19104
Attn: Senior Director of Real Estate

With a copy to: National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001
Attn: General Counsel

Notices mailed in accordance with the provisions hereof shall be deemed to have been given as to the date of hand delivery or the third business day following the date of such mailing, whichever is earlier.

20. ADJUDICATION

All adjudication relating to this Agreement shall be in the United States District Court for the Central District of California, Eastern Division.

21. TIME OF ESSENCE, BINDING UPON HEIRS, ETC.

Time is of the essence of each and all the terms and provisions of this Agreement, and the terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the administrators, successors and permitted assigns of the respective Parties.

22. NUMBER AND GENDER

All words used herein in the singular number shall include plural and the present tense shall include the future, and the masculine gender shall include the feminine and neuter.

23. ENTIRE AGREEMENT

This Agreement contains the sole and only agreement of the Parties as to the license, access, and use of the Premises. Any prior agreements, promises, negotiations or representations, relating to the subject matter herein, not expressly set forth in this Agreement are of no force or effect.

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24. LANGUAGE CONSTRUCTION

The language of each and all paragraphs, terms, and/or provisions of this Agreement shall, in all cases and for any and all purposes, and any and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any Party hereto and with no regard whatsoever to the identify or status of any person or persons who drafted all or any portion of this Agreement.

25. HOLDING OVER

If AMTRAK shall remain in the Premises after expiration of this Agreement, such holding over shall be construed to be only a use and access of the Premises from month to month subject to all of the covenants, conditions and obligations contained in this Agreement; provided, however, that nothing in this paragraph shall be construed to give AMTRAK any rights to remain and to continue to access and use the Premises without the consent of LICENSOR.

26. AMENDMENT

This Agreement, including any exhibits hereto, shall not be amended, except in writing signed by the Parties. Any amendment or addendum to this Agreement shall expressly refer to this Agreement.

27. AUDIT RIGHTS

a. AMTRAK, its Office of Inspector General or the FRA, and their respective agents, designees and accountants, shall have the right, at any time or from time to time for up to five (5) years after this Agreement is terminated and final payments of all sums due hereunder are made, and after advance notice to LICENSOR, to make any examination, inspection or audit of LICENSOR's books and records which relate in any way to the Depot, the Premises, this Agreement, or to any payments of any sums of money due or paid pursuant to this Agreement or the Premises or the Depot. If it is determined that any charges paid by AMTRAK have, in error, been underpaid or overpaid, then: (i) the Party that has been underpaid shall be reimbursed the amount of such underpayment by the other Party; or (ii) the Party that has been overpaid shall refund the amount of such overpayment to the other Party.

b. Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of AMTRAK's Office of the Inspector General, pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

28. STATUTORY RIGHTS

a. Nothing herein shall waive any rights benefiting AMTRAK whether statutorily granted or granted pursuant to other means. Any provision in this Agreement that is inconsistent with any statutory rights of AMTRAK, to which AMTRAK has voluntarily agreed in this Agreement, is not intended to be a waiver of such rights in the future.

b. The termination of this Agreement is not intended to be a termination of, nor will it constitute a termination of, any rights granted to AMTRAK pursuant to any statute or by any other means.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties hereto have affixed their signatures on the Effective Date.

San Bernardino County Transportation Authority:

By: _____
Raymond W. Wolfe
Executive Director

Date: _____

National Railroad Passenger Corporation:

By: _____
Louis Wolfowitz
Vice President, Real Estate

Date: _____

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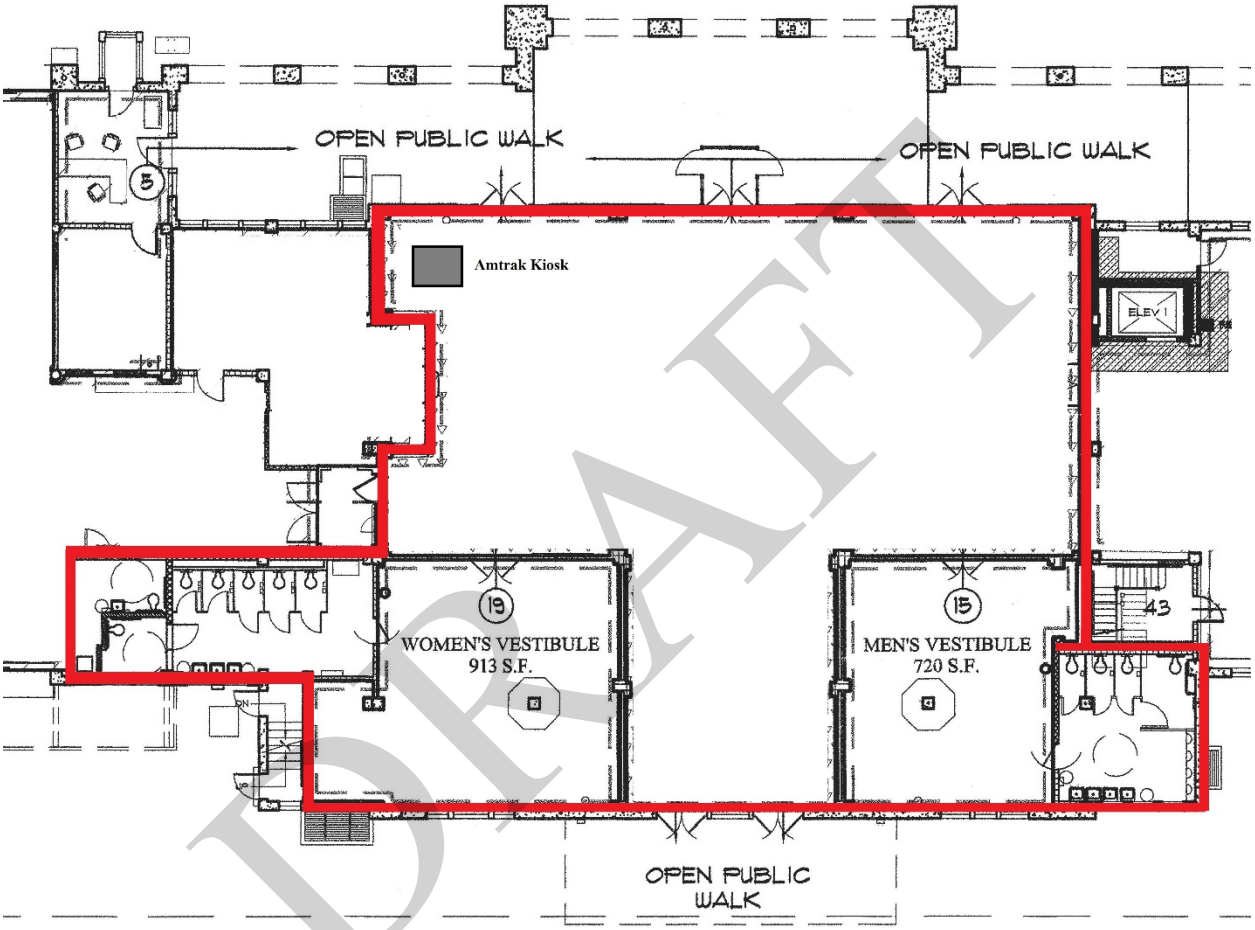
EXHIBIT A

Premises – Main Lobby Waiting Area and Restrooms/Amtrak Kiosk



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Minute Action

AGENDA ITEM: 12

Date: July 3, 2024

Subject:
Biennial Review of Conflict of Interest Code Policy No. 10102

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Perform the biennial review of SBCTA's Policy No. 10102 Conflict of Interest Code and amend Appendix A with updated employee job titles and disclosure categories, as outlined in the attachment.

B. Direct the SBCTA Clerk of the Board to submit the Policy and Appendix A to the San Bernardino County Board of Supervisors for approval.

Background:
The Political Reform Act (Act) requires every local government agency that takes actions that foreseeably may materially affect economic interests to adopt a Conflict of Interest Code for its employees and officials. San Bernardino County Transportation Authority (SBCTA) has adopted a Conflict of Interest Code and it is set forth in SBCTA Policy No. 10102. The Conflict of Interest Code lists those employees or officers who are required to file a statement of economic interests ("designated employees") and prescribes the types of interests which must be disclosed by such officials ("disclosure categories").

In order to ensure the agency's designated employees and disclosure categories are reflective of the current organization and ability to affect economic interests, the Act requires agencies to review their conflict of interest codes at least biennially. As the filing officer, the SBCTA Clerk of the Board coordinates the biennial review, which shall be completed by September 1st of every even-numbered year. SBCTA staff has reviewed Policy No. 10102, Conflict of Interest Code, and recommends amendments to Appendix A, which lists designated positions which make or participate in the making of decisions which may foreseeably have a material effect on private financial interests. It is recommended that Appendix A be amended to reflect current job titles. The amended Appendix A attached to this item reflects the most current titles for those positions covered under the Conflict of Interest Code.

The Act provides that where a multi-jurisdictional governmental agency is wholly within a county, the Board of Supervisors is the code reviewing body for that agency. Accordingly, after the SBCTA Board reviews SBCTA's Conflict of Interest Code and amends Appendix A, it must be submitted to the San Bernardino County Board of Supervisors for their review.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel has reviewed this item and the policy revisions.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

Responsible Staff:
Marleana Roman, Clerk of the Board

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

San Bernardino County Transportation Authority	**Policy**	**10102**
Adopted by the Board of Directors —Sept. 2, 1992	Revised	~~9/7/2022~~07/03/2024
Conflict of Interest Code	Revision No.	~~15~~16

Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SBCTA Intranet.

Table of Contents

| Purpose | Policy | Revision History | Appendix A |

I. PURPOSE

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission adopted a regulation, Title 2 Calif. Code of Regulations (CCR) Section 18730, which contains terms of a standard conflict of interest code, which can be incorporated by reference into a local agency's conflict of interest code, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings.

II. POLICY

The terms of Title 2 CCR Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of SBCTA.

Designated employees shall file statements of economic interests with the Clerk of the Board who will make the statements available for public inspection and reproduction (Government Code Section 81008). Statements for all designated employees will be retained by the Clerk of the Board.

SBCTA will review this policy every even-numbered year, and if change in the policy is required, will revise the policy. SBCTA will file a statement of review with the San Bernardino County Board of Supervisors, SBCTA's code reviewing body, every even-numbered year.

III. REVISION HISTORY

Revision No.	Revisions	Adopted
0	Amended Conflict of Interest Code for SANBAG approved.	09/02/92
1	Modifications to Appendix A and Appendix B approved.	02/05/97
2	Amendment to Appendix A approved by SANBAG Board of Directors.	04/05/00
3	Appendix A: Removed Advanced Transportation Development Manager	01/10/07
4	Par. I: Added paragraph heading PURPOSE. Par. II: Added paragraph heading POLICY; amended the first paragraph and added two new paragraphs that replace the existing text. Appendix A: Added Construction Manager, Contracts/Controls Manager, and Project Delivery Manager; changed category designation for Board of Directors (City designees, Executive Director, and Chief Financial Officer from Category 2 to Category 1; added clarification that Form 700s filed by the Board of Directors (County designees) are filed with the Clerk of the Board of Supervisors, not SANBAG; and revised the descriptions for Category 1 and Category 2.	06/03/09
5	Appendix A: Added Director of Programming, Chief of Planning, Chief of Programming, Chief of Transit & Rail Programs, Human Resources & Information Services Administrator, and Procurement/Risk Management/Contracts Administrator. Changed the following titles: Director of Freeway Construction to Director of Project Delivery, Director on Intergovernmental & Legislative Affairs to Director of Legislative Affairs, Director of Planning/Programming to Director of Planning, and Director of Air Quality/Mobility Programs to Chief of Air Quality/Mobility Programs. Removed the Contracts/Controls Manager.	06/30/12
6	Appendix A: Added General Counsel – missed in Rev. 5. Corrected titles for Director and Chief of Fund Administration and Programming.	08/06/12
7	Amended Purpose, Policy, and Appendix A per BOD 12/3/14 (Agenda item 10)	12/03/14

Attachment: Policy10102 - Amended 5.14.24 (10710 : Biennial Review of Conflict of Interest Code Policy No. 10102)

8	Amended Purpose, Policy, and Appendix A per BOD 1/6/16 (Agenda item 7)	01/06/16
9	Revised to be consistent with SB1305. Change approved by the Board on January 4, 2017, Agenda Item 6.	01/04/17
10	Amendment to Appendix A approved by SBCTA Board of Directors 7/11/18 (Agenda item 5)	07/11/18
11	Appendix A: Revised category for Chief of Fiscal Resources and added Corridor Manager. Approved by the Board on June 5, 2019, Agenda Item 24.	06/05/19
12	Amendment to Appendix A approved by SBCTA Board of Directors 6/3/2020	6/3/2020
13	Appendix A: Revised footnote regarding when consultants are required to file Form 700. Approved by the Board on March 3, 2021, Agenda Item 38.	03/03/21
14	Appendix A: Revised job titles and provision defining which consultants are required to file a Form 700	02/02/2022
15	Appendix A: Updates to job titles. Approved by the Board on September 7, 2022, Agenda Item 6.	09/07/2022
16	Appendix A: Updates to job titles.	07/03/2024

Attachment: Policy10102 - Amended 5.14.24 (10710 : Biennial Review of Conflict of Interest Code Policy No. 10102)

Conflict of Interest Code – Designated Employees	Policy	10102 Appendix A

	Designated Employees	Categories
1.	Accounting Manager	1
2.	Accounting Supervisor	2
3.	Assistant General Counsel	2
4.	Board of Directors (County designees)*	1
5.	Board of Directors (City designees)	1
6.	Board of Directors Alternates (City designees)	1
7.	Board of Directors Ex Officio Alternate Member	1
8.	Board of Directors Ex Officio Member	1
9.	Chief Financial Officer	1
10.	Chief of Air Quality/Mobility Programs	2
11.	Chief of Council of Governments and Equity Programs	2
12.	Chief of Express Lanes	2
~~11.~~13	Chief of Fiscal Resources	1
~~12.~~14	Chief of Fund Administration	2
~~13.~~15	Chief of Information Technology	2
~~14.~~16	Chief of Legislative and Public Affairs	2
~~15.~~17	Chief of Project Controls	2
~~16.~~	~~Chief of Toll Operations~~	~~2~~
~~17.~~18	Clerk of the Board/Administrative ~~Supervisor~~Manager	2
~~18.~~19	Construction Manager	2
~~19.~~20	Consultant **	2
~~20.~~21	Corridor Manager	2
~~21.~~22	Council of Government and Equity Programs Manager	2
23.	Data and Analytics Manager	2
~~22.~~24	Deputy Director of Planning and Regional Programs	1
~~23.~~25	Deputy Director of Transit and Rail Programs – Capital Delivery	1
~~24.~~26	Deputy Executive Director	1
27.	Director of Express Lanes	1
~~25.~~28	Director of Fund Administration	1
~~26.~~29	Director of Legislative and Public Affairs	1
~~27.~~30	Director of Management Services	1
~~28.~~31	Director of Planning and Regional Programs	1
~~29.~~32	Director of Project Delivery	1
~~30.~~	~~Director of Special Projects and Strategic Initiatives~~	~~1~~
~~31.~~	~~Director of Toll Operations~~	~~1~~
~~32.~~33	Director of Transit and ~~/~~Rail Programs	1
~~33.~~34	Energy ~~Project~~ Program Manager	2
35.	Enterprise Risk Manager	2
~~34.~~36	Executive Director	1
37.	Express Lanes Financial Supervisor	1

Attachment: Policy10102 - Amended 5.14.24 (10710 : Biennial Review of Conflict of Interest Code Policy No. 10102)

~~35.~~38	General Counsel	1
~~36.~~39	Legislative Analyst	1
~~37.~~40	Multimodal Mobility Programs Administrator	2
41.	Planning Manager	2
~~38.~~42	Procurement Analyst (I, II and III)	2
~~39.~~43	Procurement Manager	2
~~40.~~44	Project Controls Analyst (I, II and III)	2
~~41.~~45	Project Controls Manager	2
~~42.~~46	Project Delivery Manager	2
~~43.~~47	Right of Way Manager	1
~~44.~~48	Right of Way Specialist	1
~~45.~~	~~Risk Manager~~	~~2~~
~~46.~~	~~Senior Planner~~	~~2~~
~~47.~~	~~Toll Financial Supervisor~~	~~1~~
~~48.~~49	Transit Manager	2

****** Consultants will be required to file a Form 700 under the following circumstances, as determined by the Department Director:

(1) They serve in a staff capacity with SBCTA or SANBAG and either:

- Perform the same or substantially the same duties that would otherwise be performed by a staff member holding a position listed in this Policy; or
- Participate in making a government decision. A consultant participates in making a government decision if it provides information, an opinion or recommendation for the purpose of affecting a government decision without significant intervening substantive review.

Consultants ~~assigned~~ under contract for ~~to~~ a specific project only are not required to file a Form 700.

(2) The consultant's scope of work includes the ability to do any of the following:

- Approve a rate, rule, or regulation;
- Adopt or enforce a law;
- Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
- Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
- Grant agency approval to a plan, design, report, study, or similar item;
- Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof.

***Form 700s filed by the Board of Directors (County designees) are filed with the Clerk of the County Board of Supervisors. A copy of this form must be filed with SBCTA.**

Disclosure Categories

CATEGORY I
Designated employees in this category shall disclose all sources of income, interests in real property, investments and business positions in business entities. Designated employees in this category shall complete all schedules of Form 700, if applicable.

CATEGORY 2

Attachment: Policy10102 - Amended 5.14.24 (10710 : Biennial Review of Conflict of Interest Code Policy No. 10102)

Designated employees in this category shall disclose sources of income, investments, and business positions in business entities which provide services, supplies, materials, machinery or equipment of the type purchased or utilized by the department in which the designated employee is employed. Designated employees in this category shall complete all schedules of Form 700 except schedule B, if applicable.

Attachment: Policy10102 - Amended 5.14.24 (10710 : Biennial Review of Conflict of Interest Code Policy No. 10102)

San Bernardino County Transportation Authority	Policy	10102
Adopted by the Board of Directors Sept. 2, 1992	Revised	07/03/2024
Conflict of Interest Code	Revision No.	16

Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SBCTA Intranet.

Table of Contents

| Purpose | Policy | Revision History | Appendix A |

I. PURPOSE

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission adopted a regulation, Title 2 Calif. Code of Regulations (CCR) Section 18730, which contains terms of a standard conflict of interest code, which can be incorporated by reference into a local agency's conflict of interest code, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings.

II. POLICY

The terms of Title 2 CCR Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of SBCTA.

Designated employees shall file statements of economic interests with the Clerk of the Board who will make the statements available for public inspection and reproduction (Government Code Section 81008). Statements for all designated employees will be retained by the Clerk of the Board.

SBCTA will review this policy every even-numbered year, and if change in the policy is required, will revise the policy. SBCTA will file a statement of review with the San Bernardino County Board of Supervisors, SBCTA's code reviewing body, every even-numbered year.

III. REVISION HISTORY

Revision No.	Revisions	Adopted
0	Amended Conflict of Interest Code for SANBAG approved.	09/02/92
1	Modifications to Appendix A and Appendix B approved.	02/05/97
2	Amendment to Appendix A approved by SANBAG Board of Directors.	04/05/00
3	Appendix A: Removed Advanced Transportation Development Manager	01/10/07
4	Par. I: Added paragraph heading PURPOSE. Par. II: Added paragraph heading POLICY; amended the first paragraph and added two new paragraphs that replace the existing text. Appendix A: Added Construction Manager, Contracts/Controls Manager, and Project Delivery Manager; changed category designation for Board of Directors (City designees, Executive Director, and Chief Financial Officer from Category 2 to Category 1; added clarification that Form 700s filed by the Board of Directors (County designees) are filed with the Clerk of the Board of Supervisors, not SANBAG; and revised the descriptions for Category 1 and Category 2.	06/03/09
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14.	Chief of Fund Administration	2
15.	Chief of Information Technology	2
16.	Chief of Legislative and Public Affairs	2
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18.	Clerk of the Board/Administrative Manager	2
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21.	Corridor Manager	2
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32.	Director of Project Delivery	1
33.	Director of Transit and Rail Programs	1
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38.	General Counsel	1
39.	Legislative Analyst	1
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- Adopt or enforce a law;
- Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
- Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
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Attachment: Policy10102 - Clean Version (10710 : Biennial Review of Conflict of Interest Code Policy No. 10102)

Minute Action

AGENDA ITEM: 13

Date: July 3, 2024

Subject:
Fiscal Year 2023/2024 Budget Action Plan - Fourth Quarter Report

Recommendation:
Receive the Fiscal Year 2023/2024 Budget Action Plan – Fourth Quarter Report.

Background:
The San Bernardino County Transportation Authority's (SBCTA) Fiscal Year 2023/2024 Budget Action Plan (BAP) establish the Board of Directors priorities for the year. The Executive Director uses this as a tool with the Executive Management Team to evaluate SBCTA's progress in achieving the Board's priorities. The Executive Director or his designee will provide quarterly updates on the status of the goals as listed in the attached BAP.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2023/2024.

Reviewed By:
This item was received by the General Policy Committee on June 12, 2024.

Responsible Staff:
Raymond Wolfe, Executive Director

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Entity: San Bernardino County Transportation Authority

San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Initiative #1: Transparent and Accountable Allocation Strategies

Division Strategy: Complete timely audits of Measure I and Transportation Development Act recipients

	Action Plan	Milestones	Milestone Status	Responsibility
1A	Manage and communicate with Audit firm to plan and complete annual audits.	Manage and complete audits - Q2	Staff held meetings with Audit firms throughout the audit process.	Finance
	Monitor progress of audits.	Monitor audit until complete - Q2	Monitored audits during the process.	
	Inform Committees and Board of status of audits.	Committee and Board - Q3	Staff presented competed audits to Committees in March and Board in April.	
	Manage Transportation Development Act (TDA) triennial performance audits of SBCTA and transit operators.	Award consultant contract for preparation of TDA triennial performance audits - Q1	Contract was awarded at July 2023 SBCTA Board meeting.	Fund Administration
		Present TDA triennial performance audits to the SBCTA Board - Q4	Audits were completed and presented at the May 2024 SBCTA Board meeting.	Fund Administration, Transit
	Notes			

Division Strategy: Use strategic programming to ensure that no funds are lost

	Action Plan	Milestones	Milestone Status	Responsibility
1B	Manage projects closely with California Department of Transportation (Caltrans) to ensure adequate resources are available when projects are ready.	May 1 is Caltrans' deadline for guaranteed access to federal Obligation Authority (OA) – Q4	While OA is no longer monitored at the County-level in the SCAG region, SBCTA obligated more than its historical share of OA by May 10th.	Fund Administration, Project Delivery, Transit, Planning
		June 30 is California Transportation Commission (CTC) deadline for project allocation or extension requests – Q4	Staff has submitted any required allocation or extension requests to meet the June 30th deadline.	
	Manage projects to ensure funds are not lost.	Request allocation of competitive grant funds awards, Local Partnership Program formula share, and State Transportation Improvement Program (STIP) for I-15 Express Lanes Contract 1 - Q2	Delayed. The CTC did not allocate the funds at the December 2023 CTC meeting as anticipated. The CTC approved the allocation request at the January 2024 CTC meeting.	Fund Administration
		Request allocation or extension of competitive grant funds ~~(if awarded)~~ for I-10 Contract 2 - Q4	Staff has submitted a request for approval of an extension at the June 2024 CTC meeting.	
		Request allocation or extension of competitive grant funds ~~(if awarded)~~ for US-395 Phase 2 - Q4	Staff has submitted a request for approval of an extension at the June 2024 CTC meeting.	
		Request allocation of Planning, Programming and Monitoring funds for Fiscal Year 2024/2025 - Q4	Staff has submitted an allocation request for the June 2024 CTC meeting.	
	Work with SBCTA staff, local agencies, transit operators, and Caltrans to prepare project submittals for inclusion in the 2025 Federal Transportation Improvement Program (FTIP) ensuring consistency with the Regional Transportation Plan and financial constraint requirements.	Coordinate to collect and submit necessary information to SCAG for 2025 FTIP development - Q3	Staff has submitted the input for the 2025 FTIP to SCAG and is coordinating requests for additional information from SCAG with project sponsors.	Fund Administration
	Monitor approval of 2024 State Transportation Improvement Program (STIP).	Participate in development of the 2024 STIP Guidelines to seek to align STIP programming with the 2023 Update to the 10-Year Delivery Plan and ensure San Bernardino County receives its equitable share in 2024 STIP – Q3	The SBCTA Board approved the proposed STIP projects in September 2023. The CTC approved the STIP programming in March 2024 but delayed the funding for San Bernardino Line Double Track by one year. Staff will work with CTC staff in the future to advance the funds when the project is ready for construction.	Fund Administration
	Notes			
	I-10 Contract 2 and US 395 Phase II were awarded grant funds.			

Yellow shading means the work is behind schedule
Red text signifies urgent and significant challenges in completing the task

Attachment: FY 23_24 Budget Action Plan Quarter 4 (10711 : Fiscal Year 2023/2024 Budget Action Plan -

San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Division Strategy: Protect San Bernardino County's equitable share of available state and federal funds				
1C	Action Plan	Milestones	Milestone Status	Responsibility
	Develop funding strategies that maximize resources available and result in opportunities to seize additional state and federal funds.	Nominate projects to SCAG for programming of federal formula funds in accordance with the 2023 Update to the 10-Year Delivery Plan and the 10-Year Plan for transit operators' implementation of the zero emission bus mandate - Q3	Staff submitted projects to SCAG for consideration on March 29, 2024. SCAG Regional Council will approve project selections in June 2024.	Fund Administration, Project Delivery, Transit
	Notes			
Division Strategy: Develop long-term bonding needs to help leverage other funds and deliver projects				
1D	Action Plan	Milestones	Milestone Status	Responsibility
	Establish plan for 2024 sales tax revenue bond program through development of the 2023 Update to the 10-Year Delivery Plan.	Present current status of Measure I Programs and proposed projects for inclusion in 2023 Update to the 10-Year Delivery Plan to Policy Committees - Q1	Staff recommended delay to Q4 - see notes below. Agenda Items concerning current status were presented to the Transit Committee and Metro Valley Study Session in May and to the Mountain/Desert Policy Committee in June.	Fund Administration (Finance, Project Delivery, Transit, Planning)
		Present final 2023 Update to the 10-Year Delivery Plan to the Board for approval - Q2	Staff recommends delay to Q1 FY 2025 - see notes below.	
		Monitor implementation of the 2023 Update to the 10-Year Delivery Plan and Measure I revenue receipts to identify need for short-term borrowing – Ongoing	Ongoing.	
	Notes			
	Staff recommends delaying the approval of the update to the 10-Year Delivery Plan to September 2024 assuming the I-15 construction contract is awarded in June 2024. The CTC did not allocate the I-15 funds at the December CTC meeting as anticipated delaying the construction bid. Update to the 10-Year Delivery Plan relies on cash flow borrowing between the Freeway Program and the Interchange Program to be able to delay bonding until 2026 and save on interest costs. Recent increases to the I-15 cost estimate may limit the borrowing ability depending on the final actual cost. Delaying the adoption of the update will allow staff to analyze whether it is necessary to bond in 2025 rather than 2026.			
Division Strategy: Manage geographic equity in fund distribution across the County				
1E	Action Plan	Milestones	Milestone Status	Responsibility
	Manage long-term strategy for ensuring geographic equity in fund distribution over the life of the Measure.	Monitor results of SCAG project selection for federal formula funds and ensure long-term equity between subareas of San Bernardino County is maintained - Q4	Projects for SCAG consideration were due to SCAG March 29, 2024. SCAG Regional Council will approve project selections in June 2024.	Fund Administration
	Notes			
Division Strategy: Manage SBCTA railroad right-of-way in an efficient and comprehensive fashion				
1F	Action Plan	Milestones	Milestone Status	Responsibility
	Manage SBCTA railroad right of way in an efficient and comprehensive fashion.	Ongoing	Ongoing.	Transit
	Notes			

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San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Initiative #2: Engender Public Trust

Division Strategy: Secure an unmodified opinion of Comprehensive Annual Financial Report (Annual Report)

	Action Plan	Milestones	Milestone Status	Responsibility
2A	Plan meeting at interim field work with Executive Board officers and Certified Public Accountant (CPA) firm.	Meet with Executive Board - ~~Q2~~ **Q4**	Delayed to FY 2025 Q1.	Finance
	Notes			
	Contract award for audit services will be taken to July Board for approval. After Notice to Proceed is issued, a meeting will be scheduled with the auditor and Executive Board.			

Division Strategy: Obtain Certificate of Achievement for Excellence in Financial Reporting

	Action Plan	Milestones	Milestone Status	Responsibility
2B	Apply for Government Finance Officers Association (GFOA) award for the Annual Financial Report (Annual Report).	GFOA Award submittal - Q3	Application submitted in December 2023.	Finance
	Notes			

Division Strategy: Complete Measure I Biennial Agreed Upon Procedures

	Action Plan	Milestones	Milestone Status	Responsibility
2C	Complete agreed upon procedures (AUP) for Measure I programs.	AUP to be completed - Q3	Completed February 2024.	Finance
	Notes			

Division Strategy: Obtain Distinguished Budget Presentation Award

	Action Plan	Milestones	Milestone Status	Responsibility
2D	Apply for GFOA award for annual budget.	GFOA Award submittal - Q1	Application submitted in July 2023.	Finance
	Notes			

Division Strategy: Complete internal control self-assessment to identify areas of improvement.

	Action Plan	Milestones	Milestone Status	Responsibility
2E	Complete review of annual internal control self-assessment (AICA).	Review of AICA - Q3	Delayed to Q4 to allow for corrections and another round of reviews.	Finance
	Notes			
	Delay is due to adding explanations to the responses on the AICA.			

Division Strategy: Implement the Records Retention Schedule

	Action Plan	Milestones	Milestone Status	Responsibility
2F	Continue with the implementation of the Records Retention Program, including establishing quarterly meetings with records coordinators, two annual clean up days, a system that will assist tracking which documents have passed retention.	Clean up day - Q1 & Q3	Completed.	Executive Administration and Support
		Identify the retention period for all remaining boxes located at SBCTA offsite storage - Q4	Out of 2,200 boxes located offsite, only 180 boxes remain without retention.	
		Automate at least four (4) records series in Laserfiche -one per quarter - Q4	On schedule to be completed before June 30th.	
		Finalize File Plans for SharePoint files for four (4) departments - one per quarter - Q4	Completed.	
	Notes			
	Clean up completed - Destroyed 2,430 electronic files, 42 boxes on-site, 152 boxes located at offsite storage, and 676 disks.			

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Attachment: FY 23_24 Budget Action Plan Quarter 4 (10711 : Fiscal Year 2023/2024 Budget Action Plan -

San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Initiative #3: Focus on Creating and Strengthening Collaborative Partnerships with Governmental and Business Entities

Division Strategy: Work with other governments and business groups to leverage resources for our region's benefit

	Action Plan	Milestones	Milestone Status	Responsibility
3A	Prepare tools to assist local agencies with changes to statewide housing policies and environmental regulations.	Continue to explore a Housing Trust for our region as a way to leverage additional funds for affordable housing. Work with CCMTAC in Q1/Q2 and report to Board on possible actions and funding.	Met with Housing Trust Ad Hoc Committee in October. Funding MOU, Administrative Plan, and implementation on hold due to State budget deficit. SBCOG still awaits the SCAG REAP award to move forward and has submitted a request for federal earmark funding.	COG
	Partner with local and government agencies to improve opportunities in workforce development.	Work with state, County and cities to expand participation of our Business to Business event as a tool for improving access for smaller businesses - Event scheduled in Q2.	Completed.	
	Establish Housing Trust JPA, pending Board approval and successful REAP application.	Execute JPA with member agencies - Q3	On hold due to State budget deficit. SBCOG still awaits SCAG REAP award to move forward, and had submitted request a request for federal earmarks.	
		Review draft Administrative Plan - Q4	Delayed.	
	Smart County Master Plan.	Complete draft of Early Action Plan - Q1	Completed.	
	Continue close coordination with Brightline West to support their construction along the San Gabriel Subdivision between I-15 and Cucamonga Station, as well as coordinated development of the Cucamonga Station.	Ongoing	Ongoing.	Transit
	Notes			
	SBCTA received a $25 million RAISE grant for the Brightline West High-Speed Intercity Passenger Rail System-High Desert Stations Project. SBCTA, Brightline and FRA working to complete the grant agreement and a sub-recipient agreement between Brightline and SBCTA. Brightline was awarded $3 billion in Federal-State Partnership for Intercity Passenger Rail Grant Program funds on 12/5/23. Establishment of the Housing Trust has been delayed due to State's draft budget proposal that could potentially cut the REAP 2.0 program in half. Staff is working with SCAG to preserve the funding level of the REAP 2.0, but at this point SCAG has sent out a Stop-Work order.			

Division Strategy: Enhance COG role, and leverage synergy of being the CTA and COG

	Action Plan	Milestones	Milestone Status	Responsibility
3B	Plan annual City/County Conference.	In person conference set for Spring 2024.	Completed. Conference was held May 16-17, 2024.	Legislative/Public Affairs, COG
	Collaborate with member agencies through City/County Manager Technical Advisory Committee (CCMTAC).	Ongoing bimonthly meetings.	Ongoing.	
	Notes			

Division Strategy: Enhance SBCOG's and the region's ability to compete for grant funding

	Action Plan	Milestones	Milestone Status	Responsibility
3C	Host grant writing workshop for our members and other local government partners.	Host Workshop - Q3	Shifted direction and are instead providing direct grant-writing assistance, outreach, and graphic support for ATP Cycle 7. Worked with local jurisdictions to varying degrees on 8 ATP grant applications, 11 REAP applications, and 7 Carbon Reduction Program applications.	COG
	Communicate grant opportunities to member agencies.	Ongoing	Ongoing.	
	Notes			

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Attachment: FY 23_24 Budget Action Plan Quarter 4 (10711 : Fiscal Year 2023/2024 Budget Action Plan -

San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Division Strategy: Assist local governments with environmental and efficiency initiatives				
3D	Action Plan	Milestones	Milestone Status	Responsibility
	Develop a plan to replace the EV chargers where needed at the Depot.	Q2	See notes. Release RFP - Q1 FY 2025	Management Services, Transit
	Work with local agencies with Zero Emission Vehicle (ZEV) readiness plan and assist in identifying grant opportunities for charging infrastructure.	Include EV charging infrastructure grants when available in monthly grant updates.	Initiative for ZEV was included in the Smart County Master Plan and reviewed by Board on November 1. Application for ZEV funding was included in EPA Climate Pollution Reduction Grant. Priority Climate Action Plan was completed. CPRG grant submitted 4/1. Worked with AQMD to support their application.	Air Quality/Mobility
	Assist local agencies with reducing energy consumption and achieving savings through formation of the Inland Regional Energy Network (I-REN).	Implement energy programs in partnership with local jurisdictions in three focus areas: Public Sector, Workforce Education and Training, and Codes and Standards - Ongoing	SBCOG I-REN has conducted nine orientations, which resulted in 18 data meetings and 15 completed facility audits. In addition, five I-REN Energy Fellows were deployed. and 13 Codes & Standards training webinars have been offered.	
	Notes			
	In December 2023, the Board authorized the Executive Director, or designee, to release a RFP to replace chargers at depot, including administering of EV program by a third party. RFP scope of work is being developed and is scheduled to be released Q1 FY 2025.			

Initiative #4: Accelerate Delivery of Capital Projects

Division Strategy: Deliver the Redlands Passenger Rail Project & Implement Arrow Service				
4A	Action Plan	Milestones	Milestone Status	Responsibility
	Complete project close-out	Q2	Delayed to Q4.	Transit
	Notes			
	Final contract acceptance for the mainline construction and maintenance facility issued in Q3 scheduled to be completed by end of Q4 as part of the FY close-out process.			
Division Strategy: Support Delivery the West Valley Connector Phase I				
4B	Action Plan	Milestones	Milestone Status	Responsibility
	Start construction	Q1	Completed.	Transit
	Notes			
	Contract award approved at September 2023 Board meeting.			
Division Strategy: Produce Zero Emission Multiple Unit				
4C	Action Plan	Milestones	Milestone Status	Responsibility
	Begin ZEMU testing in US	Q2	Completed.	Transit
	Start construction of hydrogen fuel station	Q2	Completed - Contract awarded.	
	Start construction of maintenance facility retrofit	Q1	Completed - Contract awarded.	
	Notes			
	ZEMU vehicle testing in Europe concluded on 5/26/2023 and was delivered to U.S. (Pueblo, Colorado) in August 2023. ZEMU was presented at the APTA Expo in October 2023, and testing resumed in Pueblo, Colorado. The hydrogen fueling contract and Arrow maintenance facility retrofit contract were awarded in Q2.			
Division Strategy: Deliver the Tunnel to ONT Project				
4D	Action Plan	Milestones	Milestone Status	Responsibility
	Environmental Document approval	Q4	Delayed to FY 24/25 Q2.	Transit
	Award design-build contract	Q4	Delayed to FY 24/25 Q4.	
	Notes			
	Project delayed due to additional work to screen additional build alternatives requested by the Federal Transit Administration (FTA).			

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San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Division Strategy: Delivery of Capital Projects - Plans, Specifications and Estimate (PS&E); Engineering Reports Milestones:				
	Action Plan	Milestones	Milestone Status	Responsibility
4E	I-15 Corridor Freight and Express Lanes Project (Contract 1)	PS&E approval - Q1	Completed.	Project Delivery
	SR-210 Waterman Avenue	PS&E approval - Q1	Delayed to Q3. See note.	
	I-215 Bi-County Landscaping	PS&E approval - Q2	On Schedule.	
	I-10 Mount Vernon Avenue	PS&E approval - Q2	Delayed to Q4. See note.	
	I-10 Corridor Freight and Express Lanes Project (Contract 2) Segment 2a	PS&E approval - Q4	On Schedule.	
	US-395 Widening Project - Phase 2	PS&E approval - Q4	On Schedule.	
	Notes			
	Final PS&E package for SR 210 Waterman Avenue was submitted to Caltrans on 10/18; comments were received on January 24, 2024. Final PS&E package is being finalized for Caltrans approval. Final PS&E package for I-10 Mt. Vernon Avenue is delayed due to a project scope of work change that involved ROW and utility impacts.			

Division Strategy: Delivery of Capital Projects - Construction Milestones:				
	Action Plan	Milestones	Milestone Status	Responsibility
4F	I-10 Eastbound Truck Climbing Lane	Start construction - Q1	Completed in Q2.	Project Delivery
	I-215 University Parkway	Start construction - Q2	Delayed to FY24/25 Q1. See note.	
	SR-210 Waterman Avenue	Start construction - Q2	Delayed to FY24/25 Q1.	
	I-215 Bi-County Landscaping	Start construction - Q3	On Schedule.	
	Metrolink ATP - Phase 2	Start construction - Q3	On Schedule.	
	I-10 Mount Vernon Avenue	Start construction - Q4	Delayed to FY24/25 Q1.	
	SR-210 Waterman Avenue	Complete for Beneficial Use - Q4	Delayed to FY24/25 Q1.	
	Notes			
	I-215 University Parkway start of construction was delayed due to ROW and utility issues that delayed final design approval. Construction contract is expected to be brought before Board for approval in September 2024.			

Division Strategy: Delivery of Express Lanes Projects				
	Action Plan	Milestones	Milestone Status	Responsibility
4G	I-15 Corridor Freight and Express Lanes Project (Contract 1)	Start construction - Q3	Delayed to FY 24/25 Q2.	Project Delivery
	I-10 Express Lanes Contract 1 Toll Collections	Revenue Service Commencement Readiness - Q2	Readiness delayed to FY 24/25 Q1 to coincide with I-10 Contract 1 Revenue Service Commencement.	Toll Operations
	I-10 Corridor Freight and Express Lanes Project (Contract 1)	Complete for Beneficial Use - Q4	Delayed to FY 24/25 Q1.	Project Delivery
	Notes			

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Fiscal Year 2023/2024 Budget Action Plan

Initiative #5: Maximize Funding Opportunities and Cost-Effectiveness of Investments

Division Strategy: Conduct regional forums to discuss issues of importance across our region

	Action Plan	Milestones	Milestone Status	Responsibility
5A	Advocate for policies and funding formulas at the state and federal levels that are favorable for SBCTA to construct and deliver transportation projects.	Support for legislation regarding progressive design build delivery and oppose legislation that would adversely impact transportation funding. Build coalitions in support of state and federal transportation grant applications and budget items as well as additional transit operational funding. Maintain good working relationships and communication with state and federal officials.	This Legislative cycle SBCTA will sponsor AB 2590 (Reyes) to increase procurement thresholds. Monitoring legislative proposals that are currently in a spot bill format - Ongoing	Legislative/Public Affairs
	Notes			

Division Strategy: Operate and Maintain SB Express Lanes

	Action Plan	Milestones	Milestone Status	Responsibility
5B	I-10 Express Lanes Contract 1 Operations and Maintenance.	Ongoing starting Q3	Operations and Maintenance delayed to FY 24/25 Q1 to coincide with I-10 Contract 1 Revenue Service Commencement.	Toll Operations
	Notes			

Initiative #6: Awareness of SBCTA Programs, Services, and Transit Options

Division Strategy: Build awareness of SBCTA programs and services

	Action Plan	Milestones	Milestone Status	Responsibility
6A	Highlight Measure I's contributions to the region's transportation system.	Ongoing: Annual state of transportation event; monthly blog series "Measure I (Impact)".	B2B and State of Transportation Complete; Blog series ongoing.	Legislative/Public Affairs, Fund Administration
	Market SBCTA identity, promote awareness of programs and services.	Ongoing: Employee spotlight blog series.	Ongoing. Added Arrow Outreach and ZEMU campaigns to marketing effort.	Legislative/Public Affairs
	Notes			

Division Strategy: Leverage and grow public outreach and communication services

	Action Plan	Milestones	Milestone Status	Responsibility
6B	Continue to enhance traditional and social media presence.	Ongoing: providing project updates, alerts, and information.	Growth on all platforms continue.	Legislative/Public Affairs
	Utilize On-Call Public Outreach Contracts, On-Call Graphic Design Services Contracts, Marketing & Branding Services Contract, and Redlands Passenger Rail Project Outreach Contract to utilize new tools and capitalize on communication opportunities throughout the region.	Ongoing: providing services for Mt. Vernon Viaduct, I-10 Express Lanes, 210 freeway, Redlands Passenger Rail Project.	Business programs initiated for WVC and Mt. Vernon Viaduct Projects - ongoing	Legislative/Public Affairs, Transit
	Utilize On-Call Graphic Design Services Contracts & Marketing and Branding Services Contract to support each department in their efforts to communicate internally and externally.	Ongoing: provide assistance with presentations, graphics (i.e. Budget Book), and collateral materials.	Ongoing.	Legislative/Public Affairs, Fund Administration
	Notes			

Division Strategy: Highlight transit options in San Bernardino County

	Action Plan	Milestones	Milestone Status	Responsibility
6C	In partnership with transit operators, highlight transit connectivity options in the region.	Ongoing: provide legislative information and updates, advocate at the state and federal levels for transit maintenance and operations funding.	Ongoing. "Transit is Easy" campaign active in Q3.	Legislative/Public Affairs, Transit
	Notes			

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San Bernardino County Transportation Authority
Fiscal Year 2023/2024 Budget Action Plan

Division Strategy: SB Express Lanes Customer Support				
6D	Action Plan	Milestones	Milestone Status	Responsibility
	Open SB Express Lanes Walk-In Center.	Q2	Opening delayed until Q4, opening anticipated June 2024.	Toll Operations
	SB Express Lanes Website Live.	Q2	Live website delayed until Q4. Site build out and ready to launch June 2024.	Toll Operations
	Notes			
Initiative #7: Long Range Strategic Planning				
Division Strategy: Analyze long range transportation strategy in a financially constrained framework				
7A	Action Plan	Milestones	Milestone Status	Responsibility
	Prepare a Long Range Multimodal Transportation Plan (LRMTP).	Draft Existing Conditions Report - Q2	Existing Conditions Story Map was published on SBCTA website. Separate Existing Transit Conditions report also published.	Planning, Transit, Fund Administration
		Vision Document and Scenario Analysis - Q4	Analysis of four scenarios prepared: work-at-home, land use, transit service, and pricing.	
	Complete San Bernardino County input on growth and projects to the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).	Provide input to the Draft RTP/SCS - Q2	Completed.	Planning, Fund Administration
		Provide comments and final input to the RTP/SCS - Q3	Final 2024 RTP/SCS being prepared by SCAG in response to comments. Approved by SCAG in April 2024.	
	Notes			
Division Strategy: Conduct strategic planning of Measure I projects and update policies to be consistent with practice				
7B	Action Plan	Milestones	Milestone Status	Responsibility
	Maintain Measure I Strategic Plan Parts 1 and 2.	Ongoing	No updates in Q4.	Planning, Fund Administration
	Notes			
Division Strategy: Provide current, quality planning data				
7C	Action Plan	Milestones	Milestone Status	Responsibility
	Support other departments with data analysis and mapping/Geographic Information System (GIS).	Multiple analysis/mapping efforts conducted for Project Delivery, Transit, and Air Quality/Mobility - Ongoing	Ongoing. Supported grant applications and analysis activities.	Planning
	Update SBTAM "Plus" modeling system.	Model Validation Report - Q1	Validation report completed.	
		VMT/Land Use Model and Scenario Samples - Q2	VMT/Land Use Model completed.	
		Final Documentation & Presentation - Q4	SBTAM+ model completed in March. Additional training occurred in Q4.	
	Incrementally implement an SBCTA agency-wide data and analytics dashboard.	Ongoing	Ongoing.	
	Notes			

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Division Strategy: Conduct subarea and modal studies				
7D	Action Plan	Milestones	Milestone Status	Responsibility
	State Route 247/62 Emergency Bypass Lane Study.	Initiate study - Q3	Consultant selected. Notice to proceed issued in June.	Planning
	Conduct SR-18/138 Corridor Study with Metro and Caltrans.	Prepare two PSR-PDS documents (Project Study Report - Project Development Support): One for near-term and one for long-term - Q2	PSR-PDS completed for near-term project. Discussing joint funding with Caltrans for PA&ED phase. Preparation of PSR-PDS for long term project deferred until more appropriate time in future.	
	Notes			

Initiative #8: Environmental Stewardship, Sustainability, and Grant Applications

Division Strategy: Monitor and Provide Input to State, Federal, and Regional Plans and Guidelines				
8A	Action Plan	Milestones	Milestone Status	Responsibility
	Provide technical comments on draft reports, plans, and guidelines from Caltrans, CTC, OPR, CARB, CalSTA, and other state agencies.	Ongoing	CTC continued workshops on SB 1 grant application guidelines in Q4. SBCTA providing input.	Planning, COG
	Prepare Grant Applications for state (e.g. SB 1, Active Transportation, etc.), federal (e.g. RAISE, INFRA/Mega, etc.) and other funding.	Senate Bill 1 (SB1) Grants Identified - Q2	ONT Connector submitted for partnership opportunity with Caltrans for SCCP grant. Strategy defined for TCEP applications.	Planning, Fund Administration
		Other state and federal grants - Ongoing	Applications prepared for EPA, CEC in partnership with other regional agencies.	
	Notes			
Division Strategy: Assist jurisdictions, developers, and other stakeholders with area-wide sustainability studies				
8B	Action Plan	Milestones	Milestone Status	Responsibility
	Begin development of Vehicle Miles Traveled (VMT) mitigation bank and/or approaches to mitigation under SB 743, subject of funding.	Apply for REAP 2.0 VMT Mitigation Bank Funding - Q1	REAP 2.0 funds awarded for VMT Mitigation Bank in Q1. Agreements being developed. Grants on hold due to state's budget deficit.	Planning
		Start MOU/RFP Process - Q2/Q3	MOU development with SCAG initiated in Q1. Selections made for Contract Task Order (CTO) consultant services. To prepare for eventual funding, a scope of work for future task order has been developed.	
	Work with California Department of Fish and Wildlife (CDFW) and other stakeholders to complete the Regional Conservation Investment Strategy (RCIS), subject to Board approval.	Final submittal to CDFW ~~Q4~~ **Q2**	Completed - Final RCIS submitted in Q2.	
	Assist local agencies with housing initiatives under Regional Early Action Plan (REAP) 2.0.	Apply for REAP 2.0 Planning Funding - Q1	REAP 2.0 awards announced by SCAG in Q1 - $17.946 million across 5 SBCTA and SBCOG programs. Funds on hold due to state budget deficit.	
		Work with SCAG on REAP 2.0 application to California Housing and Community Development - Q2	Working on worst case scenario of 50% funding cut on REAP 2.0.	
	Notes			
	The Regional Conservation Investment Strategy Action Plan milestone was updated from Quarter 4 to Quarter 2 to be consistent with the grant deadline. VMT Mitigation Bank Funding is another program dependent on REAP 2.0 funding. The program is on hold due to the State's budget deficit.			

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Fiscal Year 2023/2024 Budget Action Plan

Division Strategy: Prepare effective active transportation plans				
8C	Action Plan	Milestones	Milestone Status	Responsibility
	Develop Active Transportation Plans for the Safe Routes to School Program (with SBCSS and the County DPH).	Begin outreach to schools - Q1	Outreach ongoing.	Planning
	Manage Transit Development Act (TDA) Article 3 bike/ped project invoicing.	Award announcements - Q1	Awards announced in Q1. Management ongoing.	
	Notes			
Division Strategy: Implement components of ATP Metrolink Station Accessibility Grant				
8D	Action Plan	Milestones	Milestone Status	Responsibility
	Implementation of Phase 2 of the Bicycle and Pedestrian improvements around the Metrolink Stations on the San Bernardino and Riverside Lines.	Construction Completion - Q4	Delayed - Construction to be completed in January 2025.	Planning, Project Delivery
	Create Active Transportation Project Prioritization List based on input from local jurisdictions and assessment of funding opportunities.	Completion - Q2	Development of draft priority list completed in Q2 and circulated to Transportation TAC for comment.	Planning
	Notes			
Division Strategy: Develop and administer programs to improve the efficient use of our existing freeway network				
8E	Action Plan	Milestones	Milestone Status	Responsibility
	Implement a mobile call box program for 511 program.	Award program implementation contract. Needs to occur after call handling contractor has been secured and able to implement systems/program - Q4	Delayed - See notes.	Air Quality/Mobility
	Administer Freeway Service Patrol (FSP) and call box system to improve traffic safety, reduce congestion and traffic delays.	Ongoing. Present annual report on programs to Board - Q4	On Schedule.	
	Maintain the SB County Call-Box System.	Ongoing	Ongoing.	
	Merge the regional rideshare database with OCTA, LA Metro, RCTC, and VCTC enhancing ride matching functionality and customer experience.	Q2	Completed.	Transit
	Notes			
	The implementation of a mobile call box program for 511 will be delayed due to change in approach currently being evaluated wherein CHP would answer mobile 511 calls. To be resolved in FY 24/25. The regional rideshare database was consolidated on September 26th between LA Metro, OCTA, RCTC, SBCTA and VCTC, enhancing commuter ride matching options for users. The five partner agencies are working together to help reduce vehicle miles traveled and traffic congestion, with a goal of improving air quality in Southern California.			
Division Strategy: Support access to jobs, healthcare, and education while reducing roadway congestion.				
8F	Action Plan	Milestones	Milestone Status	Responsibility
	Administer multi-modal programs to reduce congestion and improve quality of life including coordination with transit providers and Consolidated Transportation Service Agencies (CTSA) serving San Bernardino County.	Work with the transit providers and CTSAs, to identify key activities for inclusion in the SBCTA LRMTP~~, and proposed Fiscal Year 2022/2023 budget~~ based on the approved Public Transit-Human Services Transportation Coordination Plan – Q3	Completed.	Transit, Fund Administration, Legislative/Public Affairs, Planning
	Notes			

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Initiative #9 Meet Equity Goals of SBCTA/SBCOG				
Division Strategy: Ensure Equity goals met for internal structure and policies.				
	Action Plan	Milestones	Milestone Status	Responsibility
9A	Begin Equity Policy Framework to establish equity goals and policies for ensuring structural equity within the business processes and procedures within SBCTA/SBCOG.	Begin project following procurement - Q2	Consultant selection completed in Q2. Notice to Proceed given to consultant in Q4.	COG
	Notes			
Division Strategy: Ensure Equity goals met for projects and programs implemented in collaboration with SBCOG/SBCTA member agencies.				
	Action Plan	Milestones	Milestone Status	Responsibility
9B	Outdoor Equity Program, pending funding agreement from state department of parks.	Begin Program - Q1	Outdoor Equity will not be moving forward as vendor could not produce required insurance. SBCOG did not accept the grant.	COG
	Small Business Training Program	Finish study - Q1	Study completed in Q2. Will be presenting to CCMTAC and GPC in Q4.	COG
	Notes			

Attachment: FY 23_24 Budget Action Plan Quarter 4 (10711 : Fiscal Year 2023/2024 Budget Action Plan -

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Minute Action

AGENDA ITEM: 14

Date: July 3, 2024

Subject:
Agreement No. 23-1002942 with the California Highway Patrol for Call Box Liaison Services

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve Agreement No. 23-1002942 between the California Highway Patrol (CHP) and San Bernardino County Transportation Authority for Call Box Liaison Support Services beginning July 1, 2024 through June 30, 2027, in an amount not to exceed $14,400.

B. Authorize the Executive Director, or his designee, to execute Agreement No. 23-1002942 with CHP for call box liaison support services.

Background:
The San Bernardino County Transportation Authority (SBCTA) acts in the capacity as the San Bernardino County Service Authority for Freeway Emergencies (SAFE) under provisions of California Vehicle Code Sections 2421.5 and 9250.10, and the Streets and Highway Code Section 131.1 and Chapter 14 (commencing with Section 2550) to Division 3. SBCTA contracts with the California Highway Patrol (CHP) for liaison support of the San Bernardino SAFE call box program in accordance with the CHP/California Department of Transportation (Caltrans) Call Box and Motorist Aid Guidelines. Each SAFE throughout the State of California pays for its proportional share of the actual wage rate for one-half of a CHP SAFE Coordinator position.

Therefore, staff recommends the approval of Agreement No. 23-1002942, to ensure that SBCTA continues to collaborate with the CHP for support of the call box system for the next three years.

Financial Impact:
The item is included in the adopted Budget for Fiscal Year 2024/2025 and is funded with SAFE Vehicle Registration Fees Funds in Program 15, Commuter and Motorist Assistance.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the General Policy Committee on June 12, 2024. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreement.

Responsible Staff:
Kelly Lynn, Chief of Air Quality & Mobility Programs

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Entity: San Bernardino County Transportation Authority

Contract Summary Sheet

General Contract Information

Contract No: 23-1002942 Amendment No.:

Contract Class: Payable Department: Air Quality and Mobility

Vendor No.: 00493 Vendor Name: California Highway Patrol (CHP)

Description: CHP Call Box Liaison Services

List Any Related Contract Nos.:

Dollar Amount					
Original Contract	$	14,400.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**14,400.00**	**Total Contingency Value**	**$**	**-**
	Total Dollar Authority (Contract Value and Contingency)			**$**	**14,400.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10714

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? N/A N/A

State/Local Professional Services (Non-A&E) N/A

Accounts Payable

Estimated Start Date: 07/01/2024 Expiration Date: 06/30/2027 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 14,400.00	Total Contingency: $ -
GL:	2810	15	0702	0000	52001	42212001		SAFE Veh Reg Fee	14,400.00	-
GL:									-	-
GL:									-	-
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Rana Semaan
Project Manager (Print Name)

Steven Smith
Task Manager (Print Name)

Additional Notes:

Attachment: CSS_23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison Services)

State of California—Transportation Agency GAVIN NEWSOM, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

Business Services Section
Contract Services Unit
601 N. 7th Street
Sacramento, CA 95811
(916) 843-3610
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)

April 16, 2024

San Bernadino County Transportation Authority for Freeway Service Patrol
1170 West 3rd Street, 2nd Floor
San Bernadino, CA 92410

Subject: Agreement Number 24R048011-0

Congratulations, you have been awarded the agreement. Please complete the following marked item(s) and return to the above address within ten (10) business days:

- ✓ STD. 213, Standard Agreement with attached exhibits. Sign the first page of the STD. 213, and return back to Contract Analyst via email.
- ___ STD. 213A, Standard Agreement Amendment. Sign the first page of the STD. 213A, sign the additional single STD. 213A, and return both copies.
- ___ STD. 210, Short Form Contract. Sign and return both copies.
- ___ STD. 204, Payee Data Record. Complete and return.
- ✓ CCC, Contractor Certification Clauses. Complete and return.
- ___ Obtain and forward the liability insurance certificate required by the terms of the Agreement.
- ✓ Resolution, motion, order, or ordinance from the local governing body authorizing this Agreement. STD.
- ___ 807, Payment Bond. Complete and return one copy.
- ___ CHP 28, Voluntary Statistical Data. Complete and return.
- ___ CHP 78V, Conflict of Interest & CHP 116, Darfur Certification
- ___ Letter of Agreement. Sign and return both copies.

Contract status.

- ___ The enclosed agreement is signed on behalf of the Department of California Highway Patrol. Process and when approved, return an original to this office.
- ___ The enclosed approved agreement is for your records. You are now authorized to provide services.

KELLIE AU
Contract Analyst

Enclosures

DRAFT

Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
24R048011	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of California Highway Patrol

CONTRACTOR NAME

San Bernardino County Transportation Authority Acting in its Capacity as the San Bernardino County Service Authority for Freeway Emergencies (SAFE)

2. The term of this Agreement is:

START DATE

07/01/2024 or Upon Approval, whichver is later

THROUGH END DATE

06/30/2027

3. The maximum amount of this Agreement is:

$14,400.00 (Fourteen Thousand Four Hundred Dollars and Zero Cents)

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

	Exhibits	Title	Page
	Exhibit A	Scope of Work	1
	Exhibit A-1	Agreement between Department of California Highway Patrol and San Bernardino County Transportation Authority Acting in its Capacity as the San Bernardino County Service Authority for Freeway Emergencies [SAFE])	5
	Exhibit B	Budget Detail and Payment Provisions	2
+ -	Exhibit C*	General Terms and Conditions - GTC 04/2017	4
+ -	Exhibit D	Special Terms and Conditions	1

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

San Bernardino County Transportation Authority Acting in its Capacity as the San Bernardino County Service Authority for Freeway Emergencies (SAFE)

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
1170 W. Third Street, 2nd Floor	San Bernardino	CA	9241

PRINTED NAME OF PERSON SIGNING	TITLE
Raymond W. Wolfe, Ph.D.	Executive Director
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED

DRAFT

Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

EXHIBIT A
(Standard Agreement)

SCOPE OF WORK

1. Department of California Highway Patrol (CHP) will provide services and assistance in accordance and outlined in Exhibit A-1 for the San Bernardino County Transportation Authority (SBCTA) acting in the capacity as the San Bernardino County Service Authority for Freeway Emergencies (San Bernardino County SAFE).

2. The services and hours of duty performed by CHP under this Agreement are on an as-needed basis, twenty-four (24) hours per day, seven (7) days per week.

3. The Project Representatives during the term of this Agreement will be:

STATE AGENCY		CONTRACTOR	
Department of California Highway Patrol		San Bernardino County SAFE	
NAME		NAME	
Brenda Sweeney, CHP SAFE Coordinator		Kelly Lynn, Chief of Air Quality and Mobility Programs	
TELEPHONE NUMBER	EMAIL	TELEPHONE	EMAIL
(916) 843-4280	bsweeny@chp.ca.gov	(909) 884-8276	klynn@gosbcta.com
Direct all inquiries to:			
STATE AGENCY		CONTRACTOR	
Department of California Highway Patrol		San Bernardino County SAFE	
SECTION/UNIT		SECTION/UNIT	
Business Services Section Contract Services Unit		Air Quality and Mobility Programs	
ATTENTION		ATTENTION	
Kellie Au, Contract Analyst		Kelly Lynn, Chief of Air Quality and Mobility Programs	
ADDRESS		ADDRESS	
P.O. Box 942898, Sacramento, CA 94298-0001		1170 W. Third Street 2nd Floor San Bernardino, CA 92410-1715	
TELEPHONE NUMBER	EMAIL	TELEPHONE NUMBER	EMAIL
(916) 843-4344	Kellie.Au@chp.ca.gov	(909) 884-8276	klynn@gosbcta.com

4. Detailed description of work to be performed as outlined in Exhibit A-1.

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

EXHIBIT A-1
(Standard Agreement)
AGREEMENT BETWEEN
THE STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
AND
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
ACTING IN ITS CAPACITY AS THE SAN BERNARDINO COUNTY
SERVICE AUTHORITY FOR FREEWAY EMERGENCIES (SAFE)

THIS AGREEMENT is made and entered into by and between the State of California acting by and through Department of California Highway hereinafter Patrol, hereinafter called CHP, and San Bernardino County Transportation Authority acting in its capacity as the San Bernardino County Service Authority for Freeway Emergencies, called San Bernardino County SAFE, under provisions of California Vehicle Code Sections 2421.5 and 9250.10, and the Streets and Highway Code Section 131.1 and Chapter 14 (commencing with Section 2550) to Division 3.

TERMS AND CONDITIONS:

By and in consideration of the covenants and conditions herein contained, CHP and San Bernardino County SAFE do hereby agree as follows:

1. The term of this agreement is July 1, 2024, through June 30, 2027.

2. The Agreement is for services and assistance provided by CHP in accordance with the "CHP/Caltrans Call Box and Motorist Aid Guidelines," which is hereby incorporated by reference hereinafter called "GUIDELINES." As these GUIDELINES may be revised from time to time, it is understood that San Bernardino County SAFE shall have a current copy on file for the duration of this Agreement.

3. The Agreement shall remain in force subject to the following:

   A. That it shall not become effective until (1) San Bernardino County SAFE has submitted to CHP a copy of the minutes, order, motion, resolution, or ordinance from San Bernardino County SAFE approving execution of this Agreement, and (2) this Agreement is duly signed by both parties and approved by the Department of General Services, Office of Legal Services, if applicable.

   B. That it may be modified in writing and signed by both parties and shall be modified by the parties to conform to any future changes to federal or state law that affects the terms of this Agreement.

   C. Either party may terminate this agreement before the expiration of its term, or any extension, upon thirty (30) days' prior written notice to the other party.

   D. It is understood that San Bernardino County SAFE funds for the program under this Agreement are being funded from Department of Motor Vehicles (DMV) Registration Fees pursuant to California Vehicle Code Section 9250.10. It is agreed that at any time sufficient funds from DMV Registration Fees are not available to San Bernardino County SAFE for the full amount of the Agreement, San Bernardino County SAFE may terminate this Agreement.

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

4. For services and assistance herein, San Bernardino County SAFE agrees to reimburse CHP quarterly, in arrears and upon receipt of an itemized invoice, for charges identified in Sections 6 and 9. Upon receipt, payment shall be made to CHP as invoiced within sixty (60) days. If payment is not submitted because of a dispute, San Bernardino County SAFE agrees to submit the reasons for the dispute to CHP within sixty (60) days of receiving the invoice charges.

   A. Payment shall be made to:

      Department of California Highway Patrol
      Fiscal Management Section
      P.O. Box 942900
      Sacramento, CA 94298-2900

   B. Invoices shall be sent to:

      San Bernardino County SAFE
      Attn: SAFE Program Manager
      1170 West Third Street, 2nd Floor
      San Bernardino, CA 92410-1715

      Each quarterly invoice shall include a thorough explanation and justification for any additional charges or changes of the amounts of past charges.

5. The maintenance of the call box system (outside of CHP communications center), including telephone service and line costs, shall be the sole responsibility of San Bernardino County SAFE. Upgrades or modifications to San Bernardino County SAFE's system shall be in accordance with the GUIDELINES.

6. The San Bernardino County SAFE shall pay for its proportional share of the actual wage rate for one half (1/2) CHP SAFE Coordinator position. The CHP SAFE Coordinator position shall be used for SAFE-related business.

   Each SAFE's proportional share billing "factor" shall be determined at the beginning of each fiscal year by comparing the number of motor vehicles registered within each SAFE's boundaries to the total number of motor vehicles registered in all counties which have entered into SAFE agreements with CHP. This proportional share shall be billed over four (4) fiscal quarters.

7. As long as San Bernardino County SAFE contracts with a PCAC that initially answers motorist aid call box calls, CHP and San Bernardino County SAFE agree that no CHP operator positions will be charged to San Bernardino County SAFE during the term of this Agreement. However, should the requests from the PCAC to CHP increase, and CHP substantiates in writing to San Bernardino County SAFE an increase to CHP workload, then this section may be changed in accordance with GUIDELINES and upon a written amendment to this Agreement signed by CHP and San Bernardino County SAFE.

8. Currently, the San Bernardino County SAFE contracts with a private call answering center (PCAC) to receive the initial call box call first. Calls that are emergencies by nature are forwarded to CHP. Call box calls shall be handled by CHP communications centers as third level priority - after 9-1-1 (first priority) and allied agency (second priority) calls. The CHP statewide standard level of service for the handling of call box calls is as follows:

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

A. Call box calls shall be handled as rapidly as possible; however, they should be handled ideally no longer than 60 seconds after the first ring at the communications center. Experience has shown that when emergency communications traffic becomes unusually heavy, call box traffic also increases. At these times, motorists may be required to wait extended lengths of time for service.

B. Call box calls should be handled ideally within 3.5 minutes' (210 seconds) total call handling time. It is understood that the use of such services as the translation service contractor will increase total call handling time to levels above this standard.

9. The CHP agrees to submit an itemized invoice quarterly to San Bernardino County SAFE which may include and shall not exceed the following charges:

A. The CHP SAFE Coordinator personnel costs shall be based on the actual step of the wage scale for CHP SAFE Coordinator position at the time of invoicing. These costs are subject to change according to increases and/or decreases in State of California salary and benefit rates, which are beyond CHP control.

B. Indirect costs shall be applied to monthly personnel costs in accordance with California State Administrative Manual Section 8752 and 8752.1. The indirect cost rate is determined by CHP and approved by California Department of Finance and is subject to change each state fiscal year. The re-evaluation of staffing requirements shall include an explanation of the projected upcoming fiscal year indirect cost rate.

C. Telephone system costs (if applicable). The state shall provide a standard communication center telephone system, which shall also be used to handle incoming call box calls. Any agreed upon changes above and beyond the standard phone system design specifically requested by San Bernardino County SAFE Program shall be funded by San Bernardino County SAFE.

10. Call box/motorist aid system enhancements due to changing technology may require changes and/or upgrades to CHP communication center equipment. In such cases, San Bernardino County SAFE shall be responsible for the procurement, installation, and maintenance of communication center equipment, unless otherwise agreed to. All equipment procured for CHP dispatch operation shall be designed jointly by CHP and San Bernardino County SAFE. No equipment shall be installed in a CHP facility, which does not meet all CHP operational and technical specifications.

11. Communication center equipment purchased by San Bernardino County SAFE and installed at CHP for CHP's use during the term of this contract shall be the property of and maintained by San Bernardino County SAFE.

12. The CHP shall limit its review to San Bernardino County SAFE's specifications for upgrading or modifying San Bernardino County SAFE's call box system, which include any potential operational affect to CHP communications centers, in accordance with the GUIDELINES. San Bernardino County SAFE shall maintain and comply with its obligation to provide teletypewriter/telecommunication devices for the deaf, as specified in the GUIDELINES.

13. The total amount of this Agreement shall not exceed Fourteen Thousand Four Hundred Dollars and Zero Cents ($14,400.00).

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

- FY 2024/2025 (7/1/24 through 6/30/25), not to exceed $4,800.00
- FY 2025/2026 (7/1/25 through 6/30/26), not to exceed $4,800.00
- FY 2026/2027 (7/1/26 through 6/30/27), not to exceed $4,800.00

TOTAL $14,400.00

14. All services under this Agreement shall be coordinated by

Department of the California Highway Patrol
Communications Centers Support Section
601 North 7th Street, Building C
Sacramento, CA 95811
(916) 843-4280

The contact person shall be CHP SAFE Coordinator.

15. This Agreement, and any attachments or documents incorporated herein by inclusion or reference, constitutes the complete and entire Agreement between CHP and San Bernardino County SAFE and supersedes any prior representations, understandings, communications, commitments, Agreements, or proposals, oral or written.

16. Under no circumstances shall San Bernardino County SAFE or its subcontractor(s) use the name Department of California Highway Patrol or CHP to promote a product which is part of the call box system without the written consent of CHP.

17. Notices. Any and all notices permitted or required to be given hereunder shall be deemed duly given:

A. Upon actual delivery, if delivery is personally made; including delivery by private courier and/or overnight delivery services or by Fax:

B. Upon delivery into the United States Mail, if delivery is by postage paid certified mail (return receipt requested).

Each such notice shall be sent to the respective party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with the section. A change in address may be made by notifying the other Party in writing.

To: Department of California Highway Patrol		To: San Bernardino County SAFE
Attn: Kellie Au		Attn: Kelly Lynn
Contract Services Unit		Chief of Air Quality and Mobility Programs
601 North 7th Street, Building B Sacramento, Ca 95811		1170 W. Third Street, 2nd Floor San Bernardino, CA 92410-1715

18. This Agreement is entered into by the parties listed below and shall be effective upon approval by the Department of General Services Office of Legal Services, if applicable. By executing this Agr

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

the representatives of CHP and San Bernardino County SAFE warrant that they have viewed and fully understand all provisions of this Agreement and are authorized to bind their respective agencies to all terms of the Agreement's provisions.

STATE OF CALIFORNIA Department of California Highway Patrol (CHP)	SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY Service Authority for Freeway Emergencies (SAFE)
Cristina Romero, Procurement Manager Business Services Section	SIGNATURE Raymond W. Wolfe. Executive Director
Date	Date
	APPROVED AS TO FORM:
	Julianna Tillquist General Counsel

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

INVOICING AND PAYMENT

1. For services and assistance herein, satisfactorily rendered and upon receipt and approval of invoices SAN BERNARDINO COUNTY SAFE agrees to compensate California Highway Patrol (CHP) quarterly, in arrears for the rates specified herein. Upon receipt, payment shall be made to CHP as invoiced within thirty (30) days. If payment is not submitted because of a dispute, SAFE agrees to submit the reasons for the dispute to CHP within thirty (30) days or receiving the invoice charges.

The SAFE's proportional share billing "factor" shall be determined at the beginning of each fiscal year by comparing the number of motor vehicles registered within SAN BERNARDINO COUNTY SAFE's boundaries to the total number of motor vehicles registered in all counties who have entered into SAFE agreements with CHP. This proportional share shall be billed over four (4) fiscal quarters annually.

A. The CHP agrees to submit an itemized invoice quarterly to SAN BERNARDINO COUNTY SAFE which may include and shall not exceed the following charges:

1) The CHP SAFE Coordinator personnel costs shall be based on the actual step of the wage scale or CHP SAFE Coordinator position at the time of invoicing. These costs are subject to change according to increases and/or decreases in State of California salary and benefit rates, which are beyond CHP control.

2) Indirect costs shall be applied to the monthly personnel costs in accordance with California State Administrative Manual Section 8752 and 8752.1. The indirect cost rate is determined by CHP and approved by the California Department of Finance and is subject to change each state fiscal year. The re-evaluation of staffing requirements shall include an explanation of the projected upcoming fiscal year indirect cost rate.

3) Telephone system costs (if applicable). The State shall provide a standard communication center telephone system, which shall also be used to handle incoming call box calls. Any agreed upon changes above and beyond the standard phone system design specifically requested by SAN BERNARDINO COUNTY SAFE Program shall be funded by SAN BERNARDINO COUNTY SAFE.

B. The fiscal year funding for this Agreement shall be as follows:

FY	Time Period	Amount	Quarters
23/24	7/01/2024 – 6/30/2025	$4,800.00	4
24/25	7/01/2025 – 6/30/2026	$4,800.00	4
26/27	7/01/2026 – 6/30/2027	$4,800.00	4
	TOTAL	**$14,400.00**	12

C. The total amount of this Agreement shall not exceed **$14,400.00 (Fourteen Thousand Four Hundred Dollars and Zero Cents).**

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

2. Each quarterly invoice shall include a thorough explanation and justification for any new additional charges or changes of the amounts of past charges (if applicable). Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than semi-annually in arrears to:

SAN BERNARDINO COUNTY SAFE
Attn: SAFE Program Manager
1170 West Third Street, 2nd Floor
San Bernardino, CA 92410-1715

A. Payment

Payment shall be made to:

Department of California Highway Patrol
P.O. Box 942900
Sacramento, Ca 94298-2900
Telephone: (916) 843-3583

Payment for these services may be made by corporate check, cashier's check, or money order in the invoiced amount. If a cashier's check, corporate check or money order is submitted, it must be made payable to: "CHP Accounting Section." Please note the contract number in the "memo" section of the check, and submit the check with a copy of the invoice so that it can be credited to your contract.

3. BUDGET CONTINGENCY CLAUSE

A. It is mutually agreed that if the California State Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

4. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

EXHIBIT C
GTC 04/2017

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code Section 8546.7, Pub. Contract Code Section 10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code Section 12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Section12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, Section 11105.)

    Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

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14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

    a. The Government Code Chapter on Antitrust claims contains the following definitions:

        1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

        2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

    b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

    c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

    d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code Section 7110, that:

    a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code Section 10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code Section 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code Section 999.5(d); Govt. Code Section 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC Section 10344 (e).)

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

1. The CHP and Contractee agree this Agreement may be canceled by either party with thirty (30) days advance written notice.

2. In the event of an emergency, this Agreement may be canceled by either party without prior notice.

3. The CHP and Contractee agree that this Agreement may be amended by written mutual consent of the parties hereto.

4. Unforeseen events may require CHP officer(s) to expend hours in excess of the original estimate. Any costs in excess of the original estimated amount will be processed by appropriate amendment to the Agreement, to reflect the actual costs incurred.

5. Additional charges may be assessed for CHP supplies, additional equipment utilized, damage to property repaired or replaced at state expense, which are directly related to the services provided herein, but only to the extent such supplies or additional equipment are specifically requested in writing by Contractee or such need for repair or replacement of property arises directly from Contractee's gross misconduct or willful negligence with respect to the property.

6. Gifts, donations, or gratuities may not be accepted by CHP employees in their own behalf or in behalf of the Department, informal squad club, or other local funds.

7. Any dispute concerning a question of fact arising under the terms of this agreement which is not disposed within a reasonable period of time (ten days) by the parties normally responsible for the administration of this contract shall be brought to the attention of the Administrative Services Officer (or designated representative) of each organization for joint resolution.

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

CCC 04/2017

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed) San Bernardino Transportation Authority (SBCTA)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing Raymond W. Wolfe, Ph.D. Executive Director	
Date Executed	*Executed in the County of* San Bernardino

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;
2) the person's or organization's policy of maintaining a drug-free workplace;
3) any available counseling, rehabilitation and employee assistance programs; and,
4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,
2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

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certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES $50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full-time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of $100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of $100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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Attachment: CHP Agreement No. 23-1002942 (10714 : Agreement No. 23-1002942 with the California Highway Patrol (CHP) for Call Box Liaison

Minute Action

AGENDA ITEM: 15

Date: July 3, 2024

Subject:
Update on the Commuter and Motorist Assistance Call Box Program

Recommendation:
Receive information on the status of the San Bernardino County Transportation Authority Call Box Program.

Background:
In 1987, the San Bernardino County Transportation Authority (SBCTA) established itself as the San Bernardino County Service Authority for Freeway Emergencies (SB SAFE) after the enactment of Senate Bill (SB) 1199 in 1985.

SBCTA operates a call box program that offers motorists travelling on most major highways in San Bernardino County access to a motorist aid call box, that when activated calls the SBCTA's call answering center. Motorist aide calls may be forwarded to the California Highway Patrol (CHP) to assist the motorist with requesting Freeway Service Patrol (FSP), or by calling the motorists' roadside assistance provider (AAA) or a friend/family member. Motorist calls which are deemed an emergency (medical emergency, fire, debris on freeway, pedestrians on freeway, etc.) are forwarded directly to the CHP for assistance. Since the inception of the call box program in 1987, more than 1.5 million motorists have used the San Bernardino call box system.

SBCTA's call box network consists of 776 call boxes. Of those, 749 call boxes operate on the cellular network and 27 call boxes operate on the satellite network. Each cellular and satellite call box is a battery-powered, solar charged roadside terminal, with a microprocessor and a built-in digital cellular or satellite modem that allows for communications to the SBCTA call answering center. In the calendar year 2023, approximately 2,500 calls were made by motorists. Many of these calls for aid were on highways where cellular reception does not exist and a greater than expected number of calls were made from motorists that could not otherwise make a cell phone call due to a drained battery in their cell phone.

Of the 776 call boxes, 32 call boxes are considered in the "urban" areas of San Bernardino County (County) and 744 call boxes are considered in the "rural" areas of the County. Call boxes in the "urban" region are predominately located along freeway transitions. "Rural" call boxes are in areas that may either have no standard mobile phone cellular coverage, or the coverage is poor and inconsistent. Generally, these highway segments have poor and/or inconsistent cellular coverage: Interstate 40 (I-40), State Route (SR) 18, SR 38, SR 127, SR 330, US 95 and US 395, and Fort Irwin Road. In these areas, a standard mobile cell phone may not be able to successfully connect to the cellular network. Because the call boxes are equipped with an external antenna (and some operate on the satellite communication network), the call boxes can provide a connection to the cellular network to complete a call to the call answering center.

With the advancement of technology and the proliferation of cellular phone ownership over the past 15-plus years, there is a continued decline in the number of calls that have been completed by motorists that need assistance. SB SAFE took steps to evaluate and "right size" the call box system in 2015 (resulting in the removal of 216 call boxes in 2016). Another system wide evaluation was completed in 2019 (resulting in the removal of 245 call boxes in 2020). Both the 2016 and 2020 reduction of call boxes led to significant cost savings, in addition to a more efficient operation of the call box program.

Entity: San Bernardino County Transportation Authority

YEAR	# of CALL BOXES	# of CALLS per YEAR	Avg. # of CALLS per YEAR per CALL BOX
2015	1,240	7,030	5.67
2019	1,024	4,365	4.26
2022	777	2,565	3.30
2023	776	2,507	3.23

This current evaluation reviewed system usage (Exhibits B-G) and specific installation site type details (Exhibit H).

System Usage – The overall use of each call box and or segment was reviewed. This study included call volumes during calendar year 2023. In 2023 each call box generated on average 3.23 calls per call box system wide. This is almost a 25% decrease from the previous evaluation period (April 1, 2021 through March 31, 2022). Freeway segments with call boxes that are deemed "low use" are being recommended for removal. Please note "low use" is defined as less than one call per call box along a freeway segment. It is anticipated that the recommended changes to the call box system would increase the overall average call box use by 20%.

Site Type – California Department of Transportation (Caltrans) has requested that all "B" and "C" site types must be removed or relocated (if possible) and installed as another allowed site type. System wide there are approximately 35 call boxes that are either "B" or "C" site types and a cursory review of the photos in the call box database indicate that approximately 30 of these may be able to be modified to an allowable site type, and five may either need to be relocated or removed. A field analysis will need to be conducted to determine which course of action will take place.

Results of Initial Evaluation

The overall evaluation is to remove 84 "low use" call boxes and consider installing six new call boxes. The net change would be the removal of 78 call boxes from the San Bernardino Call Box system.

Mountain Area

Remove six call boxes on SR 330. Two of these call boxes have "low use" with an overall average of 1.25 calls per call box in 2023 along SR 330, and four of these call boxes are "B" or "C" site types, which are no longer allowable per Caltrans due to crash testing concerns. After this reduction, the call boxes will be approximately at a two-mile spacing, which is consistent with all other call box segments in the region.

Victorville & Cajon Pass Area

Remove seven call boxes along SR 138. These have been temporarily removed for five-plus years due to various construction activities, and historically had low use.

Barstow & Nevada Border Area

Remove a total of 39 call boxes in this area. This would include 15 of the 17 call boxes located on SR 127. Call boxes near the Dumont Dunes Off Highway Vehicle area would remain due to their use (off highway vehicle participants needing access to emergency services) and the inability for traditional cell phones carried by motorists to capture a cellular signal. On SR 247

all eight call boxes would be removed. On Fort Irwin Road 16 of the 33 call boxes will be removed due to low use, and to match the two-mile spacing in this area.

Interstate 40 Corridor

On I-40 there are approximately 20 "B" and "C" site types that will need to be modified, relocated, or removed. A cursory evaluation using pictures in the call box database indicates that most all can be modified to meet the Caltrans allowable standards and only a couple may need to be relocated or removed.

Morongo Basin & Arizona Border Area

Remove all 21 call boxes on US 95 due to low use. Along SR 62 attempt to add six call boxes to provide a consistent two-mile spacing if possible. This would depend on a number of factors such as the width/depth of the existing shoulders and if call boxes can be installed, while being compliant with Americans with Disabilities Act guidelines.

Valley Area

Remove seven call boxes along SR 71. These seven call boxes have a lower use than most of the region, and this would provide consistency in having the majority of call boxes in the rural areas and not in the urban region of the County.

Exhibits A through H are presented within this report and incorporated as attachments:

- **Exhibit A: Call Box locations from April 2024 in San Bernardino County.**
    - Exhibit A displays the location of all call boxes within the county of San Bernardino. There are additional tables and maps that display the locations by various regions within the county in Exhibits B through G.
- **Exhibits B through G: Call Box locations in six different areas within San Bernardino County.**
    - The data within Exhibits B through G includes the information about the spacing/segment length, the number of call boxes, the number of aide calls, and emergency calls.
    - The regions have been defined as follows:
        - *Exhibit B: Call Box locations in the Mountain Area.*
        - *Exhibit C: Call Box locations in Victorville and the Cajon Pass Area.*
        - *Exhibit D: Call Box locations in the Barstow and Nevada Border.*
        - *Exhibit E: Call Box locations in the I-40 Corridor Area.*
        - *Exhibit F: Call Box locations in the Morongo Basin to the Arizona Border Area.*
        - *Exhibit G: Call Box locations at the Valley Area.*
- **Exhibit H: SBCTA SAFE – Call Boxes Site Types**
    - Exhibit H displays examples of call box site types.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was received by the General Policy Committee on June 12, 2024.

Responsible Staff:
Kelly Lynn, Chief of Air Quality & Mobility Programs

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

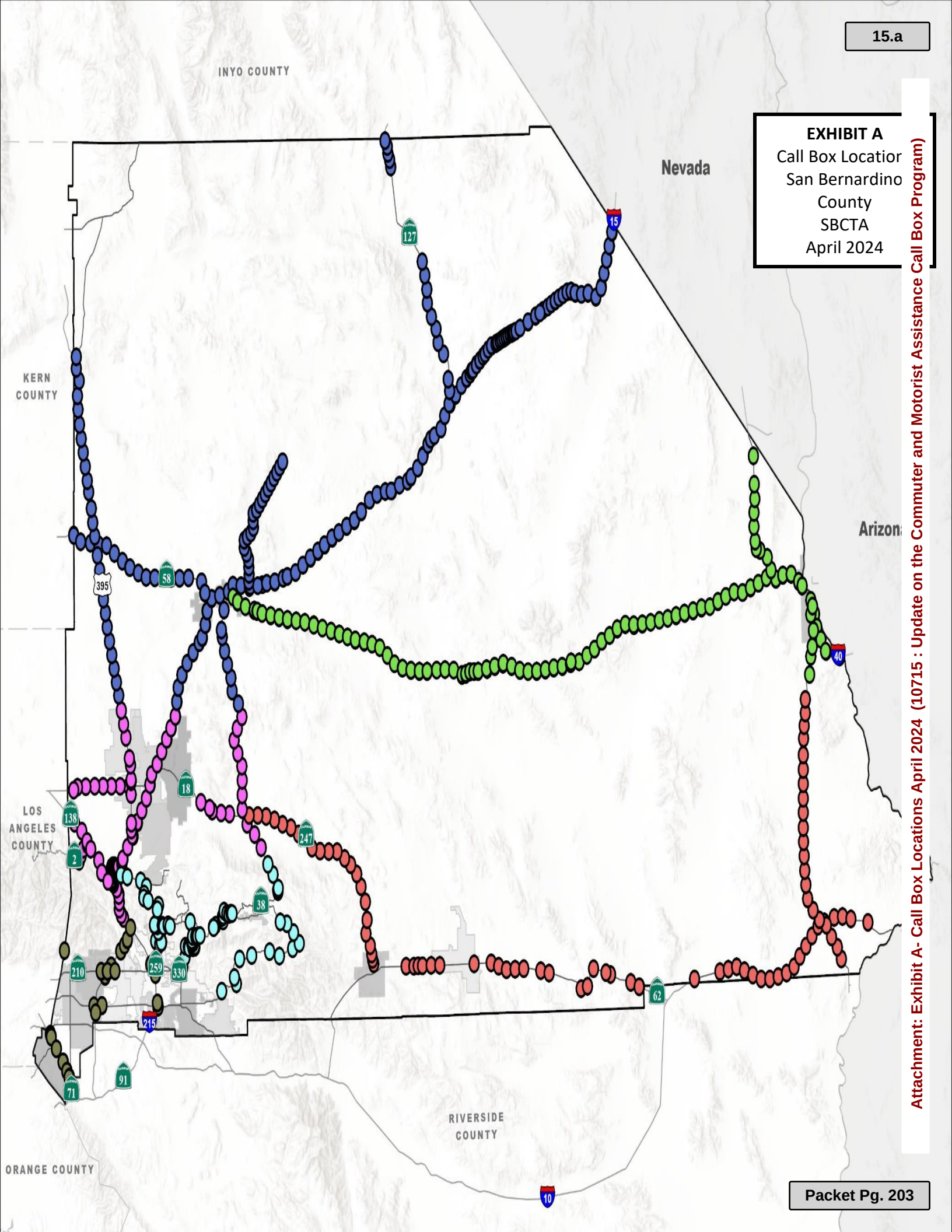
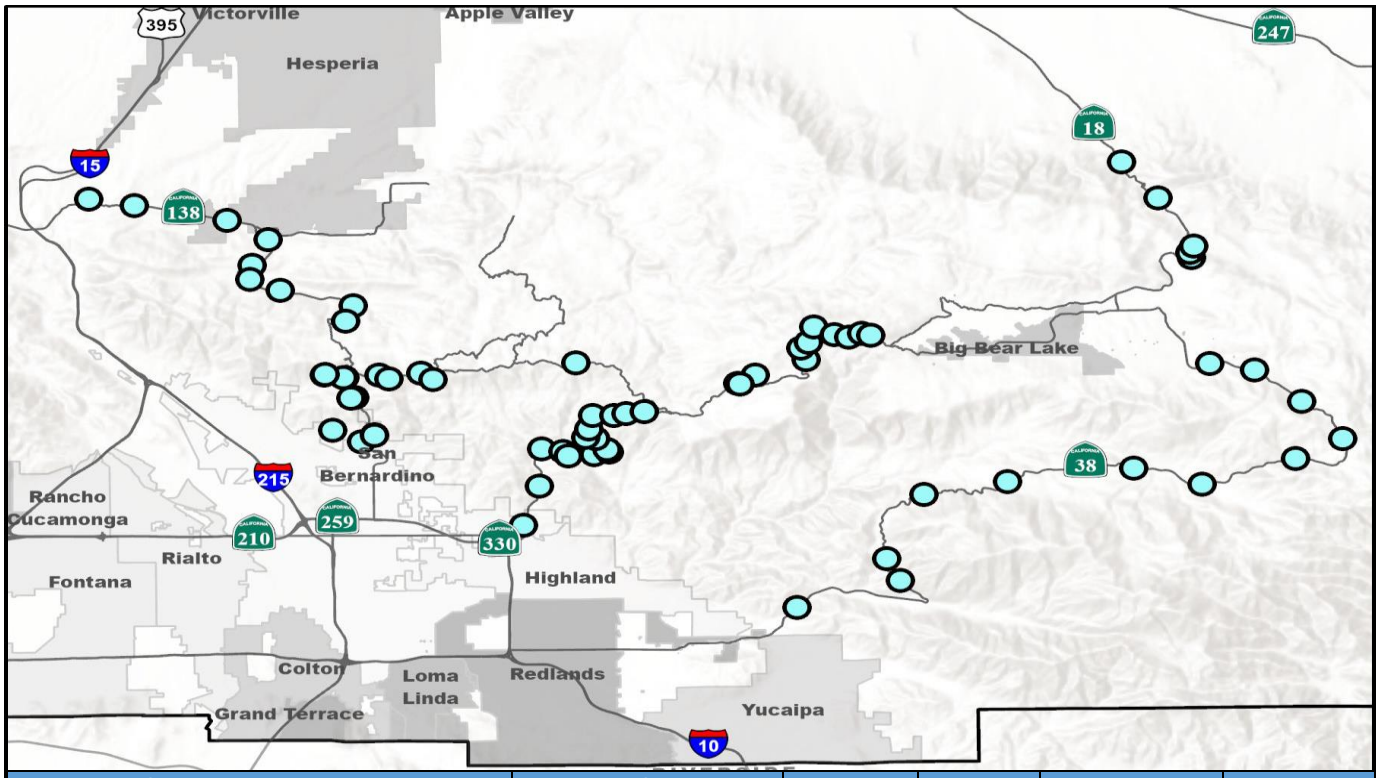


EXHIBIT A
Call Box Locatior
San Bernardino County
SBCTA
April 2024

Attachment: Exhibit A- Call Box Locations April 2024 (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

EXHIBIT B: SBCTA LOCATION OF CALL BOXES IN THE MOUNTAIN AREA

(2023 CALENDAR YEAR)



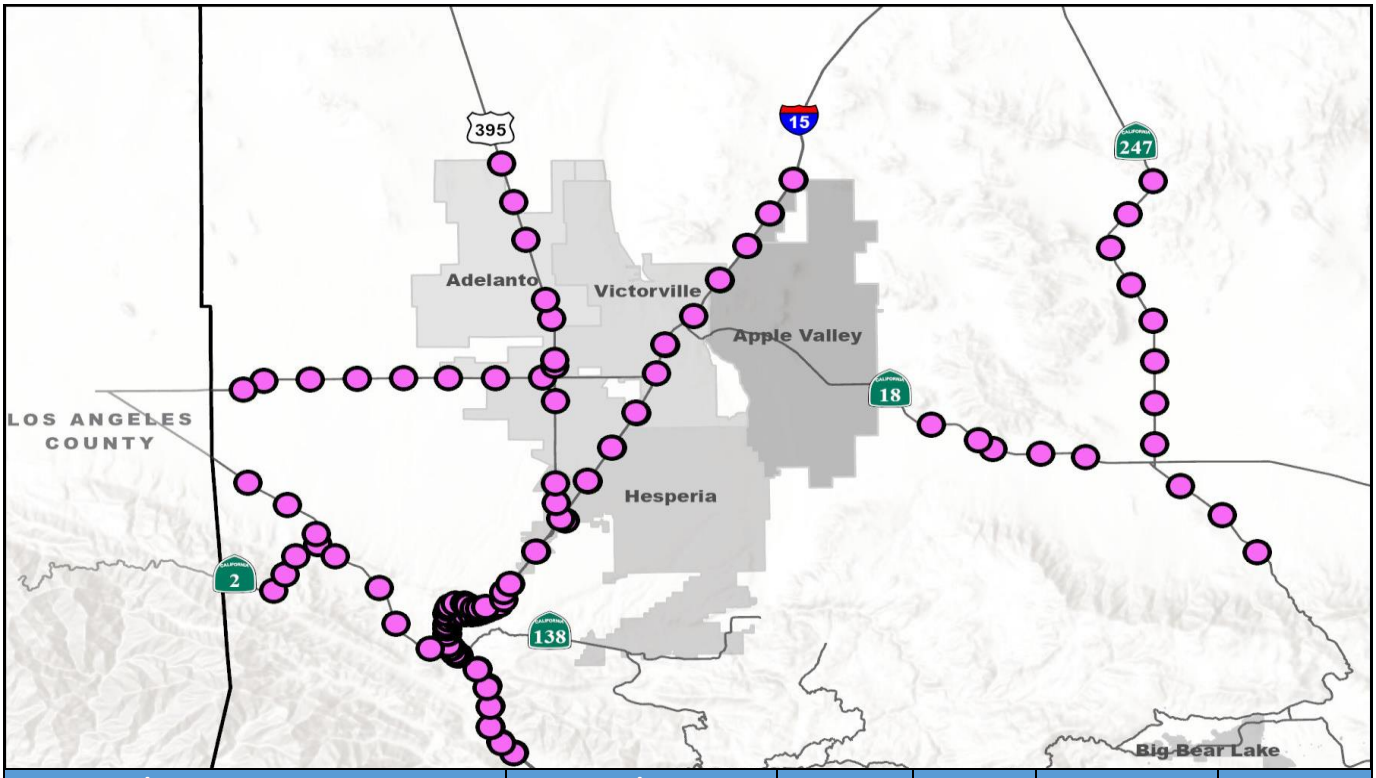
FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
CA 18	Waterman Canyon to SO Camp Rock Rd	2 miles spacing (~32 miles)	31	269	20	9.97
CA 38	SO Big Bear to NO Bryant St	~2 miles spacing (~34 miles)	17	211	18	13.47
CA 138	NO Crestline to EO I-15	2 mile spacing (14 miles)	9	43	1	5.50
CA 330	Highland Ave to Running Springs	1 mile spacing (~13 miles)	16	85	11	8.00

Recommendation: Remove six call boxes on route 330. Two of these call boxes have low use (Ave 1.25 calls), and four of these are B/C sites. In addition, two-mile spacing will be consistent with all other segments in the region.

Attachment: Exhibit B- Call Box Locations Mountain Area (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

EXHIBIT C: SBCTA SAFE - LOCATION OF CALL BOXES IN THE VICTORVILLE/PASS AREA

(2023 CALENDAR YEAR)



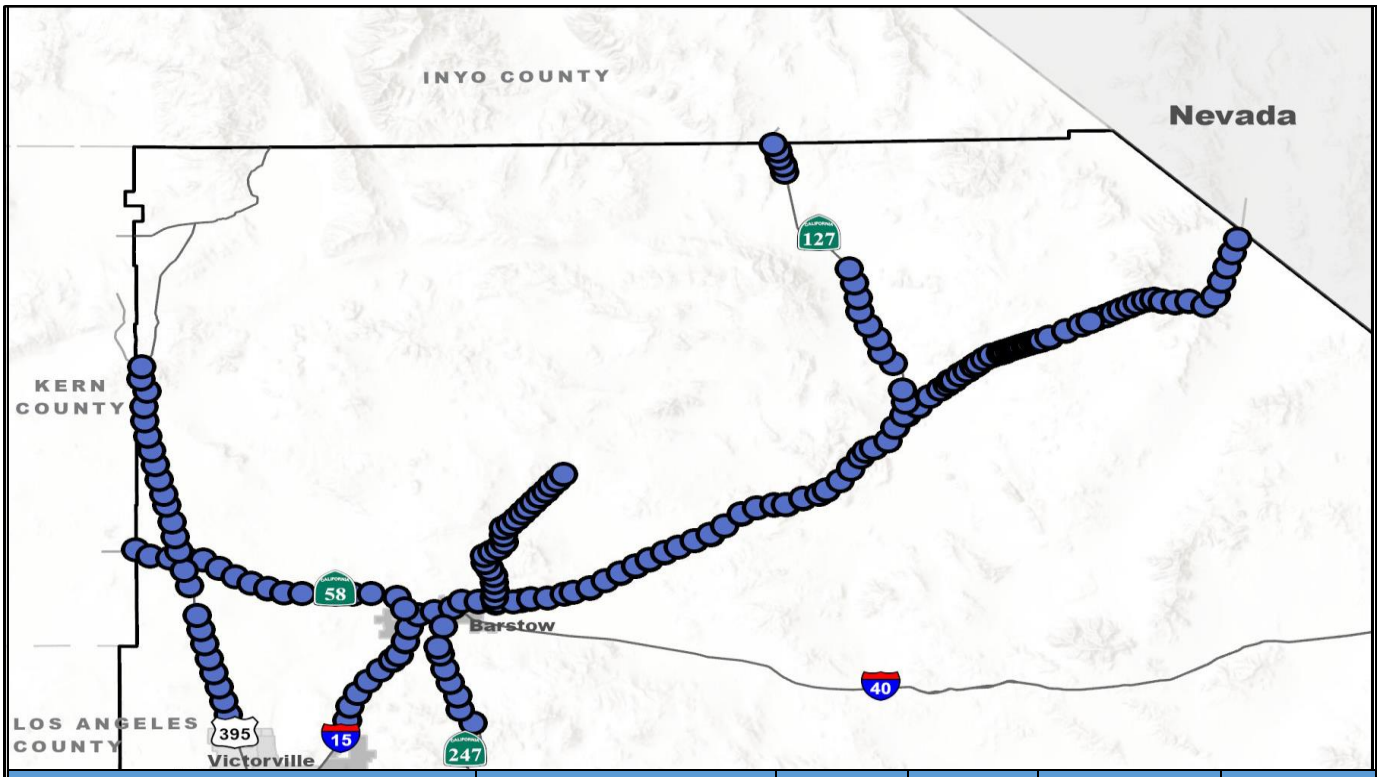
FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
CA 2	Leading to Wrightwood	1-2 miles spacing (~4 miles)	4	10	0	3.33
I-15	JNO I-15/215 Split to JNO Victorville City Limit	1/4, 1/2, 1, or 2 miles, depending on grade (~36 miles)	73	176	11	6.03
CA 18	SB/LA County Line to SR395 & Laguna Seca Dr to SR247	2 miles spacing (~30 miles)	16	90	12	6.38
CA 138	SB/LA County Line to I-15 *7 TEMP REMOVED	2 miles spacing (~10 miles)	7	NA	NA	NA
CA 247	Rabbit Springs to 15 miles north of Rabbit Springs	2 miles spacing (~15 miles)	8	19	4	2.88
US 395	I-15 to JNO Purple Sage St	2 mile spacing (~17 miles)	10	14	2	2.67

Recommendations: Remove seven call boxes on SR 138. These have been temporarily removed for five plus years, and historically had low use.

Attachment: Exhibit C- Call Box Locations Victorville & Cajon Pass Area (10715 : Update on the Commuter and Motorist Assistance Call Box

EXHIBIT D: SBCTA SAFE - LOCATION OF CALL BOXES IN THE BARSTOW/NEVADA BORDER

(2023 CALENDAR YEAR)



FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
INTERSTATE CALIFORNIA 15	JSO Barstow City Limits to CA/NV State Line	2 mile, 1 mile spacing at grade (~130 miles)	172	658	41	4.11
CALIFORNIA 58	WO I-15 to Kern County line	2 mile spacing (~32 miles)	21	37	6	3.07
CALIFORNIA 127	NO I-15 to Inyo County line	2 mile spacing (~41 miles)	17	12	3	0.94
CALIFORNIA 247	Barstow City Limits to 14 mi SO Barstow	2 mile spacing (~14 miles)	8	5	2	0.88
US 395	Shadow Mountain Rd to SB/Kern County line	2 mile spacing (~47 miles)	25	44	4	2.00
FT IRWIN RD	NO I-15 to Post Mile 22 Fort Irwin Rd	1 mile spacing (~22 miles)	33	11	1	0.36

Recommendation: Remove a total of 39 call boxes in this area. This would include 15 of the 17 call boxes located on SR 127. Call boxes near the Dumont Dunes Off would remain due to their use. Along SR 247 all eight call boxes would be removed. On Fort Irwin Road 16 of the 33 call boxes will be removed due to low use, and to match the two-mile spacing in this area.

Attachment: Exhibit D- Call Box Locations Barstow- Nevada Border (10715 : Update on the Commuter and Motorist Assistance Call Box

EXHIBIT E: SBCTA SAFE - LOCATION OF CALL BOXES IN THE INTERSTATE 40 (I-40) CORRIDOR

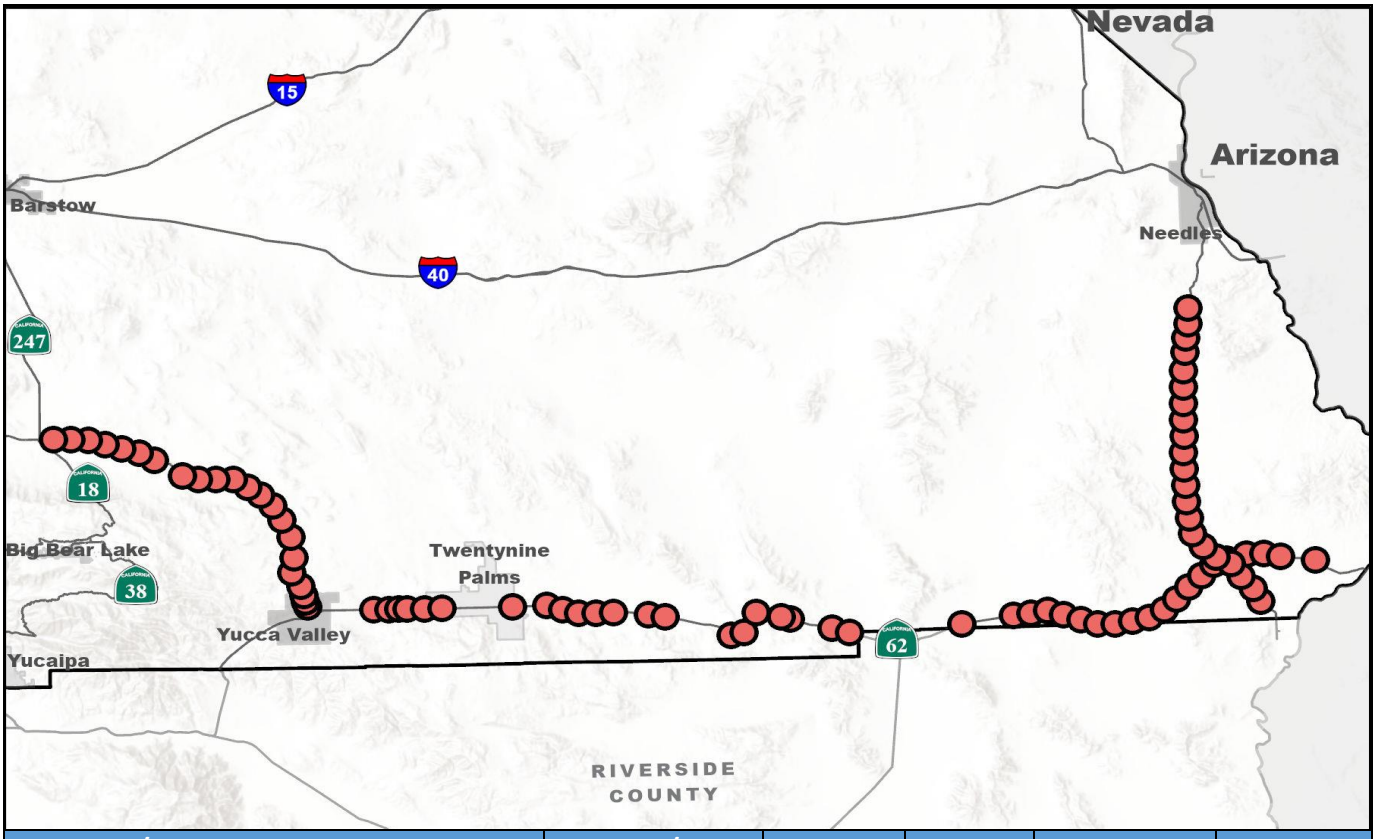
(2023 CALENDAR YEAR)

FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
INTERSTATE CALIFORNIA 40	I-15 to CA/AZ State Line	2 mile, 1 mile spacing at grade (~155 miles)	160	400	27	2.72
US 95	10 Miles SO Needles to CA/NV State Line	2 mile spacing (~30 miles)	16	17	5	1.38

Recommendation: Along I-40 there are approximately 20 B/C sites that will need to be modified/relocated/perhaps removed. A cursory evaluation using pictures in the call box database indicate that most all can be modified to meet the Caltrans standards and only a couple may need to be relocated/removed.

Attachment: Exhibit E- Call Box Locations I-40 Corridor (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

EXHIBIT F: SBCTA SAFE - LOCATION OF CALL BOXES IN THE MORONGO BASIN TO THE ARIZONA BORDER AREA (2023 CALENDAR YEAR)



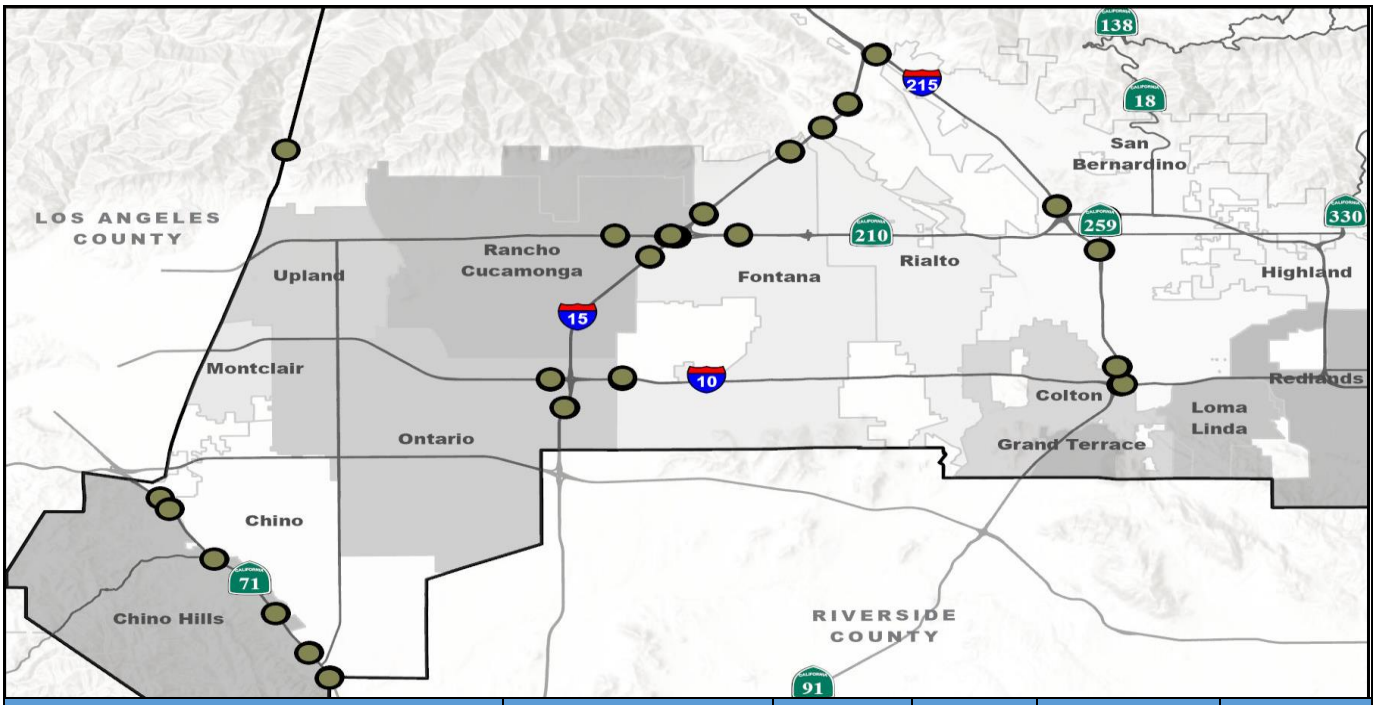
FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
CA 62	WO White Feather Rd/Joshua Tree to CA/AZ State line	2 mile spacing (~110 miles)	42	112	21	3.17
US 95	SR62/Vidal Junctions to 10 miles SO Needles City Limits	2 mile spacing, (~40 miles)	21	5	1	0.29
CA 247	Bueno Suerte Rd/Yucca Valley to Barstow City Limits	2 mile spacing, (~42 miles)	25	29	4	2.20

Recommendations: Remove all 21 call boxes on US Route 95 due to low use. On SR 62 attempt to add six call boxes to get a consistent two-mile spacing.

Attachment: I.Exhibit F- Call Box Locations Morongo Basin to the AZ Border Area (10715 : Update on the Commuter and Motorist Assistance

EXHIBIT G: SBCTA SAFE - LOCATION OF CALL BOXES IN THE VALLEY AREA

(2023 CALENDAR YEAR)



FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
INTERSTATE CALIFORNIA 10	I-15 and I-215 Freeway Transitions	Freeway Transitions	6	13	1	3.50
INTERSTATE CALIFORNIA 15	I-10 Freeway Transitions (* 10 CB TEMP REMOVED)	Freeway Transitions	14	15	2	5.67
CALIFORNIA 71	SB/RV County line to SB/LA Couy line	2 mile spacing, (~8 miles)	11	13	0	1.30
CALIFORNIA 210	I-15 Freeway Transitions	Freeway Transitions	6	10	5	3.75
INTERSTATE CALIFORNIA 215	Orange Show Rd to I-15/I215 Interchange	Freeway Transitions	8	NA	NA	NA
CALIFORNIA 259	I-215 TO SR 210	Freeway Transitions	2	7	0	3.50

Recommendation: Remove seven call boxes on SR 71. This will provide consistency in region and these call boxes have a low usage level compared to others in the region.

Attachment: Exhibit G- Call Box Locations Valley Area (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

EXHIBIT H: SBCTA SAFE - CALL BOXES SITE TYPES

Call Box Site Types – Caltrans has requested that all site types B and C be removed or relocated to another site type. The site type is the installation classification, for example, those that have a retaining wall around the call box are considered site type B, and those that have a handrail are considered site type C. Site type L and M are the preferred site types.

Site Type C

Site Type B

Site Type L

Site Type M

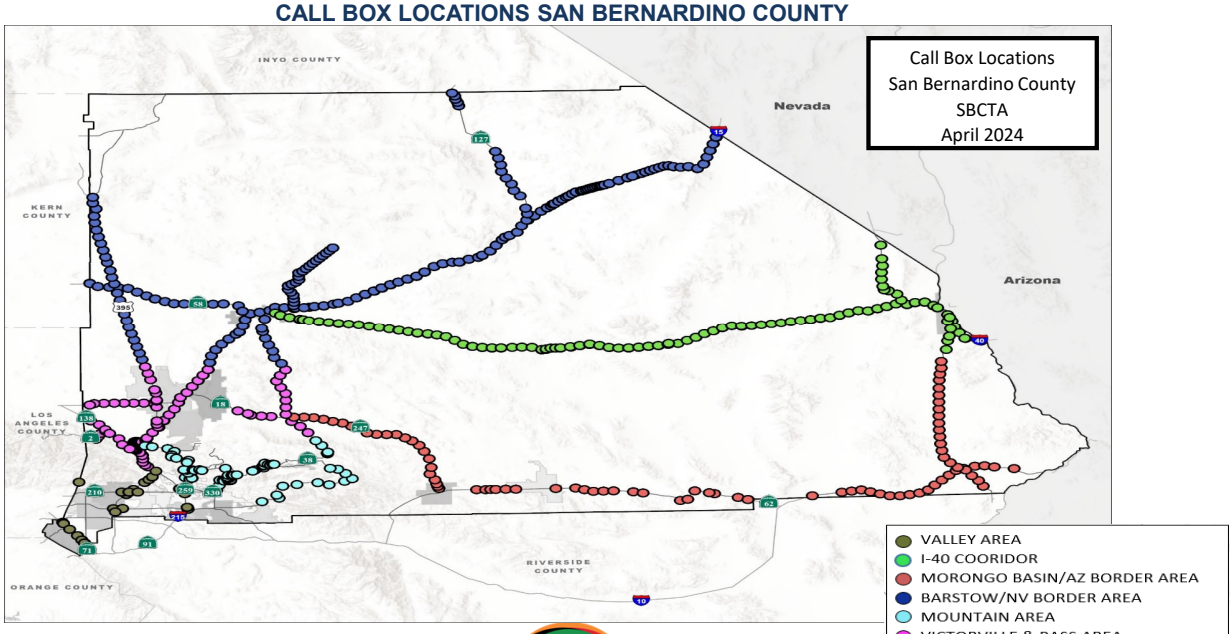
Attachment: Exhibit H- Call Box Site Types (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

SBCTA
Air Quality and Mobility Programs
Update on the Commuter and Motorist Assistance Call Box Program

San Bernardino County Transportation Authority

1

CALL BOX LOCATIONS SAN BERNARDINO COUNTY



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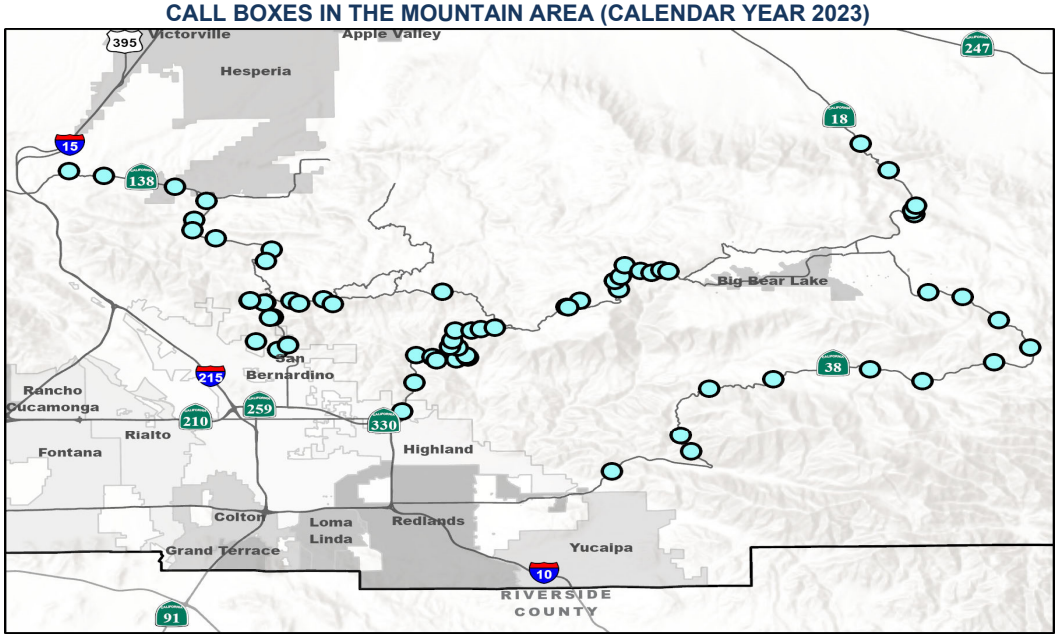
Attachment: PPT - AQMP Call Box Program (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

CALL BOXES IN THE MOUNTAIN AREA (CALENDAR YEAR 2023)



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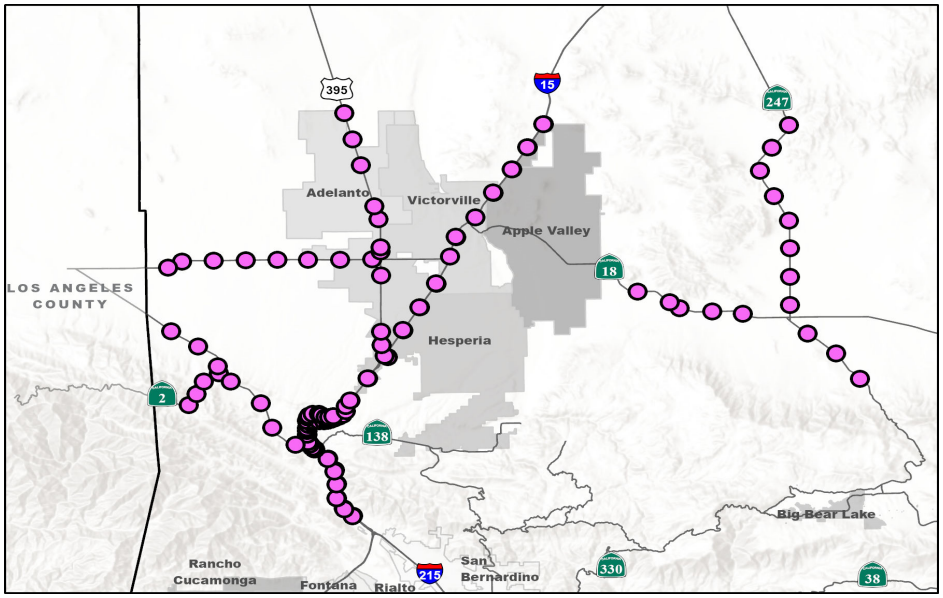
CALL BOXES IN THE MOUNTAIN AREA (CALENDAR YEAR 2023)

FREEWAY/STATE ROUTE	SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
CA 18 — Waterman Canyon to SO Camp Rock Rd	2 miles spacing (~32 miles)	31	269	20	9.97
CA 38 — SO Big Bear to NO Bryant St	~2 miles spacing (~34 miles)	17	211	18	13.47
CA 138 — NO Crestline to EO I-15	2 mile spacing (14 miles)	9	43	1	5.50
CA 330 — Highland Ave to Running Springs	1 mile spacing (~13 miles)	16	85	11	8.00

4

VICTORVILLE / CAJON PASS AREA (CALENDAR YEAR 2023)



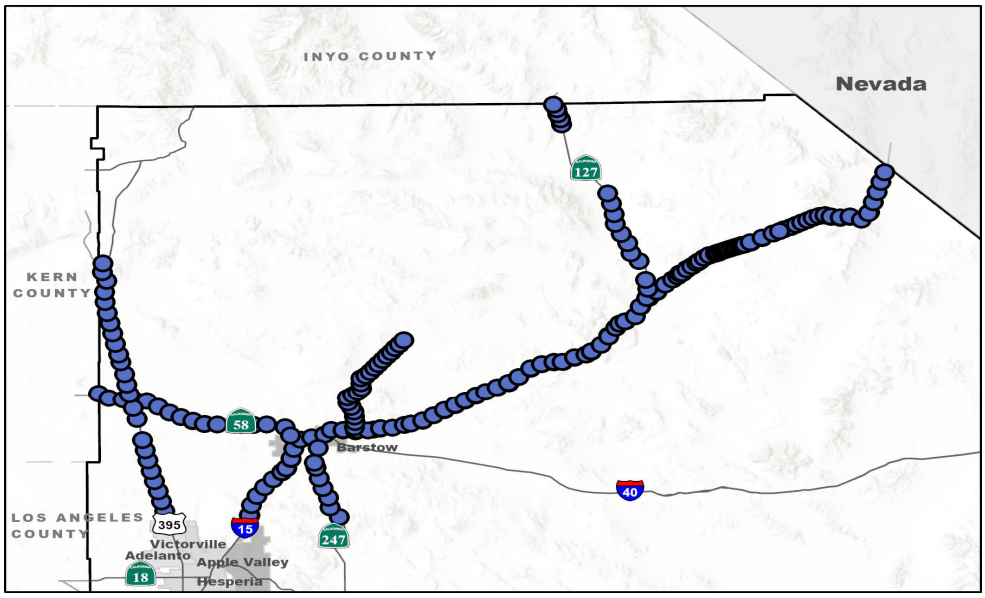
5

VICTORVILLE / CAJON PASS AREA (CALENDAR YEAR 2023)

FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
CA 2	Leading to Wrightwood	1-2 miles spacing (~4 miles)	4	10	0	3.33
I-15	JNO I-15/215 Split to JNO Victorville City Limit	1/4, 1/2, 1, or 2 miles, depending on grade (~36 miles)	73	176	11	6.03
CA 18	SB/LA County Line to SR395 & Laguna Seca Dr to SR247	2 miles spacing (~30 miles)	16	90	12	6.38
CA 138	SB/LA County Line to I-15 *7 TEMP REMOVED	2 miles spacing (~10 miles)	7	NA	NA	NA
CA 247	Rabbit Springs to 15 miles north of Rabbit Springs	2 miles spacing (~15 miles)	8	19	4	2.88
US 395	I-15 to JNO Purple Sage St	2 mile spacing (~17 miles)	10	14	2	2.67

6

BARSTOW / NEVADA BORDER (CALENDAR YEAR 2023)



7

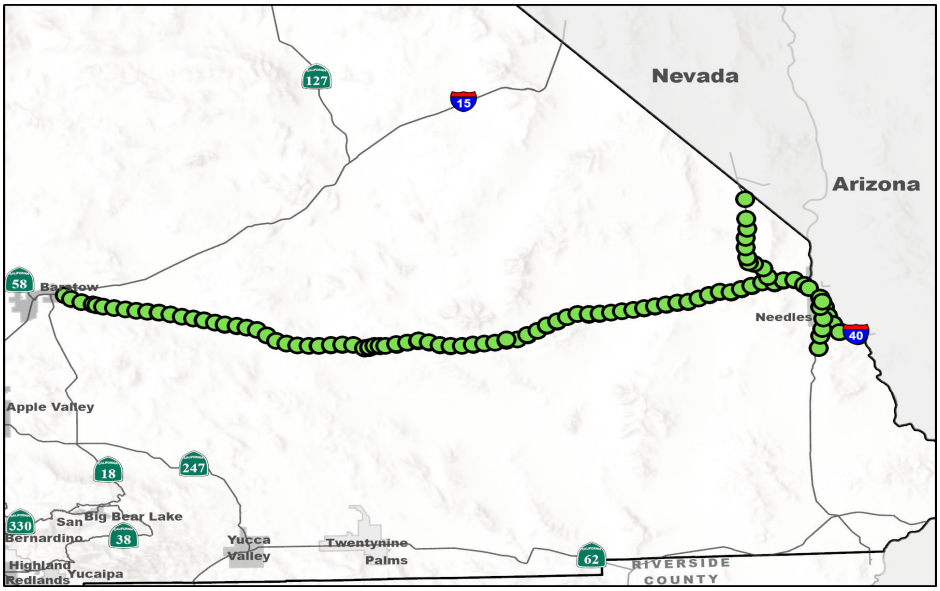
BARSTOW / NEVADA BORDER (CALENDAR YEAR 2023)

FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
I-15	JSO Barstow City Limits to CA/NV State Line	2 mile, 1 mile spacing at grade (~130 miles)	172	658	41	4.11
CA 58	WO I-15 to Kern County line	2 mile spacing (~32 miles)	21	37	6	3.07
CA 127	NO I-15 to Inyo County line	2 mile spacing (~41 miles)	17	12	3	0.94
CA 247	Barstow City Limits to 14 mi SO Barstow	2 mile spacing (~14 miles)	8	5	2	0.88
US 395	Shadow Mountain Rd to SB/Kern County line	2 mile spacing (~47 miles)	25	44	4	2.00
FT IRWIN RD	NO I-15 to Post Mile 22 Fort Irwin Rd	1 mile spacing (~22 miles)	33	11	1	0.36

8

Attachment: PPT - AQMP Call Box Program (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

INTERSTATE 40 (I-40) CORRIDOR (CALENDAR YEAR 2023)



9

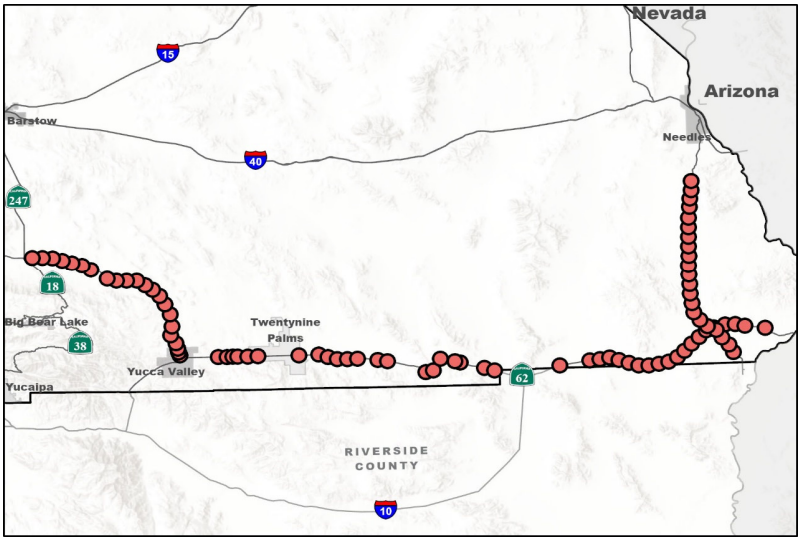
INTERSTATE 40 CORRIDOR (CALENDAR YEAR 2023)

FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
INTERSTATE CALIFORNIA 40	I-15 to CA/AZ State Line	2 mile, 1 mile spacing at grade (~155 miles)	160	400	27	2.72
US 95	10 Miles SO Needles to CA/NV State Line	2 mile spacing (~30 miles)	16	17	5	1.38

10

Attachment: PPT - AQMP Call Box Program (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

MORONGO BASIN TO THE ARIZONA BORDER AREA (CALENDAR YEAR 2023)



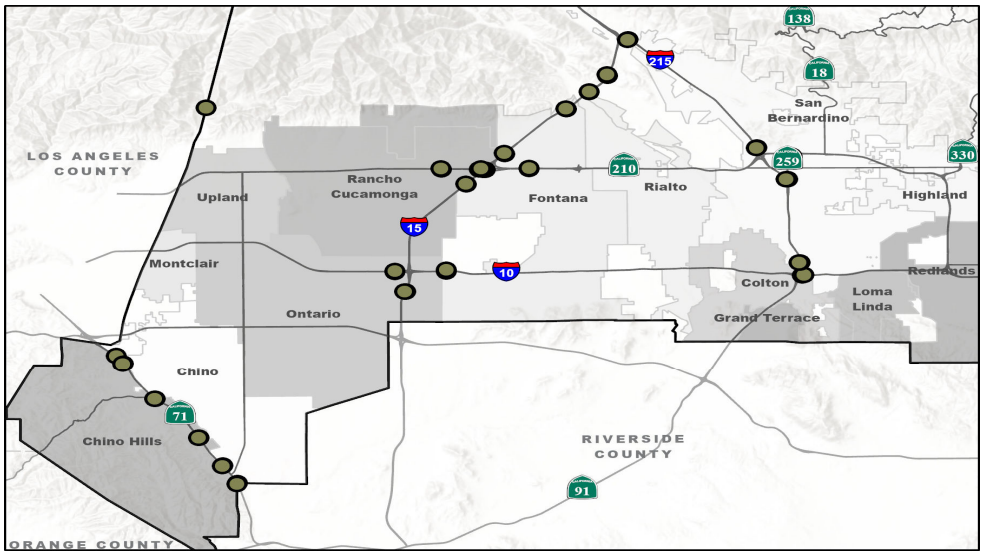
11

MORONGO BASIN TO THE ARIZONA BORDER AREA (CALENDAR YEAR 2023)

FREEWAY/STATE ROUTE	SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
WO White Feather Rd/Joshua Tree to CA/AZ State line	2 mile spacing (~110 miles)	42	112	21	3.17
SR62/Vidal Junctions to 10 miles SO Needles City Limits	2 mile spacing, (~40 miles)	21	5	1	0.29
Bueno Suerte Rd/Yucca Valley to Barstow City Limits	2 mile spacing, (~42 miles)	25	29	4	2.20

12

VALLEY AREA (CALENDAR YEAR 2023)



13

VALLEY AREA (CALENDAR YEAR 2023)

FREEWAY/STATE ROUTE	SPACING/SEGMENT LENGTH	# OF CALL BOXES	# OF AIDE CALLS	# OF EMERGENCY CALLS	AVERAGE USE BY CALL BOX
I-15 and I-215 Freeway Transitions	Freeway Transitions	6	13	1	3.50
I-10 Freeway Transitions (* 10 CB TEMP REMOVED)	Freeway Transitions	14	15	2	5.67
SB/RV County line to SB/LA Couy line	2 mile spacing, (~8 miles)	11	13	0	1.30
I-15 Freeway Transitions	Freeway Transitions	6	10	5	3.75
Orange Show Rd to I-15/I215 Interchange	Freeway Transitions	8	NA	NA	NA
I-215 TO SR 210	Freeway Transitions	2	7	0	3.50

14

CALL BOXES SITE TYPES

Site Type C

Site Type B

Site Type L

Site Type M

15

Attachment: PPT - AQMP Call Box Program (10715 : Update on the Commuter and Motorist Assistance Call Box Program)

Minute Action

AGENDA ITEM: 16

Date: July 3, 2024

Subject:
Interstate 215 Bi-County/Segment-5 Landscape Project Release of Invitation for Bids No. 24-1003062

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

Authorize the Executive Director, or his designee, to release Invitation for Bids No. 24-1003062 for the construction of Interstate 215 Bi-County/Segment-5 Landscape Project, subject to final approval of the Plans, Specifications, and Estimates package, Federal Funding Authorization (E-76 approval), and approval as to form by SBCTA General Counsel, or her designee.

Background:
The construction of Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project was completed in 2015 and possessed an environmental commitment for follow-up landscape projects. The visual enhancements on the I-215 Bi-County HOV Gap Closure Project were limited to rock blanket at the interchanges, gravel mulch shoulder backing, and retaining wall aesthetics along portions of the I-215 mainline, which is consistent with the adjacent I-215 segments running through San Bernardino and Riverside Counties. At the same time, follow-up landscaping work has been in progress on the I-215 Corridor Widening Project through San Bernardino, with the last segment of work being Segment 5.

In the fall of 2021, San Bernardino County Transportation Authority (SBCTA) staff identified the I-215 Segment-5 Landscape Project as a project to be combined with the I-215 Bi-County Landscape Project. Both projects had the same construction management firm contracted with SBCTA, and moving forward with these two segments as one project would increase cost-efficiency during design, construction management, and construction. The SBCTA Board of Directors (Board) approved this combined approach in April 2022.

The follow-up combined landscape project, I-215 Bi-County Landscape and I-215 Segment 5 Landscape (Project), proposes drought tolerant low maintenance highway planting, gravel and wood mulch, and addition of irrigation infrastructure with smart technology. The Bi-County limits are from the Orange Show Road Interchange in the City of San Bernardino to the San Bernardino/Riverside County line just south of the I-215 Iowa Avenue/La Cadena Drive Interchange in the City of Colton. The Segment-5 limits are from Massachusetts Avenue on the south end to the I-215/State Route 210 junction on the north end.

The 100% Plans, Specifications, and Estimates (PS&E) have been submitted to California Department of Transportation for final review, and their approval is anticipated in June 2024. The landscaping construction capital, including a one-year plant establishment, is currently estimated to cost $9.9 million based on the 100% Engineer's Estimate.

An Invitation for Bids (IFB) has been prepared based on this PS&E package. Staff is recommending that the Board authorize the Executive Director, or his designee, to advertise the construction contract for the Project through the release of IFB No. 24-1003062, subject to approval as to form by General Counsel, or her designee, final approval of the PS&E package, and funding allocation (E-76 approval). The Project can then be advertised for construction with an anticipated award of a construction contract to be brought directly to the Board for approval in November 2024.

Entity: San Bernardino County Transportation Authority

Financial Impact:
This item is consistent with the adopted Budget for Fiscal Year 2024/2025 under Task No. 0820 Freeway Projects, Sub-Task No. 0839 I-215 Bi-County Landscape Project, and Sub-Task No. 838 I-215 Segment-5 Landscape Project, and is funded with Measure I, Projects of National and Regional Significance, and Surface Transportation Program Funds.

Reviewed By:
This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024. SBCTA Procurement Manager and Enterprise Risk Manager have reviewed this item.

Responsible Staff:
Juan Lizarde, Project Manager

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Minute Action

AGENDA ITEM: 17

Date: July 3, 2024

Subject:
Pine Avenue Extension and Widening Project in the City of Chino Hills and the City of Chino

Recommendation:
Receive and file an update on the Pine Avenue Extension and Widening Project

Background:
At the request of the County of San Bernardino, the City of Chino Hills, and the City of Chino, the San Bernardino County Transportation Authority (SBCTA) reviewed the status and readiness of the Pine Avenue Extension and Widening Project (Project) from State Route (SR) 71 to SR 83 (Euclid Avenue).

SBCTA staff performed a high-level review of the following project documents and project development issues:

1. Total Project Cost Estimate dated July 29, 2021.
2. Traffic Impact Analysis Report dated December 2023.
3. Design Speed of Pine Avenue east of SR 71.
4. Flooding due to the Project being within the Prado Basin Dam floodplain area.
5. Draft Environmental Document and Technical Studies dated February 2023.
6. Project Schedule dated February 28, 2024.
7. Preliminary Plans dated June 15, 2021.

Total Project Cost Estimate – SBCTA performed an initial review of the July 29, 2021, total cost estimate of $59.5 million and determined that the estimate needed to be updated reflecting current contract unit prices and escalated to mid-year of construction. Based on SBCTA's initial analysis, the City of Chino's consultant updated the total Project cost to approximately $76.4 million. Upon further review, SBCTA determined that the updated estimate did not include Environmental Mitigation Long Term Management Period costs and complete construction management services. This increased the total Project cost estimate to $83.4 million.

Traffic Impact Analysis – The Traffic Impact Analysis (TIA) was revised in December 2023 and included updating the existing traffic data from year 2016 to 2023. One item the TIA did not address was that the Project will connect to SR 71 and re-direct traffic from the adjacent interchanges at Euclid Avenue, south of Pine Avenue, and Soquel Canyon Parkway Central Avenue interchange, north of Pine Avenue. SBCTA determined that the adjacent SR 71 freeway interchanges south and north of Pine Avenue needed to be included in the street network analysis for existing year (2023), opening year (2025) with and without improvements, and horizon year (2045) with and without improvements. The updating of the TIA report may further delay the approval of the Final Environmental Document (FED).

Design Speed of Pine Avenue east of SR 71 – The City of Chino Hills raised concern over the 40 mile per hour (mph) design speed for Pine Avenue. Currently, Pine Avenue has a posted speed limit of 40 mph west of SR 71. SBCTA staff reviewed the existing and proposed Pine Avenue design speed at SR 71 and easterly toward El Prado Road. The existing design speed at the Pine Avenue/SR 71 interchange is 60 mph with a 1,000-foot vertical curve. The design consultant

introduced a 457-foot compound vertical curve. Though compound curves are not desirable, it is permissible. The new compound vertical curve results in a proposed design speed of 40 mph. Engineering practice is to design a facility five to 10 mph above the anticipated posted speed limit to allow future flexibility. The Project from SR 71 to Chino Creek is within the jurisdiction of the City of Chino Hills, and they should be consulted on the design speed. The City of Chino will investigate the decision for the lower design speed, but SBCTA staff suspects that the lower design speed was the result of avoiding relocations of 220 kilovolt overhead electrical transmission lines and potentially a tower immediately east of SR 71. The two cities should then meet to discuss options. If the decision is to revise the design to incorporate a higher design speed, the City of Chino will need to review the environmental footprint to determine if additional environmental studies are required, potentially further delaying the FED.

Flooding due to the Project being within the Prado Basin Dam floodplain area – Since the Project is within the Prado Basin floodplain, SBCTA has assessed the risk of closing Pine Avenue due to flooding. SBCTA determined that the new Pine Avenue would not flood in a 50-year storm event but would flood in a 100-year event. SBCTA has determined that this is acceptable since the new Pine Avenue will be significantly above the highest recorded water surface in Prado basin. The estimated cost to design the new Pine Avenue to meet the 100-year storm event could be four times the current project estimate.

Draft Environmental Document and Technical Studies – The Draft Environmental Document (DED) that was prepared for the Project was an Initial Study [with Proposed] Mitigated Negative Declaration/Environmental Assessment under the California Environmental Quality Act and National Environmental Policy Act. SBCTA and the California Department of Transportation (Caltrans) concur that this is the appropriate environmental document for the project. The DED was circulated for public comments in March 2023. Caltrans is currently reviewing the FED. Based on discussions with Caltrans staff, they have identified an issue with the Air Quality Conformity and have informed the City of Chino that updated Air Quality Studies are required. With this, they have also requested a schedule update from the City of Chino.

Project Schedule – SBCTA staff has reviewed the City of Chino's currently updated schedule. The City of Chino has a target date to have the Project "Ready to List" (RTL) in October 2024. Based on the above discussed items, SBCTA has determined that the FED may not be approved until spring of 2025. Another key item to note is that the current project schedule allocated only four months for right-of-way activities. The largest landholder is the United States Army Corps of Engineers (USACOE), and our experience with the USACOE is that it will take a minimum of six to 10 months to resolve project right-of-way needs and associated mitigation of embankment within the Prado Basin area. Also, the environmental resource agency permits that include Section 401, 404, 1602 and a California Endangered Species Act Incidental Take Permit cannot be finalized until approval of the FED, which is normally a six-month period. SBCTA has determined that the Project RTL will likely slip into late 2025 or early 2026.

In conclusion, the Project still faces many hurdles to overcome and will not be ready for construction in October 2024. A concerted effort by the City of Chino to address the issues listed above and any others that arise as they coordinate with key stakeholders, including the City of Chino Hills, is imperative now. The most likely concern is the significant increase in Project costs. The City of Chino is looking at their capacity to absorb the increases, recognizing that by the time they are ready to award a construction contract, those costs will have increased further.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was received by the Board of Directors Metro Valley Study Session on June 13, 2024.

Responsible Staff:
Sal Chavez, Project Delivery Manager

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

K:\Irvine\GIS\Projects\Huitt Zollars\00566 11\mapdoc\Fig01 Regional Vicinity.mxd Date: 12/7/2016 25119

Attachment: Vicinity Map-01 (10699 : Pine Ave Extension and Widening Project)

Regional Vicinity
Pine Avenue Extension Project

Minute Action

AGENDA ITEM: 18

Date: July 3, 2024

Subject:
State Route 60 Central Avenue Interchange Improvement Project Amendment No. 4 to Contract No. 18-1001811 with Dynamic Engineering Services, Inc.

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve an exception to Contracting and Procurement Policy No. 11000 to extend the termination date of Contract No. 18-1001811 with Dynamic Engineering Services, Inc. (DESI), for Construction Management services for the State Route 60 Central Avenue Interchange Improvement Project beyond the five-year maximum term.

B. Approve Amendment No. 4 to Contract No. 18-1001811 to extend the contract termination date to October 3, 2025, to allow DESI sufficient time to perform inspections during the one-year plant establishment period, support closeout activities, and increase the contract amount by $60,000.00 for a revised contract total of $4,098,342.63.

Background:
The State Route (SR) 60 Central Avenue Interchange Improvement Project (Project) proposes to widen the existing Central Avenue Bridge over SR 60, widen both westbound and eastbound on-ramps, and improve both ramp intersections. The Project would improve local street circulation, facilitate freeway access for the City of Chino (City), and improve regional mobility. San Bernardino County Transportation Authority (SBCTA) and the City executed Cooperative Agreement No. R14050 in June 2014, whereby SBCTA would be the lead agency for all Project phases.

On April 4, 2018, Contract No. 18-1001811 was approved with Dynamic Engineering Services, Inc. (DESI) for construction management of the Project. Construction management activities include constructability review of the Project plans and specifications, bid and award support, and management of the construction contract. Advertisement of the contract was deferred as staff applied for, and were able to allocate, over $8 million of State Trade Corridors Improvement Funds. The construction contract was advertised on August 4, 2020, and awarded on December 2, 2020. Work began after a Notice to Proceed was issued on January 20, 2021.

Construction of the interchange improvements at large has been completed including widening of the bridge, construction of the bridge barrier walls, construction of the retaining walls, installation of signal poles, slope paving, installation of irrigation, and landscape planting. The Project includes a one-year Plant Establishment (PE) period which begins after completion of landscape planting and inspection by City and California Department of Transportation (Caltrans) inspectors. Completion of the landscape planting however was delayed by approximately five months due to unavailability of hardscape materials such as the proper sizes of rock mulch and various plant species specified in the plant list. The PE period would end in March 2025. Staff is recommending that the Board of Directors (Board) approve a contract time extension for Contract No. 18-1001811 through October 3, 2025, to allow DESI sufficient time to perform inspections during the one-year PE period and support closeout activities.

Based on a review of the remaining construction management support for DESI, staff is also recommending that the Board approve an increase to the contract amount by $60,000.00 for a revised total of $4,098,342.63, to allow DESI to complete the PE period within a revised Project budget. The amount requested in this amendment is within the balance of the cooperative agreement with the City; therefore, an amendment to the cooperative agreement with the City is not necessary.

This termination date places the contract duration beyond the five-year contract term under SBCTA's Contracting and Procurement Policy No. 11000. DESI was selected through a competitive procurement process as the most qualified firm to perform construction management services for this Project based on a review of their proposal and an interview by a panel consisting of SBCTA, City, and Caltrans staff. DESI has been providing competent services in execution of their contract. This amendment will provide the needed construction management services during PE and closeout without disruption to the overall project delivery. To date, the qualifications and performance support processing this amendment with DESI through project completion. This amendment complies with Contracting and Procurement Policy No. 11000, V.C.3.d, as DESI is the best firm positioned to perform this work due to their unique knowledge of the Project.

Financial Impact:
This Project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with Valley Interchange Measure I funds and City of Chino funds in Program 40, Project Delivery under Task 0830 Interchange Projects, Sub Task 0893 SR 60 Central.

Reviewed By:
This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024. SBCTA General Counsel, Enterprise Risk Manager, and Procurement Manager have reviewed this item and the draft amendment.

Responsible Staff:
Sal Chavez, Project Delivery Manager

Contract Summary Sheet

General Contract Information

Contract No: 18-1001811 Amendment No.: 4

Contract Class: Payable Department: Project Delivery

Vendor No.: 02924 Vendor Name: Dynamic Engineering Services, Inc.

Description: Construction Management Services for SR-60 Central Avenue Interchange Project

List Any Related Contract Nos.:

Dollar Amount

Original Contract	$	3,196,115.80	Original Contingency	$	319,611.00
Prior Amendments	$	522,615.83	Prior Amendments	$	-
Prior Contingency Released	$	319,611.00	Prior Contingency Released (-)	$	(319,611.00)
Current Amendment	$	60,000.00	Current Amendment	$	-
Total/Revised Contract Value	**$**	**4,098,342.63**	**Total Contingency Value**	**$**	**-**
		Total Dollar Authority (Contract Value and Contingency)		**$**	**4,098,342.63**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10705

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? No No Budget Adjustment

Local Construction Management N/A

Accounts Payable

Estimated Start Date: 04/04/2018 Expiration Date: 10/04/2024 Revised Expiration Date: 10/03/2025

NHS: N/A QMP/QAP: N/A Prevailing Wage: Yes

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 4,098,342.63	Total Contingency: $ -
GL:	6010	40	0830	0893	52005	42405002	5	City of Chino	2,409,825.47	-
GL:	4120	40	0830	0893	52005	41100000	5	MSI Valley Interchange	1,688,517.16	-
GL:									-	-
GL:									-	-
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Pralisa Amatya
Project Manager (Print Name)

Kristi Harris
Task Manager (Print Name)

Additional Notes:

Attachment: CSS 18-1001811-04 (10705 : SR 60 Central Avenue IC Improvement Project Amendment No. 4 to Contract No.18-1001811 with

AMENDMENT NO. 4 TO CONTRACT NO. 18-1001811

FOR

CONSTRUCTION MANAGEMENT SERVICES

SR-60/CENTRAL AVENUE INTERCHANGE IMPROVEMENT PROJECT

(DYNAMIC ENGINEERING SERVICES, INC.)

This AMENDMENT No. 4 to Contract No. 18-1001811 is made by and between Dynamic Engineering Services, Inc. ("Consultant") and the San Bernardino County Transportation Authority ("SBCTA"). SBCTA and CONSULTANT are each a "Party" and collectively the "Parties" herein.

RECITALS:

A. On April 4, 2018, the SBCTA Board approved Contract No. 18-1001811 ("Contract") to engage the services of Consultant to provide professional services for construction management of the State Route 60 Interchange Improvement ("Project"), and also authorized contingency of $319,611.

B. On June 21, 2018, a contingency amendment of $6,000 was approved, increasing the contract amount to $3,202,115.80.

C. Completion of the construction of the Project is now forecasted to extend beyond the original planned completion date due to several factors, therefore extending the project schedule.

D. On March 1, 2023, the SBCTA Board approved Amendment No. 1 to the Contract No. 18-1001811, which was executed on March 6, 2023, to extend the Contract termination date through October 4, 2024, to allow Consultant to complete work within the revised project schedule.

E. On March 7, 2023, a contingency amendment of $313,611.00 was approved, increasing the contract amount to $3,515,726.80.

F. On June 7, 2023, the SBCTA Board approved Amendment No. 2, increasing the contract amount by $422,615.83 to $3,938,342.63.

G. In January 2024, an amendment to increase the Not-to-Exceed amount by $100,000.00, was approved by the Executive Director for a revised total of $4,038.342.63, to allow Consultant to complete work within a revised project budget.

H. The project forecast completion of the Plant Establishment period was adjusted due to several factors.

I. Parties desire to extend the Contract termination date to allow Consultant to complete work within the revised schedule and increase the Not-to-Exceed amount by $60,000, for a revised total of $4,098,342.63, to allow Consultant to complete work within a revised project budget.

DRAFT

Attachment: 18-1001811-04 (10705 : SR 60 Central Avenue IC Improvement Project Amendment No. 4 to Contract No.18-1001811 with DESI)

NOW THEREFORE, the Parties agree as follows:

1. Amend Section 4.1 in its entirety to read as follows:

   "This Contract shall go into effect on April 4, 2018, contingent upon approval by SBCTA's Awarding Authority, and Consultant shall commence work after written notification to proceed by SBCTA's Procurement Analyst. The Contract shall end on October 3, 2025, unless extended by written amendment."

2. Delete Section 5.1 in its entirety and replace with the following:

   "Total compensation to CONSULTANT for full and complete performance of the Work in compliance with all the terms and conditions of this Contract shall be on a Specified Rates of Compensation basis for all obligations incurred in, or application to, Consultant's performance of Work and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by SBCTA), and shall not exceed $4,098,342.63, unless authorized by a contract amendment."

3. The Recitals set forth above are incorporated herein by this reference.

4. Except as amended by this Amendment No. 4, all other provisions of the Contract, including all previous amendments, shall remain in full force and effect.

5. This Amendment No. 4 is effective on the date executed by SBCTA.

----------SIGNATURES ON FOLLOWING PAGE----------

DRAFT

Attachment: 18-1001811-04 (10705 : SR 60 Central Avenue IC Improvement Project Amendment No. 4 to Contract No.18-1001811 with DESI)

IN WITNESS WHEREOF, the authorized parties have signed below.

DYNAMIC ENGINEERING SERVICES, INC., A CALIFORNIA CORPORATION

By: _____
Victor O Moore
Chief Executive Officer

Date: _____

By: _____
Chia-Chi Wang
Chief Financial Officer

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
Ray Marquez
Board President

Date: _____

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist
General Counsel

Date: _____

CONCURRENCE

By: _____
Jeffrey Hill
Interim Procurement Manager

DRAFT

Attachment: 18-1001811-04 (10705 : SR 60 Central Avenue IC Improvement Project Amendment No. 4 to Contract No.18-1001811 with DESI)

Minute Action

AGENDA ITEM: 19

Date: July 3, 2024

Subject:
Contract No. 24-1003170 with WattEV Inc. for Zero-Emission Truck Charging Station Expansion in San Bernardino

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to finalize and execute Contract No. 24-1003170 with WattEV SB1, Inc., for construction of a Zero-Emission Truck Charging Station Expansion in San Bernardino, subject to approval as to form by SBCTA General Counsel.

B. Authorize an exception to SBCTA Contracting and Procurement Policy No. 11000 Section IV.B.4, to allow for a six-year contract term, given that the policy limits contracts to a five-year term, absent SBCTA Board approval.

Background:
In 2017, the State Legislature passed, and the Governor signed, Senate Bill 1 (SB 1), known as the Road Repair and Accountability Act, increasing transportation funding and instituting transportation funding reforms. One of the key competitive programs funded by SB 1 is the Trade Corridor Enhancement Program (TCEP), targeted at $300 million in grant funding per year. The TCEP provides an ongoing source of State funding dedicated to freight-related projects.

This statewide, competitive program provides funding for infrastructure improvements on federally designated Trade Corridors of National and Regional Significance on the Primary Freight Network and along corridors that have a high volume of freight movement. The program is administered by the California Transportation Commission (CTC).

Consistent with the SB 1 Grant Application Strategy presented to the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) in November 2021, SBCTA staff submitted TCEP applications requesting funding for the Interstate 10 (I-10) Corridor Freight and Managed Lane Project, Contract 2 (I-10 Contract 2) and the US 395 Freight Mobility and Safety Project, Phase 2. On June 28, 2023, the CTC adopted the Program of Projects for the 2022 TCEP, awarding $85 million to the I-10 project and $35 million to the US 395 project. The award for the I-10 project included $5 million to partially fund a hydrogen truck fueling station in Colton and $5 million to partially fund expansion of the WattEV electric truck charging station in San Bernardino.

The CTC Accountability and Transparency Guidelines require SBCTA to enter into a Baseline Agreement with the California Department of Transportation (Caltrans) and the CTC for any project receiving TCEP funds. The Baseline Agreement sets forth the agreed upon expected project benefits, scope, schedule, and cost and provides a benchmark for comparison to the current status of the project and the forecast of conditions under a no-build scenario. Baseline Agreements identify the agency responsible for meeting the reporting requirements and,

for locally implemented projects, identify Caltrans' responsibilities relative to the type and location of the project. Additionally, the CTC considers the Baseline Agreement as the front-end document that forms the foundation for in-progress and follow-up accountability. The Baseline Agreement for the I-10 Contract 2 was approved by the CTC in January 2024.

The next step in the process that leads to project construction is "funding allocation," at which time the grant funding is considered secured, and the allocated phase of the project can advance to construction. The first phase ready for construction for I-10 Contract 2 is the WattEV zero-emission truck charging station, and the CTC expects that an agreement for construction between the grantee (SBCTA) and the vendor (WattEV SB1, Inc.) will be presented along with the allocation request. The allocation request is scheduled to go to the CTC for approval in August 2024, making the July SBCTA Board meeting the last meeting prior to the CTC meeting where the agreement can be approved. Given that final wording of the agreement between SBCTA and WattEV SB1, Inc. is being negotiated, staff is requesting that the Executive Director, or his designee, be authorized to execute Contract No. 24-1003170 once final wording has been settled.

Contract No. 24-1003170 covers expansion of the WattEV zero-emission truck charging station on E Street south of Orange Show Road in the City of San Bernardino. It will incorporate 30 Combined Charging System (CCS) 240 KW chargers and 6 Megawatt Charging System (MCS) 1200 KW chargers in order to increase charger capacity on the current site. The current site became operational as of March 2024 and will be referred to as Phase 1. The expansion, on which the 2022 TCEP funding will be expended, will be referred to as Phase 2. The current generation of trucks all use CCS, but the addition of MCS chargers at this site will help support emerging battery/truck technologies to scale. The TCEP funds are not funding components of Phase 1; TCEP funds will only be contributing to the implementation of Phase 2.

The total estimated cost to construct Phase 2 is $7,999,875. The TCEP dollars will fund $5,000,000 of this cost, with WattEV funding the matching 60% or $2,999,875 of the total estimated cost of construction. The agreement stipulates that WattEV SB1, Inc. will operate and maintain the site for a minimum of five years after construction acceptance by SBCTA. Construction acceptance is expected by June 30, 2025, so that the contract will terminate June 30, 2030. This six-year term requires an exception to SBCTA Contracting Policy IV.B.4, which states: *"Unless otherwise authorized by the Board, the maximum term for Contracts or Purchase Orders shall be five years …."*

In addition, SBCTA has been having discussions with Caltrans on the process to confirm that a non-competitive agreement for the zero-emission portion of the grant is acceptable, given that it involves a private sector vendor included with the original TCEP grant application, which was competitive. SBCTA staff expects to receive affirmation from Caltrans that this can be a non-competitive agreement, but staff will not move forward with execution of the contract with WattEV until that affirmation is received.

Financial Impact:
The Project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with state SB 1 Trade Corridor Enhancement Program funds in Program 20, Planning.

Reviewed By:
This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024. SBCTA General Counsel **and Enterprise Risk Manager** have reviewed this item and the draft agreement.

Responsible Staff:
Steve Smith, Director of Planning & Regional Programs

Contract Summary Sheet

General Contract Information

Contract No: 24-1003170 Amendment No.:

Contract Class: Payable Department: Planning and Regional

Vendor No.: 04012 Vendor Name: WattEV SB1, Inc.

Description: Construction of a Zero-Emission Truck Charging Station Expansion in San Bernardino

List Any Related Contract Nos.:

Dollar Amount					
Original Contract	$	5,000,000.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**5,000,000.00**	**Total Contingency Value**	**$**	**-**
	Total Dollar Authority (Contract Value and Contingency)			**$**	**5,000,000.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10721

Contract Management (Internal Purposes Only)

Capital Project Contracts Sole Source? No No Budget Adjustment

State Construction N/A

Accounts Payable

Estimated Start Date: 08/31/2024 Expiration Date: 06/30/2030 Revised Expiration Date:

NHS: No QMP/QAP: No Prevailing Wage: Yes

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 5,000,000.00	Total Contingency: $ -
GL:	2704	20	0404	0000	53701	42217701		SB 1 TCEP	5,000,000.00	-
GL:									-	-
GL:									-	-
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Steve Smith
Project Manager (Print Name)

Steve Smith
Task Manager (Print Name)

Additional Notes:

Attachment: CSS - Revised - 08-25-2022 10.11am (10721 : Contract No. 24-1003170 with WattEV Inc. for I-10 Zero-Emission Truck Charging

CONTRACT NO. 24-1003170

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

WattEV SB1, INC.

FOR

ZERO-EMISSION TRUCK CHARGING STATION EXPANSION IN SAN BERNARDINO

This contract ("Contract") is effective on the Effective Date as defined herein, by and between San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and **WattEV SB1, Inc.** ("CONTRACTOR") whose address is 444 West Ocean Boulevard Suite 1250 Long Beach CA 90802-8131. SBCTA and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, the California Transportation Commission (CTC) adopted the 2022 Trade Corridor Enhancement Program (TCEP) – Program of Projects, by means of Resolution G-23-46, on June 28, 2023; and

WHEREAS, CTC awarded SBCTA TCEP funds for the Interstate 10 Corridor Freight and Managed Lane Project, I-15 to Pepper Avenue; and

WHEREAS, SBCTA had included funding for the WattEV Zero-Emission Truck Charging Station Expansion in San Bernardino (PROJECT) as part of its TCEP funding application; and

WHEREAS, **WattEV SB1, Inc.** is a California corporation with its principal office at 444 West Ocean Boulevard, Suite 1250, Long Beach, California 90802-8131; and,

WHEREAS, **WattEV SB1, Inc.** is a constructor and operator of electric truck charging stations; and,

WHEREAS, completion of the PROJECT will accelerate the transition to zero-emission trucks and improve air quality in San Bernardino County and reduce greenhouse gas emissions overall;

NOW, THEREFORE, the Parties hereto agree as follows:

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Attachment: WattEVcontractInternalTemplate (10721 : Contract No. 24-1003170 with WattEV Inc. for I-10 Zero-Emission Truck Charging Station)

ARTICLE 1. PROJECT DESCRIPTION

The PROJECT includes an expansion of the WattEV zero-emission truck charging station on E Street south of Orange Show Road in the City of San Bernardino. The PROJECT will incorporate 30 Combined Charging System (CCS) 240 KW chargers and 6 Megawatt Charging System (MCS) 1200 KW chargers in order to increase charger capacity on the current site. The current site became operational as of March 2024 and will be referred to as Phase 1. The expansion, on which the 2022 TCEP funding will be expended, will be referred to as Phase 2. The current generation of trucks all use CCS, but the addition of MCS chargers at this site will help support emerging battery/truck technologies to scale. The TCEP funds are not funding components of Phase 1; TCEP funds will only be contributing to the implementation of Phase 2.

The following exhibits, which further describe and depict the PROJECT, are incorporated by reference and made a part of this CONTRACT:

Exhibit A, "Statement of Work (Project Components/Tasks)";

Exhibit B, " Project Location Map";

Exhibit C, " Project Budget";

Exhibit D, " Project Schedule";

Exhibit E, "Public Benefits"

ARTICLE 2. Funding, Construction, and Maintenance of the PROJECT

2.1 The total estimated cost to construct the PROJECT (exclusive of any costs for SBCTA to administer this PROJECT, as set forth in Section 5.8 below) is $7,999,875 (Seven Million, Nine Hundred Ninety-Nine Thousand, Eight Hundred Seventy-Five Dollars). The TCEP dollars will fund $5,000,000 (or 62.5%) of the total cost, with CONTRACTOR funding $2,999,875, or 37.5%, of the total estimated cost of construction, as reflected in Exhibit C, "Project Budget." In no case shall SBCTA's share of PROJECT costs exceed $5,000,000.

CONTRACTOR and SBCTA shall work together in good faith to complete the PROJECT as contemplated in this CONTRACT and in accordance with the PROJECT Schedule as set forth in Exhibit D. CONTRACTOR and SBCTA shall establish periodic meetings and/or telephone calls for coordinating issues related to the construction of the PROJECT. Each Party shall designate a representative (or representatives) for such meetings and/or telephone calls and the representatives shall establish a schedule for joint meetings and bring such other individuals to such meetings as they deem appropriate to expedite the resolution of any issues that may arise. The purpose of these coordination meetings is, among other things, to work together to resolve issues and coordinate timelines and milestones in accordance with the then-current PROJECT schedule. SBCTA shall document all such PROJECT status meetings. The participants at such meetings shall have no authority to alter the terms of this CONTRACT or the Parties' respective rights and obligations, which can only be affected by a written amendment executed by both Parties.

2.2 CONTRACTOR is responsible for construction engineering or arranging same, including, but not limited to, construction management, inspection, construction surveying, laboratory and field testing, preparation and processing of field reports, records, estimates, and final reports. All work and submittals shall be completed in accordance with the applicable

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electrical standards of the State of California and the City of San Bernardino. Work submittals must contain the information required to comply with a state audit, associated with either the TCEP funding or other purpose. CONTRACTOR personnel shall be made available in support of any audit that occurs subsequent to completion of the PROJECT, at no additional charge to the PROJECT.

2.3 CONTRACTOR will be responsible, pursuant to this CONTRACT, to achieve the Public Benefits described in Exhibit E upon completion of the PROJECT as described in Exhibit A. These benefits shall not expire for any PROJECT component with the termination of this CONTRACT, but shall remain an obligation of CONTRACTOR for a minimum of five years following SBCTA's acceptance of the PROJECT. CONTRACTOR shall perform all necessary PROJECT maintenance during and subsequent to the completion of the PROJECT to ensure that the PROJECT continues to generate the Public Benefits, subject to and in accordance with the terms of the "Public Benefits" set forth in Exhibit E.

2.4 SBCTA shall designate a PROJECT Manager to monitor the PROJECT and inspect the work performed by CONTRACTOR under this CONTRACT. CONTRACTOR shall also designate one or more PROJECT Managers to coordinate CONTRACTOR's activities under this CONTRACT. Each Party shall notify the other in writing of their designated PROJECT Manager(s) or of any change in their respective designated PROJECT Manager(s).

2.5 SBCTA's PROJECT Manager and all SBCTA employees entering CONTRACTOR property shall be accompanied by a CONTRACTOR representative and observe all applicable CONTRACTOR safety rules, regulations, and standards, including those requiring use of protective eyewear and clothing. CONTRACTOR shall provide a copy of applicable safety rules to SBCTA's PROJECT Manager.

2.6 CONTRACTOR shall seek and receive all required permits and approvals necessary to perform PROJECT work, if any. The cost of permit applications either is included in the PROJECT cost or was paid for during PROJECT engineering. Permits and approvals are defined as all approvals legally required by any public agency that has jurisdictional authority or responsibility over regulating or permitting PROJECT work. The Parties shall jointly agree upon which permits are considered legally required for PROJECT. In the event that any public agency claims jurisdictional authority or responsibility over regulating or permitting PROJECT work and asserts a need to issue one or more unanticipated permits, the Parties shall work jointly to resolve the issuance of said permit.

2.7 SBCTA and CONTRACTOR have complied with the requirements of the California Environmental Quality Act (CEQA) as they apply to funding decisions for the PROJECT.

2.8 CONTRACTOR shall comply with all environmental laws applicable to CONTRACTOR's construction of the PROJECT.

2.9 CONTRACTOR agrees to insert in all contracts for work on the PROJECT clauses that require such contracts to pay workers on the PROJECT to be paid not less than the general prevailing wage rate as predetermined by the California Director of Industrial Relations to the extent required in California Labor Code Sections 1720-1815. SBCTA shall provide prior to its Notice to Proceed the applicable prevailing wage determinations for the PROJECT or a link to where such determinations may be found.

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2.10 This CONTRACT is subject to any additional regulations, restrictions, limitations, conditions, or any statute enacted by the United States Government, the California Legislature or the California Treasurer that may affect the provisions, terms, or funding of this CONTRACT in any manner instituted prior to completion of the PROJECT.

ARTICLE 3. PROMPT PAYMENT/RETENTION

CONTRACTOR is required to pay all subcontractors for satisfactory performance of their work no later than 7 days from the date CONTRACTOR receives payment from SBCTA. SBCTA shall hold retainage from CONTRACTOR of 5% from its payments to CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by SBCTA, of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with SBCTA's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of: a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance; and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE sub-contractors.

ARTICLE 4. COMPENSATION

4.1 SBCTA agrees to provide funds and will pay reimbursable costs for the PROJECT based upon allowable costs described in this CONTRACT, to the extent applicable, to CONTRACTOR, not to exceed the total SBCTA Cost amount shown in Exhibit C (i.e., up to $5,000,000 in TCEP funding, not to exceed 62.5% of the final PROJECT cost). Allowable costs for the PROJECT will include applicable sales and use taxes and additives including, for example, the cost of vehicles, machinery, tools, supervision, clerical, lodging and rents, and applicable payroll related costs. SBCTA reserves the right to hold the retainage after the TCEP billings reach $3,000,000 (i.e., retain up to $100,000) until the termination date of the CONTRACT as a form of guarantee that CONTRACTOR will operate and maintain the charging facility for the required minimum five-year period following construction acceptance by SBCTA.

4.2 CONTRACTOR shall submit to SBCTA, monthly in arrears, an invoice that has been signed by CONTRACTOR's PROJECT Manager for actual funds expended for PROJECT work, with back-up documentation to support the amount invoiced. SBCTA shall remit payment of invoices to CONTRACTOR within forty-five (45) days of receipt. Allowable invoice amounts for PROJECT costs shall be determined pursuant to the provisions of Article 2.

4.3 CONTRACTOR and its subcontractors shall establish and/or maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs. CONTRACTOR and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for payment of invoices.

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4,4 It is expected that CONTRACTOR has performed appropriate risk management analysis and included appropriate contingencies in PROJECT estimate. Subject to the terms of this CONTRACT, CONTRACTOR will fund all PROJECT costs, including cost overruns in excess of the funds provided by SBCTA, as set forth in Section 2.1.

4.5 The Parties recognize that the actual cost of the PROJECT may vary from the amount obligated under this CONTRACT and intend that SBCTA's obligation hereunder is reasonable to cover such; provided, however, that SBCTA shall in no event be required to pay amounts in excess of the amount established in Article IV, Paragraph 4.1, and herein above.

4.6 Following completion of the PROJECT, CONTRACTOR shall determine the actual final allowable cost of the PROJECT and provide a final billing to SBCTA. CONTRACTOR shall be responsible for preparing a final PROJECT expenditure report and submitting it to SBCTA within one hundred eighty (180) days of PROJECT completion. The report shall identify the itemized costs incurred on the PROJECT and the sources of funds and shall itemize the 5% retention identified in Articles 3 and 4.1.

4.7 WattEV may, at its sole discretion, select material and vendors following established policy of WattEV relative to bidding and procurement for non-CONTRACT reimbursed PROJECT work. [Awaiting more info re subs]

4.8 The Parties acknowledge and agree that SBCTA's costs associated with administering this CONTRACT are not included in the PROJECT Budget. Such costs for SBCTA to administer this CONTRACT will come from sources other than the PROJECT Budget.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensation set forth in this Contract shall be inclusive of, all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of work performed by the CONTRACTOR, work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

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ARTICLE 7. PERMITS AND LICENSES

CONTRACTOR agrees that he/she is currently the holder of a valid license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain license through the entire duration of Contract without additional compensation from SBCTA. CONTRACTOR also agrees to keep current all permits required throughout the duration of the Project.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SBCTA and its authorized representatives or agents access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SBCTA, its representatives and agents to reproduce any materials as reasonably necessary.

ARTICLE 9. SCHEDULE

CONTRACTOR agrees to complete the work within the time period as stipulated in Exhibit D. CONTRACTOR shall incur no costs (excluding insurance and bonds) and shall not perform or furnish any work, services or equipment under this Contract, unless and until SBCTA has issued a written Notice To Proceed (NTP).

ARTICLE 10. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

10.1 CONTRACTOR agrees to comply with the Equal Employment Opportunity (EEO) provisions of this Article.

10.1.1 CONTRACTOR will work with SBCTA in carrying out EEO obligations and in SBCTA's review of his/her activities under the Contract.

10.2 CONTRACTOR will accept as its operating policy the following statement: "It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

10.2.1 EEO Officer: CONTRACTOR will designate and submit to SBCTA in writing the EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active CONTRACTOR program of EEO and who must be assigned adequate SBCTA and responsibility to do so.

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10.3 Dissemination of Policy: All employees of the CONTRACTOR who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONTRACTOR's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above CONTRACT will be met, the following actions will be taken as a minimum:

10.3.1 Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the CONTRACTOR's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

10.3.2 All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the CONTRACTOR's EEO obligations within thirty days following their reporting for duty with the CONTRACTOR.

10.3.3 All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the CONTRACTOR's procedures for locating and hiring minority group employees.

10.3.4 Notices and posters setting forth the CONTRACTOR's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

10.3.5 CONTRACTOR's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

10.4 Recruitment: When advertising for employees, CONTRACTOR will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

10.4.1 CONTRACTOR will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, CONTRACTOR will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to CONTRACTOR for employment consideration.

10.4.2 In the event CONTRACTOR has a valid bargaining agreement providing for exclusive hiring hall referrals, it is expected to observe the provisions of that agreement to the extent that the system permits CONTRACTOR's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the CONTRACTOR to do the same, such implementation violates Executive Order 11246, as amended.)

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10.4.3 CONTRACTOR will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

10.5 Personnel Actions**:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

10.5.1 CONTRACTOR will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

10.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

10.5.3 CONTRACTOR will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONTRACTOR will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

10.5.4 CONTRACTOR will promptly investigate all complaints of alleged discrimination made to the CONTRACTOR in connection with his obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONTRACTOR will inform every complainant of all of his avenues of appeal.

10.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

10.6.1 Consistent with CONTRACTOR's work force requirements and as permissible under Federal and State regulations, the CONTRACTOR shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

10.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.

10.6.3 CONTRACTOR will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

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10.7 Unions: If CONTRACTOR relies in whole or in part upon unions as a source of employees, CONTRACTOR will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by CONTRACTOR either directly or through a CONTRACTOR's association acting, as agent will include the procedures set forth below:

10.7.1 CONTRACTOR will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

10.7.2 CONTRACTOR will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

10.7.3 CONTRACTOR is to obtain information as to the referral practices and policies of the labor union, except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to CONTRACTOR, CONTRACTOR shall so certify to SBCTA and shall set forth what efforts have been made to obtain such information.

10.7.4 In the event the union is unable to provide CONTRACTOR with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, CONTRACTOR will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which CONTRACTOR has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents CONTRACTOR from meeting these obligations, such CONTRACTOR shall immediately notify SBCTA.

10.8 CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Contract. Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, shall have equal opportunity to compete for and perform subcontracts the CONTRACTOR enters into pursuant to this contract. CONTRACTOR will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. CONTRACTOR shall obtain lists of DBE construction firms from SBCTA. CONTRACTOR will use his best efforts to ensure subcontractor compliance with their EEO obligations.

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10.9 Records and Reports: CONTRACTOR shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three (3) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of SBCTA. The records kept by the CONTRACTOR shall document the following: The number of minority and non-minority group members and women employed in each work classification on the project; the progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

10.9.1 CONTRACTOR will submit an annual report to SBCTA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, CONTRACTOR will be required to collect and report training data.

ARTICLE 11. CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or to be contrary to the interests of SBCTA as to the Project. CONTRACTOR further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONTRACTOR is obligated to fully disclose to SBCTA, in writing, conflict of interest issues as soon as they are known to CONTRACTOR. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102

ARTICLE 12. REPRESENTATIONS

All work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that the Work performed shall conform to all drawings, plans and specifications herein.

ARTICLE 13. PROPRIETARY RIGHTS/CONFIDENTIALITY

13.1 If, as part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by SBCTA, shall deliver to SBCTA the original of all such products, which shall become the property of SBCTA.

13.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of SBCTA.

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13.3 Except as reasonably necessary for the performance of Work, CONTRACTOR agrees that it, its employees, agents, and subcontractors will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA in connection with CONTRACTOR's performance of this Contract, unless (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA pursuant to a prior contract, or (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article which are produced by CONTRACTOR for SBCTA in the performance and completion of CONTRACTOR's Work under this Contract shall be kept confidential until released in writing by SBCTA, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.

13.4 CONTRACTOR shall not use SBCTA's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.

13.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by the Parties.

13.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 14. TERMINATION

14.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall promptly discontinue performance of Services and shall preserve work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.

14.1.1 CONTRACTOR shall deliver to SBCTA all deliverables prepared by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SBCTA. Upon such delivery, CONTRACTOR may then invoice SBCTA for payment in accordance with the terms herein.

14.1.2 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.

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14.1.3 CONTRACTOR shall be entitled to receive the actual cost incurred by CONTRACTOR to return CONTRACTOR's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

14.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its solvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have: (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finish Services by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of CONTRACTOR, nor be deemed to waive, amend, or modify any term of this Contract.

14.2.1 CONTRACTOR shall deliver to SBCTA all finished and unfinished products prepared under this Contract by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SBCTA within ten (10) working days of said notice.

14.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONTRACTOR be entitled to any prospective profits or any damages because of such termination.

ARTICLE 15. STOP WORK ORDER

Upon failure of CONTRACTOR or its subcontractors to comply with any requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with the Termination provision herein.

ARTICLE 16. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

Per Public Contract Code (PCC) §:9204

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

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(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code .

(v) The Military Department as to any project under the jurisdiction of that department.

DRAFT

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(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been

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identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as

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applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

ARTICLE 17. INSURANCE

~~Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, CONTRACTOR shall, at the CONTRACTOR's sole expense, procure and maintain insurance coverage with the following minimum requirements, and shall require all subcontractors of every tier performing any portion of the Work to procure and maintain such insurance as specified below: PLEASE NOTE: THIS SECTION IS BEING FINALIZED AND WILL BE PROVIDED FOR REVIEW AT A LATER DATE.~~

Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, CONTRACTOR shall, at the CONTRACTOR's sole expense, procure and maintain insurance coverage with the following minimum requirements, and shall require all subcontractors of every tier performing any portion of the Work to procure and maintain such insurance as specified below:

1. **Worker's Compensation/Employer's Liability. The policies must include the following:**

   - **Coverage A. Statutory Benefits**
   - **Coverage B. Employer's Liability**
   - **Bodily Injury by accident - $1,000,000 per accident**
   - **Bodily Injury by disease - $1,000,000 policy limit/$1,000,000 each employee**

   Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any sub-CONTRACTOR of any tier. All sub-CONTRACTORs of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees below. SBCTA and CONTRACTOR must be certificate holders and must be provided at least 30 days advance notice of cancellation, unless the cancellation is for non-payment, then at least 10 days advance notice of cancellation shall be provided. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

DRAFT

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2. **Commercial General Liability.** **The policy must include the following:**

- **$2,000,000 per occurrence limit/$2,000,000 in the aggregate for property damage or bodily injury**
- **$1,000,000 per occurrence limit/$2,000,000 in the aggregate for personal injury and advertising injury**
- **$2,000,000 per occurrence limit for products/completed operations coverage. CONTRACTOR shall maintain products and completed operations coverage for 10 years following the acceptance of Work or until all applicable statutes of limitations expire, whichever length of time is longer. Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.**
- **An endorsement stating that any aggregate limits apply on a "per project" and on a "per location" basis.**
- **The project name must be indicated under "Description of Operations/Locations."**
- **The policy shall be endorsed to provide: "This insurance will be primary and noncontributory with any other insurance of the additional insureds."**

All commercial general liability insurance policies shall also include premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage; severability of interests (full separation of insureds); contractual liability coverage (including coverage to the maximum extent possible for the indemnifications contained in this Contract); broad form property damage coverage (including completed operations); and a duty to defend in addition to (without reducing) the limits of the policy(ies). All sub-CONTRACTORs of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the commercial general liability insurance coverage with limits not less than:

- **Each occurrence limit: $1,000,000**
- **General aggregate limit: $2,000,000**
- **Personal injury and advertising limit $1,000,000**
- **Products-completed operations aggregate limit $2,000,000**

All sub-CONTRACTORs' and sub-CONTRACTORs' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

3. **Umbrella/Excess CGL.** **The policy must include the following:**

- **$1,000,000 umbrella or excess liability.**
- **The umbrella or excess policy shall follow form over the CONTRACTOR's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.**
- **The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.**
- **The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.**

DRAFT

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4. **Commercial Auto.** **The policy must include the following:**

- **Auto Liability limits of not less than $2,000,000 each accident**
- **Combined Bodily Injury and Property Damage Liability insurance**
- **Coverage must include owned autos, hired or non-owned autos**

The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. CONTRACTOR waives all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance required herein. All sub-CONTRACTORs of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with the same waiver of subrogation in favor of all parties named as Additional Insureds below, and CONTRACTOR.

C. **General Provisions**

1. **Qualifications of Insurance Carriers.** **If policies are written by insurer carriers authorized and admitted to do business in the state of California, then the insurer carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by SBCTA's Risk Manager.**

2. **Additional Insurance Coverage.** **All policies, except those for Workers' Compensation and Professional Liability insurance, shall name San Bernardino County Transportation Authority, and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.**

3. **Proof of Coverage.** **Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance, shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.**

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4. **Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self- insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its sub-CONTRACTORS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. At the option of SBCTA, if the deductible or SIR is greater than $ 50,000 or five (5) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor' s policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR.**

5. **CONTRACTOR's and Sub-CONTRACTORs' Insurance Primary. All policies required to be maintained by the CONTRACTOR or any sub-CONTRACTOR with the exception of Professional Liability and Worker's Compensation shall be endorsed to be primary coverage, and any coverage carried by any of the Additional Insureds named herein shall be excess and non-contributory. Further, none of CONTRACTOR's or sub-CONTRACTORs' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.**

6. **Waiver of Subrogation Rights. To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other CONTRACTOR, sub-CONTRACTOR or sub-sub-CONTRACTOR performing work or rendering services on behalf of SBCTA, in connection with the planning, development, and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its sub-CONTRACTORs of every tier. CONTRACTOR shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds. Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.**

7. **Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is canceled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance**

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coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at insurance@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

8. **Enforcement. SBCTA may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR, or any sub-CONTRACTOR of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.**

9. **No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.**

10. **Sub-CONTRACTOR Insurance. Insurance required of the CONTRACTOR shall be also provided by sub-CONTRACTORs or by CONTRACTOR on behalf of all sub-CONTRACTORs to cover their services performed under this Contract. CONTRACTOR may reduce the amounts of insurance limits provided by sub-CONTRACTORs to be proportionate to the amount of the sub-CONTRACTOR's contract and the level of liability exposure for the specific type of work performed by the sub-CONTRACTOR. CONTRACTOR shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to sub-CONTRACTOR.**

11. **Higher limits. If the CONTRACTOR maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.**

12. **Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.**

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ARTICLE 18. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless San Bernardino County Transportation Authority, San Bernardino Council of Governments, and their officers, directors, members, employees, contractors, agents and volunteers (collectively the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. To the extent permitted by law, CONTRACTOR's duties to defend and indemnify shall apply regardless of the existence or degree of fault of any of the Indemnitees. The duty of CONTRACTOR and its insurers to provide a defense shall be immediate upon receipt of a written tender of defense from any of the Indemnitees, notwithstanding any subsequent allocation of defense costs that may be required by law. CONTRACTOR's indemnification obligation applies to the "passive" negligence of any of the Indemnitees, but does not apply to the "sole" or "active" negligence or "willful misconduct" of any of the Indemnitees within the meaning of Civil Code section 2782.

ARTICLE 19. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 20. RECORD AND INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives or agents, shall at all times have access during normal business hours to CONTRACTOR's operations and products wherever they are in preparation or progress, and CONTRACTOR shall provide sufficient, safe and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of its rights to require CONTRACTOR to comply with the Contract or to subsequently reject any unsatisfactory Work or products.

ARTICLE 21. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCTA shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance or as to the manner, means and methods by which work is to be performed. All personnel furnished by CONTRACTOR pursuant to this Contract and all representatives of CONTRACTOR shall be and remain the employees or agents of CONTRACTOR or of CONTRACTOR's subcontractors at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 22. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorney's fees. This Article shall not apply to those costs and Attorney's fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

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Attachment: WattEVcontractInternalTemplate (10721 : Contract No. 24-1003170 with WattEV Inc. for I-10 Zero-Emission Truck Charging Station)

ARTICLE 23. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 24. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 25. PRECEDENCE

In case of a discrepancy among the Contract Documents, the Contract articles shall prevail over any Exhibits.

ARTICLE 26. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given, and received: (a) upon actual delivery, if delivery is personally made; or if made by fax or email during regular business hours; (b) on the first business day following delivery by fax or email when made not during regular business hours; or (c) on the fourth business day following deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONTRACTOR shall notify SBCTA of any changes within ten (10) business days of the change.

To: CONTRACTOR: WattEV, Inc.	**To: SBCTA**
444 West Ocean Boulevard, Suite 1250	**1170 W. 3rd Street, 2nd Floor**
Long Beach CA 90802-8131	**San Bernardino, CA 92410-1715**
Attn: Salim Youssefzadeh, CEO	**Attn: (Steve Smith, P.E.)**
Email: syoussefzadeh@WattEV.com	**Email: (ssmith@gosbcta.com)**
Phone: (949) 916-2751	**Phone: (909) 884-8276**

ARTICLE 27. MATERIALS

CONTRACTOR agrees to notify SBCTA if any PROJECT component, which shall include but not be limited to property, equipment, or infrastructure, is not used for the PROJECT up to the point of termination of the contract.

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Attachment: WattEVcontractInternalTemplate (10721 : Contract No. 24-1003170 with WattEV Inc. for I-10 Zero-Emission Truck Charging Station)

ARTICLE 28. ASSIGNMENT

CONTRACTOR agrees not to sell, transfer, or otherwise dispose of any contract part either voluntarily or by operation of law without prior written consent from SBCTA.

ARTICLE 29. SUBCONTRACTS

29.1 CONTRACTOR shall perform with its own organization contract work amounting to not less **than 30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by SBCTA. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by CONTRACTOR's own organization.

29.1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

29.1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. The contract amount upon which the requirements set forth in this Contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the contract provisions.

29.2 CONTRACTOR shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Contract requirements, and is in charge of all construction operations (regardless of who performs the work), and (b) such other of its own organizational resources (supervision, management, and engineering services) as SBCTA determines is necessary to assure the performance of the Contract.

29. 3 No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the prior written consent of SBCTA or authorized representative, and such consent when given shall not be construed to relieve CONTRACTOR of any responsibility for the fulfillment of the contract. Written consent will be given only after SBCTA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. CONTRACTOR does not have the right to make any substitutions of any subcontractor listed in its Bid, except in accordance with the State of California Public Contract Code, section 4100 et. seq. SBCTA's consent to substitution shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Contract. CONTRACTOR shall be responsible for all acts and omissions of its employees, subcontractors and their employees. CONTRACTOR is responsible for coordinating all work performed by the subcontractors. SBCTA reserves the right, but not the obligation, to review the subcontractor agreements for this project and to require any modifications so as to conform to the requirements set forth in this Contract.

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ARTICLE 30. COORDINATION WITH OTHER CONTRACTS

SBCTA may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other CONTRACTOR's and SBCTA's employees or agents and carefully fit its own work to such additional work as may be directed by SBCTA. CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other contractor or by SBCTA.

ARTICLE 31. PREVAILING WAGE REQUIREMENTS

31.1 CONTRACTOR shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Work.

31.2 Any subcontract entered into as a result of this Contract if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

ARTICLE 32. SAFETY

32.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SBCTA may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under California Occupational Safety and Health Act of 1973.

32.2 It is a condition of this Contract that the Director of Industrial Relations or authorized representative thereof shall have right of entry to any site of Contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under California Occupational Safety and Health Act of 1973.

ARTICLE 33. DISADVANTAGED BUSINESS ENTERPRISE

33.1 Though no DBE goal is set for this Project, SBCTA encourages participation from small and Disadvantaged Business Enterprise (DBE). Firms interested in the DBE program may contact SBCTA's Procurement Manager at (909) 884-8276.

ARTICLE 34. NONSEGREGATED FACILITIES

34.1 CONTRACTOR, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services

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at any location under its control where segregated facilities are maintained. CONTRACTOR agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

34.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g., disabled parking).

34.3 CONTRACTOR agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

ARTICLE 35. GRATUITIES

CONTRACTOR, its employees, agents or representatives shall not offer or give to an officer, official or employee of SBCTA, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 36. CONFIDENTIALITY

Any SBCTA materials to which the CONTRACTOR or its agents has access to or materials prepared by the CONTRACTOR during the term of this Contract shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent disclosure of confidential information to anyone except as authorized by SBCTA. CONTRACTOR shall not release any reports, information of promotional materials or allow for the use of any photos of the project for any purposes without prior written approval from SBCTA.

ARTICLE 37. CONVICT LABOR

In connection with the performance of work under this Contract, CONTRACTOR agrees not to employ any person undergoing sentence of imprisonment at hard labor. This Article does not include convicts who are on parole or probation.

ARTICLE 38. INSPECTION OF SITE

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electricity and roads, and uncertainties of weather, river stages, tides or similar conditions at the site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. CONTRACTOR fully acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be

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encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by SBCTA, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by CONTRACTOR to acquaint itself with the available information from SBCTA will not relieve the CONTRACTOR from responsibility.

ARTICLE 39. CLEAN WATER REQUIREMENTS

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Porter-Cologne Water Quality Control Act (California Water Code §§13000 et seq.) and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et. seq. CONTRACTOR shall report each violation to SBCTA and understands and agrees that SBCTA will in turn report each violation as required to assure notification to the Regional Water Quality Control Board. CONTRACTOR shall include this requirement in every subcontract.

ARTICLE 40. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq, the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

ARTICLE 41. SEVERABILITY

The partial or complete invalidity of any one or more of the provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.

ARTICLE 42. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

ARTICLE 43. INCORPORATION OF RECITALS

The Recitals stated above are true and correct and are hereby incorporated into this Contract.

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ARTICLE 44. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of this Contract.

---------- SIGNATURES ARE ON THE FOLLOWING PAGE ----------

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Attachment: WattEVcontractInternalTemplate (10721 : Contract No. 24-1003170 with WattEV Inc. for I-10 Zero-Emission Truck Charging Station)

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

WattEV SB1, INC	**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**
By: _____	By: _____
Salim Youssefzadeh, Chief Executive Officer	Raymond W. Wolfe Executive Director
Date: _____	Date: _____
Licensed in accordance with an act providing for registration of contractors.	**APPROVED AS TO FORM**
_____	By: _____
License Number	Julianna K. Tillquist General Counsel
_____	Date: _____
Federal Employer Identification Number	

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Exhibit A

Statement of Work (Project Components/Tasks)

The PROJECT includes an expansion of the WattEV zero-emission truck charging station on E Street south of Orange Show Road in the City of San Bernardino. The PROJECT will incorporate 30 CCS 240 KW chargers and 6 MCS 1200 KW chargers in order to increase CCS charger capacity on the current site. The current site became operational as of March 2024 and will be referred to as Phase 1. The expansion, on which the 2022 TCEP funding will be expended, will be referred to as Phase 2. The current generation of trucks all use CCS, but the addition of MCS chargers at this site will help support emerging battery/truck technologies to scale. The TCEP funds are not funding components of Phase 1; TCEP funds will be contributing to the implementation of Phase 2.

Project Outputs include purchase and installation of:

30 - Combined Charging System (CCS) 240 KW Chargers
6 - Megawatt Charging System (MCS) 1200 KW Chargers
2 - Substation Units

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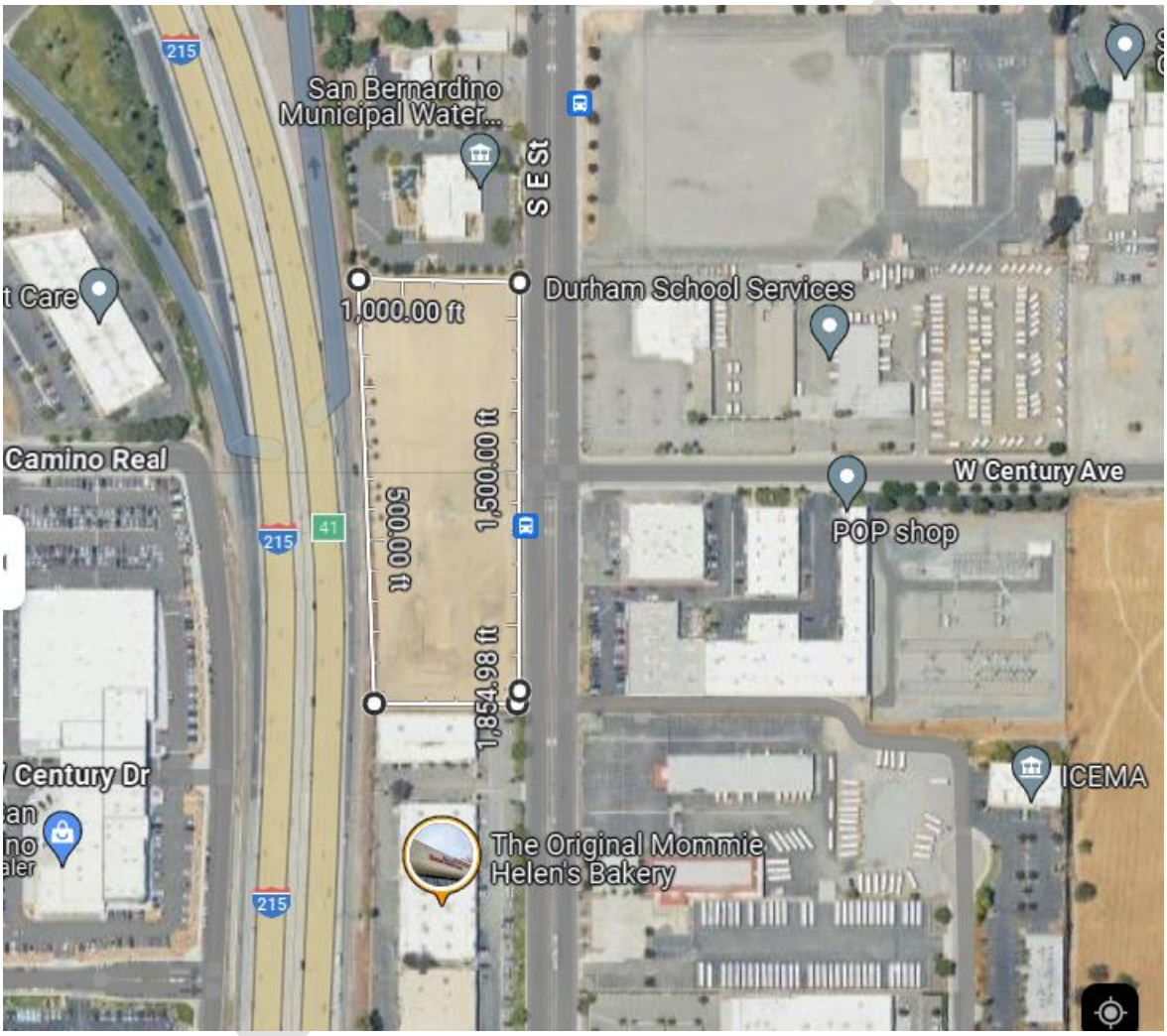
Exhibit B
Project Location Map

See the location of the WattEV site below, with the perimeter designated by the white outline. The site is approximately a mile north of Interstate 10, being located between I-215 to the west and E Street to the east. The aerial map shows the site as graded. At this time, the site has been paved and Phase 1 became operational in March 2024. Phase 2 will proceed upon allocation of TCEP funding by the CTC.



Attachment: WattEVcontractInternalTemplate (10721 : Contract No. 24-1003170 with WattEV Inc. for I-10 Zero-Emission Truck Charging Station)

Exhibit C

PROJECT Budget

Component	WattEV	TCEP Funding	Total
Electric truck charger and substation materials acquisition and installation, to include work with So Cal Edison on utility service to site	$2,999,875	$5,000,000	$7,999,875
Operation and maintenance	Ongoing, and 100% responsibility of WattEV for 5 years after contract acceptance.		

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Exhibit D

Project Schedule

TO BE PROVIDED BY WattEV

PROJECT Item	Start Date	End Date
Utility Work		
Acquisition of Chargers		
Installation and Field Testing of Chargers		
Maintenance and Operations		

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Exhibit E

Public Benefits

Charging infrastructure for battery-electric trucks will be implemented by WattEV at a site they have secured on E Street south of Orange Show Road in San Bernardino near the east end of the proposed I-10 Corridor Freight and Managed Lane Project. The WattEV site is less than a mile from the I-10 freeway. See description below. This will be an important expansion of a "Truck as a Service" (TaaS) model that is already established at a WattEV site near the Port of Long Beach. WattEV has ordered 50 Class 8 Volvo VNR Electric trucks to launch its unique TaaS model in California. WattEV's TaaS model provides shippers and carriers access to battery-electric trucks at a per-mile rate, including charging, that is on par with the total cost of operating diesel trucks.

To support its TaaS model, WattEV is building a public network of heavy-duty battery-electric truck charging depots to service major transportation corridors, connecting shipping ports with freight distribution centers and warehouse locations. WattEV's first public truck charging depots will be in Bakersfield, San Bernardino, and near the Port of Long Beach, and will feature 250 kW CCS chargers that will provide the Volvo VNR Electric trucks an 80% charge in 90 minutes for the six-battery packs. As WattEV's public charging network expands nationwide, the company plans to scale its depots to provide 1.2 MW charging capability for ultra-fast charging.

As to the site on E Street in San Bernardino (within one mile of Interstate 10 access), the following site specifications are highlighted for both Phase 1 and Phase 2:

Phase 1 at the San Bernardino site is already operational

- 12 CCS 360 KW Chargers
- Total project costs are $3.8 million
- Funded by $2.4 million in Calstart EnergIZE and SCAQMD Carl Moyer grants and $1.37 million match.

Phase 2 (part of I-10 TCEP grant)

- 30 CCS 240 KW Chargers
- 6 MCS 1.2 MW Chargers
- 2 Substation units
- Total project costs are $7,999,875, including $5 million committed from TCEP.

Rough estimate of GHG reduction benefits for WattEV site in San Bernardino (if WattEV already has GHG reduction calculations, can use those)

1000	grams per mile CO2 for typical truck, per CalB/C emission factors
454	grams per pound
2.20	pounds per mile of CO2 emissions
100	miles per day in a local truck duty cycle
220	pounds per day of CO2 emissions
260	workdays per year
48	CCS and MCS chargers
2	assume 2 charges per day per charger, on average
96	total charges/day - assume this is the number of diesel trucks replaced
21,145	pounds per day of CO2 emissions reduced
2000	pounds/ton
10.57	tons per day of CO2 emissions reduced
260	working days per year
2,749	tons per year of CO2 emissions reduced

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Minute Action

AGENDA ITEM: 20

Date: July 3, 2024

Subject:
Fiscal Year 2024/2025 Transit Operator Allocations

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve the Fiscal Year 2024/2025 Transit Operator Funding Allocations to the City of Needles, Morongo Basin Transit Authority, Mountain Area Regional Transit Authority, Omnitrans, and Victor Valley Transit Authority.

B. Approve revisions to the transit agencies' Short Range Transit Plan revenue assumptions to reflect the final allocation amounts.

C. Approve the revised Congestion Mitigation and Air Quality Allocation Plan through Fiscal Year 2032/2033.

Background:
San Bernardino County Transportation Authority (SBCTA) staff has worked with each of the transit operators to determine their funding needs for Fiscal Year (FY) 2024/2025. Attachment 1 outlines the proposed FY 2024/2025 transit funding allocations for the individual transit operators. Attachment 2 contains the recommended revisions to the operator Short Range Transit Plan (SRTP) revenue assumptions to reflect consistency with the proposed FY 2024/2025 allocations. Attachment 3 is the proposed revised Congestion Mitigation and Air Quality Allocation Plan through FY 2032/2033 that has been developed in coordination with the transit operators. Allocations to SBCTA and Southern California Regional Rail Authority (SCRRA) are addressed in separate SBCTA Board of Directors (Board) actions.

While the COVID-19 pandemic has drawn to a close, transit ridership throughout San Bernardino County has yet to fully recover to pre-pandemic levels, and the loss of passenger fare revenue continues to be significant.

Fund Source Detail
On an annual basis, SBCTA allocates a variety of funds to the transit operators in San Bernardino County. SBCTA's role in each of the fund sources varies, as well as the parameters by which the operators can use the funds. Below is a summary of each fund source and detailed information on how the allocation amount is determined, SBCTA's role, and how the funds can be used.

Local Transportation Fund (LTF) - LTF is derived from a quarter cent of the general sales tax collected statewide, enacted as part of the Transportation Development Act (TDA) of 1971. LTF is the most flexible funding source available for transit as it can be used for capital and operations with minimal restrictions and does not require matching funds. The main qualifying requirement is that an operator must maintain a minimum ratio of fare revenue to operating cost of at least 20 percent in urban areas and 10 percent in rural areas, unless an alternate ratio has been adopted.

The annual apportionment includes the estimated amount available, a 10 percent reserve per Board policy, and priority uses per the TDA. Set-asides for priority uses prior to apportioning based on population include: one percent for TDA administrative costs, three percent for SBCTA planning efforts, three-quarter percent for Southern California Association of Governments (SCAG) planning efforts, and two percent for pedestrian and bike facilities. In accordance with TDA, the remainder of LTF can be set aside for passenger rail service operations, capital improvements and community transit services, prior to area apportionment. However, SBCTA does not elect to use that set-aside and instead allocates to rail and community transit services after apportioning the remaining balance geographically based on population.

In the Valley Subarea, LTF is entirely used for transit purposes with the focus on maintaining a steady flow of operations funding available in the future. In the Mountain/Desert region, LTF is allocated to the individual transit operators based on population of their service areas. The amount identified in Attachment 1 is the total LTF available to the Mountain/Desert operators.

State Transit Assistance (STA) – STA funding is derived from the statewide sales tax on diesel fuel, enacted as part of the TDA. Each January, the State Controller's Office (SCO) provides a STA revenue estimate for the following year. STA funds are allocated to SBCTA in accordance with California Public Utility Code (PUC) as follows: 1) 50 percent under PUC Section 99313, STA-Population Share, based on the ratio of the population of the area under its jurisdiction to the total population of the state; and 2) 50 percent under PUC Section 99314, STA-Operator Share, which is allocated to individual operators based on the ratio of the prior year transit operator passenger fare and local support revenues, including revenues from member agencies, to the total revenues of all operators in the state and member agencies. The amount of STA-Operator Share funds available to each transit operator on an annual basis is determined by the SCO, and SBCTA functions as a pass-through agency for this portion of STA for all operators except SCRRA. SCRRA is allocated STA-Operator Share funds as needed to meet their annual subsidy requirements, and if 100 percent of the funds are not needed in a given year, the funds are reserved solely for future use by SCRRA.

The STA-Population Share revenue is apportioned to the Valley and Mountain/Desert regions based on population. STA-Population Share is then allocated to the operators on an as-needed basis, as approved by the Board. The STA-Population Share has historically been limited to funding capital projects unless the operator can demonstrate compliance with a specific efficiency calculation. However, recent changes to California State law concerning the use of these funds for operations have provided additional flexibility to use STA for operations.

State of Good Repair (SGR) – The SGR Program is apportioned to SBCTA and the operators in the same manner as STA. SGR funds are derived from a portion of the Transportation Improvement Fee (TIF) on vehicle registrations. Since the amount is determined from the total collections, prior to allocations to other TIF-funded programs, SGR funding is anticipated to be less volatile to economic conditions. SGR provides funding to transit operators in California for eligible maintenance, rehabilitation, and capital projects with the specific goal of keeping transit systems in a state of good repair. SGR-Operator Share funds are apportioned and allocated in the same manner as STA-Operator Share funds. SGR-Population Share funds apportioned to the Valley are allocated on a case-by-case basis as approved by the Board, and in the

Mountain/Desert, allocations to operators are made by population. SGR funds do not require matching funds. These amounts are consistent with the SGR allocations in a concurrent item on this agenda.

Low Carbon Transit Operations Program (LCTOP) – LCTOP is a source of State funding and one of several programs that are part of the Transit, Affordable Housing, and Sustainable Communities Program established by California Legislature in 2014 by Senate Bill (SB) 862. The LCTOP was created to provide transit operating and capital assistance to eligible project sponsors in an effort to reduce greenhouse gas emissions and improve mobility, with priority on serving disadvantaged communities. This program is funded by auction proceeds from the California Air Resources Board (CARB) Cap-and-Trade Program, where proceeds are deposited into the Greenhouse Gas Reduction Fund (GGRF). Although five percent of future annual GGRF proceeds will continue to be appropriated to the LCTOP, staff is cautious about becoming reliant upon this funding source as the overall availability is market driven. LCTOP apportionments occur after the auctions are completed and the amounts are known; therefore, the amounts in Attachment 1 are based on auctions that have already occurred.

Eligible projects include new or expanded bus or rail service, expanded intermodal transit facilities, free or reduced-fare transit passes/vouchers, and may include equipment acquisition, fueling, maintenance and other costs to operate those services or facilities, with each project required to reduce greenhouse gas emissions. For agencies whose service area includes disadvantaged communities, at least 50 percent of the total monies received shall be expended on projects that will benefit disadvantaged communities.

As with STA and SGR funds, LCTOP funding is allocated pursuant to PUC Sections 99313 and 99314. SBCTA receives LCTOP funds by formula, based on the ratio of the population of the area under its jurisdiction, to the total population of the state. A transit operator that is eligible to receive STA funds per PUC Section 99314 is eligible to receive LCTOP funds by formula based on the ratio of the revenue of the transit operator's jurisdiction to the total revenue of all operators in the state. The transit operators receiving LCTOP funds per PUC Section 99314, work directly with the California Department of Transportation (Caltrans) to receive their LCTOP funds. In San Bernardino County, this includes the City of Needles, Morongo Basin Transit Authority (Basin Transit), Mountain Area Regional Transit Authority (Mountain Transit), Victor Valley Transit Authority (VVTA), Omnitrans, and SCRRA.

Annually, staff recommends that LCTOP funds received under the population formula be further apportioned to the Valley and Mountain/Desert based on population, the same as STA funds that SBCTA receives per PUC Section 99313. After apportionment, LCTOP funds apportioned to the Valley are allocated on a case-by-case basis, as approved by the Board, and in the Mountain/Desert, allocations are made by population. LCTOP funds do not require matching funds.

Annually, the City of Needles requests a swap of their LCTOP allocations for STA funds to reduce the administrative burden of the LCTOP funds. A swap of $13,652 was approved by the Board in April 2024.

Measure I (MSI) Senior and Disabled (S&D) Transit Program – In the Valley Subarea, eight percent of the total MSI collected is dedicated for MSI S&D, of which two percent is specifically dedicated to Consolidated Transportation Services Agency (CTSA) operations. Initially, in the Victor Valley Subarea, five percent of the total MSI collected was dedicated to MSI S&D, with one-half percent increases every five years after the initial collection of MSI 2010-2040 revenues, to a maximum of seven and one-half percent. Currently, six percent of the Victor Valley Subarea MSI collected is allocated to VVTA to support S&D transit, with all increases above five percent coming from the MSI Local Streets Program. In the rural Mountain/Desert Subareas, five percent of the total MSI collected continues to be dedicated to MSI S&D based on Board approval in February 2019 as an increase was not required to address unmet transit needs of senior and disabled transit services.

All of the MSI S&D funds available are allocated to the transit operator serving the MSI Subarea. In the Valley Subarea, Omnitrans is the only operator eligible to use these funds. The MSI S&D funds are administered as a pass-through; therefore, the operators receive only the amounts actually received by SBCTA.

An additional $3,000,000 in MSI S&D Valley Subarea unallocated fund balance is allocated to Omnitrans for the I Street Facility Rehabilitation, which supports their senior and disabled service, Access.

Federal Transit Administration (FTA) Section 5307 Urban Area Formula Funds - Section 5307 funds are Federal urban formula funds apportioned by SCAG to SBCTA for the Riverside/San Bernardino Urbanized Area (UZA) and the Los Angeles/Long Beach/Anaheim UZA. These Valley UZAs receive apportionments for Section 5307, per an apportionment formula codified in Title 49 of the United States Code, which includes a formulaic split for buses and fixed guideway. The Victorville/Hesperia UZA funds are apportioned directly to VVTA. VVTA is the only operator in an urbanized area in San Bernardino County outside the Valley area. Eligible activities include public transportation capital, planning, job access, and reverse commute projects, as well as operating expenses under certain circumstances that do not exist in the San Bernardino Valley. This program requires a 20 percent local match. SBCTA is responsible for allocating the funds available to the Riverside/San Bernardino UZA and Los Angeles/Long Beach/Anaheim UZA. SBCTA's vanpool program, SB Loop, has continued to generate funding in Section 5307 funding. The funding generated from vanpool will be able to cover the cost of the program.

FTA Section 5339 Urban Area Formula Funds for Bus and Bus Facilities – Section 5339 funds are Federal urban formula funds apportioned by SCAG to SBCTA for the Riverside/San Bernardino UZA and the Los Angeles/Long Beach/Anaheim UZA. The Victorville/Hesperia UZA funds are apportioned directly to VVTA. The formula is based on population, vehicle revenue miles, and passenger miles. This capital program provides funding to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities. This program requires a 20 percent local match. Additionally, SB Loop has generated funding in Section 5339 funding. The funding generated from vanpool will be able to cover the cost of other projects that fall under the Section 5339 umbrella.

FTA Section 5311 Rural Area Formula Funds (Regional Apportionment) – Section 5311 funds are rural formula funds apportioned by Caltrans to the San Bernardino County region based on population. Eligible activities include: public transportation planning, capital, operating, job access and reverse commute projects, and the acquisition of public transportation services. This program requires a 20 percent local match for capital projects and a 50 percent match for operating assistance. SBCTA is responsible for ensuring proposed projects are selected and eligible, and for preparation of the Program of Projects that is submitted to Caltrans.

FTA Section 5310 Enhanced Mobility of Seniors & Individuals with Disabilities Program - Section 5310 funds are Federal formula funds apportioned by SCAG to SBCTA for the Riverside/San Bernardino UZA, the Los Angeles/Long Beach/Anaheim UZA, and the Victorville/Hesperia UZA to support transportation services planned, designed and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas. Eligible activities would improve mobility for seniors and individuals with disabilities by removing barriers to transportation services and expanding transportation mobility options, including both traditional capital investment and nontraditional investment beyond the Americans with Disabilities Act complementary paratransit services. Although SCAG apportions this funding to SBCTA, the Riverside/San Bernardino and Victorville/Hesperia UZAs are administered through Caltrans on SBCTA's behalf. The Los Angeles/Long Beach/Anaheim UZA funds are allocated by SBCTA to Omnitrans as part of the Annual Operators allocation. Omnitrans, in return, will add MSI CTSA funds to its MSI CTSA call-for-projects in an amount equivalent to the Section 5310 funding received. This action was done to help ease the burden of FTA oversight by Omnitrans, as non-profits had difficulty meeting some of the FTA requirements. This was approved by the Board in November 2020.

Congestion Mitigation and Air Quality (CMAQ) Funds – CMAQ funds are Federal formula funds apportioned by Caltrans based on population and emissions weight factors to specific air basins such as the South Coast Air Basin and Mojave Desert Air Basin. SBCTA receives annual apportionments of CMAQ funds and has historically been the agency responsible for recommending projects; however, after FY 2025/2026 SBCTA will be required to recommend projects to SCAG for final project selection. Activities typically eligible for CMAQ funding include: high occupancy vehicle and express lanes, transit improvements, travel demand management strategies, traffic flow improvements such as signal synchronization, and public fleet conversions to cleaner fuels. SBCTA is responsible for submitting a CMAQ annual report to the Federal Highway Administration and Caltrans. The annual report documents the results of emission reduction assessments for projects in San Bernardino County using CMAQ funding for each Federal FY. Each CMAQ project must be analyzed using calculation methodologies recommended and approved by Caltrans and the CARB and shown to provide emissions reductions.

The Board has identified funding gaps for transit as a high priority for allocation of CMAQ funds. Additionally, the Board approved Policy No. 40023 in February 2015 to ensure a proportional share of State and Federal funds are available for each Subarea in accordance with the MSI 2010-2040 Expenditure Plan. Typically, the Board adopts a 10-year allocation plan for CMAQ funds to transit operators with annual updates during this allocation process, and also makes updates to the allocation plan and includes the plan as part of the biennial update to the 10-Year Delivery Plan.

SB 125 – The Transit and Intercity Rail Capital Program (TIRCP) was created by SB 862 (Chapter 36, Statutes of 2014) and modified by SB 9 (Chapter 710, Statutes of 2015), to provide grants from the GGRF to fund transformative capital improvements that will modernize California's intercity commuter and urban rail systems, and bus and ferry transit systems to significantly reduce emissions of greenhouse gases, vehicle miles traveled, and congestion. Assembly Bill (AB) 398 (Chapter 135, Statutes of 2017) extended the Cap-and-Trade Program that supports the TIRCP from 2020 through 2030. SB 1 (Chapter 5, Statutes of 2017) continues to provide a historic funding increase for transportation with funds directed to the TIRCP from the Public Transportation Account (PTA). AB 102 (Chapter 38, Statutes of 2023) and SB 125 (Chapter 54, Statutes of 2023) amended the Budget Act of 2023 to appropriate $4 billion from the General Fund to the TIRCP over the next two fiscal years as well as $910 million of GGRF funding and $190 million of PTA funding over the next four fiscal years to establish the Zero-Emission Transit Capital Program (ZETCP). These funds are formula funds that are to be administered by SBCTA. The TIRCP portion is distributed to SBCTA based on a population formula and the ZETCP is distributed to SBCTA based on the STA formula, which is 50 percent based on population and 50 percent based on transit operator revenues.

In March 2024, the SBCTA Board apportioned the FY 2023/2024 funds to the Valley Subarea and to the Mountain/Desert operators in the same manner as they are received by SBCTA. Attachment 1 is the resulting apportionment with the TIRCP funds being apportioned based on population and ZETCP funds being apportioned in the same manner as the STA funds with 50 percent based on population and 50 percent based on transit operator revenue, consistent with the FY 2023/2024 STA operator apportionments. SB 125 funds are currently on hold and there is uncertainty about when they will be received by transit commissions in the state. However, when they become available, they could replace some of the LTF allocated to Omnitrans.

An additional fund source available to the transit operators, not included above or identified in Attachment 1, is LTF Article 3 funds. Article 3 funds are made available to transit operators for projects that improve access to transit stops for pedestrians and persons with disabilities and to eligible entities for bicycle and pedestrian facilities. These funds are allocated through a call-for-projects process under separate Board action.

LTF, STA, SGR, and MSI S&D funds available for allocation to the individual transit operators are included in the SBCTA FY 2024/2025 Budget.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024.

Responsible Staff:
Nancy Strickert, Transit Manager

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Attachment 1

Fiscal Year 2024/2025 Operator Allocations

SBCTA Allocations	MBTA	Mtn. Transit	Needles	Omnitrans	VVTA	Total
LTF	$ 5,279,722	$ 3,936,886	$ 347,953	$ 42,425,684	$ 35,077,895	$87,068,139
LTF Carryover	$ -	$ -	$ -	$ 5,000,000	$ -	$5,000,000
STA - Population	$ 290,340	$ 7,000,000	$ 137,891	$ 67,000	$ 120,000	$7,615,231
Measure I - S&D	$ 153,100	$ 134,400	$ 22,700	$ 12,349,725	$ 1,760,600	$14,420,525
Measure I - CTSA	$ -	$ -	$ -	$ 4,116,575	$ -	$4,116,575
Measure I - S & D I Street Access Facility	$ -	$ -	$ -	$ 3,000,000	$ -	$3,000,000
CMAQ	$ 904,072	$ 1,469,675		$ 11,950,000	$ 3,044,000	$17,367,747
FTA 5307 (non-stimulus)	$ -	$ -	$ -	$ 24,133,230	$ 11,811,833	$35,945,063
FTA 5339 (non-stimulus)[4]	$ -	$ -	$ -	$ 1,893,018	$ 1,083,060	$2,976,078
FTA 5311 (non-stimulus)	$ 555,516	$ 384,018	$ 53,315	$ -	$ 985,529	$1,978,378
Prior Year Surplus Funds	$ -	$ -	$ -	$ -	$ -	$0
Allocations/Estimates from other SBCTA Board actions or by other entities						
SB 125 - TIRCP[1]	$ 3,639,476	$ 2,579,132	$ 247,084	$ 38,930,779	$ 24,099,833	$ 69,496,304
SB 125 - ZETCP[1]	$ 246,734	$ 174,849	$ 16,751	$ -	$ 1,633,819	$ 2,072,153
STA - Operator	$ 84,016	$ 46,164	$ 4,757	$ 2,802,134	$ 370,319	$3,307,389
STA - Operator FY2023 Negative Balance[2]	$ -	$ -	$ -	$ -	$ -	$0
SGR - Population	$ 125,110	$ 86,486	$ 8,245	$ 2,500,000	$ 831,217	$3,551,058
SGR - Operator	$ 11,672	$ 6,414	$ 661	$ 389,306	$ 51,449	$459,502
LCTOP - Population	$ 191,152	$ 132,140	Swapped for STA-Pop	$ 3,119,757	$ 1,269,991	$4,713,040
LCTOP - Operator	$ 18,610	$ 10,225	Swapped for STA-Pop	$ 620,685	$ 82,027	$731,547
FTA 5310[3] (non-stimulus)	$ -	$ -	$ -	$ 425,000	$ -	$425,000
Grand Total	**$11,499,520**	**$15,960,389**	**$839,356**	**$153,722,893**	**$82,221,572**	**$264,243,730**

[1] SB125 Funding allocated in FY23/24 but will be used for multiple out years.

[2] No adjustment is necessary as all STA-Operator share actual receipts were higher than estimates.

[3] Omnitrans FTA 5310 is only from Los Angeles/Long Beach Urbanized Area

[4] Section ~~5309~~ **5339** are estimates and actuals will be given when FTA releases allocations.

Attachment: Attachment 1 Operator Allocation Table (10701 : Fiscal Year 2024/2025 Transit Operator

Attachment 2

Summary of Changes to SRTP Revenue Assumptions for FY 2024/2025[1]

Operator	FY 2024/2025 Total Revenues	LTF/ LTF Carryover	STA	SGR	LCTOP	Measure I	CMAQ	SB125 (TIRCP & ZETCP)	FTA Non-Stimulus (5307/5310/5311/ 5337/5339)[2]
MBTA Plan	$ 5,848,896	3,520,220	230,356	113,339	151,262	138,888	1,275,938	-	418,893
Amendment	**$ 11,499,520**	**5,279,722**	**374,356**	**136,782**	**209,762**	**153,100**	**904,072**	**3,886,210**	**555,516**
Difference	$ 5,650,624	1,759,502	144,000	23,443	58,500	14,212	(371,866)	3,886,210	136,623
Mountain Transit Plan[4]	$ 12,453,091	3,077,882	7,000,000	90,347	134,469	126,295	1,469,675	-	554,423
Amendment	**$ 15,960,389**	**3,936,886**	**7,046,164**	**92,900**	**142,365**	**134,400**	**1,469,675**	**2,753,981**	**384,018**
Difference	$ 3,507,298	859,004	46,164	2,553	7,896	8,105	-	2,753,981	(170,405)
Needles Plan[3]	$ 557,116	243,479	250,725	7,973	-	14,312	-	-	40,627
Amendment	**$ 839,357**	**347,953**	**142,648**	**8,906**	**-**	**22,700**	**-**	**263,835**	**53,315**
Difference	$ 282,241	104,474	(108,077)	933	-	8,388	-	263,835	12,688
Omnitrans Plan	$ 121,117,920	49,134,919	2,500,000	385,525	1,498,418	17,053,253	24,472,971	-	26,072,834
Amendment[5]	**$ 153,722,893**	**47,425,684**	**2,869,134**	**2,889,306**	**3,740,442**	**19,466,300**	**11,950,000**	**38,930,779**	**26,451,248**
Difference	$ 32,604,973	(1,709,235)	369,134	2,503,781	2,242,024	2,413,047	(12,522,971)	38,930,779	378,414
VVTA Plan	$ 36,801,847	20,522,378	272,534	703,870	906,974	1,321,628	2,500,000	-	10,574,463
Amendment	**$ 82,221,572**	**35,077,895**	**490,319**	**882,666**	**1,352,018**	**1,760,600**	**3,044,000**	**25,733,652**	**13,880,422**
Difference	$ 45,419,725	14,555,517	217,785	178,796	445,044	438,972	544,000	25,733,652	3,305,959
Total Original Plan	$ 176,778,870	76,498,878	10,253,615	1,301,054	2,691,123	18,654,376	29,718,584	-	37,661,240
Total Amendment	**$ 264,243,730**	**92,068,139**	**10,922,621**	**4,010,560**	**5,444,587**	**21,537,100**	**17,367,747**	**71,568,457**	**41,324,519**
TOTAL INCREASE/(DECREASE)	**$ 87,464,860**	**15,569,261**	**669,006**	**2,709,506**	**2,753,464**	**2,882,724**	**(12,350,837)**	**71,568,457**	**3,663,279**

[1] Does not include all SRTP revenues (i.e., passenger fares, advertising, directly received federal & other revenues)

[2] FTA FY 2024/2025 apportionments are not available now; amounts are estimates primarily based on FY 2023/2024 apportionments.

[3] Needles swapping LCTOP for STA.

[4] Mountain Transit Board of Directors approved a revision to their SRTP on May 17, 2023.

[5] Omnitrans CMAQ decrease reflects the advance of approximately $45,000,000 made in FY 2022/2023.

Attachment: Attachment 2 SRTP Table (10701 : Fiscal Year 2024/2025 Transit Operator Allocations)

Attachment 3

CMAQ Allocation Plan for Transit Operators[1]

	FY 2023/2024	FY 2024/2025	FY 2025/2026	FY 2026/2027	FY 2027/2028	FY 2028/2029	FY 2029/2030	FY 2030/2031	FY 2031/2032	FY 2032/2033	Total
MBTA[2]	$745,070	$904,072	$0	$876,513	$595,579	$1,040,485	$3,053,006	$1,500,000	$1,079,971	$0	$9,794,696
Omnitrans	$45,602,575	$11,950,000	$6,028,000	$26,369,560	$27,142,452	$28,672,131	$24,867,689	$42,072,196	$19,723,484	$19,723,484	$252,151,571
VVTA[2]	$120,000	$3,044,000	$3,100,000	$2,500,000	$3,465,983	$6,311,981	$5,658,869	$6,696,381	$6,003,494	$6,003,494	$36,900,708
VVTA Barstow[2]	$0	$0	$1,300,000	$0	$650,000	$0	$650,000	$0	$0	$0	$2,600,000
MARTA	$1,716,987	$1,469,675	$102,736	$2,750,322	$821,931	$0	$1,851,448	$2,289,384	$0	$0	
Total	$48,184,632	$17,367,747	$10,530,736	$32,496,395	$32,675,945	$36,024,597	$36,081,012	$52,557,961	$26,806,949	$25,726,978	$301,446,975

[1] Funding after FY2025/2026 will go through a competiive process and approved by SCAG

[2] MBTA and VVTA CMAQ plan will be revised based on the completion of their SRTP. Will be completed in FY2024/2025

Attachment: Attachment 3 CMAQ table (10701 : Fiscal Year 2024/2025 Transit Operator Allocations)

Minute Action

AGENDA ITEM: 21

Date: July 3, 2024

Subject:
Fiscal Year 2024/2025 State of Good Repair Program Allocations

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Allocate $4,546,650 of State of Good Repair Program – Population Share and Operator Share funding to the following projects:

i. Onboard Passenger Information Systems – Morongo Basin Transit Authority - $136,782
ii. Crestline Transit Center Facility Project – Mountain Area Regional Transit Authority - $92,900
iii. Preventative Maintenance – City of Needles - $8,906
iv. Preventative Maintenance – Omnitrans - $389,306
v. Replacement of HVAC System – Omnitrans $2,500,000
vi. Service Vehicles – Victor Valley Transit Authority (VVTA) - $310,000
vii. Paratransit Vehicles – VVTA - $170,000
viii. Regional Bus Replacements – VVTA – $402,666
ix. Metrolink Rehabilitation Program – Southern California Regional Rail Authority - $304,246
x. Metrolink Station Improvements – SBCTA - $231,844

B. Adopt Resolution No. 24-009, authorizing the Executive Director, or his designee, to submit project nominations to the California Department of Transportation for Fiscal Year 2024/2025 State of Good Repair Program funds for the projects listed above.

Background:
Senate Bill (SB) 1, also known as the Road Repair and Accountability Act of 2017, was approved in April 2017 and will provide over $50 billion in new transportation funding over the next decade to improve transit service and repair highways, bridges, and local roads. The State of Good Repair (SGR) Program, derived from the approval of SB 1, is funded from a portion of a Transportation Improvement Fee on vehicle registrations and provides approximately $105 million annually to transit operators in California for eligible maintenance, rehabilitation, and capital projects. While SB 1 addresses a variety of transportation needs, the SGR Program has a specific goal of keeping transit systems in a state of good repair, including the maintenance and rehabilitation of transit facilities and vehicles, and the purchase of new transit vehicles.

Administered by the California Department of Transportation (Caltrans), SGR Program funds are apportioned to eligible agencies using the State Transit Assistance Program formula. The formula apportions 50% of the available SGR funds by population and the remaining 50% by operator revenues from the prior Fiscal Year (FY), in accordance with Public Utilities Code (PUC) Section 99313 and PUC Section 99314, respectively. The State Controller's Office (SCO) is responsible for determining the estimated funding levels for PUC Section 99313 (Population Share) and PUC Section 99314 (Operator Share) funds. San Bernardino County Transportation Authority (SBCTA), as the regional transportation planning agency, will receive direct allocations of SGR funds in accordance with PUC Section 99312.2(c) and is responsible for

allocating SGR-Population Share funds to projects based on local need and sub-allocating SGR-Operator Share funds to the transit operators in the San Bernardino County region based on the amounts published by the SCO. SBCTA is further responsible for providing a list annually to Caltrans of all projects proposed to be funded with SGR funds made available to San Bernardino County. Agencies eligible to receive SGR funds include SBCTA, Omnitrans, Victor Valley Transit Authority (VVTA), Morongo Basin Transit Authority (MBTA), Mountain Area Regional Transit Authority (Mountain Transit), City of Needles, and Southern California Regional Rail Authority (SCRRA).

In March 2024, the SBCTA Board of Directors (Board) approved a total FY 2024/2025 SGR-Population Share apportionment of $3,782,902. This amount includes the SCO estimated apportionment of $3,625,195 for FY 2024/2025, an additional $30,935 from excess FY 2022/2023 Population Share revenue, and $126,772 of interest earned on existing SGR fund balance. The Board also approved apportioning the funds to the Valley and Mountain/Desert areas based on California Department of Finance Population Data and further apportioning the Mountain/Desert SGR-Population Share apportionment to the Mountain/Desert transit operators in accordance with the population of their respective service areas. The total amount of FY 2024/2025 SGR-Population Share funds available to the Valley and Mountain/Desert is $2,731,844 and $1,051,058, respectively. As required, SGR-Operator Share funds are allocated to the transit operators in the San Bernardino region based on the amounts determined by the SCO. Since SBCTA has no discretion in the apportionment of the SGR-Operator Share, and Caltrans does not require revised allocation documents, the Board authorized SBCTA staff to release SGR-Operator Share funds as they are received. The SBCTA Board-approved SGR-Population Share apportionments and the estimated SGR-Operator Share funds to be disbursed are included below in Table 1.

Table 1 – Fiscal Year 2024/2025 SGR-Population Share and Operator Share Apportionments

Agency	Population Share[1]	Operator Share	Total SGR Apportionment
Omnitrans	$2,500,000	$389,306	$2,889,306
SCRRA	-	$304,246	$304,246
SBCTA	$231,844	-	$231,844
Basin Transit	$125,110	$11,672	$136,782
Mountain Transit	$86,486	$6,414	$92,900
City of Needles	$8,245	$661	$8,906
VVTA	$831,217	$51,449	$882,666
Total	**$3,782,902**	**$763,748**	**$4,546,650**

[1] Apportionment includes revenue over FY 2022/2023 estimate + interest.

SBCTA staff contacted all transit operators requesting the submission of a proposed list of projects to be funded with SGR funds. Based on project list submittals and discussions with the operators concerning the availability of funds, SBCTA staff is recommending the following projects for FY 2024/2025 SGR allocations:

MBTA Onboard Passenger Information Systems (OPIS) - $136,782
MBTA will be using SGR funding to implement onboard passenger information systems. OPIS is a digital platform that provides improved communications between drivers and dispatchers, real-time passenger information, passenger counting, and automated Americans with Disabilities Act announcements.

Mountain Transit Crestline Transit Center Facility Project - $92,900
Mountain Transit will be using SGR funding to construct a new transit center facility at its property on Forest Shade Road in Crestline to replace the office space that was severely damaged by a fire which occurred in August 2019.

City of Needles Preventative Maintenance - $8,906
Pursuant to an agreement with the City of Needles, Transportation Concepts provides Needles Area Transit service and facilitates preventative maintenance on the vehicles used for service. The City of Needles will use SGR funds to partially fund the preventative maintenance portion of the Transportation Concepts contract.

Omnitrans Preventative Maintenance - $389,306
Omnitrans will use the SGR funding for preventative maintenance. Preventative maintenance will help prevent any future failures on their service vehicles.

Omnitrans Replacement of Heating and Air Conditioning System - $2,500,000
Omnitrans will utilize the SGR funding for replacement of the Heating, Ventilation, and Air Conditioning (HVAC) system at the East Valley Maintenance Facility. The HVAC system to be replaced is beyond its useful life and is costing more money for repairs while adding extended downtime throughout the facility.

VVTA Service Vehicles - $310,000
VVTA will add five service vehicles to their fleet. This will decrease downtime and increase reliability to ensure that the drivers have the support vehicles needed to make service.

VVTA Paratransit Vehicles - $170,000
As part of VVTA's fleet replacement plan, VVTA systematically replaces and expands transit vehicles that are part of the active fleet. SGR funds will be used for the purchase of three replacement vehicles as outlined in the Transit Asset Management (TAM) plan. The vehicles being replaced are in poor condition.

VVTA Regional Bus Replacement - $402,666
VVTA will use SGR funds to purchase three Class H Zero Emission Buses for their regional routes. This purchase is outlined in the TAM plan and will help meet the state mandated requirement to have all vehicles zero emissions by 2040.

Metrolink Rehabilitation Program- $304,246
SCRRA will use SGR funds to rehabilitate and replace the critical priorities of aging track, railroad structures, vehicles, and facilities currently in use by Metrolink's daily commuter rail service within San Bernardino County.

SBCTA Metrolink Station Improvement Project - $231,844
SBCTA will use SGR funds to upgrade Metrolink stations within San Bernardino County. This funding will be used to improve station amenities that are outdated or need repair. This will be the first of two accruals.

Caltrans requires that SBCTA submit an authorizing resolution from its governing board that approves the submission of the Certifications and Assurances (included as Attachment 2), authorizes SBCTA to accept the SGR funds, and authorizes SBCTA's Executive Director, or his designee, to execute the Certifications and Assurances and other relevant documents necessary for funding and completing the SGR-funded projects.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal 2024/2025.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024. SBCTA General Counsel has reviewed this item and the draft resolution.

Responsible Staff:
Nancy Strickert, Transit Manager

RESOLUTION NO. 24-009

RESOLUTION OF THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AUTHORIZING THE PROJECTS FUNDED BY CALIFORNIA STATE OF GOOD REPAIR PROGRAM FUNDS

WHEREAS, the San Bernardino County Transportation Authority (SBCTA) is an eligible project sponsor and may receive State Transit Assistance funding from the State of Good Repair Account (SGR) now or sometime in the future for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 1 (2017) named the Department of Transportation (Department) as the administrative agency for the SGR; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing SGR funds to eligible project sponsors (local agencies); and

WHEREAS, the guidelines require local agencies to execute certifications and assurances, authorized agent forms and other documents in order to receive SGR funds; and

WHEREAS, SBCTA wishes to implement the SGR Projects listed below.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Bernardino County Transportation Authority, as follows:

Section 1. The fund recipient, SBCTA, agrees to comply with all conditions and requirements set forth in the Certification and Assurances document and the Authorized Agent documents and applicable statutes, regulations and guidelines for all SGR funded transit projects.

Section 2. The SBCTA Executive Director, Raymond W. Wolfe, is authorized to execute all required documents of the SGR program, and any Amendments thereto with the Department.

Section 3. The submittal of the following project nominations to the Department for Fiscal Year 2024/2025 SGR funds is hereby authorized:

- Morongo Basin Transportation Authority Onboard Passenger Information Systems
- Mountain Transit Crestline Transit Center Facility Project
- City of Needles Preventative Maintenance
- Omnitrans Preventative Maintenance
- Omnitrans Replacement of Heating and Air Conditioning (HVAC)
- Victor Valley Transportation Authority Service Vehicles
- Victor Valley Transportation Authority Paratransit Vehicles
- Victor Valley Transportation Authority Regional Bus Replacements
- Southern California Regional Rail Authority Metrolink Rehabilitation Program
- San Bernardino County Transportation Authority Metrolink Station Improvements Project (accrual)

DRAFT

Attachment: RESOLUTION NO. 24-009 (10702 : Fiscal Year 2024/2025 State of Good Repair Program Allocations)

Section 4. This resolution shall take effect immediately upon its adoption.
PASSED AND ADOPTED at a meeting of the San Bernardino County Transportation Authority held on July 3, 2024.

By: _____
Ray Marquez, Board President
San Bernardino County Transportation Authority

ATTEST:

By: _____
Marleana Roman, Clerk of the Board
San Bernardino County Transportation Authority

DRAFT

Attachment: RESOLUTION NO. 24-009 (10702 : Fiscal Year 2024/2025 State of Good Repair Program Allocations)

State Transit Assistance State of Good Repair Program

Recipient Certifications and Assurances

Recipient: ***Name*** .

Effective Date: ***Date Month, 20xx*** .

In order to receive State of Good Repair Program (SGR) funds from the California Department of Transportation (Department), recipients must agree to following terms and conditions:

A. General

(1) The recipient agrees to abide by the State of Good Repair Guidelines as may be updated from time to time.

(2) The potential recipient must submit to the Department a State of Good Repair Program Project List annually, listing all projects proposed to be funded by the SGR program. The project list should include the estimated SGR share assigned to each project along with the total estimated cost of each project..

(3) The recipient must submit a signed Authorized Agent form designating the representative who can submit documents on behalf of the recipient and a copy of the board resolution authorizing the agent.

B. Project Administration

(1) The recipient certifies that required environmental documentation will be completed prior to expending SGR funds. The recipient assures that each project approved for SGR funding comply with Public Resources Code § 21100 and § 21150.

(2) The recipient certifies that SGR funds will be used for transit purposes and SGR funded projects will be completed and remain in operation for the estimated useful lives of the assets or improvements.

(3) The recipient certifies that it has the legal, financial, and technical capacity to deliver the projects, including the safety and security aspects of each project.

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Attachment: Attachment 2 SGR certs_assurances (10702 : Fiscal Year 2024/2025 State of Good Repair Program Allocations)

(4) The recipient certifies that there is no pending litigation, dispute, or negative audit findings related to any SGR project at the time an SGR project is submitted in the annual list.

(5) Recipient agrees to notify the Department immediately if litigation is filed or disputes arise after submission of the annual project list and to notify the Department of any negative audit findings related to any project using SGR funds.

(6) The recipient must maintain satisfactory continuing control over the use of project equipment and/or facilities and will adequately maintain project equipment and/or facilities for the estimated useful life of each project.

(7) Any and all interest the recipient earns on SGR funds must be reported to the Department and may only be used on approved SGR projects or returned to the Department.

(8) The recipient must notify the Department of any proposed changes to an approved project list by submitting an amended project list.

(9) Funds will be expended in a timely manner.

C. Reporting

(1) Per Public Utilities Code § 99312.1 (e) and (f), the recipient must submit the following SGR reports:

a. Annual Expenditure Reports within six months of the close of the fiscal year (by December 31st) of each year.

b. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of SGR funds. A copy of the audit report must be submitted to the Department within six months of the close of each fiscal year in which SGR funds have been received or expended.

D. Cost Principles

(1) The recipient agrees to comply with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(2) The recipient agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items and (b) those parties shall

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comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(3) Any project cost for which the recipient has received payment that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, are subject to repayment by the recipient to the State of California (State). Should the recipient fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the recipient from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

E. Record Retention

(1) The recipient agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the recipient, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of the recipient, its contractors and subcontractors connected with SGR funding shall be maintained for a minimum of three (3) years from the date of final payment and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the recipient, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the recipient pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the recipient's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.

(2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the recipient's contracts with third parties pursuant to Government Code § 8546.7, the recipient, its contractors and subcontractors and the Department shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a

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project for audits, examinations, excerpts, and transactions, and the recipient shall furnish copies thereof if requested.

(3) The recipient, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

(1) Recipient acknowledges that if a project list is not submitted timely, the recipient forfeits its apportionment for that fiscal year.

(2) Recipients with delinquent expenditure reports may risk future eligibility for future SGR funding.

(3) Recipient acknowledges that the Department shall have the right to perform an audit and/or request detailed project information of the recipient's SGR funded projects at the Department's discretion from SGR award through 3 years after the completion and final billing of any SGR funded project.. Recipient agrees to provide any requested project information.

I certify all of these conditions will be met.

AGENCY NAME

BY: _____

AUTHORIZING OFFICER, Title
Unit/Department

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Attachment: Attachment 2 SGR certs_assurances (10702 : Fiscal Year 2024/2025 State of Good Repair Program Allocations)

Minute Action

AGENDA ITEM: 22

Date: July 3, 2024

Subject:
ONT Connector Project Update and Shortlist of Operating System Providers and DB Teams

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Receive an update on the Ontario International Airport (ONT) Connector Project, including the current funding plan, and seek direction from the Board to proceed with submitting grant applications given the large funding gap, and the potential of having to return grant awards, prior to expending any of them, should we be unable to close the funding gap.

B. Pre-qualify Glydways, Inc., Oceaneering International, Inc., and Ohmio, Inc., as the prospective Operating System Providers for the ONT Connector Project, pursuant to Request for Qualifications (RFQ) No. 23-1002878.

C. Shortlist joint ventures ONTheMove JV and Ontario Tunnel Constructors as the prospective Design-Build contractors for the ONT Connector Project, pursuant to RFQ No. 23-1002870.

D. Authorize the Executive Director, or his designee, to execute Pre-Proposal Works Agreements with the two shortlisted Design-Build firms, ONTheMove Joint Venture and Ontario Tunnel Contractors, for the ONT Connector project, for a not-to-exceed amount of $3,000,000 per agreement, upon General Counsel's approval as to form.

E. Authorize the Executive Director, or his designee, to release the Request for Proposals (RFP) and future addenda to the shortlisted Design-Build teams for the ONT Connector Project.

Background:
The Ontario International Airport (ONT) Connector Project ("Project") will provide new passenger service between the Cucamonga Metrolink Station and the Ontario International Airport (ONT) Terminals 2 and 4 utilizing fully autonomous, all-electric, rubber-tired transit vehicles. The proposed project includes the construction of a 4.2-mile-long transit service tunnel, stations to serve Cucamonga Metrolink Station, ONT Terminal 2, and ONT Terminal 4; a maintenance and storage facility to store and maintain vehicles; and an emergency access and ventilation (vent) shaft to provide a means of emergency passenger egress and first responder access. This new connection would increase mobility and connectivity for transit patrons, improve access to existing transportation services, provide a connection to future Brightline West service to/from ONT, and support the deployment of clean, emerging technology for transit opportunities between Cucamonga Metrolink Station and ONT.

The Project is currently in the environmental clearance phase and on April 6, 2022, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) awarded Contract No. 22-1002758 to AECOM Technical Services, Inc., to assist with work associated with both the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) clearance of the Project. SBCTA is the lead agency under CEQA, and the Federal Transit Administration (FTA) is the lead agency under NEPA. The first draft of the NEPA document, an Environmental Assessment (EA), and associated technical studies have been submitted to the FTA and are currently under review. Also, the first draft of the CEQA document, an Environmental Impact Report (EIR), and associated technical studies have been completed

and are under review by SBCTA and the Project Management/Construction Management (PCM) consultant team. Circulation of the environmental documents for public review is scheduled for the summer of 2024, and the environmental phase is scheduled to be completed in late 2024.

On July 6, 2022, the Board directed staff to proceed with the development of a form of design-build procurement for the ONT Connector Project with a limited transitional operating period for a system, with the determination to proceed beyond the design phase contingent on available funding, including significant grant funds from the State or Federal government. Following this action, on September 7, 2022, the Board received an update on the project and approved the release of two separate Requests for Qualifications (RFQs), one for an Operating System Provider and the other for a Design-Build (DB) Contractor. The DB RFQ was intended to shortlist two DB teams and includes a stipend in the amount of $3,000,000. The stipend would be paid only to the unsuccessful bidder as the successful bidder's cost for the pre-proposal work would be included as part of the overall cost proposal. The two-stage procurement approach allows SBCTA, the PCM team, and selected contractors to collaborate as an integrated team during the pre-construction phase. This collaborative approach promotes innovative ideas to benefit the project cost and schedule. Areas for potential project innovation include tunnel sizing, Tunnel Boring Machine logistics and operations, and vehicle technology selection.

Recommendation A:
In June 2024, SBCTA received an update on the 10-Year Delivery Plan for the San Bernardino Valley Metrolink/Rail Service Programs and the San Bernardino Valley Express/Bus Rapid Transit Service. As noted under the staff report, the 10-Year Delivery Plan includes a section for other projects of interest that are significant to SBCTA and the region but do not use funding from a specific Measure I program. The ONT Connector Project is not eligible for Measure I funds, and the update noted the unfunded need at $467 million, based on a current project cost of $538.5 million. Furthermore, the operating costs are now projected to be approximately $5.4 million per year. The total funding approved is approximately $72 million, which is more than the projected $31.5 million needed to complete the environmental clearance and pre-proposal phase of the project. The total projected expenditures by the end of the pre-proposal phase include the $6 million obligated to the shortlisted firms under the Pre-Proposal Works Agreement (PPWA), $17.3 million for PCM services, $3.4 million for legal support services, $700,000 to complete permits with Union Pacific Railroad (UPRR), and $300,000 for leasing of the project office needed during Phase 1. With the exception of a projected $1.5 million amendment for legal services and the $700,000 to complete the UPRR Permit, all projected contract expenditures have been previously approved by the Board. The amendment for legal services and additional funds needed to complete the permit with UPRR will be presented to the Board for approval at a future meeting. The current funding approved for the project is noted below:

Table 1. Current Project Funding Sources

Source	Type	Amount (thousands)	Notes
Rail Assets	Local	$ 980	Approved
State Transit Assistance (STA)	State	$ 18,100	Approved (Allocated)
State Transit Assistance (STA)	State	$ 37,762	Approved (Not yet Allocated)
Local Transportation Funds (LTF)	Local	$ 15,167	Approved (Not yet Allocated)
	Sub-total	$72,009	

As the anticipated overall project cost is better defined, staff has identified an additional $199 million in Local, State, and Federal discretionary funds available for the Project. Final approval to use the $199 million is contingent upon future Board approval. The funding sources that have been identified to date are shown in Table 2:

Table 2. Competitive Funding Plan

Source	Type	Amount (thousands)	Notes
FTA 5307	Federal	$ 21,000	Reduces funds available for other rail capital projects on the Metrolink system but is available over construction period
Congestion Mitigation and Air Quality (CMAQ)	Federal	$ 59,667	Subject to approval by SCAG and needs for bus conversions
Low Carbon Transit Operations Program (LCTOP)	State	$2,000	
Local Transportation Funds (LTF)	Local	$116,324	Typically used for operating costs, but higher revenue than anticipated since 2020 allows for an allocation to capital while still preserving balance for transit operations in the Valley
Sub-total		$198,991	
Total Competitive and Project Funding		$271,000	
Future Grant Opportunities (State/Federal)		$267,500	Current Funding Gap

Table 2 shows a current funding plan gap of $267.5 million, and with a funding gap of this magnitude, grant funding will be critical to the completion of funding for the Project. Future potential funding opportunities include:

Table 3. Future Potential Funding Opportunities

Source	Type	Range or Potential Amount (thousands)	Notes
FTA 5309 Capital Investment Grants (CIG)	Federal	$ TBD	Competitive Program that requires SBCTA to begin the process to enter into FTA's Project Development process and receive a competitive ranking to secure a Full-Funding Grant Agreement (FFGA). A complete financial

			plan, including a third-party contract review, is required before the FFGA is signed. This is a very competitive program.
Rebuilding American Infrastructure with Sustainability and Equity (RAISE)	Federal	$ TBD	Previously submitted a $25 million dollar grant request under RAISE 2022 grant cycle which was not funded. This is a very competitive program.
Reconnecting Communities and Neighborhoods Program (RCN)	Federal	$25,000	It is a common strategy to apply for both RCN and RAISE if the scope of the project aligns with the scoring rubric for both programs.
Airport Terminal Program	Federal	$5,000 to $20,000	A highly-competitive grant application would include scope of work that directly benefits the airport property.
Buses and Bus Facilities Competitive Program (49 U.S.C. 5339(b))	Federal	$1,000 to $5,000	This program can pay for vehicle, facility, and charging infrastructure.
Senate Bill (SB) 125 Transit Program	State	$80,000	If SB 125 funding is continued, an additional $111 million could be available, with $80 million being the typical Valley share.
Solutions for Congested Corridors Program (SCCP)	State	$80,000	Initial recommended grant request.
Transit and Intercity Rail Capital Program (TIRCP)	State	$30,000	$30 million is the recommended grant request based on prior state awards and $/GHG reduction, we are analyzing requesting more in an effort to lower the funding gap.

SBCTA submitted a request to the California Department of Transportation (Caltrans) to nominate the project under the SCCP Cycle 4 program in early November 2023. As part of the program evaluation, the project is ranked for program fit (low, medium, or high) and is also issued a Climate Action Plan for Transportation Infrastructure (CAPTI) alignment score.

Caltrans ranked the program fit as High and issued a CAPTI alignment score of 54 out of 110. The feedback from the SB1 Committee included:

- Financial Risk-High: Large amount of uncommitted funding has not been secured for the construction phase.

- Deliverability Risk-Medium: Project Approval & Environmental Document (PA&ED) anticipated to be completed by March 2025. Obligation date for seeking Plans Specifications & Estimate (PS&E) & Right-of-Way (ROW) funds April 2025. Construction start date May 2025. One year to complete PS&E & ROW.
- SB1 Committee Decision-No: "Incomplete funding plan, may be duplicate transit route service to the already funded West Valley Bus Rapid Transit Connector service, and potential labor issues with autonomous transit."

Even though Caltrans has declined to support the project as a partnership application under the SCCP, SBCTA is able to submit an application directly to the California Transportation Commission (CTC) as a single applicant. SCCP applications will be due in late fall 2024, with awards from the CTC scheduled for June 2025. Grant funds generally include restrictions on the timely use of funds and given the large funding gap, there is a risk of having to return grant awards prior to expending any of them should we be unable to close the funding gap. Based on the funding gap and potential funding opportunities, staff is seeking direction to continue seeking grant funding including, but not limited to, those listed under Table 3, in order to continue to close the funding gap as this will become a critical path activity in the overall project delivery.

The environmental technical study for ridership forecast includes ridership projections of approximately 900 passengers per weekday in 2040, which assumes Brightline West is operating out of Cucamonga Station, that the service frequency on the Metrolink San Bernardino Line is thirty minutes bi-directional, and that ONT has 15 million annual passengers per year. It assumes a fare comparable to Omnitrans fares. The service will have to be run with a high degree of efficiency and reliability for airport passengers to have confidence that it will get them to the airport on time. As with any expansion of the transit system, the estimated cost of operations must be planned for and can ultimately limit the ability to do further expansion of the transit network.

Recommendation B:
In November 2022, SBCTA released RFQ No. 23-1002878 to pre-qualify Operating System Providers (OSP) for the ONT Connector Project, formerly known as the Tunnel to Ontario International Airport Project. The OSP will be responsible, in whole or in part, for the design, fabrication, delivery, installation, testing, integration, commissioning, verification of passenger service readiness, permitting, and safety certification of a completely autonomous, on-demand transportation system. This includes vehicles, control systems, power distribution and vehicle charging, communications systems, station equipment, and maintenance facility fit out and equipment, along with all related equipment and services. These components are essential to provide a completely autonomous, on-demand transportation system, collectively, the Operating System.

On April 20, 2023, SBCTA received a Statement of Qualifications (SOQ) from four interested firms. Upon thorough evaluation and consideration by the Evaluation and Selection Oversight Committee (EOC), the EOC recommends to prequalify three experienced firms listed below in alphabetical order:

- Glydways, Inc.
- Oceaneering International, Inc.
- Ohmio, Inc.

Recommendations C and D:
In November 2022, SBCTA released RFQ No. 23-1002870 for shortlisting DB teams for the ONT Connector Project. Significant industry feedback was collected through comments on the RFQ, as well as one-on-one meetings with prospective teams. This resulted in the issuance of nine addenda over the course of the procurement.

- Addendum 1 issued on December 23, 2022
- Addendum 2 issued on January 10, 2023
- Addendum 3 issued on February 16, 2023
- Addendum 4 issued on March 5, 2023
- Addendum 5 issued on March 9, 2023
- Addendum 6 issued on April 19, 2023
- Addendum 7 issued on May 3, 2023
- Addendum 8 issued on May 22, 2023
- Addendum 9 issued on June 9, 2023

On June 13, 2023, SBCTA received two SOQs in response to the RFQ from the following teams:

- **Ontario Tunnel Constructors**, a joint venture comprised of Skanska USA Civil West California District Inc. (Skanska) and Obayashi Corporation (Obayashi);
- **ONTheMove JV**, a joint venture led by Civil & Building North America, Inc. (CBNA) with BESSAC, Nicholson Construction Company, and Colas Construction USA as joint venture partners.

The project team conducted discussions with both teams submitting SOQs on their submissions between June 2023 and April 2024 to clarify information contained in the submissions, as well as negotiating final revisions to the form of the PPWA and Draft Request for Proposals (RFP). The PPWA sets out the terms and conditions by which the shortlisted teams will prepare certain pre-proposal deliverables and other work products during the pre-proposal period, estimated to take approximately 10 months. On April 26, 2024, SBCTA received letters from both teams confirming their acceptance of the final form of the PPWA and agreement with the contents and terms of the Draft RFP. The EOC thoroughly reviewed and evaluated the two submissions and deemed them both responsive and highly qualified to deliver the project scope of work. On May 13, 2024, the EOC unanimously recommended shortlisting both proposers, as well as recommending that the PPWA be executed with both teams to allow the project to move into the pre-proposal phase.

Recommendation E:
The next step in the DB procurement process will be to issue the RFP, which includes instructions to proposers, a draft DB contract term sheet, technical provisions, reference documents, and third-party agreements. The draft RFP, which includes the draft DB contract term sheet is attached to this staff report. Based on the RFP, the DB firm will then advance their designs during an approximately 10-month pre-proposal phase (Phase 1). DB firms will be expected to team with a pre-qualified OSP no later than 3-4 months into Phase 1. At the conclusion of Phase 1, each team will submit a proposal and guaranteed maximum price to SBCTA. The proposals will then be reviewed by an EOC. The EOC will then provide a

recommendation to the SBCTA Board for the award of the DB contract to deliver the project and proceed to the construction phase (Phase 2), which will include final design, construction, and transitional operations, and maintenance. Contingent on available funding and subject to Board approval, the project would then proceed with equipment procurement, right-of-way acquisitions, and early utility relocations. Primary construction activities would begin in 2026 and continue through 2031, with the start of Revenue Service expected to begin in 2031.

Financial Impact:
The ONT Connector project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with State Transit Funds in Program 30, Transit.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024. SBCTA General Counsel has reviewed this item. Special Counsel prepared and reviewed the RFP and draft agreement.

Responsible Staff:
Victor Lopez, Director of Transit & Rail Programs

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
REQUEST FOR QUALIFICATIONS (23-1002870)

for the Shortlisting of Design-Build Teams for the

TUNNEL TO ONTARIO INTERNATIONAL AIRPORT PROJECT

PRE-PROPOSAL WORKS AGREEMENT

between the

San Bernardino County Transportation Authority

and

[*Proposer Counterparty*]

[*Date*], 2024

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TABLE OF CONTENTS

1. FOUNDATIONAL MATTERS....2
1.1. Effectiveness and Term....2
1.2. Integration with Procurement Process....2
1.3. Relationship to Environmental Process....3
2. SUPPLEMENTAL PROCUREMENT RULES....3
2.1. Integration with Procurement Documents....3
2.2. Issuance of RFP, Addenda, and Project Information....3
2.3. Meetings....4
3. PRE-PROPOSAL WORK....5
3.1. Notice to Proceed....5
3.2. Authorization and Scope of Pre-Proposal Work....5
3.3. Pre-Proposal Workshops....6
3.4. Pre-Proposal Deliverables....7
3.5. Subcontracting of Pre-Proposal Work....7
3.6. Force Majeure Events....8
4. WORK PRODUCT AND INTELLECTUAL PROPERTY....8
4.1. Pre-Proposal Work as "Work for Hire"....8
4.2. Proprietary and Third-Party Intellectual Property....9
4.3. SBCTA-Provided Intellectual Property....10
5. STIPEND....11
5.1. Limitation on Financial Obligations....11
5.2. Stipend Payment....11
5.3. Payment Timing....12
5.4. Set-off....13
6. CHANGES....13
6.1. Process for Change Proposals....13
6.2. Memorandum Documenting Change Proposal....13
7. PUBLIC RECORDS LAW REQUIREMENTS....13

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

7.1. Compliance with Public Records Law 13
7.2. Confidential and Proprietary Information 13
7.3. Review by Key Stakeholders 14
7.4. Disputes and Liability 14
8. DEFAULTS, REMEDIES, AND TERMINATION 15
8.1. Occurrence of Default 15
8.2. SBCTA's Remedies upon Default 16
8.3. Termination 17
9. FEDERAL AND STATE REQUIREMENTS 18
9.1. Compliance Matters 18
9.2. Labor and Wage Provisions 18
9.3. Assignment of Claims and Causes of Action 18
10. INDEMNIFICATION 18
10.1. No Obligation to Indemnify Proposer Counterparty 18
10.2. Proposer Counterparty Indemnity 18
10.3. Relationship to Insurance 20
10.4. Claims by Employees 20
10.5. Proposer Counterparty Defenses 20
11. INSURANCE 20
11.1. General Provisions 20
11.2. Required Policies 23
12. PROPOSER COUNTERPARTY REPRESENTATIONS AND WARRANTIES 25
12.1. Organization, Power, and Authority 25
12.2. Authorization and Due Execution 26
12.3. No Conflicts 26
12.4. No Breach; No Litigation 26
12.5. Debarment; Anti-Money Laundering 26
12.6. Additional Legal Assurances 27
13. REMEDIES 28
13.1. Proposer Counterparty's Sole Remedy 28

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

13.2. Available Insurance 28
13.3. Limitation on Liability 28
14. LIABILITY 29
14.1. Joint and Several Liability 29
14.2. Waiver of Consequential Damages 29
14.3. No Personal Liability 30
14.4. Governmental Immunity 30
15. GOVERNING LAW 30
16. PROTESTS & DISPUTES 30
16.1. Consent to Jurisdiction 30
16.2. Protest Procedures 31
16.3. Dispute Resolution 31
17. RESERVATION OF RIGHTS 32
18. CONSENT TO SERVICE OF PROCESS 32
19. NOTICE 32
19.1. Notice Requirements 32
20. PARTIES TO CONTRACT 33
20.1. Binding Effect; Successors and Assigns 33
20.2. Limitation on Third-Party Beneficiaries 33
20.3. Independent Proposer Counterparty 34
21. CONSTRUCTION OF CONTRACT 34
21.1. Counterparts 34
21.2. Entire and Integrated Agreement 34
21.3. Integration of Provisions Required by Law 34
21.4. Subordination to United States Government 35
21.5. Severability 35
21.6. Survival 35
22. MISCELLANEOUS 36
22.1. Taxes 36

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

22.2. Costs....36
22.3. No Personal Liability of Government Officials....36
22.4. Signature Warranty....36

EXHIBIT 1 – RULES OF INTERPRETATION AND CONSTRUCTION

EXHIBIT 2 – DEFINITIONS AND ABBREVIATIONS

EXHIBIT 3 – PRE-PROPOSAL DELIVERABLES

EXHIBIT 4 – FEDERAL REQUIREMENTS

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

This **Pre-Proposal Works Agreement** (this "Agreement") is made and entered into as of [*date*], 2024 (the "Effective Date"), by and between:

a) San Bernardino County Transportation Authority, a public entity of the State of California, ("SBCTA") and

b) [*Name of Design-Builder/Counterparty Entity*], a [*type of company and where formed/organized prior to execution*] (the "Proposer Counterparty", and together with SBCTA, the "Parties" and each a "Party").

RECITALS

A. **WHEREAS**, SBCTA intends to construct an approximately 4-mile tunnel and autonomous vehicle transit connection from the Cucamonga Station to Ontario International Airport ("ONT"), with one surface station at Cucamonga Station and two surface stations at ONT (as further described in the Project RFQs and any RFP, the "Project"); and

B. **WHEREAS**, on November 15, 2022, SBCTA issued a Request for Qualifications for Operating System Providers (as amended, the "OSP RFQ") in order to prequalify Operating System Providers for the purpose of teaming with Shortlisted Design-Build Teams to complete the Work and Project contemplated by the same; and

C. **WHEREAS**, on November 21, 2022, SBCTA issued a Request for Qualifications for Design-Build Teams (as amended, the "DB RFQ," and together with the OSP RFQ, the "Project RFQs") in order to select Design-Build Teams (each, a "Shortlisted Design-Build Team") to each enter into this Agreement for the purpose of progressing development of proposals to be subsequently submitted to SBCTA for evaluation under a separately issued Request for Proposals (as and when issued, the "RFP"); and

D. **WHEREAS**, pursuant to the processes set forth in the respective Project RFQs, SBCTA on [*date*], 2023 prequalified a list of Operating System Providers and on [*date*], 2023 SBCTA qualified [*number*] Shortlisted Design-Build Teams, including the Proposer Counterparty, to proceed in the procurement process for the Project under the terms of this Agreement and the RFP; and

E. **WHEREAS**, this Agreement sets out certain terms and conditions, supplemental to the DB RFQ and any RFP, pursuant to which the Proposer Counterparty will prepare certain pre-proposal deliverables and other work product during the Pre-Proposal Period and otherwise conduct work to advance preparation of its Proposal for evaluation by SBCTA in response to the RFP; and

F. **WHEREAS**, on the basis of such Proposals under the terms of the RFP, SBCTA anticipates selecting a Proposer (which may, or may not be, the Proposer Counterparty) to enter into a design-build contract for the Project (such contract in substantially the form initially included in any RFP, the "Design-Build Contract");

NOW, THEREFORE, BE IT RESOLVED, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. FOUNDATIONAL MATTERS

1.1. Effectiveness and Term

Subject to Section 21.6, the "Term" of this Agreement will commence on the Effective Date and end on the earliest to occur of the following (such date being the "Expiry Date"):

a. the date of execution of a Design-Build Contract by SBCTA with the Proposer Counterparty or any other Shortlisted Design-Build Team;

b. the date on which SBCTA informs the Proposer Counterparty that it is no longer eligible to proceed as a Proposer under the terms of the DB RFQ or, once issued, the RFP;

c. the date on which SBCTA notifies a Proposer Counterparty previously identified as the Preferred Proposer that it has been unable to reach agreement to enter into the Design-Build Contract on terms acceptable to SBCTA;

d. the date of early termination of this Agreement as a result of a Default as provided for in Section 8.1;

e. the date on which SBCTA informs the Proposer Counterparty of a cancellation of the procurement of the Project; and

f. the date of expiration of the validity period for any Proposal submitted by the Proposer Counterparty in response to any RFP.

1.2. Integration with Procurement Process

Proposer Counterparty acknowledges and agrees that:

a. execution of and compliance with this Agreement is a condition precedent to Proposer Counterparty remaining a Shortlisted Design-Build Team eligible to submit a Proposal in response to any RFP and to subsequently be selected by SBCTA for award of the Design-Build Contract;

b. this Agreement is non-exclusive and SBCTA has entered or will enter into one or more additional agreements (each an "Additional Pre-Proposal Works Agreement") in equivalent form with other Shortlisted Design-Build Teams;

c. this Agreement does not commit SBCTA to any particular outcome with respect to the procurement process initiated under the DB RFQ and continued through any RFP, including any commitment to issue any RFP or subsequently award the Project or enter into a Design-Build Contract with the Proposer Counterparty or any other Shortlisted Design-Build Team;

d. any Design-Build Contract will be generally consistent with the latest term sheet provided to Proposer Counterparty prior to the Effective Date, which sets forth the anticipated principal terms and conditions that will be addressed in the Design-Build Contract (the "Term Sheet"), provided that the Term Sheet will remain subject to modification by addendum as a result of negotiations between SBCTA and the Proposer Counterparty during the Pre-Proposal Period; and

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e. notwithstanding execution of this Agreement, in accordance with this Section 1.2, the Project procurement process remains ongoing.

1.3. Relationship to Environmental Process

Notwithstanding any other provision of this Agreement to the contrary, any determination by SBCTA to proceed with the Project is contingent upon receipt of all required environmental clearances.

2. SUPPLEMENTAL PROCUREMENT RULES

2.1. Integration with Procurement Documents

The procurement process for the Project remains ongoing under the terms of the DB RFQ and, when issued, any RFP, subject to the express modifications made pursuant to this Section 2.

2.2. Issuance of RFP, Addenda, and Project Information

a. SBCTA may:

i. notwithstanding Section 11 of the DB RFQ and the passage of the SOQ Submission Deadline, prior to issuance of any RFP, issue addenda to the DB RFQ in accordance with its terms;

ii. issue the RFP and, thereafter, Addenda thereto, which will be effective and binding if made in writing and posted to the Project Website; and

iii. in connection with the RFP, issue the Project Information, the proposed form of Design-Build Contract, and the proposed form of Technical Provisions for Proposer Counterparty's use and reference.

b. Proposer Counterparty acknowledges and agrees that through issuance of any Addenda, RFP, Project Information, form of Design-Build Contract, or form of Technical Provisions, SBCTA may, in its discretion:

i. unilaterally amend, modify, or supplement the following provisions of this Agreement:

A. Sections 3.3 and 3.4 regarding the schedule for and conduct of the Pre-Proposal Workshops (but for certainty, not with respect to the Pre-Proposal Deliverables that are to be provided by the Proposer Counterparty under Exhibit 3); and

B. Section 5.2 regarding the Stipend Payments to the extent that such adjustments will only be to increase the Stipend Payment amount; and

ii. otherwise provide Proposer Counterparty with assumptions, requirements, or constraints relevant to the Project and the development and progression of any Pre-Proposal Deliverable and the performance of the Pre-Proposal Work, which Proposer Counterparty will take into account when performing the Pre-Proposal Work and preparing any Proposal, provided that such

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issuance and materials be given equal effect under the terms of any Additional Pre-Proposal Works Agreement.

2.3. Meetings

a. Notwithstanding Sections 11 (Communications and Contacts) and 13 (Pre-SOQ One-on-One Meetings) of the DB RFQ,

i. Proposer Counterparty must participate in the Pre-Proposal Workshops as provided for in Section 3.3; and

ii. prior to issuance of the RFP, SBCTA may, in its discretion, invite Proposer Counterparty to participate in additional one-on-one meetings and/or forums open to all Shortlisted Design-Build Teams to attend simultaneously, provided that:

A. such invitation is also extended to each other Shortlisted Design-Build Team that is party to an Additional Pre-Proposal Works Agreement and that such meetings will be held in accordance with rules equivalent to those set out in Section 15.4 of the DB RFQ or such other rules of which SBCTA may notify Proposer Counterparty in advance; and

B. topics for such meetings may include:

I. discussion of specific topics relating to due diligence on the Project and progression of the Pre-Proposal Work;

II. discussions with third parties; and/or

III. presentation and discussion of any Pre-Proposal Deliverable, including in draft form.

b. While SBCTA intends that the discussions in any meeting (including, for certainty, any Pre-Proposal Workshop) will be confidential to the meeting participants, subject always to Section 7.2, SBCTA reserves the right:

i. in the interests of ensuring a transparent and non-discriminatory procurement process, to disclose to each Shortlisted Design-Build Team any issues raised during any such meeting, including through the issuance of Addenda, except to the extent that SBCTA determines, in their sole discretion, that such disclosure would constitute a disclosure of Public Records Exempt Materials and

ii. to share information, comments or feedback received during any meeting with any governmental authorities' representative, subject to such Person's prior agreement to appropriate confidentiality and non-disclosure restrictions.

c. All meetings (including, for certainty, any Pre-Proposal Workshop) will be subject to the following additional rules:

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i. Proposer Counterparty will not be permitted to submit to SBCTA any written work product at such meeting except for exact copies of materials that were previously submitted in accordance with this Agreement;

ii. SBCTA may invite third-party governmental authorities, subject to prior agreement to appropriate confidentiality and non-disclosure restrictions, to attend;

iii. no binding decisions regarding the procurement process, this Agreement, or the Proposal will be made by SBCTA in any meeting;

iv. no oral statement made by or on behalf of SBCTA in any meeting, or included in a written record of such meeting, will constitute:

A. an amendment or addendum or other waiver or exercise of any Reserved Rights; or

B. an indication of preference or acceptance or rejection of anything said, done or presented; and

v. for certainty, the review of Pre-Proposal Deliverables will be based on the information provided in such deliverables and not on the conduct of Proposer Counterparty or discussions that occur during any meeting.

3. PRE-PROPOSAL WORK

3.1. Notice to Proceed

The Proposer Counterparty shall not commence the Pre-Proposal Work until it is given a notice to proceed with such work in writing from SBCTA.

3.2. Authorization and Scope of Pre-Proposal Work

a. Subject to the terms and conditions of this Agreement and at all times conditioned on Proposer Counterparty remaining a qualified and responsible Shortlisted Design-Build Team under the terms of the DB RFQ and any RFP:

i. SBCTA hereby retains Proposer to actively participate in good faith in the procurement process and to prepare a responsive and compliant Proposal in response to any RFP and, including by undertaking the Pre-Proposal Work in accordance with this Agreement; and

ii. Proposer Counterparty accepts all such rights, risks, responsibilities, obligations, and liabilities in connection with delivering the Pre-Proposal Work consistent with this Agreement, the DB RFQ, and any RFP.

b. Proposer Counterparty will conduct the Pre-Proposal Work:

i. in accordance with the Procurement Schedule and any RFP, each as updated from time to time in accordance with Section 2.2; and

ii. under the assumption that performance of work under any future Design-Build Contract will require compliance with the proposed form, including the proposed form of Technical Provisions, of Design-Build Contract, included in the RFP.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

c. The "Pre-Proposal Work" is comprised of all of the work, services, and activities to be performed, furnished, or undertaken by Proposer Counterparty under this Agreement, including as set out in this Section 3 and with respect to the preparation, delivery, and completion of all Pre-Proposal Deliverables, including:

i. preparing and submitting the Pre-Proposal Deliverables and responding to SBCTA's comments (if any) on the same, in accordance with Section 3.4;

ii. participating in any required Pre-Proposal Workshops in accordance with Section 3.3 or any other meetings in accordance with Section 2.3 and the terms of any RFP;

but in all cases excluding:

iii. any anticipated work under any Design-Build Contract, including any which is the subject of award of such contract under any RFP;

iv. the performance of any other work which would be subject to California Public Contract Code Section 7104, provided that such may be separately authorized, at SBCTA's discretion, in connection with Supplemental Due Diligence Activities; and

v. the performance of any other work which constitute a "public works project" as defined under California Public Contract Code Section 9204, provided that such may be separately authorized, at SBCTA's discretion, in connection with Supplemental Due Diligence Activities.

3.3. Pre-Proposal Workshops

a. Proposer Counterparty will attend each "Pre-Proposal Workshop" described below, as and when required in the Procurement Schedule, as such may be updated from time to time, together with such additional Pre-Proposal Workshops as SBCTA may require in accordance with Sections 2.2 and 2.3.

b. The Pre-Proposal Workshop topics will be as described in Exhibit 3.

c. Subject to more detailed direction from SBCTA regarding the agenda for such presentation to be provided in advance, the purpose of each workshop will be to:

i. provide Proposer Counterparty with an opportunity to present on the topics and Pre-Proposal Deliverables identified in Exhibit 3;

ii. allow the Proposer Counterparty an opportunity to otherwise present elements of its Proposal in their then-current development stage in order to demonstrate its understanding of, and responsiveness to, the Project criteria set forth in the RFP, in the proposed form of Design-Build Contract, and in the proposed form of Technical Provisions;

iii. assist SBCTA in understanding any issues related to the Project and the RFP raised by Proposer Counterparty; and

iv. to provide SBCTA with the context of Proposer Counterparty's initial design, risk assessment, and approach to scheduling when reviewing Proposer Counterparty's alternative technical concept submissions.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

d. No later than the first of the month that any Pre-Proposal Workshop is scheduled to occur, Proposer Counterparty shall submit an agenda for such meeting to SBCTA; such agenda to include each of the topics to be covered at such meeting and the proposed attendees from the Proposer Counterparty (and their respective organizations) at such meeting.

e. At (but not prior to) any Pre-Proposal Workshop, Proposers shall present such materials and Pre-Proposal Deliverables in the form of drafts, slide decks, narratives and/or drawings as they consider appropriate or as otherwise required by SBCTA and this Section 3.3. Such materials and Pre-Proposal Deliverables will not be retained by SBCTA.

3.4. Pre-Proposal Deliverables

a. The "Pre-Proposal Deliverables" are comprised of the materials described in Exhibit 3.

b. SBCTA will maintain the confidentiality of each Pre-Proposal Deliverable except:

i. to the extent that disclosure is necessary to maintain compliance with federal or State permitting and/or other legal requirements (including under the Public Records Law) necessary for the delivery of the Project;

ii. to governmental entities, which will be involved in the review of Pre-Proposal Deliverables submitted by SBCTA;

iii. to certain other Persons in accordance with Section 2.3 in connection with any such meetings at which such Pre-Proposal Deliverables are discussed; and

c. Subject to Section 4.2, and excluding the cost-related Pre-Proposal Deliverables provided pursuant to Section 1.5 of Exhibit 3, SBCTA may, following the award of the Design-Build Contract, share any Pre-Proposal Deliverable that was previously submitted by Proposer with the counterparty to the Design-Build Contract.

d. Whenever this Agreement requires Proposer Counterparty to submit a Pre-Proposal Deliverable to SBCTA, Proposer Counterparty will deliver such Pre-Proposal Deliverable in manner, form, and substance reasonably acceptable to SBCTA. In addition, each Pre-Proposal Deliverable will:

i. respond to all prior comments made by SBCTA on any previously submitted draft,

ii. include all other preliminary materials or supplementary details that show or describe the character, scope, and intent of the Pre-Proposal Work being performed, or which are otherwise necessary for SBCTA to review the relevant deliverable, in each case as reasonably requested by SBCTA, and

iii. where applicable, be developed in accordance with the Technical Provisions.

3.5. Subcontracting of Pre-Proposal Work

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

a. Nothing contained in this Agreement nor any subcontract will create any contractual relationship between SBCTA and any subcontractor, including any Major Participant, or create any obligation on the part of SBCTA to pay or cause the payment of any sums to any subcontractor or grant any subcontractor any rights as a third-party beneficiary.

b. Proposer Counterparty will be solely responsible for the performance of all subcontractors (of every tier), including each Major Participant, and all other Persons for whom or for which Proposer Counterparty is directly or indirectly responsible by contract or pursuant to Law, and for the performance, non-performance, acts, defaults, omissions, breaches, and negligence of the same, as fully as if any such performance, non-performance, acts, defaults, omissions, breaches, or negligence were those of Proposer Counterparty.

c. In accordance with California Public Contract Code Section 6109(a), Proposer Counterparty will not perform Pre-Proposal Work with any subcontractor who is ineligible to perform work on a public works project pursuant to California Labor Code Section 1777.1 or Section 1777.7. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between Proposer Counterparty and a debarred subcontractor is void as a matter of law.

3.6. Force Majeure Events

a. If either Party's participation or attendance at any Pre-Proposal Workshop or its compliance with its obligations under Section 3 of this Agreement is prevented or delayed due to the occurrence of a Force Majeure Event, the affected Party shall notify the other Party of the occurrence of the Force Majeure Event and the affected Party's nonperformance shall be excused during the period of prevention or delay, and in the event that Proposer Counterparty is the affected Party, SBCTA will use reasonable efforts to reschedule the required performance within the Procurement Schedule.

b. The affected Party shall exercise commercially reasonable efforts to overcome the impediment to performance, which performance will not be excused unless the Party demonstrates that performance remains impossible or to the extent such efforts cannot overcome or mitigate the effects of such impediment.

4. WORK PRODUCT AND INTELLECTUAL PROPERTY

4.1. Pre-Proposal Work as "Work for Hire"

a. All Work Product will be considered "work for hire" in which Proposer Counterparty transfers any ownership rights and claims to SBCTA upon creation, and all such Work Product will be the property of SBCTA without restriction or limitation on their use; provided that:

i. such transfer is conditioned upon SBCTA not defaulting upon any payment obligation to Proposer Counterparty under this Agreement;

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ii. subject to Section 4.2, Work Product will not include, and SBCTA will not obtain title to, any Proprietary Intellectual Property or Third-Party Intellectual Property; and

iii. the Proposer Counterparty or Related Party may request that an invention or discovery, made after the Effective Date through the performance of the Pre-Proposal Work, be excluded from Work Product, subject to:

A. SBCTA's approval, such approval not to be unreasonably withheld;

B. the Proposer Counterparty or Related Party granting to SBCTA a license with respect to such excluded Work Product equivalent to the license required for Proprietary Intellectual Property under Section 4.2; and

C. such other conditions as reasonably required by SBCTA, provided they are commercially reasonable with respect to intellectual property licenses within the industry in the relevant field(s) of technology.

b. On such basis, Proposer Counterparty agrees and does hereby assign, grant, transfer, and convey to SBCTA, and will cause each Related Party to assign, grant, transfer, and convey to SBCTA, including its successors and assigns, the Proposer Counterparty's or Related Party's right, title, interest, and ownership in and to such Work Product. Notwithstanding passage of ownership and title of the Work Product to SBCTA, risk of loss associated with the Work Product will remain with Proposer Counterparty or Related Party until the end of the Term.

c. Upon passage of ownership of any Work Product to SBCTA, SBCTA will be deemed to grant to the Proposer Counterparty a limited license, for Proposer Counterparty and other Related Parties, to use and reproduce applicable portions of the drawings, specifications, and other documents prepared as Work Product appropriate to and for use in the execution of the Pre-Proposal Work. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of SBCTA's rights with respect to the Work Product.

d. The foregoing rights of SBCTA will not apply to work product that is expressly required to be returned to the Proposer Counterparty under the terms of the DB RFQ, any RFP, or this Agreement.

e. Neither Proposer Counterparty nor any Related Party will seek to register copyrights in any of the Work Product. Notwithstanding the foregoing, Proposer Counterparty and any Related Party may use and reproduce any elements of the Work Product that are standard and not unique to the subject of the submission and the Project.

f. Proposer Counterparty will furnish and execute such documents, including documents of title, and take such further actions as may be reasonably requested by SBCTA to give effect to this Section 4.1.

4.2. Proprietary and Third-Party Intellectual Property

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

a. All Proprietary Intellectual Property will remain the exclusive property of the Proposer Counterparty or any Related Party.

b. Proposer Counterparty hereby grants to SBCTA, and will cause each Related Party (other than the Operating System Provider) to grant to SBCTA (or, with respect to the Operating System Provider and any Third-Party Intellectual Property, will undertake commercially reasonable efforts to provide to or obtain for) a non-exclusive, non-transferable, irrevocable, perpetual, fully paid up and sub-licensable license to use the Proprietary Intellectual Property and any Third-Party Intellectual Property for the following purposes:

   i. procuring, designing, constructing, funding, financing, completing, operating, maintaining, modifying, expanding, maintaining and/or decommissioning any aspect of the Project, including in connection with any subsequent procurement of the Project;

   ii. integration into the Design-Build Contract or any other contract related to the Project;

   iii. in respect of the integration with any adjacent project or facility with any element or phase of the Project;

   iv. complying with any applicable Law or agreement binding on SBCTA; and

   v. performing SBCTA's obligations or exercising SBCTA's rights under this Agreement, any Design-Build Contract, or any other agreement related to the Project,

   provided that Proposer Counterparty or Related Party may, to the extent it is reasonably unable to comply with the foregoing with respect to any Operating System Provider or Third-Party Intellectual Property, comply with its obligations through functionally equivalent alternative arrangements subject to the consent of SBCTA (such consent not to be unreasonably withheld).

c. The Proposer Counterparty will use reasonable efforts to promptly and clearly disclose to SBCTA any identified Proprietary Intellectual Property and Third-Party Intellectual Property prior to incorporation into or combination with the Pre-Proposal Work. The Proposer Counterparty may disclose and identify Proprietary Intellectual Property and Third-Party Intellectual Property to SBCTA at a later time, provided that the failure to timely disclose and identify such Intellectual Property was inadvertent and not in bad faith. SBCTA will be entitled to consider any Intellectual Property not so identified and disclosed to constitute Work Product.

d. Proposer Counterparty will deliver to SBCTA copies and/or embodiments of all Intellectual Property used in the Pre-Proposal Work, other than Proprietary Intellectual Property, promptly following delivery of written request from SBCTA.

e. SBCTA acknowledges that any designs, plans, drawings, or other Pre-Proposal Work are preliminary in nature and use or reuse by SBCTA is at SBCTA's sole risk.

4.3. SBCTA-Provided Intellectual Property

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

SBCTA may in its discretion make certain Intellectual Property available to the Proposer Counterparty for use on the Project and in performance of the Pre-Proposal Work. SBCTA will make such Intellectual Property available under a license, grant, assignment, or other arrangement, the nature, terms, and conditions of which will be determined by SBCTA, acting reasonably.

5. STIPEND

5.1. Limitation on Financial Obligations

a. By entry into this Agreement, SBCTA does not assume any obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by Proposer Counterparty in connection with the procurement for the Project, including in undertaking any Pre-Proposal Work, except to the extent expressly provided for with respect to the Stipend Payment in this Section 5.15.

b. Proposer Counterparty will be considered a vendor for purposes of the Stipend Payment.

5.2. Stipend Payment

a. In consideration for Proposer Counterparty agreement with respect to Work Product and Intellectual Property under Section 4, and subject to the terms of this Section 5.2, SBCTA agrees to pay Proposer Counterparty, on behalf of all Major Participants, the aggregate amount of three million dollars ($3,000,000) (the "Stipend Payment") upon the satisfaction of all of the following conditions:

i. Proposer Counterparty submits a Proposal that is responsive to, and in all material regards compliant with, the pass/fail and minimum technical requirements set forth in the RFP;

ii. Proposer has fully and actively participated in the procurement process as indicated through, among other things, the submission of RFP Comments; the submission of all Pre-Proposal Deliverables required pursuant to Section 3.4; attendance at meetings facilitated by the SBCTA; and participation in the Pre-Proposal Workshops required pursuant to Section 3.3 and identified in Exhibit 3;

iii. Proposer Counterparty delivers to SBCTA Proposer Counterparty's Work Product in a usable format reasonably acceptable to SBCTA in accordance with this Agreement;

iv. Proposer Counterparty has complied with all other material terms and conditions of this Agreement and the RFP; and

v. Proposer Counterparty is notified by SBCTA in writing that it was not identified as the Preferred Proposer contemplated under the RFP.

b. Payment of the Stipend Payment shall constitute payment in full to Proposer Counterparty for the license of Proposer Counterparty's and each Related Party's Intellectual Property to SBCTA in accordance with this Agreement.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

c. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, SBCTA shall not be obligated to pay any Stipend Payment to Proposer Counterparty and shall not be responsible, in whole or in part, for any costs incurred by any Proposer Counterparty as a result of its participation in the procurement process described herein, if:

i. Proposer Counterparty is disqualified from, or otherwise is no longer eligible for, further participation in the procurement process under the terms of this Agreement, the DB RFQ, and any RFP, including as a result of a Default; or

ii. After first notifying Proposer Counterparty that it has been identified as the Preferred Proposer contemplated under the RFP, SBCTA subsequently notifies Proposer Counterparty that it is unable to reach agreement to enter into the Design-Build Contract with such Proposer Counterparty on terms acceptable to SBCTA; provided, however, that if the terms deemed by SBCTA to be unacceptable were identified by Proposer Counterparty as Contract Exceptions in its Proposal, this Section 5.2.c.ii will not apply.

d. The Parties expressly agree the Design-Build Contract will provide that, in the event SBCTA fails to or is unable to issue NTP-1 (as defined in the Term Sheet) through no fault of the Design-Builder within six (6) months following the effective date of the Design-Build Contract, unless such time period is extended in writing by the parties thereto, the Design Build Contract will terminate and the Design-Builder will be entitled to a Stipend Payment in the amount and consistent with the terms set forth in this Agreement.

5.3. Payment Timing

a. SBCTA will make the Stipend Payment to Proposer Counterparty within thirty (30) days following the occurrence of:

i. the earlier of:

A. execution of the Design-Build Contract with a Preferred Proposer that is not the Proposer Counterparty; or

B. the expiration of the Proposal Validity Period with regard to Proposer Counterparty's Proposal;

ii. receipt of an invoice for the same from the Proposer Counterparty; and

iii. receipt of any other documentation reasonably requested by SBCTA.

b. The invoice for the Stipend Payment shall be sent via email to the following email addresses with the subject line indicated below:

To: AP@gosbcta.com
cc: Victor Lopez, VLopez@gosbcta.com
Subject: SBCTA Tunnel to ONT Project-RFQ 23-1002870_Stipend Payment

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

5.4. Set-off

SBCTA will have the right to retain, out of any payment otherwise due Proposer Counterparty under this Agreement, an amount sufficient to satisfy any amount due and owing to SBCTA from Proposer Counterparty under this Agreement, including in connection with indemnification, or any other agreement between Proposer Counterparty and SBCTA. Prior to withholding any amounts in dispute, SBCTA will use reasonable efforts to provide Proposer Counterparty with a notice indicating the specific amounts SBCTA intends to withhold and the reasons and contractual basis for the withholding.

6. CHANGES

6.1. Process for Change Proposals

a. SBCTA may in its discretion initiate a change in the Pre-Proposal Work relative to what is otherwise permitted or required. The Proposer Counterparty will promptly thereafter present SBCTA with a "Change Proposal" the resulting cost, performance, compliance, and/or schedule impacts of the proposed changes to the Pre-Proposal Work.

b. SBCTA will provide the Proposer Counterparty, upon request, with any supporting information and documentation that the Proposer Counterparty may require to assess the resulting cost, performance, compliance and/or schedule impacts of the proposed changed Pre-Proposal Work.

6.2. Memorandum Documenting Change Proposal

a. If SBCTA and the Proposer Counterparty agree on the terms of any Change Proposal, they will memorialize their agreement in a written acknowledgement of the Change Proposal (a "Change Order"), in a form to be prepared by SBCTA (and reasonably acceptable to the Proposer Counterparty) setting out the details of such agreement.

b. A Change Proposal will not be effective or implemented without the Proposer Counterparty's written acceptance and execution of such written Change Order.

7. PUBLIC RECORDS LAW REQUIREMENTS

7.1. Compliance with Public Records Law

Proposer Counterparty acknowledges that all Pre-Proposal Deliverables, proposals, and other materials, including written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids, delivered by Proposer Counterparty to SBCTA under this Agreement or any RFP are, upon their receipt by SBCTA, the property of SBCTA and are subject to the California Public Records Act, Chapter 3.5, commencing with Section 6250, of Division 7 of Title I of the Government Code (and pursuant to the CPRA Recodification Act of 2021, effective January 1, 2023, Chapter 1, commencing with Section 7920.000, of Division 10 of Title 1 of the Government Code) (the "Public Records Law").

7.2. Confidential and Proprietary Information

7.2.1. Submission of Confidential and Proprietary Information

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

a. In the event Proposer Counterparty submits any information that Proposer Counterparty believes is not subject to disclosure pursuant to the Public Records Law ("Public Records Exempt Materials"), it must conspicuously mark the affected document "CONFIDENTIAL" or "CONFIDENTIAL TRADE SECRETS" in the header or footer of each such page affected.

b. To the extent reasonably possible, SBCTA intends to follow procedures that will preserve confidentiality relating to Public Records Exempt Materials during the procurement, including by:

i. providing notice to the Proposer Counterparty of a request for public disclosure of Proposer Counterparty's materials, which were submitted to SBCTA and identified as Public Records Exempt Materials by the Proposer Counterparty; and

ii. giving the Proposer Counterparty an opportunity to assert a claimed exception under the Public Records Law or other applicable Law within the time period specified in such notice issued by SBCTA to the extent allowed under the Public Records Law.

7.2.2. SBCTA Assessment of Confidential and Proprietary Information

a. SBCTA will not advise Proposer Counterparty as to the nature or content of documents entitled to protection from disclosure under the Public Records Law or other applicable Law, as to the interpretation of such Laws, or as to the definition of trade secret.

b. Nothing contained in this Section 7.2.2 will modify or amend requirements and obligations imposed on SBCTA by the Public Records Law or other applicable Law.

c. SBCTA reserves the right to disagree with a Proposer Counterparty's assessment regarding confidentiality or proprietary nature of information in the interest of complying with the Public Records Law. The provisions of the Public Records Law or other applicable Law will control in the event of a conflict between the procedures described above and the applicable Law.

7.3. Review by Key Stakeholders

Information submitted by Proposer Counterparty, including Public Records Exempt Materials, may be made available to representatives of FTA, Omnitrans, OIAA, the City of Rancho Cucamonga, and the City of Ontario as necessary to facilitate review and evaluation of such materials and other submissions during the procurement.

7.4. Disputes and Liability

a. In the event of any proceeding or litigation concerning the disclosure of any material submitted by Proposer Counterparty, SBCTA will be the custodian retaining the material until otherwise ordered by a court or such other authority with jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that SBCTA reserves the right, in its

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

respective sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by SBCTA in connection with any litigation, proceeding, or request for disclosure will be reimbursed and paid by Proposer Counterparty objecting to the disclosure.

b. Proposer Counterparty will be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

c. In no event will SBCTA or any of its agents, representatives, consultants, directors, officers, or employees be liable to Proposer Counterparty for the disclosure of all or a portion of any materials submitted under this Agreement or any RFP.

8. DEFAULTS, REMEDIES, AND TERMINATION

8.1. Occurrence of Default

Subject to the Proposer Counterparty's rights under Section 3.6 with respect to any Force Majeure Event, the occurrence of any one of the following events will constitute a "Default":

a. Proposer Counterparty is deemed by SBCTA to be disqualified from further participation in the procurement process due to a violation of the procurement rules set forth in the DB RFQ and any RFP;

b. Proposer Counterparty, through its actions or inactions, fails to or is unable to materially perform its obligations under the PPWA after having been provided reasonable opportunities to cure;

c. if awarded the Project under the terms of any RFP, Proposer Counterparty:

i. except with respect to issues or provisions included by the Proposer Counterparty as identified exceptions to the form of Design-Build Contract in its Proposal (each a "Contract Exception"), refuses or fails to enter into the Design-Build Contract in the form incorporated in any RFP, including a refusal or failure to satisfy any conditions precedent to execution of such agreement;

ii. fails to engage in good faith negotiations regarding the Design-Build Contract in accordance with the terms of any RFP; and/or

iii. withdraws or attempts to withdraw its Proposal, or refuses or fails to meet any commitments made therein that were to be fulfilled, in each case prior to execution of the Design-Build Contract;

d. failure to deliver Pre-Proposal Deliverables, attend Pre-Proposal Workshops, or otherwise fully and actively participate in material aspects of the procurement process;

e. failure to satisfy any conditions precedent to the submittal of a Proposal, including having failed to incorporate an Operating System Provider as Major Participant to the Shortlisted Design-Build Team;

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f. failure to submit a Proposal in conformance with the administrative requirements of any RFP, including with respect to timeliness; method of submission; Proposal contents, format, and organization;

g. Proposer Counterparty refuses to comply with SBCTA's rights to Work Product and Intellectual Property under Section 3;

h. Proposer Counterparty is Insolvent;

i. Proposer Counterparty, any Financially Responsible Party, or any other Major Participant, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, is or has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code Section 1101, with any public entity, as defined in California Public Contract Code Section 1100;

j. after exhaustion of all rights of appeal, there occurs any suspension or debarment from bidding, proposing, or contracting with any state-level, interstate, or federal Governmental Authority (distinguished from ineligibility due to lack of financial qualifications) of Proposer Counterparty or any other Related Party to the extent such remains a Related Party;

k. any representation or warranty made by Proposer Counterparty under this Agreement, or in any certificate, Exhibit, report, instrument, agreement, or other document delivered by or on behalf of Proposer Counterparty to SBCTA pursuant to this Agreement, is false, misleading or inaccurate in any material respect when made or omits material information when made; or

l. any other material breach by Proposer Counterparty of this Agreement.

8.2. SBCTA's Remedies upon Default

a. If any Default occurs, SBCTA may, in its discretion:

i. disqualify Proposer Counterparty from further participation in the procurement process under the terms of this Agreement, the DB RFQ, and any RFP;

ii. determine Proposer Counterparty ineligible for any Stipend Payment under this Agreement;

iii. suspend, in whole or in part, the Pre-Proposal Work by written order to Proposer Counterparty; and/or

iv. exercise any rights and remedies available to it (under this Agreement, at Law or in equity, or otherwise) for so long as such Default continues uncured.

b. Subject to Section 8.3.1, the foregoing remedies under the terms of this Agreement are not exclusive of any other remedy. Each and every remedy is cumulative and in addition to any other remedy, existing now or hereafter, at Law, or in equity.

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8.3. Termination

8.3.1. Exclusive Rights and Remedies

a. This Section 8.3.1, together with the other provisions of this Agreement expressly referred to in this Section 8.3.1, contain the rights of SBCTA and Proposer Counterparty regarding termination of this Agreement.

b. Notwithstanding anything to the contrary, a termination of this Agreement in accordance with this Section 8.3.1 will not waive any right or claim to damages that SBCTA may have and SBCTA may pursue any cause of action that it may have under the Agreement.

c. If only a portion of the Pre-Proposal Work is terminated, Proposer Counterparty will continue to complete the remaining portions of the Pre-Proposal Work that was not terminated in accordance with the Agreement.

8.3.2. Occurrence of Termination or Expiry Date

a. If a Default occurs, whether or not such Default is then continuing, SBCTA may, in its discretion, terminate this Agreement as a result in accordance with Section 8.2, and SBCTA will have no obligation to pay Proposer Counterparty any amount (and Proposer Counterparty will not be entitled to any Stipend Payment). Anything contained in this Agreement to the contrary notwithstanding, a termination for Default will not waive any right or claim to damages, with respect to indemnification, or otherwise, that SBCTA may have and SBCTA may pursue any cause of action against Proposer Counterparty that it may have under this Agreement.

b. If SBCTA exercises its discretion to terminate the Agreement by delivering written notice to Proposer Counterparty to such effect at any time prior to the Proposal Submission Deadline set forth in the RFP, provided that no Proposer Counterparty Default has occurred, and subject to the Proposer Counterparty otherwise complying with the applicable conditions set forth in Section 5.2.a, then SBCTA will, within ninety (90) days following the date of such termination notice, pay to Proposer Counterparty the Stipend Payment.

c. Without limiting its other obligations under this Agreement, on the Expiry Date, Proposer Counterparty will, unless SBCTA elects in writing to the contrary, assign and transfer to SBCTA, and/or any Person designated by SBCTA, for no additional payment, all Work Product and, subject to Section 4, all Intellectual Property required to be transferred under this Agreement.

d. Under no circumstances is Proposer Counterparty entitled to anticipatory damages, unearned profits, punitive, exemplary, special, incidental, or consequential damages as a result of the occurrence of the Expiry Date or any termination under 8.3.2.b.

e. Anything contained in this Agreement to the contrary notwithstanding, the occurrence of the Expiry Date will not waive any right or claim to damages, with respect to indemnification, or otherwise, that SBCTA may have and SBCTA may

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pursue any cause of action that it may have against Proposer Counterparty under this Agreement.

9. FEDERAL AND STATE REQUIREMENTS

9.1. Compliance Matters

a. Proposer Counterparty will comply with and require its subcontractors (including each Major Participant) to comply with, all State and federal requirements applicable to the Pre-Proposal Work, whether or not specifically listed in this Agreement, pursuant to Law, including all federal, state, and local laws, ordinances, rules, and regulations applicable to the work or payment for work thereof.

b. Proposer Counterparty will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.

c. Furthermore, Proposer Counterparty will comply with the requirements set out in Exhibit 5.

d. Proposer agrees to incorporate the provisions of this Section 9 and Exhibit 5 in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

9.2. Labor and Wage Provisions

In performing the Pre-Proposal Work, Proposer Counterparty will comply, and require all subcontractors to comply, with all applicable federal and State labor, occupational safety and health laws and orders, including payment of prevailing wages.

9.3. Assignment of Claims and Causes of Action

In accordance with California Public Contract Code Section 7103.5(b) and California Government Code Section 4552, Proposer Counterparty will assign to SBCTA all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15), or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, equipment, hardware, software or materials in accordance with this Agreement.

10. INDEMNIFICATION

10.1. No Obligation to Indemnify Proposer Counterparty

SBCTA will not indemnify Proposer Counterparty and no such express obligation or liability will be construed to the contrary as an indemnity.

10.2. Proposer Counterparty Indemnity

a. Except as otherwise set forth in Section 10.2.e below, Proposer Counterparty agrees that it will indemnify, defend, and hold harmless SBCTA and all of SBCTA's board members, officers, agents, representatives, employees, successors and assigns (the "Indemnified Party" or collectively the "Indemnified Parties") from any

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claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) asserted, incurred, suffered, or awarded as a result of or that relate to any third party claims, suits, actions, allegations, or proceedings arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law, or breach of contract by Proposer Counterparty, its Major Participants, other team members or their respective agents, employees, or representatives arising in connection with Proposer Counterparty's performance of the Pre-Proposal Work, whether direct or indirect, except that Proposer will not be liable under this this Section 10.2 for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence or willful misconduct of SBCTA or any of its board members, officers, agents, representatives, or employees.

b. The foregoing indemnity will survive the expiration or termination of this Agreement and will expressly apply to and include all third-party claims, suits, actions or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights and unauthorized use. Should the Proposer Counterparty become the Design-Builder under the Design-Build Contract, the indemnity under this Section 10.2 will continue to apply in accordance with its terms and be additive to any indemnifications set forth in the Design-Build Contract.

c. Proposer Counterparty's obligation to indemnify, defend, and pay for the defense, or at SBCTA's option, to participate and associate with SBCTA in defense of any claim and any related settlement negotiations, will be triggered by SBCTA's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding sole negligence or willful misconduct of SBCTA or any of its board members, officers, agents, representatives or employees will excuse performance of this provision. Proposer Counterparty will pay all costs and fees related to this obligation and its enforcement by SBCTA. SBCTA's failure to notify Proposer Counterparty of a claim will not release Proposer Counterparty of the above duty to defend.

d. For purposes of this Section 10.2, "third party" means any Person (including Proposer Counterparty's employees or agents) other than an Indemnified Party and Proposer Counterparty, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (i) against an Indemnified Party, (ii) within the scope of the indemnities, and (iii) not covered by the Indemnified Party's worker's compensation program.

e. The indemnity set forth in Section 10.2.a will be limited to the extent that any loss or claim:

   i. is with respect to design professional liability, in which case the Proposer Counterparty's indemnification and defense obligations with respect to design professionals will be limited to such claims and amounts as are permitted under California Civil Code Section 2782.8; or

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ii. relates to defects or damages relating thereto solely and directly caused by SBCTA's misuse or, only with respect to designs, plans, drawings, or other documents of such nature, use or reuse, of Proposer Counterparty's Intellectual Property.

10.3. Relationship to Insurance

For certainty, the insurance coverage Proposer Counterparty is required to obtain and maintain, or cause to be obtained and maintained, pursuant to Section 11 may support but will not limit Proposer Counterparty's indemnification and defense obligations pursuant to this Agreement.

10.4. Claims by Employees

The indemnification obligations set forth in Section 10.2 will not be limited or reduced by a limitation on the amount or type of damages, compensation, or benefits payable by or for Proposer Counterparty or subcontractor (or anyone directly or indirectly employed by them or anyone for whose acts they may be liable) under workers' compensation acts, disability benefits acts, other employee benefit acts, related law, or judicial decision with respect to any such law.

10.5. Proposer Counterparty Defenses

In Proposer Counterparty's defense of SBCTA under this Section 10.5, as to the negotiation, compromise, and settlement of any action, SBCTA will retain discretion and must concur in the terms of any settlement and appeals therefrom.

11. INSURANCE

11.1. General Provisions[1]

a. Without limiting the indemnification obligations of Proposer Counterparty under this Agreement, Proposer Counterparty will provide at its expense and continuously maintain in full force and effect at all times from and after the Effective Date through the end of the Term insurances in the types and amounts of specified in Section 11.2.

b. All policies written by insurance carriers shall be authorized and admitted to do business in the state of California with a current A.M. Best rating of A-VIII or better. Professional Liability policies may be from non-admitted carriers provided they are authorized and licensed in the State of California and meet the current A.M. Best rating of A: X or better.

c. All policies, except those for workers' compensation and professional liability insurance, shall be endorsed by ISO Form CG 20 10 and CG 20 37, to name SBCTA and its officers, directors, members, employees, agents and volunteers, as additional insureds (the "Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of Proposer Counterparty under this Agreement, coverage for such Additional

[1] Project specific insurance will not be required for the Pre-Proposal Period; however, the project-specific requirements identified in the Term Sheet will apply for the Design-Build Contract.

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Insureds shall not extend to liability to the extent prohibited by Section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.

d. Evidence of insurance in a form acceptable to SBCTA, including declarations pages of each policy, certificates of insurance, and the required additional insured endorsements, shall be provided to SBCTA prior to commencing the Pre-Proposal Work. Certificate(s) of insurance, as evidence of the required insurance, shall be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Section 11; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the SBCTA contract number on the face of the certificate. If requested in writing by SBCTA, the Proposer Counterparty shall submit complete copies of all required insurance policies within 10 business days of a written request by SBCTA.

e. Regardless of the allowance of exclusions of deductibles or self-insured retention by SBCTA, the Proposer Counterparty shall be responsible for any deductible or self-insured retention amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Section 11. The Proposer Counterparty shall pay, and shall require its subcontractors to pay, all deductibles, co-pay obligations, premiums, and any other sums due under the required insurance. All deductibles or self-insured retention will be in amounts acceptable to SBCTA. The Proposer Counterparty will advise SBCTA in writing as to the amounts of any deductible or self-insured retention, or as to any increase in any insurance deductible or self-insured retention under any insurance required above. At the option of SBCTA, if the deductible or self-insured retention is greater than $10,000 or one percent (1%) of the amount of coverage required under this Agreement, whichever is less, the Proposer Counterparty shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to SBCTA, its directors, officials, officers, employees, and agents; or, (2) the Proposer Counterparty shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA will have the right, but not the obligation, to pay any deductible or self-insured retention due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to Proposer Counterparty. The Proposer Counterparty's policies will neither obligate nor prohibit SBCTA or any other additional insured, from paying any portion of any Proposer Counterparty's deductible or self-insured retention.

f. All policies required to be maintained by the Proposer Counterparty or any subcontractor, with the exception of professional liability and worker's compensation, shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and noncontributory. Further, none of Proposer Counterparty's or subcontractor's pollution, automobile, general liability

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or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an Additional Insured against a named insured.

g. To the fullest extent permitted by law, Proposer Counterparty hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA. To the fullest extent permitted by law, Proposer Counterparty shall require similar written express waivers and insurance clauses from each of its subcontractors at every tier. With the exception of professional liability insurance, Proposer Counterparty shall require all of the policies and coverages required in this Section 11 to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit Proposer Counterparty from waiving the right of subrogation prior to a loss or claim.

h. If any insurance company elects to cancel or non-renew coverage for any reason, Proposer Counterparty will provide SBCTA 30 days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, Proposer Counterparty will provide SBCTA 10-days prior written notice. In any event, Proposer Counterparty will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which Proposer Counterparty receives within five business days after Proposer Counterparty receives it by submitting it to SBCTA at insurance@gosbcta.com with a copy of the notice as provided for under Section 19.

i. SBCTA may take any steps as are necessary to assure Proposer Counterparty's compliance with its insurance obligations as identified within this Section 11. Failure to continuously maintain insurance coverage as provided herein shall constitute a material breach of contract. In the event Proposer Counterparty fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the Proposer Counterparty, or withhold such expense from amounts owed Proposer Counterparty, or terminate this Agreement.

j. The insurance required or provided shall in no way limit or relieve Proposer Counterparty of its duties and responsibility under the Agreement, including the obligation to indemnify, defend and hold harmless the Indemnified Parties. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Proposer Counterparty for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Agreement or Law. Nothing contained herein shall relieve Proposer Counterparty or any subcontractor of their obligations to exercise due care in the performance of their duties in connection with the Pre-Proposal Work and to complete the Pre-Proposal Work in strict compliance with the Agreement.

k. Insurance required of Proposer Counterparty shall be also provided by subcontractors or by Proposer Counterparty on behalf of all subcontractors to cover their services performed under this Agreement. Proposer Counterparty may

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reduce types and the amounts of insurance limits provided by subconsultants to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by such subcontractor. Proposer Counterparty shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

l. If Proposer Counterparty maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by Proposer Counterparty. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

m. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If SBCTA request any changes to the insurance that results in an increase in premium then SBCTA will reimburse the actual cost to Proposer Counterparty. If requested changes result in a reduction is the cost of the insurance then Proposer Counterparty will reimburse SBCTA the actual cost savings.

11.2. Required Policies

11.2.1. Commercial General Liability

a. Proposer Counterparty shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than $5,000,000 each occurrence.

b. The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Agreement), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.

c. The policy shall include:

i. $5,000,000 per occurrence limit for property damage or bodily injury;

ii. $1,000,000 per occurrence limit for personal injury and advertising injury;

iii. $5,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01);

d. If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504).

e. Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.

f. A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

g. All subcontractors at any tier performing any portion of the Pre-Proposal Work for Proposer Counterparty shall also obtain and maintain the CGL insurance coverage, with deductibles or self-insured retentions acceptable to SBCTA, and with limits not less than:

i. $1,000,000 each occurrence;

ii. $2,000,000 general aggregate;

iii. $1,000,000 personal injury and advertising limit; and

iv. $2,000,000 products-completed operations aggregate limit.

11.2.2. Commercial Automobile Liability

a. Proposer Counterparty shall maintain a commercial automobile liability policy with a total limit of liability of not less than $5,000,000 each accident. This total limit of liability may be met by combining the limits of the primary automobile policy with an umbrella or excess policy in accordance with Section 11.2.3.

b. The commercial automobile policy shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the Pre-Proposal Work.

c. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

11.2.3. Umbrella/Excess CGL

a. If the Proposer Counterparty elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy shall follow from the Proposer Counterparty primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.

b. The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.

c. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

d. The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

e. There shall be no statement limiting the coverage provided to the parties listed as Additional Insureds or Indemnified Parties.

11.2.4. Worker's Compensation and Employer's Liability

a. The Proposer Counterparty shall maintain worker's compensation and employer's liability policies including the following:

i. Coverage A. Statutory Benefits;

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ii. Coverage B. Employer's Liability;

iii. Bodily Injury by accident with limits of $1,000,000 per accident; and

iv. Bodily Injury by disease with limits of $1,000,000 policy limit/$1,000,000 each employee.

b. The worker's compensation and employer's liability policies shall contain a waiver of subrogation in favor of the Indemnified Parties. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Pre-Proposal Work by Proposer Counterparty or any subcontractor at any tier.

c. All subcontractors at any tier performing any portion of the Pre-Proposal Work shall also obtain and maintain the same insurance coverage as specified in this Section 11.2.4, with a waiver of subrogation in favor of Proposer Counterparty and all Indemnified Parties. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

11.2.5. Professional Liability

a. The Proposer Counterparty shall maintain a professional liability policy including a limit of liability not less than $2,000,000 per claim and an annual aggregate limit of not less than $4,000,000.

b. Coverage shall be appropriate for the Pre-Proposal Work to be performed and shall include coverage for errors and omissions arising out of Proposer Counterparty's professional services, or services of any person employed by Proposer Counterparty, or any person for whose acts, errors, mistakes or omissions Proposer Counterparty may be legally liable.

c. If Coverage is on a claims made basis, the policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date Proposer Counterparty begins to perform the Pre-Proposal Work under this Agreement.

d. Proposer Counterparty shall secure and maintain "tail" coverage for a minimum of three (3) years after Agreement completion.

12. PROPOSER COUNTERPARTY REPRESENTATIONS AND WARRANTIES

Proposer Counterparty hereby represents and warrants to SBCTA that each of the following representations and warranties made by it and set out below are true and correct as of the Effective Date.

12.1. Organization, Power, and Authority

a. Proposer Counterparty, [name], is a [type of entity], with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted under this Agreement.

b. Proposer Counterparty is duly qualified to do business in the State, and is in good standing in the State and, as applicable, its state of formation or incorporation.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

c. As of the Effective Date, Proposer Counterparty has full power, right, and authority to execute and deliver and perform this Agreement, and to perform all of Proposer Counterparty's obligations provided for under this Agreement.

12.2. Authorization and Due Execution

a. Each Person executing this Agreement on behalf of Proposer Counterparty has been duly authorized to execute and deliver this Agreement on behalf of Proposer Counterparty

b. The execution, delivery, and performance of this Agreement by Proposer Counterparty has otherwise been duly authorized by all necessary action of Proposer Counterparty.

c. This Agreement has been (or, at the time of execution and delivery, will have been) duly and validly executed and delivered by Proposer Counterparty.

12.3. No Conflicts

The execution, delivery, and performance by Proposer Counterparty of this Agreement does not and will not contravene, or result in breach or default under, any:

a. Law applicable to Proposer Counterparty that is in effect on the date of execution and delivery of this Agreement;

b. organizational, corporate, or other governing documents of Proposer Counterparty; or

c. agreement, instrument, permit, approval, judgment or decree to which Proposer Counterparty is a party or is bound.

12.4. No Breach; No Litigation

There is no action, suit, proceeding, investigation, or litigation pending and served on Proposer Counterparty that challenges:

a. Proposer Counterparty's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement; or

b. the authority of Proposer Counterparty's official to execute this Agreement,

and Proposer Counterparty has disclosed to SBCTA any pending and un-served or threatened action, suit, proceeding, investigation, or litigation with respect to such matters that Proposer Counterparty is aware of after reasonable inquiry and investigation.

12.5. Debarment; Anti-Money Laundering

a. None of Proposer Counterparty, any of its principals (being any officer, director, or other direct or indirect owner, partner, employee (including key personnel) or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Proposer Counterparty) or, to Proposer Counterparty's knowledge after reasonable inquiry, any of its subcontractors engaged as of the Effective Date, are presently disqualified, suspended or debarred from bidding, proposing or contracting with any local, state-level, interstate or federal Governmental Authority.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

b. Furthermore, none of Proposer Counterparty, nor any of its subcontractors engaged as of the Effective Date, are listed on any of the following lists or their successors: the Specially Designated Nationals List; the Denied Persons List; the Unverified List; the Entity List or the Debarred List; the General Service Administration's System for Award Management; or any other list of Persons with which SBCTA may not do business pursuant to Law.

c. Proposer Counterparty is not in violation of:

i. any applicable United States anti-money laundering laws, including those contained in the Bank Secrecy Act and the regulations promulgated thereunder;

ii. any applicable economic sanction laws administered by Office of Foreign Assets Control of the United States Department of the Treasury (OFAC) or by the United States Department of State; or

iii. any applicable United States anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal.

d. Proposer Counterparty is not a Person:

i. that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws;

ii. that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws;

iii. that is owned, controlled by, or affiliated with any Person identified in the foregoing clauses; or

iv. that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, money laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

12.6. Additional Legal Assurances

a. Prior to the Effective Date and in accordance with the DB RFQs, Proposer Counterparty disclosed to SBCTA in writing all organizational conflicts of interest (as described in the Project RFQs) of which it was aware and, since such date, Proposer Counterparty has not obtained knowledge (having made reasonable inquiries to obtain such knowledge) of any additional such organizational conflict of interest, and there have been no organizational changes in Proposer Counterparty or changes in its Major Participants that have not been approved by SBCTA.

b. In connection with this Agreement, Proposer Counterparty has not committed or caused, and will not commit or cause, a violation of: (A) Government Code

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Sections 1090 through 1099, 84308, or 87100 through 87105; or (B) California Code of Regulations Sections 18438.1 through 18438.8.

c. Proposer Counterparty has not employed nor retained any company or person, other than a bona fide employee working solely for Proposer Counterparty, to solicit or secure this Agreement. Further, Proposer Counterparty has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Proposer Counterparty, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

d. Proposer Counterparty has fully complied with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and will require that each of its subcontractors and each of their respective subcontractors will comply with the same.

e. Proposer Counterparty has not, in the past three (3) years, been convicted of or had a civil judgment rendered against it for:

i. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (e.g., federal, state or local) transaction or public contract;

ii. violation of federal or state antitrust statutes; or

iii. commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,

iv. and Proposer Counterparty is not presently indicted for or otherwise criminally or civilly charged by a Governmental Entity with commission of any of the foregoing offenses.

f. Proposer Counterparty has not, in the past three (3) years, had one or more public transactions (federal, state or local) terminated for cause or default.

13. REMEDIES

13.1. Proposer Counterparty's Sole Remedy

Proposer Counterparty's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement will be that right or remedy and Proposer Counterparty will have no additional right or remedy, however arising.

13.2. Available Insurance

Proposer Counterparty will not be entitled to any payment or credit (or any portion of either thereof) which would have been due, or from which it would have otherwise received a benefit, under this Agreement to the extent that it is (or should have been) able to recover the amount or receive the benefit of such payment or credit (or such portion) under any insurance carried by Proposer Counterparty.

13.3. Limitation on Liability

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a. Except as provided in Section 13.3.b below, Proposer Counterparty's total aggregate liability to SBCTA and any Indemnified Party, including for default, breach of contract, negligence, any liquidated damages (howsoever described), pursuant to any indemnity obligations related to Claims and/or Losses suffered by any Indemnified Parties, or otherwise in connection with the performance of the Pre-Proposal Work, will be limited to the amount of three million dollars ($3,000,000).

b. The foregoing limitation on liability will not apply:

i. to Losses to the extent that such Losses are required to have been covered by insurance pursuant to this Agreement;

ii. to Losses to the extent that such Losses are covered by the proceeds of insurance actually carried by or insuring the Proposer Counterparty under policies solely with respect to the Project, regardless of whether such policies are required pursuant to this Agreement;

iii. under any indemnity pursuant to this Agreement to the extent such indemnity relates to a Claim asserted and/or Losses suffered by any third party (other than an Indemnified Party), or Claims arising from death or bodily injury; arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith, or gross negligence (including that of any Related Party); or

iv. to costs, liabilities or obligations arising from the Proposer Counterparty's abandonment of the Project.

c. Subject to any terms and conditions of this Agreement that survive its termination, the limitation of liability in this section is intended to be limited to the Pre-Proposal Period and will be superseded by any limitation of liability applicable to the performance of the Design-Builder's obligations under the Design-Build Contract upon its execution.

14. LIABILITY

14.1. Joint and Several Liability

In the event that Proposer Counterparty, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Proposer Counterparty will be the joint and several obligation or undertaking of each such individual or other legal entity.

14.2. Waiver of Consequential Damages

a. Neither Party will be liable to the other for any punitive, indirect, incidental, consequential or special damages of any nature, whether arising out of a breach of this Agreement, tort (including negligence), or other legal theory of liability, including loss of bonding capacity, loss of bidding, loss of business or contracting opportunities, or other impact costs.

b. The limitation set out in Section 14.2.a will not apply to:

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i. any amounts expressly payable pursuant to this Agreement;

ii. Proposer Counterparty's liability for:

A. Claims and/or Loss that are in respect of death or personal injury;

B. Claims and/or Loss (including defense costs) to the extent that they are required to have been covered by insurance available to Proposer Counterparty; and

C. amounts payable by Proposer Counterparty under an indemnity pursuant to this Agreement (but only to the extent such indemnity relates to a Claim asserted and/or Loss suffered by any third-party, and is not otherwise a type of liability listed under A. or B. above); and

iii. any Party's liability for Loss arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith, or gross negligence on the part of the relevant Party (including, with respect to Proposer Counterparty, that of any other Related Party).

14.3. No Personal Liability

No agent, consultant, officer, or authorized employee of SBCTA will be responsible either personally or as an agent, consultant, officer or employee, or board member, for any liability arising under this Agreement, it being understood that in such matters they act as representatives of SBCTA.

14.4. Governmental Immunity

The Parties acknowledge and agree that SBCTA and its officials, officers and employees are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by Law, or otherwise available to SBCTA and its officials, officers and employees.

15. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State, and any applicable federal law.

16. PROTESTS & DISPUTES

16.1. Consent to Jurisdiction

a. The venue for any litigation arising from a dispute shall be the local State courts and the United States District Court for the Central District of California. Any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be adjudicated exclusively by such courts.

b. The Parties acknowledge that the Pre-Proposal Work does not include any element which would be considered a "public works project" for purposes of Public Contract Code Section 9204, with any such Pre-Proposal Work being reserved for incorporation in a future Design-Build Contract.

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16.2. Protest Procedures

a. This Section 16.2 sets forth the sole and exclusive protest remedies available with respect to this Agreement.

b. Only Proposer Counterparty (and not individual Major Participants) is permitted to file protests regarding this Agreement.

c. Any protests regarding this Agreement shall be delivered to SBCTA by e-mail to tunneltoontario@gosbcta.com. Any Proposer Counterparty submitting such a protest is responsible for obtaining proof of delivery through the use of automated receipt and read message confirmations.

d. Any protest must include the following in order to be considered complete and delivered as specified in Section 16.2.c:

   i. the name of the Proposer Counterparty that is making the protest;

   ii. a succinct statement of the grounds, legal authority and factual basis for such protest; and

   iii. all documentation required to establish the merits of the protest.

e. Unless SBCTA decides otherwise in its discretion, no hearing will be held on the protest and SBCTA shall decide it on the basis of the written submissions received from the protesting Proposer Counterparty. SBCTA (and/or its designees) may, in its discretion, discuss the protest with the protesting Proposer Counterparty, SBCTA's advisors and other governmental entities or their representatives.

f. Any additional information regarding the protest requested from the protesting Proposer Counterparty by SBCTA or its designees shall be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to expeditiously comply with any request for information, the protest may be resolved without such information.

16.3. Dispute Resolution

a. This Section 16.3 sets forth the dispute resolution procedures under this Agreement.

b. A Party shall use reasonable efforts to deliver notice of any dispute to the other Party within thirty (30) days of the event or condition giving rise to the dispute. The description of the dispute shall be in sufficient detail to allow the other Party to evaluate the merits of the complaining Party's position, as well as any additional information relating to the dispute as may reasonably requested to evaluate the dispute. The receiving Party shall provide a written response of its position within ten (10) Business Days of receipt of the dispute.

c. SBCTA will consider both Parties' positions and will render its decision with respect to the dispute within thirty (30) days of receipt of the receiving Party's response.

d. If Proposer Counterparty wishes to dispute SBCTA's decision, the Parties shall use their best efforts to resolve such dispute at the lowest possible administrative level. If a dispute cannot be resolved, then the Parties shall present the dispute to

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the Executive Director of SBCTA, or his or her duly authorized representative, and to an equivalent executive officer of Proposer Counterparty for resolution.

e. If the dispute cannot be resolved at the executive level, the Parties may determine by mutual agreement to proceed with non-binding mediation. The Parties shall, within ten (10) Business Days after submission of the dispute to mediation, select a mediator acceptable to both Parties. If the Parties fail to reach agreement regarding a mediator within ten (10) Business Days, each Party shall submit the names of three (3) mediators to the relevant mediation agency, and the Parties shall proceed with the mediator selected by the relevant mediation agency. Each such mediation must be:

i. administered in accordance with the American Arbitration Association ("AAA") Commercial Industry Mediation Rules and Procedures then in effect;

ii. held in San Bernardino County, California; and

iii. concluded within 30 days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties.

f. No mediator will be empowered to render a binding decision as to any dispute or to make any findings or reduce his or her recommendations or decisions to writing. The mediation shall be considered to be a settlement negotiation as contemplated by the California Evidence Code. In the event that the matter is not resolved in mediation, any offer of settlement shall be inadmissible pursuant to the provisions of California Evidence Code Section 1152. The provisions of California Evidence Code Sections 703.5 and 1115 through 1128, shall apply to the mediation. The Parties agree that evidence admissible or subject to discovery or disclosure shall not be inadmissible or protected from disclosure solely by reason of its introduction or use in the mediation. Furthermore, disclosure of information which is otherwise privileged shall not alter its privileged character.

g. If the dispute cannot be resolved through mediation, each Party may pursue any rights and remedies available under Law or under the Agreement.

17. RESERVATION OF RIGHTS

In connection with the procurement process described in this Agreement, SBCTA reserves to itself, any and all of the rights set out in Section 34 of the DB RFQ and any equivalent provisions of any RFP, each of which is incorporated herein by reference.

18. CONSENT TO SERVICE OF PROCESS

Proposer Counterparty irrevocably consents to service of process by notice as provided for in Section 19.

19. NOTICE

19.1. Notice Requirements

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a. Unless the context otherwise requires, any reference to a "notice" in this Agreement means a notice, request, demand, instruction, Pre-Proposal Deliverable, or other communication, and any such notice must be made in writing.

b. All notices and any other information required to be provided to a Party under this Agreement shall be made in writing, and shall be delivered either personally, by overnight delivery service, by U.S. certified or registered mail, postage prepaid, or by email addressed to the Parties at their respective addresses indicated below or, at SBCTA's election, using the Project Website or as provided by SBCTA:

with respect to Proposer Counterparty:

[ ]

with respect to SBCTA:

[ ]

c. Notices sent by overnight delivery service shall be deemed received on the Business Day following the date of deposit with the delivery service. Mailed notices shall be deemed received upon the earlier of the date shown on the return receipt, or the second Business Day after the date of mailing. Any notice sent by email or through the Project Website shall be deemed received when confirmed by written or electronic confirmation of receipt by the addressee of the email or equivalent digital documentation.

d. Notwithstanding the foregoing, any service of process must at all times be physically delivered.

20. PARTIES TO CONTRACT

20.1. Binding Effect; Successors and Assigns

a. This Agreement will be binding upon and inure to the benefit of SBCTA and Proposer Counterparty and each of their respective permitted successors and assigns.

b. Proposer Counterparty will not assign, transfer, pledge, sell, or otherwise convey this Agreement without SBCTA's prior written consent, in its sole discretion; provided that, this Agreement may be assigned to the special purpose vehicle formed by the Proposer Counterparty for purposes of the Project without the prior written consent of the SBCTA, but upon written notice to SBCTA. Any assignment of this Pre-Proposal Works Agreement without the required consent of SBCTA will be null and void and may, in SBCTA's sole discretion, disqualify Proposer Counterparty from further consideration in the procurement process and for the Project.

c. SBCTA may assign, transfer, pledge, sell, or otherwise convey this Pre-Proposal Works Agreement without Proposer Counterparty's consent, to any other Person that succeeds to the governmental powers and authority of SBCTA in respect of the Project.

20.2. Limitation on Third-Party Beneficiaries

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a. The Parties agree that this Agreement is solely for the benefit of the Parties and nothing herein is intended to create any third-party beneficiary rights for third parties.

b. Notwithstanding the foregoing, the duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed by Law.

20.3. Independent Proposer Counterparty

a. Proposer Counterparty must perform the Pre-Proposal Work under this Agreement as a non-exclusive independent contractor, and nothing herein is intended or will be construed to create any partnership, agency, or joint venture relationship between SBCTA and Proposer Counterparty.

b. Neither Proposer Counterparty nor its subcontractors, nor the employees of any of them, will be deemed for any purpose to be employees or agents of SBCTA. Proposer Counterparty is not authorized to act as SBCTA's agent and will have no authority, expressed or implied, to act for or bind SBCTA unless otherwise expressly set forth for a particular purpose in a separate writing by SBCTA.

21. CONSTRUCTION OF CONTRACT

21.1. Counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Transmission by electronic mail of an executed counterpart of this Agreement will be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart. The Parties, in the manner specified by SBCTA, may sign this Agreement digitally.

21.2. Entire and Integrated Agreement

a. This Agreement, including the Project RFQs, any RFP, and each Exhibit, constitutes the entire agreement between Proposer Counterparty and SBCTA with regard to its subject matter, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations are part of this Agreement.

b. Subject to Section 21.5, this Agreement, which includes its Exhibits each as fully incorporated elements, constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

c. Subject to any non-disclosure and confidentiality agreement executed by SBCTA and the Proposer Counterparty pursuant to the Project prior to the Effective Date, this Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral.

21.3. Integration of Provisions Required by Law

The Parties agree that any additional provisions not set forth in this Agreement required by any existing or future Law to be inserted in this Agreement are and will be deemed to be incorporated in this Agreement as and when required by or for compliance with such

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Law with effect from the date of their incorporation (unless Law expressly provides for retroactive effectiveness).

21.4. Subordination to United States Government

a. The Parties agree that this Agreement will be subject and subordinate to the provisions of any existing or future agreement between SBCTA and the United States of America, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to SBCTA or expenditure or reimbursement of Federal or State funds (including federal grants-in-aid) for the development of the Project, including but not limited to any security requirements of state or federal government, including temporary security procedures or instructions.

b. In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates such agreement referred to in the prior paragraph, SBCTA will promptly notify Proposer Counterparty of such conflict or violation, and work with Proposer Counterparty to amend, alter or otherwise modify the terms of this Agreement in order to resolve such conflict or violation in a manner reasonably acceptable to both Parties.

21.5. Severability

If any provision of this Agreement is held or deemed inoperative or unenforceable because it conflicts with any other provision or provisions hereof, or any constitution, statute, ordinance, rule of Law, public policy, or any other reason, the circumstances will not render the provision in question inoperative or unenforceable in any other case or circumstances, or render any other provision herein contained invalid, inoperative, or unenforceable to any extent. The invalidity of any one or more phrases, sentences, clauses, or Sections contained in this Agreement will not affect the remaining portions of this Agreement or any part thereof.

21.6. Survival

The following provisions of this Agreement will survive the expiration or earlier termination of this Agreement and/or completion of the Pre-Proposal Work:

a. Section 4 regarding Work Product and Intellectual Property;

b. Section 5.2.d regarding inclusion of a Stipend Payment obligation in the Design-Build Contract;

c. Section 10 regarding indemnification;

d. Section 11.2.5.d regarding representations and warranties,

e. Sections 13 and 13.3.b.i regarding remedies and limitations on liability,

f. Sections 15 and 16 regarding governing law, protests, and disputes,

g. Exhibit 1: Rules of Interpretation and Exhibit 2: Definitions, and

h. any Proposer Counterparty liability or obligations to SBCTA arising from a Default occurring prior to the date of such termination.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

22. MISCELLANEOUS

22.1. Taxes

a. SBCTA takes no position, and bears no responsibility or liability, for Proposer Counterparty's elected tax treatment of any interest in the Pre-Proposal Work.

b. Proposer Counterparty is solely responsible for the withholding or payment of all applicable Federal, State, and local personal income taxes, social security taxes, unemployment and sickness disability insurance, and other payroll taxes with respect to Proposer Counterparty's employees. Neither Proposer Counterparty nor its subcontractors, nor the employees of any of them, will be eligible for any retirement, pension, or other employment benefits available to employees of SBCTA.

c. As such, Proposer Counterparty will pay or cause to be paid, prior to delinquency, all Taxes in each case in respect of Proposer Counterparty's performance of the Pre-Proposal Work under this Agreement, and any other Related Party interest in any of the foregoing. SBCTA will not in any case be responsible for any Taxes levied on Proposer Counterparty or on any other Proposer Counterparty-Related Parties. Proposer Counterparty accepts sole responsibility for, and agrees that it will have no right to claim, a Force Majeure Event or to any other claim for relief due to, its misinterpretation of Laws in relation to Taxes or incorrect assumptions regarding applicability of Taxes.

22.2. Costs

a. Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution, and delivery of this Agreement.

b. Except as otherwise expressly provided in this Agreement, each Party will perform its obligations in accordance with this Agreement at its own cost and risk.

22.3. No Personal Liability of Government Officials

a. SBCTA's representatives are acting solely as agents and representatives of SBCTA, when carrying out the provisions of or exercising any right under this Agreement. They will not be liable either personally or as employees of SBCTA for actions in their ordinary course of employment.

b. No agent, consultant, officer, or authorized employee of SBCTA nor any member of SBCTA's board, will be responsible either personally or as an agent, consultant, officer or employee, or board member, for any liability arising under this Agreement, it being understood that in such matters they act as representatives of SBCTA.

22.4. Signature Warranty

Each signatory to this Agreement warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

EXHIBITS

EXHIBIT 1: RULES OF INTERPRETATION AND CONSTRUCTION

EXHIBIT 2: DEFINITIONS AND ABBREVIATIONS

EXHIBIT 3: PRE-PROPOSAL DELIVERABLES

EXHIBIT 4: FEDERAL REQUIREMENTS

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

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EXHIBIT 1 – RULES OF INTERPRETATION AND CONSTRUCTION

Except as otherwise specified, the provisions set forth in this Exhibit 1 apply to this Agreement including its Exhibits:

1. RULES OF INTERPRETATION

1.1. General Rules

a. Headings are inserted for convenience only and will not affect interpretation of this Agreement.

b. Except as otherwise expressly provided or as the context may otherwise provide:

i. a reference to any section within this Agreement (including in the Exhibits) is a reference to such Section of this Agreement (excluding the Exhibits); and

ii. a reference to an agreement or other document, or to any Law or Permit, will be construed to be a reference to such agreement, document, Law or Permit as it may be amended, modified, replaced, or supplemented from time to time.

c. The singular includes the plural and vice versa.

d. Except as otherwise expressly provided in this Agreement, a reference to a person includes such person's permitted successors, assigns and transferees, and any and all gender specific references, classifications and/or language will be interpreted to be gender neutral.

e. Words preceding "include", "includes", "including" and "included" will be construed without limitation by the words that follow.

f. Except as otherwise expressly provided in this Agreement or as the context may otherwise provide, words and phrases not otherwise defined herein:

i. that have well-known insurance, engineering, construction, or specialized technical industry meanings will be construed pursuant to such recognized meanings where such meaning would be contextually appropriate; and

ii. of an accounting or financial nature will be construed pursuant to the Generally Accepted Accounting Principles (GAAP), in each case taking into account the context in which such words and phrases are used.

1.2. Deadlines

Whenever this Agreement requires either Party to make any payment, or provide or deliver any approval, consent, or like assent, notice, Work Product, comment or any information or material, or otherwise complete any action or performance, in each case on or no later than a date that is not a Business Day, then such deadline will automatically be extended to the next Business Day to occur after such date.

2. CONSENTS AND RELIANCE

2.1. Exercise of Discretion and Default Standards for Consents and Approvals

Except as otherwise expressly provided in this Agreement, where this Agreement provides SBCTA with any right to consent, approval or like assent, such consent, approval or like assent is to be made or given in the sole discretion of SBCTA.

2.2. Limited Potential Proposer Counterparty Reliance

a. Proposer Counterparty may rely on approvals, any other consent, approval, or like assent, and any notice, from SBCTA only for the limited purpose of establishing that the approval, or any other consent, approval or like assent, occurred, or any notice was given. Any such approvals, any other consent, approval, or like assent, and any notice, by SBCTA, is otherwise for the sole benefit of SBCTA.

b. Except as otherwise expressly provided in this Agreement, no:

A. approval, other consent, approval or like assent, or notice;

B. comment, responses, review, oversight, check, test, inspection, certification, concurrence, verification, or oversight;

C. agreement to resolution of a Force Majeure Event claim; or

D. payment,

E. or the absence of any of the foregoing, will in any case:

i. be deemed or construed as:

A. any kind of representation or warranty, express or implied, by SBCTA, or be relied upon by Proposer Counterparty in determining whether Proposer Counterparty has satisfied the requirements of this Agreement;

B. acceptance of services, materials or Pre-Proposal Work as satisfying the requirements of this Agreement or a professional approval by SBCTA; and

C. a detailed review or checking of design, details, or accuracy of Proposer Counterparty's Pre-Proposal Work;

ii. relieve Proposer Counterparty from, or diminish Proposer Counterparty's liability for, the performance of its obligations under this Agreement;

iii. estop or prevent SBCTA from subsequently exercising its rights under this Agreement without being bound by the manner in which they previously exercised (or refrained from exercising) such rights;

iv. prejudice SBCTA's rights against Proposer Counterparty, whether under this Agreement, including any cause of action it may have arising out of this Agreement, or Law;

v. constitute a waiver of any rights under this Agreement of any legal or equitable right of SBCTA or of any other Person; and

vi. be asserted by Proposer Counterparty against SBCTA as a legal or equitable defense to, or as a waiver of or relief from, Proposer Counterparty's obligation to fulfill the requirements of the Agreement.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

b. To the maximum extent permitted by Law, Proposer Counterparty hereby releases, acquits, and discharges SBCTA from any and all duty and obligation to cause the Pre-Proposal Work to satisfy the standards and requirements of this Agreement.

3. RESOLUTION OF CONFLICTS

3.1. Standards for Resolving Conflicts and Inconsistencies

a. If there is any conflict, ambiguity, or inconsistency between or among any provision(s) of the Agreement that cannot be reconciled by reading all relevant provisions of the Agreement as mutually explanatory of one another, then the order of precedence will be as follows:

i. a written amendment to this Agreement signed by both Parties, but only with respect to such portion of the Agreement that it expressly modifies;

ii. this Agreement (including, for such purposes, Exhibits 1 and 2, but not other Exhibits);

iii. all other Exhibits;

iv. the DB RFQ, provided that in the event of any conflict, ambiguity or inconsistency between or among the provisions of this Agreement (including any referenced Project Information) with an equal order of precedence which cannot otherwise be resolved, the most stringent requirement will take precedence;

v. except as otherwise expressly provided in this Agreement, where this Agreement cites any external document to define requirements of this Agreement, the cited portion of the applicable external document will:

A. be deemed incorporated into this Agreement to the extent it is so cited; and

B. have the same order of priority as the part of this Agreement where the citation is made;

vi. on plans, working drawings and standard plans, written or calculated dimensions take precedence over scaled dimensions;

vii. notwithstanding anything to the contrary contained in this Agreement, in the event of any conflict, ambiguity or inconsistency between or among any applicable requirement under Law and any other requirement of this Agreement, the applicable requirement under Law will take precedence;

viii. additional or supplemental requirements that Proposer Counterparty is required to comply with pursuant to this Agreement (including such requirements pursuant to any of the Project Information) with a lower order of precedence relative to other parts of this Agreement as determined pursuant to this Section 3 of Exhibit 1 will be given effect except to the extent such requirements conflict or are inconsistent with, or otherwise create an ambiguity in relation to, the provisions contained in a part of this Agreement with a higher order of precedence; and

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

ix. in the event of any conflict, ambiguity, or inconsistency between Proposer Counterparty's scope of work under this Agreement and any excluded Pre-Proposal Work pursuant to Section 3.2.c of this Agreement (including as to SBCTA's obligations with respect to the environmental process), SBCTA's determination, acting reasonably, as to the allocation of responsibility for the relevant scope of work will govern subject to Proposer Counterparty 's rights under Section 16 of this Agreement.

b. Subject only to Proposer Counterparty's express rights under this Agreement, omissions of details of Pre-Proposal Work in this Agreement which details are otherwise necessary to carry out the intent of the Agreement, or that are customarily performed by a Proposer Counterparty in accordance with Good Industry Practice, will not themselves relieve Proposer Counterparty from the obligation to perform such omitted Pre-Proposal Work or otherwise entitle Proposer Counterparty to additional time for performance or any compensation.

3.2. Special Provisions with Respect to Pre-Proposal Work and Design

a. Incorporation into this Agreement of any part of the Pre-Proposal Work will not:

i. limit, modify, or alter SBCTA's rights to review and approve any Work Product;

ii. be deemed as acceptance or approval of any part of the same by SBCTA as conforming with the requirements of this Agreement or Law; and

iii. waive application of Section 3.1 of this Exhibit 1.

b. If any part of the Pre-Proposal Work and/or any approved design package and/or any approved Work Product includes statements, terms, concepts or designs that can reasonably be interpreted as commitments or offers acceptable on award of this Agreement or approval of the design package or Work Product:

i. to provide higher quality items, materials, designs, or products than otherwise required by this Agreement;

ii. to adhere to more stringent requirements than otherwise required by this Agreement; and

iii. to perform services or meet standards in addition to or better than those otherwise required under this Agreement, then Proposer Counterparty's obligations hereunder will include compliance and performance in accordance with such statements, terms, concepts, and designs.

c. Proposer Counterparty is responsible for any omissions from any approved design package or Work Product and for any misdescription by it of details of Pre-Proposal Work that are necessary to carry out the intent of this Agreement.

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EXHIBIT 2 – DEFINITIONS AND ABBREVIATIONS

Except as otherwise specified herein, or as the context may otherwise require, the capitalized terms and acronyms used in this Agreement have the respective meanings set out in the DB RFQ or, once issued, the RFP, and otherwise in this Exhibit 2:

"Addenda" and "Addendum"	mean any supplemental written additions, deletions, and modifications to the provisions of the RFP.
"Additional Insured"	has the meaning given to it in Section 11.1.c.
"Additional Pre-Proposal Works Agreement"	has the meaning given to it in Section 1.2.
"Agreement"	has the meaning given to it in the Preamble.
"Authority Having Jurisdiction"	means, together and separately, utility owners, government, regulatory, and/or any other entity having jurisdiction pursuant to applicable Law over any part of the Pre-Proposal Work or the Project.
"Business Day"	means any day other than a Saturday, Sunday, or legal holiday in the State.
"Change Order"	has the meaning given to it in Section 6.2.
"Change Proposal"	has the meaning given to it in Section 6.1.
"Claim"	means any claim, demand, action, cause of action, proceeding (legal or administrative), investigation, judgement, demand, suit, dispute, or liability.
"Contract Exception"	has the meaning given to it in Section 8.1.c.
"DB RFQ"	has the meaning given to it in the Recitals.
"Design-Build Contract"	has the meaning given to it in the Recitals.
"Default"	has the meaning given to it in Section 8.1.
"Effective Date"	has the meaning given to it in the Preamble.
"Expiry Date"	has the meaning given to it in Section 1.1.
"Fault Event"	means an event that arises directly or indirectly as a result of any: a. breach by Proposer Counterparty of this Agreement; b. act or omission, fraud, willful misconduct, criminal conduct, recklessness, bad faith, or negligence by or of Proposer Counterparty or any other Related Party;

c. Default; and
d. other breach of Law, Permit, or this Agreement, by any Related Party.

"Force Majeure Event"	means any event or circumstance beyond the reasonable control of either Party, to the extent such could not have been avoided or mitigated by the exercise of due diligence, and which could not have been expected or taken into account as of the Effective Date, including, but not limited to, pandemics and epidemics (including COVID-19, but excluding those impacts of COVID-19 that are in effect as of the Effective Date), lockouts, failures of power, acts of God, tornados, hurricanes, earthquakes, acts of public enemies, terrorism, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, fire, or similar cause, in each case with respect to any potential claim under Section 3.6 by the Proposer Counterparty as the affected Party, excluding any event or circumstance arising from any Fault Event.
"FTA"	means the Federal Transit Administration.
"Good Industry Practice"	will be defined as the degree of skill, care, prudence, foresight, and practice that would reasonably and ordinarily be expected from time to time of a skilled and experienced professional designer, engineer, constructor, manufacturer, or installer, as applicable, engaged in the same (or if none, a reasonably equivalent) type of activity or activities in North America as that of the Proposer Counterparty, or any other Person to which such term relates, never being less than the standard applied by the Proposer Counterparty or such Person, or any of its or their Affiliates, under the same or similar circumstances on other projects.
"Governmental Authority"	means any: a. United States Federal, State or local government, and any political subdivision of any of them; and b. any interstate, governmental, quasi-governmental, judicial, public, regulatory or statutory instrumentality, administrative agency, authority, body or entity of, or formed by, any such government or subdivision thereof, in each case other than SBCTA.
"Indemnified Party"	has the meaning given to it in Section 10.2.
"Insolvency Event"	means a Person in respect of which any of the following have occurred and are continuing:

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(a) any of:

(i) the commencement of a voluntary case under Federal bankruptcy law;

(ii) the filing of a petition seeking to take advantage of any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition for adjustment of debts;

(iii) the application for or the consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign;

(iv) the admission in writing of its inability to pay its debts as they become due;

(v) the making of a general assignment for the benefit of creditors; or

(vi) the taking of any corporate (or equivalent) action for the purpose of authorizing any of the foregoing; or

(b) the commencement of a case or other proceeding against such Person in any court of competent jurisdiction seeking:

(i) relief under Federal bankruptcy law or under any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts; or

(ii) the appointment of a trustee, receiver, custodian, liquidator or the like for such Person or for all or any substantial part of their respective assets, domestic or foreign,

and with respect to i. or ii.:

(i) the petition that commenced such case or proceeding is not contested by such Person within the amount of time provided under Law; or

(ii) either: (I) such case or proceeding continues without dismissal or stay for a period of 60 Calendar Days; or (II) an order granting the relief requested in such case or proceeding (including, an order for relief under such federal bankruptcy law) is entered and not appealed to the extent that the order for relief is stayed.

“Insolvent” means the condition of a Person in respect of whom an Insolvency Event has occurred.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

"Intellectual Property"	means all current and future legal and/or equitable rights and interests in or to know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, business and internet domain names, inventions, solutions embodied in technology, databases and data sets, and other intellectual activity and applications of or for any of the foregoing subsisting in or relating to the Pre-Proposal Work, the Project or Project design and other data including algorithms, software, source code, and source code documentation used in connection with the Project.
"Law"	means any federal, State, or local: a. constitutional provision; b. statute, law (including common law), code, regulation, ordinance, or rule; c. binding judgment, judicial or administrative order, or decree; d. written directive, regulations, or other governmental restriction or requirement (including those resulting from an initiative or referendum process, but excluding those by SBCTA within the scope of its administration of this Agreement); and e. similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Authority, in each case that is applicable to or has an impact on the Pre-Proposal Work or the Project (where such applicability or impact will be determined by reference to the context in which the term Law is used), whether taking effect before or after the Effective Date, but excluding Permits.
"Loss"	means any loss, damage, cost, expense, charge, fee, injury, liability, obligation, judgement, penalty, or fine, in each case including attorney's, accountant's, and expert witness' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of this Agreement, but excluding, for certainty, any Termination Payment amount payable by SBCTA under this Agreement).
"Major Participant"	means each of Proposer Counterparty, Lead Contractor, Lead Designer, Lead Tunneling Contractor, and any financially responsible parties. One entity may fill more than one Major Participant role.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

"Operating System"	means the vehicles, control systems, power distribution and vehicle charging, communications systems, station equipment, and maintenance facility fit out and equipment, along with all related equipment and services as required to provide a complete autonomous, on-demand transportation system.
"Operating System Provider"	means the entity that will be responsible, in whole or in part, for the design, fabrication, delivery, installation, testing, integration, commissioning, verification of passenger service readiness, permitting, and safety certification, of the Operating System.
"OSP RFQ"	has the meaning given to it in the Recitals.
"Party"	means either SBCTA or Proposer Counterparty and "Parties" means collectively, SBCTA and Proposer Counterparty.
"Permit"	means any consent, agreement, permit, clearance, authorization, approval, certification, notification, ruling, exemptions, variance, registration, filing, decision, order, license, right-of-way agreement, concession, grant, registration, franchise or qualification required or advisable under the applicable circumstances to be issued by, granted by, or made with any Authority Having Jurisdiction in connection with the Pre-Proposal Work or the performance of any of Proposer Counterparty's obligations under this Agreement.
"Person"	means any of a natural person, a corporation, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a Joint Venture, an unincorporated association, or any other entity recognized as having legal personality under the laws of the State, in each case as the context may require.
"Phase 1 Work Plan"	has the meaning given to it in Exhibit 3.
"Pre-Proposal Deliverables"	has the meaning given to it in Section 3.4.
"Pre-Proposal Period"	means that part of the Term from the Effective Date through the submission deadline for the Proposal under the RFP.
"Pre-Proposal Work"	has the meaning given to it in Section 3.2.c.
"Pre-Proposal Workshop"	has the meaning given to it in Section 3.3.
"Procurement Schedule"	means the indicative procurement schedule appended to the RFP.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

"Project"	has the meaning given to it in the Recitals.
"Project Information"	means any information, materials, documents, and data provided to the Proposer Counterparty by SBCTA during the RFQ phase of the procurement and the Pre-Proposal Period.
"Project RFQs"	has the meaning given to it in the Recitals.
"Project Website"	means the limited-access website to be separately notified to Proposer Counterparty for use in connection with this procurement.
"Proposal"	means, collectively, the submissions by the Proposer Counterparty to SBCTA in response to the requirements set forth in the RFP.
"Proposal Validity Period"	means with respect to the Proposal, the period commencing at the Proposal Submission Deadline (as defined in the RFP) and ending on (and including) the earliest to occur of: a. the date which is one hundred twenty (120) days after the Proposal Submission Deadline (as defined in the RFP) or, if after such deadline, the date on which a Proposer submitted its final update to its Proposal (if any) in response to an SBCTA request; b. the date on which SBCTA publicly announces the cancellation of the procurement process described in this RFP; and c. the date on which Proposer elects, in its sole discretion, to extend the validity of its Proposal.
"Proposer Counterparty"	has the meaning given to it in the Preamble.
"Proprietary Intellectual Property"	means Intellectual Property, excluding Work Product, that: d. is patented or copyrighted by any Related Party prior to the Effective Date; or e. if not patented or copyrighted, was created (i) prior to the Effective Date, or (ii) after the Effective Date, but the creation of which did not arise from the Pre-Proposal Work or any anticipated work under the Design-Build Contract and which is held and managed as a trade secret or confidential, proprietary information by the relevant Related Party.
"Public Access Inspections"	means inspections of areas that are physically and legally accessible to members of the general public, to the extent such inspections would be functionally distinguishable from the lawful activities of most

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	other users of such areas; and/or would require the use of non-intrusive equipment.
"Public Records Exempt Materials"	has the meaning given to it in Section 7.2.1
"Public Records Law"	has the meaning given to it in Section 7.1.
"Related Party"	means: a. Proposer Counterparty, b. each other Major Participant, c. each subcontractor (of any tier), d. any other Persons (except SBCTA) performing any of the Pre-Proposal Work for or on behalf of Proposer Counterparty, e. any other Persons (except SBCTA, and any members of the general public) for whom Proposer Counterparty may be legally or contractually responsible, and f. the employees, agents, officers, directors, representatives and consultants of any of the foregoing.
"RFP"	has the meaning given to it in the Recitals.
"RFP Comments"	means written comments, questions and/or requests for clarification relating to the RFP, which are submitted in accordance with the same.
"RFQ"	means request for qualifications.
"Restricted Access Inspections"	means inspections of such areas are not physically and/or legally accessible to members of the general public.
"Reserved Rights"	any and all of the rights reserved by SBCTA to itself, including such rights as set out in Sections 34.2.a through 34.2.g of the DB RFQ and any other rights available to SBCTA under applicable Law (any of which rights will be exercisable by SBCTA in its sole discretion, with or without cause, and with or without notice).
"SBCTA"	means the San Bernardino County Transportation Authority.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

"Shortlisted Design-Build Team"	has the meaning given to it in the Recitals.
"SOQ"	means the statement of qualifications submitted by the Proposer Counterparty in response to the DB RFQ.
"SOQ Submission Deadline"	means the date and time indicated for such deadline in the DB RFQ.
"State"	means the State of California.
"Stipend Payment"	has the meaning given to it in Section 5.2.
"Supplemental Due Diligence Activities"	means Restricted Access Inspections and/or Public Access Inspections.
"Supplemental Due Diligence Request"	means a request to conduct Supplemental Due Diligence Activities submitted in accordance with the terms of this Agreement.
"Taxes"	means any federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee or charge imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with or by, the Project, the Work, other compensation or act, business, status or transaction of any Related Party, any Person, including any interest, penalty or addition thereto, in all cases whether disputed or undisputed.
"Technical Provisions"	means the documents included as an annex to the RFP addressing Project administration, design, construction, operations, maintenance, vehicles, and other relevant technical disciplines.
"Term"	has the meaning given to it in Section 1.1.
"Termination Payment"	has the meaning given to it in Section 8.3.2.b.
"Third-Party Intellectual Property"	means any Intellectual Property used or applied by Proposer Counterparty or any Related Party in connection with the Project or the Pre-Proposal Work which is owned by any Person other than SBCTA or a Related Party.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

"Work Product" means:

a. the SOQ, any Proposal, and all Pre-Proposal Deliverables, Supplemental Due Diligence Requests, agendas, comments, correspondence, and other materials submitted by Proposer Counterparty to SBCTA under the terms of the DB RFQ, any RFP, and this Agreement;

b. all submittals, correspondence, drawings, specifications, plans, engineering models, reports, documents, data compilations, applications, research, manuals, CAD materials, job books, designs, software, reports, analysis, studies and other information or material of any kind, in any medium, acquired, collected, created or prepared by or on behalf of Proposer Counterparty in the performance of the Pre-Proposal Work, including any draft thereof; and

c. any and all Intellectual Property, acquired, collected, developed or prepared in whole or in part during performance of and arising out of the Pre-Proposal Work, including improvements and modifications, whether or not copyrightable, patentable, and/or trademarkable, and any applications for letters patent issuing thereon.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

EXHIBIT 3 – PRE-PROPOSAL DELIVERABLES

1. PRE-PROPOSAL DELIVERABLES

The following Pre-Proposal Deliverables will be completed and delivered to SBCTA in accordance with the Agreement prior to the conclusion of the Pre-Proposal Period.

1.1. Phase 1 Work Plan

a. The Proposer Counterparty will prepare a "Phase 1 Work Plan," describing its work plan and schedule for Work during the Pre-Proposal Period, which will include discussion of the following:

   i. Project understanding and scope;

   ii. Pre-Proposal Work major elements and milestones;

   iii. management approach, team responsibilities, and communication matrices;

   iv. key issues, input needed, and decisions required; and

   v. interfaces with other projects and stakeholders.

b. The Phase 1 Work Plan will also include:

   i. a schedule for delivery of each Pre-Proposal Deliverable identified in this Exhibit 3 prior to one of the Pre-Proposal Workshops identified in the table in Section 2 below; and

   ii. the Proposer Counterparty's proposed schedule for the Pre-Proposal Workshops, including themes and major topics for discussion.

1.2. Plan Drawings

The Proposer Counterparty will submit, in accordance with the schedule set forth in the approved Phase 1 Work Plan, the following plans/drawings:

a. 100% alignment design (plan & profile).

b. 100% right of way determination.

c. Construction staging plans at Cucamonga Station & ONT Airport.

d. Construction staging plans at ventilation shaft.

e. Underground easement requirements (locations and size).

f. The following design packages to a design level sufficient to develop a cost proposal for discrete elements of the Project:

   i. Typical sections.

   ii. Tunnel & interior structures.

   iii. Fire Life Safety (FLS).

   iv. Systems.

   v. Portals.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

vi. Cucamonga Station.

vii. ONT Terminal 2 and Terminal 4 Stations.

viii. Operations Control Center.

ix. Ventilation shaft.

1.3. Reports

The Proposer Counterparty will submit, in accordance with the schedule set forth in the approved Phase 1 Work Plan, the following written plans/reports:

a. Geotechnical

i. Geotechnical investigation work plan.

ii. Geotechnical Baseline Report - for Construction (GBR-C).

b. Tunnel Boring Machine (TBM)

i. TBM Procurement Plan.

ii. Tunnel Basis of Design.

iii. Tunnel Spaceproofing Report (100% design of tunnel ID and TBM sizing).

iv. TBM Temporary Utilities Plan.

v. TBM Muck Removal Plan.

vi. Draft Transportation Management Plan.

c. Risk

i. Quantitative evaluation of project risks in Risk Register.

ii. Establishment of project risk-based contingency.

iii. Identification of the Safety Certification Standards applicable to the Project as of the Contract date.

d. Operating System Provider

i. Draft Concept of Operations Report and Draft Vehicle Product Specifications[2]

ii. Draft Vehicle and Systems Interface Functional Requirements Report, including:

A. Definition and description of vehicle subsystems.

B. Graphic depiction of each interface between on-board vehicle subsystems and wayside systems.

[2] The Parties acknowledge that prior SBCTA approval of the Draft Concept of Operations Report and Draft Vehicle Product Specifications will be a condition to submitting a compliant Proposal under the terms of the RFP. The Draft Concept of Operations and Draft Vehicle Product Specifications will demonstrate, at a minimum, the Operating System's planned compliance with criteria (1), (2), (3), (4), (5), (6), (8), (9), (10), (11), and (14) in Section 29.1.2 (OSP Technical Pass/Fail Evaluation Criteria) included as Exhibit 6A to the draft RFP.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

C. Communications architecture for the entire vehicle interface communication system.

iii. Draft Vehicle Operations Model and Report, including:

A. Passenger loading and unloading.

B. Vehicle travel through the entire tunnel.

iv. Draft Safety Certification Plan.

e. Phase 2 Implementation Plan

i. Construction approach.

ii. Subcontracting plan.

iii. Interface management (external and internal).

iv. Quality.

v. Safety.

vi. Risk.

1.4. Schedule

The Proposer Counterparty will submit, in accordance with the schedule set forth in the approved Phase 1 Work Plan, the following:

a. Draft Basis of Schedule Report, including:

i. Execution approach, identifying all key or driving resources.

ii. Calendars used for each work segment, indicating the workdays per week, hours per week, and public holidays.

iii. Shift patterns (number of shifts) and shift times for each work segment and any other special calendars that only allow work to take place during a pre-defined window of time.

iv. Production rate assumptions used within the schedule development, including but not limited to tunnel boring, tunnel lining fabrication, tunnel lining installation, and tunnel muck excavation.

v. Interface milestones and/or activities with other entities.

vi. Assumptions used for review times with agencies or others requiring review of information.

vii. List any contingencies built into the schedule, for weather or other disruptions. Note the total day allocated for such events.

viii. List of long lead procurement items and other activities with long duration periods.

ix. List schedule risks.

x. Document top 3 critical paths.

b. Draft Phase 2 Construction Schedule, including:

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

i. AACEI Level 3.

ii. Demonstrate key sequences of activities for the work, float paths to revenue operations, and key schedule risks.

1.5. Cost

The Proposer Counterparty will submit, in accordance with the schedule set forth in the approved Phase 1 Work Plan, the following:

a. Proposal Pricing Development Methodology, including:

i. Pricing methodology describing the general approach to defining and quantifying allowances and escalation regimes for certain project elements.

ii. Anticipated basis.

iii. Framework for the organization and management of cost data.

iv. Estimating standards.

v. Estimate limitations/exclusions.

b. Draft Project Cost Model, including:

i. Work Breakdown Structure.

ii. Product Breakdown Structure.

iii. Cost Breakdown Structure.

iv. Ability to report costs in FTA SCC format.

c. Allowance and Escalation Regime Narrative, including:

i. Phasing / timelines used in preparation of the estimate.

ii. Project Scope / Scope of Services related to the Proposal.

iii. Estimate Methodology.

iv. Estimate Classification.

v. Design, Planning and Pricing Basis.

vi. Allowances.

vii. Assumptions.

viii. Exclusions.

ix. Contingencies.

x. Escalation.

xi. Overhead & Profit.

xii. Risks and Opportunities.

xiii. Estimating Team - Preparers and Contributors.

1.6. RFP Requirements

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

The Proposer Counterparty will submit, on an ongoing basis, and as further provided for in accordance with the schedule set forth in the approved Phase 1 Work Plan, proposed revisions to the Technical Provisions submitted pursuant to the RFP.

2. PRE-PROPOSAL WORKSHOPS

Workshop No.	Date	Workshop Theme	Major Topics	Deliverables
0	[ ]	Kick-Off	Contractor to present Phase 1 Work Plan	Phase 1 Work Plan
1	[ ]	Phase 1 Work Plan	SBCTA to present comments on Contractor's Phase 1 Work Plan	*TBD*
2	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*
3	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*
4	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*
5	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*
6	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*
7	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*
8	[ ]	*TBD*	*Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan*	*TBD*

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

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EXHIBIT 4 – FEDERAL REQUIREMENTS

The Pre-Proposal Work shall comply with, and the Proposer Counterparty shall perform its obligations and (where relevant) shall require each subcontractor to perform their respective obligations under this Agreement, the other Agreement documents and the subcontracts in accordance with the following requirements.

1. General Requirements.

The Proposer Counterparty and its subcontractors shall comply with applicable requirements and provisions, in effect now or as hereafter amended, of (1) 49 U.S.C. chapter 53 and other procurement requirements of Federal laws; (2) 2 C.F.R. pt. 200; (3) all other applicable Federal regulations pertaining to federally-aided contracts; and (4) Federal Transit Administration ("FTA") Circular 4220.1F, "Third Party Contracting Guidance", March 18, 2013, and any later revision thereto, except to the extent FTA determines otherwise in writing.

2. Protection of Security Sensitive Information and Critical Infrastructure Information.

The Proposer Counterparty and its subcontractors shall comply with all applicable provisions of 49 C.F.R. Part 1520 and 6 C.F.R. Part 29 and all applicable FTA guidance, including FTA Resource Document for Transit Agencies, "Sensitive Security Information (SSI): Designation, Markings, and Control, Resource Document for Transit Agencies" (March 2009), as may be amended, and all Department of Homeland Security (DHS) directives, including DHS Management Directive System MD Number: 11042.1, "Safeguarding Sensitive but Unclassified (For Official Use Only) Information" (January 6, 2005) as may be amended. The Proposer Counterparty also agrees to include these requirements in each subcontract and to require each subcontractor to include this clause in lower tier subcontracts.

3. Ethics.

3.1. Bonus or Commission.

The Proposer Counterparty affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain this Agreement.

3.2. Lobbying Restrictions.

The Proposer Counterparty agrees that:

a. In compliance with 31 U.S.C. § 1352(a), it will not use the proceeds of this Agreement to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer or employee of Congress or employee of a member of Congress, in connection with making, extending or modifying the Agreement;

b. In addition, the Proposer Counterparty will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

c. It will comply and will assure the compliance of each subcontractor and other participant at any tier of the Project with USDOT regulations, "New Restrictions on Lobbying", 49 C.F.R. Part 20, to the extent consistent with 31 U.S.C. § 1352.

d. The Proposer Counterparty will also comply and assure compliance of each subcontractor and other participant at any tier of the Project with 31 U.S.C. § 3801, *et seq.*

e. Subcontractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to SBCTA. See the form, "Use of Contract Funds for Lobbying Certification," in the RFP.

3.3. False or Fraudulent Statements or Claims.

The Proposer Counterparty acknowledges and agrees that:

a. Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.,* and USDOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to the Proposer Counterparty's activities in connection with the Project. By executing the Agreement, the Proposer Counterparty certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Proposer Counterparty also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation, directly or indirectly, to the Federal Government, the Federal Government reserves the right to impose on the Proposer Counterparty the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

b. Criminal Fraud. If the Proposer Counterparty makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation directly or indirectly to the Federal Government, the Federal Government reserves the right to impose on the Proposer Counterparty the penalties of 49 U.S.C. § 5323(l)(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

c. Inclusion in Lower Tier Subcontracts. The Proposer Counterparty agrees to include the above clauses at Section 3.3.a and Section 3.3.b in each lower tier subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the lower tier subcontract that will be subject to the provisions.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

3.4. Trafficking in Persons.

a. To the extent applicable, the Proposer Counterparty agrees to comply with, and assures the compliance of each subcontractor with, the requirements of subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of said subsection (g) consistent with U.S. OMB guidance, "Award Term for Trafficking in Persons", 2 C.F.R. Part 175:

b. Definitions. For purposes of this section, the Proposer Counterparty agrees that:

i. Employee means an individual who is employed by the Proposer Counterparty or any subcontractor under this Agreement.

ii. Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

iii. Private entity means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25 and includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

iv. Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(9). Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(4).

v. Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

c. The Proposer Counterparty agrees:

i. To inform SBCTA immediately of any information it receives from any source alleging a violation of a prohibition in 22 U.S.C. § 7104(g).

ii. That SBCTA may unilaterally terminate this Agreement if the Proposer Counterparty, a subcontractor, or other participant at any tier, or an employee of any of them, violates the provisions of 22 U.S.C. § 7104(g). SBCTA's right to terminate implements FTA's right to terminate unilaterally:

A. Under subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and

B. Is in addition to all other remedies for noncompliance that are available to SBCTA under this Agreement and to the Federal Government.

iii. That:

A. Neither it, its subcontractors or other participants at any tier, or the employees of any of them, will engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect;

B. Neither it, its subcontractors or other participants at any tier, or the employees of any of them, will procure a commercial sex act during the period of time that this Agreement is in effect; or

C. Neither it, its subcontractors or other participants at any tier, or the employees of any of them, will use forced labor in the performance of this Agreement or any subcontract;

D. The provision of this subsection will be included in all subcontracts and any other arrangement under this Agreement at any tier,

3.5. Members of Congress.

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

4. Civil Rights.

4.1. General.

The Proposer Counterparty agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. The Proposer Counterparty shall include the requirements of this Section 4 in every prime subcontract for performance of construction work, and shall require each subcontractor performing construction work, at all tiers, to include the requirements of this Section 4 in any lower tier subcontracts. If funding for operations and maintenance (O&M) work is obtained from FTA, the Proposer Counterparty shall include the requirements of this Section 4 in every prime subcontract for performance of O&M work, and shall require each subcontractor performing O&M work, at all tiers, to include the requirements of this Section 4 in any lower tier subcontracts.

4.2. Nondiscrimination in Federal Public Transportation Programs.

The Proposer Counterparty agrees to comply, and assures the compliance of each subcontractor or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, disability, or age, and prohibit the exclusion or discrimination in employment or business opportunity and/or denial of program benefits in employment or business opportunities, as identified in 49 U.S.C. § 5332. The Proposer Counterparty shall follow, and require its subcontractors and other participants at any tier of the Project to follow, the most recent version of the FTA's Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients" (October 2012) to the extent required by the FTA.

4.3. Nondiscrimination — Title VI of the Civil Rights Act.

The Proposer Counterparty agrees to comply, and assures the compliance of each subcontractor or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq.; with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964", 49 C.F.R. Part 21; and with

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

federal transit law, 49 U.S.C. § 5332. Except to the extent FTA determines otherwise in writing, the Proposer Counterparty agrees to follow all applicable provisions of FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients" (October 2012); USDOT "Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and any other applicable Federal directives that may be issued.

4.4. Equal Employment Opportunity.

a. The Proposer Counterparty agrees to and assures that each subcontractor and other participant at any tier of the Project agree to, prohibit discrimination on the basis of race, color, religion, sex, or national origin. The Proposer Counterparty agrees to comply, and assures the compliance of each subcontractor or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332; with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e; with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note; and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Proposer Counterparty also agrees to follow all applicable Federal EEO directives that may be issued.

b. Accordingly:

i. General. The Proposer Counterparty agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Proposer Counterparty agrees to take affirmative action that includes employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ii. Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction", the Proposer Counterparty agrees to comply and assures the compliance of each subcontractor and other participant at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 *et seq.,* which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note, and also with any Federal laws and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

c. Specifically, during the performance of this Agreement, the Proposer Counterparty agrees as follows:

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

i. The Proposer Counterparty will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Proposer Counterparty will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer Counterparty agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The Proposer Counterparty will, in all solicitations or advertisements for employees placed by or on behalf of the Proposer Counterparty, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

iii. The Proposer Counterparty will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Proposer Counterparty's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

iv. The Proposer Counterparty will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

v. The Proposer Counterparty will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vi. In the event of the Proposer Counterparty's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Proposer Counterparty may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

vii. The Proposer Counterparty will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor at all tiers. The Proposer Counterparty will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Proposer Counterparty becomes involved in, or is threatened with, litigation with a subcontractor at any tier as a result of such direction by the administering agency the Proposer Counterparty may request the United States to enter into such litigation to protect the interests of the United States.

4.5. Additional Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

a. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Proposer Counterparty shall facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

i. The Proposer Counterparty agrees and assures that it shall comply with section 1101(b) of MAP-21, 23 U.S.C. § 101 note; USDOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs", 49 C.F.R. Part 26; and federal transit law, 49 U.S.C. § 5332.

ii. The Proposer Counterparty agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the performance of this Agreement and the award and performance of any subcontract or other arrangement under this Agreement in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Proposer Counterparty agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subcontracts, and other arrangements under this Agreement. As set forth in 49 C.F.R. § 26.13(b), failure by the Proposer Counterparty to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SBCTA deems appropriate, which may include, but is not limited to:

A. Withholding monthly progress payments;

B. Assessing sanctions;

C. Liquidated damages; and/or

D. Disqualifying the Proposer Counterparty from future bidding as non-responsible.

iii. Each subcontract the Proposer Counterparty signs with a subcontractor must include the assurance set forth above.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

b. Nondiscrimination on the Basis of Sex. The Proposer Counterparty and subcontractor agree to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.;* with implementing U.S. Department of Transportation regulations at 49 C.F.R. Part 25 that prohibit discrimination on the basis of sex that may be applicable; and Federal transit law, 49 U.S.C. § 5332.

c. Nondiscrimination on the Basis of Age. The Proposer Counterparty and subcontractor agree to comply with all applicable requirements of:

i. The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance", 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age;

ii. The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act", 29 C.F.R. Part 1625; and

iii. Federal transit law, 49 U.S.C. § 5332.

d. Access for Individuals with Disabilities. To the extent applicable, the Proposer Counterparty and subcontractor shall comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing the services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Proposer Counterparty and subcontractor also shall comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with Titles I, II, and III of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.,* which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.,* which requires that buildings and public accommodations be accessible to individuals with disabilities; with federal transit law, 49 U.S.C. § 5332, which includes disability as a prohibited basis for discrimination; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Proposer Counterparty and subcontractor agree to comply with applicable implementing Federal regulations and any later amendments thereto, and agree to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

i. USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

ii. USDOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;

iii. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/USDOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

iv. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;

v. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;

vi. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;

vii. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities", 47 C.F.R. Part 64, Subpart F;

viii. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards", 36 C.F.R. Part 1194;

ix. FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609; and

x. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

e. Drug and Alcohol Abuse Confidentiality and Other Civil Rights Protections. To the extent applicable, the Proposer Counterparty and subcontractor agree to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.,* with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.,* and with the Public Health Service Act, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

f. Access to Services for Persons with Limited English Proficiency. The Proposer Counterparty and subcontractor shall facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency", 42 U.S.C. § 2000d-1 note, and follow applicable provisions of USDOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons", 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

g. Environmental Justice. The Proposer Counterparty shall facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 42

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

U.S.C. § 4321 note; USDOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations", 62 Fed. Reg. § 18377 *et seq.,* April 15, 1997; and the most recent edition of FTA's Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients" (August 2012), except to the extent that the federal government determines otherwise in writing.

h. Other Nondiscrimination Laws. The Proposer Counterparty agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

i. Veterans Preference. Contractors working on a capital project funded using FTA assistance shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. § 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This provision will not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee. See 49 US.C. § 5325 (k).

5. Prohibited Interest.

No member, officer, or employee of SBCTA or of any local public body during his tenure and for a period of one (1) year thereafter shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

6. Termination.

If the Federal Government suspends or terminates all or any part of the Federal assistance for this Agreement, SBCTA may suspend work under or terminate the Agreement, in whole or in part, under the suspension or termination provision of the Agreement that are applicable in the circumstances.

7. Labor Provisions.

7.1. General.

a. To the extent that the Agreement or any subcontract involves construction activities, the Proposer Counterparty shall comply with, and assure the compliance of each subcontractor and other participant at any tier of the Project with, the following federal laws and regulations providing protections for construction employees:

i. Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.,* pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)", 29 C.F.R. Part 5. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference;

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

ii. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.,* specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)", 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704 and 29 U.S.C. §§ 651 *et seq.,*, and implementing U.S. DOL regulations, "Occupational Safety and Health Standards," 29 C.F.R. Part 1910 and "Safety and Health Regulations for Construction", 29 C.F.R. Part 1926; and

iii. Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States", 29 C.F.R. Part 3.

b. To the extent that the Agreement or any subcontract concerns activities that do not involve construction, the Proposer Counterparty shall comply and assure the compliance of each subcontractor and other participant at any tier of the Project with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)", 29 C.F.R. Part 5.

c. Pursuant to 29 CFR § 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704-3705).

d. The Proposer Counterparty shall comply with, and assure the compliance of each subcontractor and other participant at any tier of the Project with, the following provisions:

i. Minimum Wages

A. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

Secretary of Labor included in this Exhibit 5, regardless of any contractual relationship which may be alleged to exist between the subcontractor(s) and such laborers and mechanics.

B. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph E below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Section 7.4. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph C below and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Proposer Counterparty and subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

C. Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. SBCTA shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

I. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

II. The classification is utilized in the area by the construction industry; and

III. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

D. If the Proposer Counterparty and the laborers and mechanics to be employed in the classification (if known), or their representatives, and SBCTA agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), SBCTA will send a report of the action taken to the Administrator of the Wage and Hour Division, Employment Standards Administration,

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

U.S. Department of Labor, Washington, DC 20210. Said Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise SBCTA or will notify SBCTA within the 30-day period that additional time is necessary.

E. In the event the Proposer Counterparty and laborers or mechanics to be employed in the classification or their representatives, and SBCTA do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), SBCTA shall refer the questions, including the views of all interested parties and the recommendation of SBCTA to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise SBCTA or will notify SBCTA within the 30-day period that additional time is necessary.

F. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs C(I) and C(II) above, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

G. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Proposer Counterparty or subcontractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

H. If the Proposer Counterparty or subcontractor, as appropriate, does not make payments to a trustee or other third person, the Proposer Counterparty may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Proposer Counterparty, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Proposer Counterparty or any subcontractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

7.2. Withholding.

SBCTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Proposer Counterparty under this Agreement or any other Federal contract with the same entity, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same entity, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Proposer Counterparty or

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

subcontractors the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Agreement, SBCTA may, after written notice to the Proposer Counterparty, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7.3. Payrolls and Basic Records.

a. Payrolls and basic records relating thereto shall be maintained by the Proposer Counterparty and each subcontractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Proposer Counterparty shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Proposer Counterparty and any subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. The Proposer Counterparty and each subcontractor shall submit weekly for each week in which any work is performed under the Agreement two (2) copies of all payrolls to SBCTA within seven (7) days after the regular payroll date for transmission to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 7.3.a, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four (4) digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at http://www.dol.qov/whd/forms/wh347.pdf or successor site. The Proposer Counterparty is responsible for the submission of copies of payrolls by all subcontractors. The Proposer Counterparty and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to SBCTA, as the case may be, for transmission to the USDOT, the Proposer Counterparty or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

prevailing wage requirements. It is not a violation of this section for the Proposer Counterparty to require a subcontractor, or for a subcontractor to require a lower tier subcontractor, to provide addresses and social security numbers to the Proposer Counterparty or subcontractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

c. Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Proposer Counterparty, subcontractor or its agent who pays or supervises the payment of the persons employed under the Agreement or subcontract and who shall certify the following:

   i. That the payroll for the payroll period contains the information required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. Part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 C.F.R. Part 5, and that such information is correct and complete;

   ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulation, 29 C.F.R. Part 3;

   iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

d. The weekly submission of a properly executed certification set forth the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Section 7.3.d.

e. The falsification of any of the above certifications may subject the Proposer Counterparty or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

f. The Proposer Counterparty or subcontractor shall make the records required under this Section 7.3 available for inspection, copying or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Proposer Counterparty or subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to the Proposer Counterparty, sponsor, applicant, or SBCTA, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

7.4. Apprentices and Trainee.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the subcontractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees. Except as proved in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymen wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this Section 7.4 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 20 C.F.R. Part 30.

8. Compliance with Copeland Act Requirements.

The Proposer Counterparty and any subcontractors at any tier shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Agreement.

9. Agreement Termination: Debarment.

A breach of this Section 9 may be grounds for termination of the Agreement and/or any subcontract under the Agreement, and for debarment of the Proposer Counterparty or any subcontractor at any tier as provided in 29 C.F.R. § 5.12.

10. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

11. Disputes Concerning Labor Standards.

11.1. General.

Disputes arising out of the labor standards provisions of this Agreement or any subcontract under the Agreement shall not be subject to the general disputes clause of the Agreement or subcontract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Proposer Counterparty (or subcontractor) and SBCTA, the U.S. Department of Labor, or the Proposer Counterparty's/ subcontractor's employees or their representatives.

11.2. Certification of Eligibility.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

a. By entering into this Agreement, the Proposer Counterparty certifies that neither it (nor he or she) nor any person or firm who has an interest in the Proposer Counterparty is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

b. No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

11.3. Contract Work Hours and Safety Standards Act.

The Proposer Counterparty shall comply with, and assure the compliance of each subcontractor and other participant at any tier of the Project with, the following provisions:

a. Overtime Requirements. Neither the Proposer Counterparty nor subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 ½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

b. Violations; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in this Section 11.3, the Proposer Counterparty and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Proposer Counterparty or such subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this Section 11.3, equal to the liquidated damages established by the Department of Labor pursuant to the Contract Work Hours and Safety Standards Act as of the date of execution of each subcontract involving construction work (currently $10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in this Section 11.3.

c. Withholding for Unpaid Wages and Liquidated Damages. SBCTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Proposer Counterparty or subcontractor under the Agreement or any subcontract under the Agreement or any other Federal contract with the same entity, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same entity, such sums as may be determined to be necessary to satisfy any liabilities of such entity for unpaid wages and liquidated damages as provided in the clause set forth above.

12. Subcontracts.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

The Proposer Counterparty and any subcontractors at any tier shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Proposer Counterparty shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

13. Delinquent Certified Payrolls.

If the Proposer Counterparty is delinquent in submitting its payroll records or those of any subcontractor required under Section 7, processing of invoices may be held in abeyance pending receipt of the payroll records. In addition, if the Proposer Counterparty is delinquent in submitting its payroll records or those of any subcontractor, the Proposer Counterparty shall be liable to SBCTA for liquidated damages. The liquidated damages shall constitute the sum of ten dollars ($10) for each day that the payroll records are late.

14. Cargo Preference — Use of United States-Flag Vessels.

a. To the extent applicable, the Proposer Counterparty shall comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels", 46 C.F.R. Part 381.

b. The Proposer Counterparty agrees to utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessel.

c. The Proposer Counterparty agrees to furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in Section 14.a to the FTA Administrator and SBCTA (through the subcontractor(s) in the case of subcontractor(s) bills-of-lading) and to the Office of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, marked with appropriated identification of the Project.

d. The Proposer Counterparty agrees to insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.

15. Buy America.

a. The Proposer Counterparty shall comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements", 49 C.F.R. Part 661, and any amendments thereto, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in Appendix A to 49 C.F.R. § 661.7. Separate requirements for rolling

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have more than seventy percent (70%) domestic content. The Proposer Counterparty is responsible for ensuring lower tier subcontractors are in compliance with this Section 15, including submission of appropriate certifications from subcontractors set forth in the RFP.

b. In addition to the provision of the certifications in the RFP documents and the certifications under Section 15.a above, the Proposer Counterparty shall submit applicable material source documentation throughout the Term to demonstrate compliance with Buy America, at such times and in such form as is required by SBCTA. The material source documentation shall include, at a minimum, the name of the subcontractor supplying the material, location and contact information of manufacturer, project name and number, date and location material shipped, material description, material quantity, and means of identifying the product (such as label marking, product model number, or serial number).

c. SBCTA may undertake investigations as it deems appropriate to confirm compliance with this provision by the Proposer Counterparty and subcontractors, including the right to inspect all work, materials, payrolls, and data; and opportunity to audit all Project-related information in accordance with Section 16.18 below. The Proposer Counterparty shall cooperate with any such investigation.

16. Compliance with Environmental Standards.

16.1. General.

The Proposer Counterparty agrees and understands that environmental and resource laws, regulations, and guidance, now in effect or that may become effective in the future, may apply to the Project.

16.2. National Environmental Policy Act.

The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following federal laws, regulations, executive orders, and guidance, to the extent applicable:

a. Federal transit laws, specifically 49 U.S.C. § 5323(c)(2), as amended;

b. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 through 4335, as limited by 49 U.S.C. § 5159;

c. U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508;

d. Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622;

e. Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note;

f. Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, especially guidance on implementing 23 U.S.C. § 139 pertaining to environmental procedures

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

and 23 U.S.C. § 326 pertaining to state responsibility for categorical exclusions; and

g. Other federal environmental protection laws, regulations, executive orders, or guidance applicable to the Project.

16.3. Use of Certain Public Lands.

The Proposer Counterparty agrees to comply, and assures that its subcontractors at every tier will comply with the following, to the extent applicable:

a. U.S. DOT laws, specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land that Federal officials authorized under law have determined to be a:

i. Park of national, State or local significance,

ii. Recreation area of national, State or local significance,

iii. Wildlife refuge of national, State or local significance, or

iv. Waterfowl refuge of national, State or local significance, and

b. Joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

16.4. Wild and Scenic Rivers.

The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, protections for the national wild and scenic rivers system, including the following, to the extent applicable:

a. The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287;

b. U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297; and

c. U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

16.5. Wetlands.

The Proposer Counterparty agrees to comply with and agrees to assure that its subcontractors at every tier comply with, protections for wetlands provided in Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note, to the extent applicable.

16.6. Floodplains.

The Proposer Counterparty agrees to comply with and agrees to assure that its subcontractors at every tier comply with, Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note, facilitating compliance with the flood hazards protections in floodplains, to the extent applicable.

16.7. Endangered Species and Fishery Conservation.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following protections for endangered species, to the extent applicable:

a. The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544; and

b. The Magnuson Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. § 1801 et seq.

16.8. Waste Management.

The Proposer Counterparty agrees to comply with and agrees to assure that its subcontractors at every tier comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k, to the extent applicable.

16.9. Hazardous Waste.

The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractor at every tier comply with, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, establishing requirements for the treatment of areas affected by hazardous waste, to the extent applicable, and all Hazardous Materials Management obligations, specifically including the hazardous waste management responsibilities found at 40 C.F.R. Part 261, and as set forth in Section 10.1 of the Agreement.

16.10. Historic Preservation.

The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following, to the extent applicable:

a. 49 U.S.C. § 303;

b. § 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f;

c. Executive Order No. 1593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note;

d. Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. § 469a through 469c; and

e. U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. Part 800, including consultation with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project and notification of the FTA of affected properties.

16.11. Indian Sacred Sites.

The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following, to the extent applicable:

a. Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians;

b. The American Indian Religious Freedom Act, 42 U.S.C. § 1996; and

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

c. Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C. § 1996 note.

16.12. Mitigation of Adverse Environmental Effects.

If the Project causes or results in any adverse environmental effect, the Proposer Counterparty agrees to, and agrees to assure that its subcontractors:

a. comply with all environmental mitigation measures that may be identified as commitments in the environmental documents that apply to the Project, such as environmental assessments, environmental impact statements, memoranda of agreement, documents required under 49 U.S.C. § 303, any other environmental documents, and any conditions the Federal Government imposes in a finding of no significant impact or record of decision; and

b. assure that any mitigation measures agreed on are incorporated by reference and made a part of this Agreement, that any deferred mitigation measures will be incorporated by reference and made a part of this Agreement as soon as agreement with the Federal Government is reached, and that any mitigation measures agreed to will not be modified or withdrawn without the written approval of the Federal Government.

16.13. Energy Conservation.

The Agreement shall comply with mandatory standards and policies relating to energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.* To the extent applicable, the Proposer Counterparty agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments", 49 C.F.R. Part 622, Subpart C. The Proposer Counterparty is responsible for ensuring lower tier subcontractors are in compliance with this Section 16.13.

16.14. Certification Regarding Debarment.

The Proposer Counterparty agrees that it will comply with the following requirements of 2 C.F.R. Part 180, subpart C, as adopted and supplemented by USDOT regulations at 2 C.F.R. Part 1200:

a. It will not enter into any arrangement to participate in the development or implementation of the Project with any subcontractor at any tier that is debarred or suspended, except as authorized by:

i. USDOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200;

ii. U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as amended; and

iii. Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note.

b. It will review the U.S. GSA "System for Award Management," https://www.sam.gov, or successor site, if required by USDOT regulations, 2 C.F.R. Part 1200.

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

c. It will include, and require each of its subcontractors at every tier to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier subcontractor will:

i. comply with Federal debarment and suspension requirements; and

ii. review the "System for Award Management" at https://www.sam.00v, or successor site, if necessary to comply with USDOT regulations, 2 C.F.R. Part 1200.

16.15. Fly America Requirements.

The Proposer Counterparty shall comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. §§ 301-10.131 through 301-10.143, which provide that the Proposer Counterparty and its subcontractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of individuals and their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Proposer Counterparty shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Proposer Counterparty agrees to include, and to require subcontractors to include, the requirements of this Section 16.15 in all subcontracts that may involve international air transportation.

16.16. Recycled Products/Recovered Materials.

The Proposer Counterparty agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. To the extent applicable, the Proposer Counterparty shall include these requirements in each subcontract and require each subcontractor to include this clause in lower tier subcontracts.

16.17. Seismic Safety Requirements.

The Proposer Counterparty shall comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.,* in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction", 42 U.S.C. § 7704 note, and comply with USDOT regulations, "Seismic Safety", 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117). The Proposer Counterparty shall include this clause in each subcontract issued under the Agreement for architectural and engineering services and construction related to new buildings or additions to new buildings and shall require each subcontractor to include this clause in similar lower tier subcontracts.

16.18. Access to Records and Reports.

a. The Proposer Counterparty shall retain, and cause subcontractor at any tier to retain, complete and readily accessible records related in whole or in part the Project, including, but not limited to, data, documents, reports, records, statistics,

Attachment: (Include) Tunnel to ONT - PPWA - Proposed Execution Version (2024-04-22) (1811686.11) (10703 : Shortlisting of Design-Build

subcontracts and sub-agreements, leases, arrangements, and supporting materials related to those records.

b. The Proposer Counterparty shall provide, and shall cause subcontractors at any tier to provide, to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, and SBCTA access to all third-party contract records as required by 49 U.S.C. § 5325(g) and 2 C.F.R. pt. 200; opportunity to inspect all work, materials, payrolls, and data; and opportunity to audit all Project-related information.

c. The Proposer Counterparty shall provide, and shall cause subcontractors at any tier to provide, SBCTA and the FTA Administrator or their authorized representatives, including any project management oversight subcontractor, access to the contract records and construction sites.

d. The Proposer Counterparty shall permit, and cause subcontractors to permit, any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

e. The Proposer Counterparty shall maintain, and shall require subcontractors to maintain, all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date final payment is made under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Proposer Counterparty agrees to maintain same until SBCTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 C.F.R. pt. 200.

f. The Proposer Counterparty shall include, and cause its subcontractors at any tier to include, the provisions of this Section 16.18 in each subcontract under this Agreement.

16.19. Clean Water Requirements.

The Proposer Counterparty agrees to comply with, and agrees to assure that any subcontracts exceeding $100,000 at every tier comply with, the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, and its implementing regulations and guidance, except as the federal government determines otherwise in writing. The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following:

a. Protection of underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f through 300j-6;

b. Notice of violating facility provisions in Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368 to SBCTA, understanding that SBCTA will in turn report each violation as required to FTA and EPA's Regional Office; and

c. Executive Order No. 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

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16.20. Clean Air Requirements.

The Proposer Counterparty agrees to comply with, and agrees to assure that any subcontracts exceeding $100,000 at every tier comply with, the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q, and its implementing regulations and guidance, except as the federal government determines otherwise in writing. The Proposer Counterparty agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following:

a. U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Emissions from New and In-Use Highway Vehicles and Engines," 40 C.F.R. Part 86; "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 C.F.R. § 93, subpart A; and Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600;

b. State Implementation Plans (SIP), including implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project, assuring if the Project is identified as a Transportation Control Measure in the SIP it will be wholly consistent with the design concept and scope described in the SIP, and complying with § 176(c) of the Clean Air Act, 49 U.S.C. § 7506(c) and U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23, U.S.C. or the Federal Transit Laws," 40 C.F.R. Part 93, subpart A; and

c. Notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 49 U.S.C. § 7414 and Executive Order No. 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

17. Pre-Award and Post-Delivery Audit Requirements (applicable only to supply of AVs).

a. The Proposer Counterparty agrees to comply with 49 U.S.C. § 5323(m) and FTA regulations "Pre-Award and Post Delivery Audits of Rolling Stock Purchases" at 49 C.F.R. Part 663 regarding pre-award and post-delivery audits of rolling stock acquisitions.

b. Specifically, the Proposer Counterparty agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663 and to complete and submit documentation which lists (a) component and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin, and costs; and (b) the actual location of the final assembly point for the rolling stock, including a description of the activities which took place at the final assembly point and the cost of the final assembly.

18. Restrictions on Telecommunications Equipment and Services.

This Agreement is subject to 2 C.F.R. 200.216 and Section 889 of Public Law 115-232, the National Defense Authorization Act for Fiscal Year 2019. The Proposer Counterparty

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shall not provide under this Agreement any equipment or services prohibited by those laws and regulations.

19. No Obligation by the Federal Government.

a. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, subcontract or other arrangement at any tier, absent its express written consent, the Federal Government has no obligations or liabilities to the Proposer Counterparty or any other participant at any tier of the project.

b. The Proposer Counterparty shall include this clause in each subcontract issued under the Agreement and shall require each subcontractor to include this clause in lower tier subcontracts. It is further agreed that the clause shall not be modified, except to identify the parties who will be subject to its provisions.

20. FTA Terms.

The preceding provisions include, in part, certain standard terms and conditions required by the USDOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, as amended and updated, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms in the FTA Best Practices Manual Appendix A-1 shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Proposer Counterparty shall not perform any act, fail to perform any act, or refuse to comply with any requests made by SBCTA which would cause SBCTA to be in violation of the FTA terms and conditions. The Proposer Counterparty agrees to include these requirements in each subcontract and to require each subcontractor to include this clause in lower tier subcontracts.

21. Changes in Requirements.

Federal requirements cited above may change and the changed requirements shall be applicable to this Agreement as required. It is understood by the Proposer Counterparty and each subcontractor that all limits or standards set forth above to be observed in the performance of the Agreement services are minimum requirements.

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SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSALS
for the
TUNNEL TO ONTARIO INTERNATIONAL AIRPORT PROJECT

Draft RFP Issuance Date: [ ]
Proposal Submission Deadline: [ ] pm PT, [ ]

SBCTA
1170 W. Third St., Second Floor
San Bernardino, CA 92410-1715

SBCTA Procurement Contact:
Shaneka Morris, Procurement Manager,
Special Projects and Strategic Initiatives

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TABLE OF CONTENTS

Page

PART A: PROJECT INFORMATION 1
1. OVERVIEW 1
1.1. Status of RFQ 1
1.2. Project Overview 1
1.3. Project Goals 2
2. State and Federal Law Position 2
2.1. State Law Provisions 2
2.2. Federal Law Provisions 2
3. PROJECT STATUS UPDATES 3
3.1. PCM Procurement 3
3.2. NEPA/CEQA 3
3.3. Funding Availability and Phased Delivery 3
PART B: PROCUREMENT PROCESS 4
4. OVERVIEW 4
4.1. RFP Documents 4
4.2. Modification Through Addenda 5
4.3. Project Information 5
4.4. Reference Documents 6
4.5. Use of Reference Documents 7
5. PROCUREMENT SCHEDULE 7
6. RFP COMMENTS 7
6.1. Timing of RFP Comments 7
6.2. Form and Submission of RFP Comments 7
6.3. Responses to RFP Comments 8
7. MEETINGS 8
7.1. Organization of One-on-One Meetings 8
7.2. Agenda for One-on-One Meetings 8
7.3. Additional Topic Meetings 8
7.4. Confidentiality of One-on-One Meetings 9

FOR REFERENCE ONLY

7.5. Other Rules Governing Meetings 9
8. ALTERNATIVE TECHNICAL CONCEPTS 9
8.1. ATC Submission Process 9
8.2. ATC Discussions at One-on-One Meetings 10
8.3. Responses to ATC Submissions 10
8.4. Confidentiality 11
8.5. Incorporation of ATCs into Contract 11
PART C: PROCUREMENT RULES 11
9. PROPOSER DUE DILIGENCE 11
9.1. Responsibility for Due Diligence and Assumption of Risk 11
9.2. Supplemental Due Diligence 12
10. CHANGES IN PROPOSER ORGANIZATION AND KEY PERSONNEL 12
10.1. General Restrictions on Changes 12
10.2. Incorporation of the Operating System Provider 13
10.3. Incorporation of the Lead Operator 13
11. PRE-PROPOSAL WORKS AGREEMENT & PRE-PROPOSAL SUBMISSIONS 13
11.1. General Requirements 13
12. PUBLIC RECORDS LAW REQUIREMENTS 14
12.1. Compliance with Public Records Law 14
12.2. Confidential and Proprietary Information 14
12.3. Review by Key Stakeholders 15
12.4. Disputes and Liability 15
13. COMMUNICATIONS AND CONTACTS 15
13.1. Proposer Contacts 15
13.2. Rules for Communications and Contact 15
14. ORGANIZATIONAL CONFLICTS OF INTEREST 18
14.1. General Requirements 18
14.2. Federal and SBCTA Requirements and Prohibitions 18
14.3. Disclosure of Conflicts 19
14.4. Persons with Organizational Conflicts of Interest 20
15. LIMITATIONS ON PROPOSER TEAM MEMBERSHIP 20

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

15.1. Design-Build Team Members on More Than One Team 20
15.2. Licensing Requirements 21
15.3. Other Limitations on Design-Build Team Membership 21
16. DISQUALIFICATION FOR NON-COMPLIANCE 22
17. WAGE RATES FOR FEDERAL-AID PROJECTS 22
PART D: RFP SUBMISSIONS 22
18. RFP SUBMISSION REQUIREMENTS 22
18.1. Proposal Submission Requirements 22
18.2. Proposal Validity Period 22
18.3. Proposal Letter 23
18.4. Proposal Forms 23
PART E: EVALUATION & SELECTION 23
19. EVALUATION PROCESS 23
19.1. Evaluation Criteria 23
20. SELECTION AND POST-SELECTION PROCESS 23
20.1. Selection and Announcement of Preferred Proposer 23
20.2. Finalization of the Design-Build Contract for Execution 24
20.3. Execution of the Design-Build Contract 25
20.4. DBE Requirements 26
PART F: PROTESTS AND RESERVED RIGHTS 26
21. PROTESTS 26
21.1. Applicability and Process 26
21.2. Required Early Communication for Certain Protests 26
21.3. Content of Protest 26
21.4. Burden of Proof 27
21.5. Decision on the Protest 27
21.6. Protestor's Payment of Costs 27
22. SBCTA'S RIGHTS 27
22.1. SBCTA's Reserved Rights 27
22.2. No Commitment or Liability 29
PART G: DEFINITIONS AND RULES OF INTERPRETATION 30
23. DEFINITIONS 30

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

24. RULES OF INTERPRETATION.....30
24.1. References to SBCTA 30
24.2. SBCTA Discretion 30
24.3. Interpretation of Certain References, Terms, Phrases and Types of Language.....30
PART H: EXHIBITS & FORMS
EXHIBIT 1: PROCUREMENT SCHEDULE
EXHIBIT 2: RFP SUBMISSION REQUIREMENTS
EXHIBIT 3: EVALUATION PROCESS AND CRITERIA
EXHIBIT 4: DBE REQUIREMENTS
EXHIBIT 5: FEDERAL & STATE REQUIREMENTS
EXHIBIT 6A: OSP RFQ
EXHIBIT 6B: LEAD OPERATOR SOQ SUBMISSION REQUIREMENTS
FORM 1: RFP COMMENT SUBMISSION FORM
FORM 2: SUPPLEMENTAL DUE DILIGENCE REQUEST FORM
FORM 3: ALTERNATIVE TECHNICAL CONCEPT SUBMISSION FORM
FORM 4: PROPOSAL LETTER
FORM 5: BUY AMERICA CERTIFICATION
FORM 6: NON-COLLUSION AFFIDAVIT
FORM 7-A: DBE COMMITMENT FORM
FORM 7-B: BIDDERS LIST
FORM 8: DBE CERTIFICATION FORM
FORM 9: EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION
FORM 10: USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION
FORM 11: DEBARMENT AND SUSPENSION CERTIFICATION
FORM 12: IRAN CONTRACTING CERTIFICATION
FORM 13: DISCLOSURE OF CONTRIBUTIONS FORM
FORM 14: FORM OF LEGAL OPINION
ANNEX A: DEFINITIONS
ANNEX B: FORM OF DESIGN-BUILD CONTRACT
ANNEX C: FORM OF OPERATING CONTRACT

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PART A: PROJECT INFORMATION

1. OVERVIEW

1.1. Status of RFQ

a. To the extent that this RFP contains information or instructions in addition to, different from, or inconsistent or conflicting with, the equivalent information and instructions set out in the Project RFQs, this RFP will govern.

b. Other than to the extent provided in the preceding sentence, rules, information and instructions set out in the Project RFQs that by their terms or by implication survive will continue to govern.

1.2. Project Overview

San Bernardino County Transportation Authority ("SBCTA"), in partnership and cooperation with the City of Rancho Cucamonga, the City of Ontario, Ontario International Airport Authority ("OIAA"), and Omnitrans, are procuring the design and construction of an approximately 4-mile tunnel and autonomous vehicle transit connection from the Rancho Cucamonga Metrolink Station, also known as Cucamonga Station, to the Ontario International Airport ("ONT"), with one surface station at Cucamonga Station and two surface stations at ONT as further described in this Part A (the "Project").

On November 15, 2022, SBCTA issued a Request for Qualifications for Operating System Providers (as amended, the "OSP RFQ") inviting prospective entities interested in participating in the Project as an Operating System Provider to submit qualifications for evaluation to be pre-qualified to team with Shortlisted Design-Build Teams.

On November 21, 2022, SBCTA issued a Request for Qualifications for Design-Build Teams (as amended, the "DB RFQ," and together with the OSP RFQ, the "Project RFQs") to procure the Project. SBCTA invited entities or groups of entities (each company, team or joint venture acting together for such purpose, a "Prospective Proposer") interested in competing for the Project, pursuant to the DB RFQ, to submit statements of qualifications (such statements, including any supplemental materials and information submitted or provided by a Prospective Proposer in accordance with the DB RFQ, each a "SOQ" and, collectively, the "SOQs").

Upon evaluation of the SOQs, SBCTA will select two design-build teams (each, a "Proposer") to each enter into an agreement (the "Pre-Proposal Works Agreement") for the purpose of preparing certain Pre-Proposal Deliverables stated therein that will progress development of proposals to be subsequently submitted to SBCTA for evaluation under this Request for Proposals (the "RFP").

Following evaluation of any such proposals under this RFP, it is anticipated that SBCTA will select one Proposer (the "Preferred Proposer") to proceed with the execution of a Design-Build Contract, incorporated into this RFP as Annex B, for final design, construction, testing, and commissioning of the Project under the terms of such Design-Build Contract.

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The Project contemplates the handover of operations and maintenance of a completely autonomous, on demand transportation system, to include vehicles, control systems, power distribution and vehicle charging, communications systems, station equipment, and maintenance facility fit out and equipment, along with all related equipment and services (collectively, the "Operating System") to the Lead Operator for a period of five (5) years under a separate "Operating Contract" that is to be entered into between the Lead Operator and Omnitrans. The form of Operating Contract is incorporated into the RFP as Annex C.[1]

1.3. Project Goals

The purpose of the Project is to provide a fast and low-cost connection to the Southern California regional rail/transit system and future interstate high speed rail service for air passengers and other users of ONT. Specifically, the goals of the Project include the following (which are not listed in order of importance):

a. providing a reliable trip time and ability to accommodate capacity during peak demand;

b. minimizing wait times for those using the system to transfer to and from Cucamonga Station Metrolink trains and other transit services feeding Cucamonga Station over the majority of the day;

c. promoting sustainable travel and livability for the region;

d. providing a convenient, safe, and reliable method of transportation connecting the ONT passenger terminals to the regional transit network;

e. minimizing environmental impacts and ROW acquisitions;

f. using flexible design, construction, and technology;

g. commencement of service targeted for Summer 2031; and

h. promoting a safe work environment throughout the duration of the Project.

2. STATE AND FEDERAL LAW POSITION

2.1. State Law Provisions

SBCTA is issuing this RFP and carrying out the procurement as described below in accordance with the provisions of California Public Contract Code § 22160 et. seq. (the "DB Law"), and other applicable provisions of Applicable Law, and SBCTA's Contracting and Procurement Policy. Pursuant to the DB Law, the California Legislature has authorized regional transportation agencies to award design-build contracts for transit capital projects.

2.2. Federal Law Provisions

The RFP is drafted based on the assumption that the Project and the plan of finance for the Project will remain eligible for federal-aid funds. Accordingly, this RFP will conform to

[1] SBCTA anticipates releasing the draft form of Operating Contract concurrent with the release of the Lead Operator SOQ Submission Requirements.

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the requirements of applicable federal law, including FTA regulations set out in FTA Circular 4220.1F "Third Party Contracting Guidance."

3. PROJECT STATUS UPDATES

3.1. PCM Procurement

SBCTA has procured a comprehensive PCM consultant team to assist with the implementation of the Project. The PCM's role will be to jointly work together with the stakeholders, on behalf of SBCTA, to successfully oversee environmental approvals, permitting, ROW acquisition, design, construction, and implementation of the Project.

The PCM will administer the Design-Build Contract on behalf of SBCTA, provide review services on behalf of SBCTA for all design submittals, and provide construction management and verification of the Design-Builder's construction operations and work product on behalf of SBCTA.

3.2. NEPA/CEQA

a. FTA is the lead agency for NEPA review of the Project.

b. SBCTA is the lead agency for CEQA review of the Project.

c. SBCTA is currently undertaking the environmental review for the Project and anticipates both NEPA and CEQA decisions will be forthcoming.

d. Any determination by SBCTA to proceed with the Project is contingent upon receipt of all required environmental clearances. The execution of a Design-Build Contract at the conclusion of this procurement process will not commit SBCTA to a particular course of action beyond work completed under the Pre-Proposal Works Agreement.

3.3. Funding Availability and Phased Delivery

a. Authority to proceed with Work after the Pre-Proposal Period will be sequenced through issuance of notices to proceed (each an "NTP"). The Preferred Proposer will be prohibited from undertaking any Work prior to it having satisfied the relevant conditions precedent, including as reflected by issuance of the relevant NTP. The currently contemplated NTPs are:

i. NTP-1 will authorize final design work.

ii. NTP-2 will authorize tunnel boring machine procurement.[2]

iii. NTP-3 will authorize certain early works prior to the commencement of construction.

iv. NTP-4 will authorize construction work.

v. NTP-5A will authorize assembly of the Vehicle prototype and test track preparation.

[2] SBCTA anticipates that the identification of all necessary funding for completion of the Work will be a condition to SBCTA's obligation to issue to NTP-2.

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vi. NTP-5B will authorize Vehicle procurement.

vii. Infrastructure Substantial Completion will be achieved upon the completion of all construction work authorized by NTP-4, excluding the Operating System.[3]

viii. NTP-6 will authorize testing and commissioning of the Operating System. Infrastructure Substantial Completion is anticipated to be a condition precedent to NTP-6.

ix. Readiness for Revenue Service will be achieved upon the completion of testing and commissioning, including successful safety certification and receipt of any other approvals necessary for the commencement of revenue service.

x. SBCTA anticipates requiring that the Lead Operator agree to a final form of Operating Contract with Omnitrans no later than the issuance of NTP-5B. If such agreement is not reached prior to NTP-5B, then SBCTA may direct the Design-Builder to terminate the Lead Operator; seek out a replacement Lead Operator; and/or assist SBCTA and Omnitrans in identifying a suitable substitute Lead Operator to separately contract with Omnitrans upon completion of the Work. The details of such arrangements will be finalized between SBCTA, Omnitrans, and the Shortlisted Design-Build Teams during the Pre-Proposal Period.

b. SBCTA currently estimates the cost of construction for the Work that will be required under the Design-Build Contract (including the Operating System) will be approximately four hundred million ($400,000,000).

PART B: PROCUREMENT PROCESS

4. OVERVIEW

4.1. RFP Documents

The RFP will include the following documents:

a. the RFP document (including Forms),

b. the form of Design-Build Contract,

c. the Technical Provisions,

d. the form of Operating Contract,

e. any Reference Documents, and

f. any Addenda.

[3] The definitions of Infrastructure Substantial Completion, Final Acceptance, Operating System, and related definitions are subject to minor changes necessary to conform to the specific scope delineations of the Design-Builder team with respect to the Operating System and supporting infrastructure.

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4.2. Modification Through Addenda

a. Without limiting the exercise by SBCTA of any of the Reserved Rights, SBCTA may issue Addenda modifying the RFP at any time before the Proposal Submission Deadline.

b. Notwithstanding any election by the SBCTA to communicate the publication of any such addenda to the Proposer through other means, the sole official notice of issuance of any such addenda will be by the posting of such addenda on the Project Website. The Proposer is solely responsible for monitoring the Project Website to ensure that they have received any and all such Addenda.

c. SBCTA will not be bound by any (i) oral communications or (ii) written communications, interpretations or clarifications, which written communications do not otherwise constitute an Addendum.

4.3. Project Information

a. Proposer acknowledges that SBCTA has and continues to make certain Project Information available to it under the terms of the Pre-Proposal Works Agreement and this RFP.

b. SBCTA does not make, nor will it be deemed to have made, any representation, warranty, or guarantee as to the accuracy, completeness, utility, or relevance of any Project Information or information on third party websites, whether referred to in this RFP, during the course of any meeting or workshop, or otherwise made available by SBCTA. SBCTA has no obligation to update any Project Information, the contents of which may reflect information available as of the date that it was prepared or as of such other date indicated therein. As such:

i. Proposer acknowledges and agrees that, without prejudice to any future Design-Build Contract:

A. any Project Information or other information, documents, materials, work product, assistance, or access, to or made available to Proposer under this RFP, during the course of any meeting or workshop, or otherwise made available by SBCTA, is and are provided:

1. on an “as is”, “where is”, and “with all faults” basis without any undertaking, guaranty, representation or warranty, express or implied, regarding the accuracy, completeness, relevance, fitness for purpose, or adequacy of condition of the same (or any part thereof); and

2. subject to any condition or restriction (including the rights of third parties) that may exist from time to time on the same; and

3. Proposer will assume full responsibility for their use of any Project Information or other such information, documents, materials, work product, assistance, or access, including any interpretations of or conclusions drawn, will not be

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entitled to rely on the same, and will bear all risk, including of delay and/or increased cost, resulting from or arising out of its use of any such Project Information or other information, documents, materials, work product, assistance, or access.

c. Without limiting SBCTA's right to require Proposer to agree to customary or necessary supplemental provisions regarding the receipt or handling of confidential or sensitive information, Proposer shall keep confidential all Project Information furnished to it by SBCTA or otherwise learned by it in oral or written communication with SBCTA or any stakeholder.

d. Except as may be required by Applicable Law, Proposer shall not make any announcements or release information (including any member of the public, press, or any official body) that it learns during the procurement process, including any information contained in the Project Information. Upon receipt of any request or order, including a subpoena for any documents received by Proposer in connection with this RFP, the procurement, or the Project, Proposer will immediately advise SBCTA. For requests other than orders or subpoenas from legal or administrative bodies with jurisdiction, SBCTA will advise Proposer what information, if any, to make available and to whom.

4.4. Reference Documents

a. SBCTA has established the Project Website to assemble documents to supplement the Project Information previously provided under the Project RFQs.

b. All documents and information made available on the Project Website shall constitute "Reference Documents."

c. SBCTA does not make, nor will it be deemed to have made, any representation, warranty, or guarantee as to the accuracy, completeness, utility, or relevance of any Reference Document. Reference Documents are provided for reference, and not reliance, purposes only and shall not be construed as any kind of representation or warranty on behalf of SBCTA or any stakeholder. Proposer will assume full responsibility for their use of any Reference Document and will not be entitled to rely on any such Reference Document unless otherwise set forth in this RFP or in any future agreement related to the Project.

d. SBCTA has no obligation to update any Reference Document, the contents of which may reflect information available as of the date that it was prepared or as of such other date indicated therein.

e. Proposer is responsible for ensuring that it has all of the information necessary to respond to the RFP and for independently informing and satisfying itself with respect to the information contained in this RFP and any materials that may be supplied throughout the procurement process.

f. Proposer is responsible for obtaining its own architectural, engineering, environmental, other technical, or professional advice with respect to the Project, the RFP, and any Addenda, appendices, data, materials or documents provided, delivered or made available or required by SBCTA.

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4.5. Use of Reference Documents

a. Without limiting SBCTA's right to require a Proposer to agree to customary or necessary supplemental provisions regarding the receipt or handling of confidential or sensitive information, Proposer shall keep confidential all Reference Documents furnished to it by SBCTA or otherwise learned by it in oral or written communication with SBCTA or any stakeholder.

b. Except as may be required by applicable law, Proposer shall not make any announcements or release information (including, but not limited to, any member of the public, press, or any official body) that it learns during the procurement process, including any information contained in the Reference Documents. Upon receipt of any request or order, including a subpoena for any documents received by a Proposer in connection with the Project, Proposer will immediately advise SBCTA. For requests other than orders or subpoenas from legal or administrative bodies with jurisdiction, SBCTA will advise Proposer what information, if any, to make available and to whom.

5. PROCUREMENT SCHEDULE

SBCTA anticipates completing the procurement process in accordance with the indicative schedule (the "Procurement Schedule") appended hereto as Exhibit 1.

6. RFP COMMENTS

6.1. Timing of RFP Comments

Proposer may submit written comments, questions and/or requests for clarification relating to the RFP (collectively, "RFP Comments"), including any addenda, to SBCTA at any time prior to the RFP Comment Deadline set forth in the Procurement Schedule. Proposer is encouraged to submit RFP Comments with respect to the RFP, or a particular addendum, as and when they are ready for submission. SBCTA may by advance notice set interim RFP Comment deadlines as it deems necessary and appropriate.

6.2. Form and Submission of RFP Comments

a. All RFP Comments will be in the form of Form 1, compliant with the instructions provided therein, and written so as not to identify the Proposer in the body of the question or comment.

b. RFP Comments will be submitted to the SBCTA Procurement Contact by e-mail to tunneltoontario@gosbcta.com, in which case the subject line will be "Tunnel to ONT Procurement: RFP Comment Submission No. [*Insert Number*]". Proposer is responsible for ensuring the receipt of their RFP Comments by SBCTA through the use of automated receipt and read message confirmations.

c. Proposer should assume that SBCTA will not consider any RFP Comments that are:

i. telephone or oral comments; or

ii. submitted (A) by a person with no clear affiliation to Proposer that such person purports to represent or (B) to a person other than the SBCTA Procurement Contact.

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6.3. Responses to RFP Comments

a. SBCTA, may in its discretion, elect to address RFP Comments through the release of relevant Project Information within this RFP, when released, or within an Addendum, that by its terms either reflects, or declines to reflect, a response to the substance of such comments.

b. SBCTA may also, but is not obligated to, provide written responses to RFP Comments; such responses, subject to the confidentiality requirements of this RFP, will be made available to each Proposer.

c. SBCTA's written responses to RFP Comments will be digitally released or delivered, in SBCTA's discretion, on the Project Website, by email, or otherwise. In responding to RFP Comments, SBCTA may rephrase them as it deems appropriate. SBCTA may also create and answer questions independent of those submitted by Proposer. SBCTA will endeavor to provide responses within a reasonable period following receipt.

7. MEETINGS

7.1. Organization of One-on-One Meetings

a. SBCTA will provide Proposer with opportunities to have meetings to discuss the RFP and Proposer's RFP Comments ("One-on-One Meetings").

b. One-on-One Meetings will be held at the invitation of SBCTA.[4] SBCTA reserves the right to cancel or reschedule any anticipated One-on-One Meetings or to require or invite attendance at additional One-on-One Meetings.

7.2. Agenda for One-on-One Meetings

SBCTA may require Proposers to submit a brief agenda for each One-on-One Meeting in advance and may further require the advance submission of written RFP Comments to inform the One-on-One Meeting agendas and allow SBCTA the opportunity to prepare in advance of such meetings.

7.3. Additional Topic Meetings

a. SBCTA reserves the right to invite Proposer to attend additional meetings not formally organized as One-on-One Meetings for the purpose of providing Proposer with an opportunity to discuss specific topics relating to their due diligence on the RFP and the Project, including discussions with third parties.

b. SBCTA invites Proposer to suggest topics for discussion at such meetings through the submission of RFP Comments.

FOR REFERENCE ONLY

[4] Details of the date, place and duration of, and any limitation on the number of attendees at, any such meetings, as well as any other logistical details (which potentially may include amendments to the rules that would otherwise apply to such meetings in accordance with this RFP) will be provided by SBCTA in writing in advance thereof.

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7.4. Confidentiality of One-on-One Meetings

a. SBCTA intends that the discussions in any meeting will be confidential to the meeting participants, provided that SBCTA reserves the right:

i. in the interests of ensuring a transparent and non-discriminatory procurement process, to disclose to each Proposer any issues raised during any such meeting, including through the issuance of addenda, except to the extent that SBCTA determines, in its sole discretion, that such disclosure would constitute a disclosure of Public Records Exempt Materials or contradict the confidentiality provisions that apply to a Proposer's Alternative Technical Concepts in accordance with Section 8.4; and

ii. to share information, comments or feedback received during any meeting with any governmental authorities' representative, subject to such Person's prior written agreement to appropriate confidentiality and non-disclosure restrictions.

7.5. Other Rules Governing Meetings

a. All One-on-One Meetings, and any other meetings held in accordance with this RFP, shall be subject to the following additional rules:

i. Proposer shall not be permitted to submit to SBCTA any written work product at such meeting except for exact copies of materials that were previously submitted in accordance with this RFP;

ii. SBCTA may invite third-party governmental authorities, subject to prior written agreement to appropriate confidentiality and non-disclosure restrictions, to attend;

iii. no binding decisions regarding the procurement process, this RFP, or the Proposal will be made by SBCTA in any meeting;

iv. no oral statement made by or on behalf of SBCTA in any meeting, or included in a written record of such meeting, will constitute:

A. an amendment or addendum or other waiver or exercise of any Reserved Right; or

B. an indication of preference or acceptance or rejection of anything said, done or presented; and

b. for certainty, the review of Pre-Proposal Submissions will be based on the information provided in such submissions and not on the conduct of Proposer or discussions that occur during any meeting.

8. ALTERNATIVE TECHNICAL CONCEPTS

8.1. ATC Submission Process

a. Proposer may identify alternative technical concepts that are not, unless and until approved by SBCTA, otherwise permitted by the terms of this RFP and any form of Design-Build Contract or Technical Provisions ("Alternative Technical Concepts"

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or “ATCs”), but only to the extent that Proposer reasonably anticipates that the incorporation of such ATC will provide an equal or better technical solution than the one being replaced or modified.

b. Proposer may request that SBCTA review a particular ATC by submitting an “ATC Submission Form” in the form of Form 3 with respect to such concept (each such submission, an “ATC Submission”) at any time prior to the ATC Submission Deadline set forth in the Procurement Schedule.

c. SBCTA reserves the right to request additional information regarding any ATC.

8.2. ATC Discussions at One-on-One Meetings

a. In accordance with the instructions provided in the ATC Submission Form, in any ATC Submission, Proposer shall indicate whether it requests that such submission be discussed with SBCTA at a One-on-One Meeting. SBCTA also reserves the right to require Proposer, subject to prior written notice, to be prepared to discuss any ATC Submission at such meeting, which Proposer has not previously requested be the subject of such a meeting.

b. ATC discussions will be subject to the same rules that apply to One-on-One Meetings in accordance with Section 7.

8.3. Responses to ATC Submissions

a. SBCTA intends to use reasonable efforts to provide Proposers with written feedback on any Conceptual ATC Submission within ten (10) Business Days following the date of submission (or, if such Conceptual ATC is to be discussed at a One-on-One Meeting, as soon as possible following such meeting).

b. SBCTA will use reasonable efforts to provide a Proposer with the following written feedback on a Detailed ATC Submission within fifteen (15) Business Days following the later of (1) the date the relevant Detailed ATC Submission was submitted, (2) the One-on-One Meeting at which such submission was discussed, or (3) the date that the Proposer provided additional information pursuant to (vi) below. Such feedback will be one of the following:

i. unconditional approval;

ii. conditional approval, subject to modifications and/or conditions;

iii. disapproval, with or without guidance that such ATC can be re-submitted under any circumstance;

iv. notification that the inclusion of the proposed ATC in the Proposer’s Proposal is already permitted under the terms of the RFP, and therefore does not qualify as an ATC;

v. notification that an addendum to the RFP is currently under consideration that is the subject matter of the proposed ATC, and consideration of the proposed ATC may be more useful if delayed until that RFP addendum is made (or determined not to be made); or

vi. a request for clarification of, or for more information, with respect to the proposed ATC.

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8.4. Confidentiality

SBCTA will maintain the confidentiality of each ATC Submission except:

a. to the extent that disclosure is necessary to maintain compliance with federal or State permitting and/or other legal requirements (including under the Public Records Law) necessary for the delivery of the Project;

b. to governmental entities, which will be involved in the review of ATC Submissions by SBCTA; or

c. to certain other Persons in accordance with Section 7.5 in connection with any One-on-One Meetings at which such ATC Submissions are discussed; and

d. following the award of the Design-Build Contract, SBCTA may, in its discretion, share any ATC that was previously submitted by Proposer (whether or not incorporated by such Proposer in its Proposal under any RFP) with the counterparty to the Design-Build Contract.

8.5. Incorporation of ATCs into Contract

a. SBCTA's approval (with or without conditions) of an ATC will constitute an agreement to modify the applicable requirements of the Design-Build Contract, subject to agreement of the necessary specific drafting modifications as agreed to by SBCTA, to the extent specified in such approval, provided that any such approval of an ATC (whenever issued by SBCTA) does not constitute an approval of specific drafting modifications to the Design-Build Contract necessary to incorporate such ATC, which modifications will be agreed by SBCTA and Proposer (each acting reasonably).

b. In the event that SBCTA's approval of an ATC is subject to any condition and/or implementation of such ATC will require a third party (including governmental) approval, the relevant Proposer will be solely responsible for satisfying such condition(s) and/or obtaining any such approval(s). If any required condition is not met and/or approval is not subsequently granted, the Proposer will comply with the requirements of the Design-Build Contract (unmodified by such ATC) without compensation, time extension, or relief.

PART C: PROCUREMENT RULES

9. PROPOSER DUE DILIGENCE

9.1. Responsibility for Due Diligence and Assumption of Risk

a. Proposer is responsible for performing all due diligence specified in this RFP and otherwise as necessary with respect to the Project in order to perform and complete the Work and to prepare and submit a Proposal.

b. Proposer acknowledges and agrees that, except with respect to Project Information, any information that Proposer needs to perform and complete its Work will have to be sourced independently by it.

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9.2. Supplemental Due Diligence

a. Proposer will not access any part of the expected Project site or other areas or facilities related to the Project, for the purpose of carrying out Supplemental Due Diligence Activities unless and until SBCTA has approved such access and investigation in accordance with this Section 9.2. Furthermore, Proposer will not conduct intrusive investigations related to the Project, including borings, water or materials sampling, or other equivalent activities deemed inappropriate by SBCTA in its discretion.

b. Proposer may submit Supplemental Due Diligence Requests for Restricted Access Inspections and Public Access Inspections at any time prior to the deadline therefore specified in the Procurement Schedule.

c. All Supplemental Due Diligence Requests must be submitted in the form of Form 2. Proposer should submit a separate Supplemental Due Diligence Request with respect to each requested Supplemental Due Diligence Activity.

d. SBCTA reserves the right to reject any Supplemental Due Diligence Request, including on the basis that such request is excessive in scope or otherwise unreasonable (taking into account all other Supplemental Due Diligence Requests submitted by the same Proposer), and to otherwise impose conditions on any Supplemental Due Diligence Request approval.

e. Proposer is responsible for all costs and expenses of, and for securing any required third-party consents or permits necessary for them to conduct any otherwise-approved Supplemental Due Diligence Activities, including all costs of compliance with any training, safety, protective equipment or other requirements for access imposed by SBCTA as conditions for approval.

f. SBCTA will use reasonable efforts:

   i. to provide a Proposer with written feedback on any Supplemental Due Diligence Request promptly following receipt, provided, however, that SBCTA may approve (with or without conditions or modifications) or disapprove any such request in its discretion; and

   ii. to maintain the confidentiality of any Supplemental Due Diligence Request during the procurement process described in this RFP, provided that SBCTA may respond to Proposer's request for Restricted Access Inspections or Public Access Inspections by providing all Proposers with such access, either collectively or individually at different times.

10. CHANGES IN PROPOSER ORGANIZATION AND KEY PERSONNEL

10.1. General Restrictions on Changes

Proposer will not:

a. materially alter the responsibilities of, or materially diminish the qualifications of any Key Personnel or other Person;

b. add, delete or substitute a Major Participant, specifically identified in its SOQ as being part of its team; or

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c. materially alter the relationships or responsibilities among any of the Major Participants, Key Personnel, or other Persons, previously identified in its SOQ as being part of its team at any time prior to the date of the public announcement of the identity of the Preferred Proposer, except as provided for in this RFP.

10.2. Incorporation of the Operating System Provider

a. Proposer will be required to incorporate an Operating System Provider as a Major Participant as a condition precedent to submitting a Proposal. Operating System Providers must be selected either from among the list of SBCTA-Prequalified Operating System Providers, or through submission of a supplemental statement of qualifications with respect to a prospective Operating System Provider. Any supplemental statement of qualifications submitted on behalf of a prospective Operating System Provider must be submitted under the same terms as the OSP RFQ and is subject to review and approval by SBCTA in accordance with the same. Such OSP RFQ, specifically Addendum No. 6 to the SBCTA Request for Qualifications (23-1002878) for the Prequalification of Operating System Providers for the Tunnel to Ontario International Airport Project, dated April 12, 2023, is appended hereto as Exhibit 6A.

b. Operating System Providers may participate as a Major Participant on more than one Shortlisted Design-Build Team.

c. Proposer shall provide SBCTA a notification of Organizational Change to incorporate a Pre-Qualified Operating System Provider as a Major Participant no later than the deadline provided therefor in the Procurement Schedule.

10.3. Incorporation of the Lead Operator

a. Proposer is required to incorporate a Lead Operator as a Major Participant as a condition precedent to submitting a Proposal; as such, Proposer will submit a supplemental statement of qualifications (the “Supplemental SOQ” or the “Lead Operator SOQ”) for review and approval by SBCTA by the deadline set forth in the Procurement Schedule.

b. The Lead Operator SOQ must comply in form and substance with the requirements set forth in Exhibit 6B appended hereto. The Lead Operator SOQ will provide that no Lead Operator will participate on a Proposer team on an exclusive basis.

c. If, despite the exercise of best efforts, a Proposer is not able to incorporate a qualifying Lead Operator due to reasons outside its control, the condition precedent to submission of a Proposal will be waived, and SBCTA and Proposer will work together in good faith to identify a resolution satisfactory to SBCTA.

11. PRE-PROPOSAL WORKS AGREEMENT & PRE-PROPOSAL SUBMISSIONS

11.1. General Requirements

Proposer acknowledges and agrees that:

a. execution of and compliance with the Pre-Proposal Works Agreement is a condition precedent to Proposer remaining eligible to submit a Proposal in

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response to this RFP and to subsequently be selected by SBCTA for award of the Design-Build Contract;

b. any submission or other information provided by Proposer to SBCTA prior to the Proposal Submission Deadline including, but not limited to, RFP Comments, Pre-Proposal Deliverables, other written communications, Supplemental Due Diligence Requests, and ATC Submissions (each, a "Pre-Proposal Submission" and collectively, "Pre-Proposal Submissions") shall be prepared and delivered in accordance with the requirements of the Pre-Proposal Works Agreement;

c. the Pre-Proposal Works Agreement and the review of any Pre-Proposal Submissions do not commit SBCTA to any particular outcome with respect to the procurement process initiated under the Project RFQs and continued through this RFP, including any commitment to subsequently award the Project or enter into a Design-Build Contract with the Proposer;

d. notwithstanding execution of the Pre-Proposal Works Agreement, the Project procurement process remains ongoing.

12. PUBLIC RECORDS LAW REQUIREMENTS

12.1. Compliance with Public Records Law

Proposer acknowledges that the Proposal, any Pre-Proposal Submissions, and other materials (including written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids) delivered by Proposer to SBCTA under this RFP are, upon their receipt by SBCTA, the property of SBCTA and are subject to the California Public Records Act, Chapter 3.5, commencing with Section 6250, of Division 7 of Title I of the Government Code (and pursuant to the CPRA Recodification Act of 2021, effective January 1, 2023, Chapter 1, commencing with Section 7920.000, of Division 10 of Title 1 of the Government Code) (the "Public Records Law").

12.2. Confidential and Proprietary Information

12.2.1. Submission of Confidential and Proprietary Information

In the event Proposer submits any information that Proposer believes is not subject to disclosure pursuant to the Public Records Law ("Public Records Exempt Materials"), it must conspicuously mark the affected document "CONFIDENTIAL" or "CONFIDENTIAL TRADE SECRETS" in the header or footer of each such page affected.

12.2.2. SBCTA Assessment of Confidential and Proprietary Information

a. SBCTA will not advise Proposer as to the nature or content of documents entitled to protection from disclosure under the Public Records Law or other Applicable Law, as to the interpretation of such laws, or as to the definition of trade secret.

b. Nothing contained in this Section 12.2.2 will modify or amend requirements and obligations imposed on SBCTA by the Public Records Law or other Applicable Law.

c. SBCTA reserves the right to disagree with Proposer's assessment regarding confidentiality or proprietary nature of information in the interest of complying with

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the Public Records Law. The provisions of the Public Records Law or other Applicable Law will control in the event of a conflict between the procedures described above and the Applicable Law.

12.3. Review by Key Stakeholders

a. Information submitted by Proposer, including Public Records Exempt Materials, may be made available to representatives of FTA, Omnitrans, OIAA, the City of Rancho Cucamonga, and the City of Ontario as necessary to facilitate review and evaluation of such materials and other submissions during the procurement.

b. To the extent reasonably possible, SBCTA intends to follow procedures that will preserve confidentiality relating to Public Records Exempt Materials during the procurement.

12.4. Disputes and Liability

12.4.1. Disclosure Disputes

a. In the event of any proceeding or litigation concerning the disclosure of any material submitted by Proposer, SBCTA will be the custodian retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that SBCTA reserves the right, in its respective sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by SBCTA in connection with any litigation, proceeding, or request for disclosure will be reimbursed and paid by Proposer objecting to the disclosure.

b. Proposer will be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

c. In no event will SBCTA or any of its agents, representatives, consultants, directors, officers or employees be liable to Proposer for the disclosure of all or a portion of the Proposal or any Pre-Proposal Submissions.

13. COMMUNICATIONS AND CONTACTS

13.1. Proposer Contacts

Proposer previously identified its Proposer's "Official Representative" in its SOQ. Proposer may, after notice to SBCTA, update its Official Representative.

13.2. Rules for Communications and Contact

13.2.1. Application of the Rules

a. The rules of contact specified in this Section will apply during the procurement for the Work, having commenced as of the date of issuance of the Project RFQs through the execution of the Design-Build Contract (the "Restricted Contact Period").

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b. These rules are designed to promote a fair, competitive, and unbiased procurement process. Additional rules or modifications to these rules may be issued by SBCTA in connection with this RFP.

c. Contact includes face-to-face, telephone, facsimile, e-mail, or formal written communication, either directly or indirectly by an agent, representative, promoter or advocate of Proposer.

13.2.2. Rules of Contact

The specific rules of contact during the Restricted Contact Period (unless another period is otherwise noted) are as follows:

a. After release of the Project RFQs, no Restricted Person will communicate with another Proposer or its team members with regard to the Project RFQs, the RFP, or either team's SOQ; provided, however, that subcontractors that are shared between two or more Design-Build Teams may communicate with their respective team members so long as those Proposers establish reasonable protocols to ensure that the subcontractor will not act as a conduit of information between the teams. In addition, contact among Proposer organizations is allowed during SBCTA-sponsored informational meetings.

b. SBCTA will be the sole contact for purposes this RFP and the procurement. Proposer will correspond with SBCTA regarding the RFP through SBCTA's designated representative (as updated by SBCTA from time to time, the "SBCTA Procurement Contact"), who initially will be:

Ms. Shaneka Morris, Procurement Manager
Special Projects and Strategic Initiatives
San Bernardino County Transportation Authority
1170 W. 3rd St., Second Floor
San Bernardino, CA 92410
Phone: 909.884.8276 x-167
tunneltoontario@gosbcta.com .

Any official information regarding the Work and the Project will be disseminated from SBCTA either from an official email account or on agency letterhead, in either case from the SBCTA Procurement Contact. SBCTA will not be (and will be deemed not to be) responsible for, and Proposers may not rely (and will be deemed not to have relied) on, any oral or written communication or contact or any other information or exchange that occurs outside the official process specified in this RFP.

c. Subject to 13.2.2.b, Proposer may also direct communications regarding this RFP, the Work, the Project, or the procurement that are made outside of a One-on-One Meeting or topic meeting to any of the following specifically identified SBCTA representatives:

i. Victor Lopez, SBCTA, Director of Rail and Transit Programs;

ii. Ian Choudri, HNTB, SBCTA PCM Team; or

iii. other individuals identified in writing by the SBCTA Procurement Contact;

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provided that:

A. all such communications shall be made in writing, which may include e-mail; and

B. the SBCTA Procurement Contact shall be copied on all communications.

d. Commencing with the issuance of this RFP and continuing until the earliest to occur of (i) notification that Proposer was not identified as a Shortlisted Design-Build Team, (ii) rejection of all SOQs by SBCTA, (iii) cancellation of the procurement, or (iv) SBCTA entering into a Design-Build Contract with a Preferred Proposer at the conclusion of the procurement, no Proposer or representative thereof will have any *ex parte* communications regarding this RFP, the Pre-Proposal Works Agreement, the Design-Build Contract, or the procurement with:

i. any SBCTA Board member; and/or

ii. any SBCTA staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by this RFP or except as approved in writing in advance by the SBCTA Procurement Contact, in his or her sole discretion.

The foregoing restriction will not, however, preclude or restrict communications with regard to matters unrelated to this RFP, the Pre-Proposal Works Agreement, the Design-Build Contract, or the procurement, or limit participation in public meetings or any public or Proposer workshop related to the Work, the Project, or this RFP.

e. Proposer shall not directly or indirectly contact or communicate with the following identified stakeholders regarding the Work, the Project, or this RFP, including employees, representatives, members, consultants, and advisors of the stakeholders listed below (provided that, with respect to consultants and advisors, such restrictions on contact and communications only apply to the extent any such consultant or advisor provides or has provided services related to the Project or this RFP):

i. OIAA,

ii. City of Rancho Cucamonga,

iii. City of Ontario,

iv. San Bernardino County,

v. FTA, and

vi. FAA.

f. In order to ensure that, among other things, the procurement is implemented in a fair, competitive and transparent manner, SBCTA will provide any necessary intermediary coordination during the procurement process between Proposers, on the one hand, and the stakeholders and related Persons who are the subject of the restrictions in Section 13.2.2.e, on the other hand, provided that Proposers are

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permitted to submit written requests to SBCTA, via the SBCTA Procurement Contact, for its approval, to be given in its discretion, to:

i. engage a consultant or advisory firm that also acts for any such stakeholder in connection with the Project, the Project RFQs or this RFP, subject to such firm's implementation of Information Barriers; and

ii. engage in SBCTA-monitored contacts or communications with any such stakeholder or related Person.

Any such requests should identify the anticipated benefits to the Project and/or the procurement process that may result from the requested engagement, contact or communication.

13.2.3. Violation of Rules of Contact

Any communications or contacts determined to be prohibited by the rules outlined in this Section 13 or otherwise improper, at the sole discretion of SBCTA, may result in disqualification of one or more Proposers.

14. ORGANIZATIONAL CONFLICTS OF INTEREST

14.1. General Requirements

a. Proposers are required to comply with certain FTA and SBCTA conflict of interest policy requirements for the Project, as more fully set forth in this Section 14.

b. SBCTA's goals in adopting these policies and requirements include:

i. protecting the integrity, transparency, competitiveness and fairness of the planning, procurement, design, construction, and development of the Project;

ii. avoiding circumstances where a Proposer obtains, or appears to obtain, an unfair competitive advantage as a result of work performed by a consultant;

iii. providing guidance to Proposers in establishing teams for the procurement of the Project; and

iv. ensuring compliance with applicable legal requirements.

14.2. Federal and SBCTA Requirements and Prohibitions

14.2.1. Federal Requirements

Proposers are required to comply with FTA's organizational conflict of interests guidance found in Circular 4220.1F and the Federal Common Grant Rule, 2 C.F.R. 200.11. All Persons participating in the procurement should be familiar with all requirements of applicable federal law and FTA regulations, circulars and guidance, including all applicable FTA-third-party procurement and contracting requirements and FTA Circular 4220.1F terms regarding organizational conflicts of interest. Any failure to comply with the FTA requirements in any respect, including the failure to disclose any actual, perceived or potential conflict of interest, may result in Proposer's disqualification from participating in the solicitation.

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14.2.2. SBCTA Requirements

a. Proposers are required to comply with SBCTA's Conflict of Interest Policy for the Project, which is available at http://www.gosbcta.com/about-sbcta/do-biz-contracting.html.

b. Without an exception granted by SBCTA with respect to SBCTA's Conflict of Interest Policy, it is SBCTA's policy that any Person under contract, or previously under contract with SBCTA to prepare procurement documents, preliminary plans, planning reports or other project development products for the Project will not be allowed to participate in any capacity on a Proposer's team. Exceptions to this policy may be granted by SBCTA, consistent with Applicable Law, upon written request from such Person, if it is determined that the Person's involvement is in the best interest of the public and would not constitute an unfair advantage. Proposers seeking such exception will submit such written request as soon as possible. No extension of the Proposal Submission Deadline will be given, nor will SBCTA be responsible for any inability or failure to respond to any such request prior to the Proposal Submission Deadline.

c. Proposers are also advised that SBCTA's guidelines relating to organizational conflicts of interest in this RFP are intended to augment applicable federal and state law, including federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such Applicable Law will also apply to Proposers' teams and teaming and may preclude certain firms and their entities from participating on a certain Proposer team.

14.3. Disclosure of Conflicts

a. Proposer will provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest (i) at any time during the Restricted Contact Period, as soon as such conflict is discovered, and (ii) in its SOQ (which requirement may be satisfied by inclusion of a confirmation that no such organizational conflicts of interest exist in relation to such Proposer).

b. With regard to each disclosure pursuant to this Section 14.3, Proposer will state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors, or Key Personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.

c. By submitting its SOQ, each Proposer agrees that, if an organizational conflict of interest is discovered, Proposer must make an immediate and full written disclosure to SBCTA that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, SBCTA may disqualify Proposer. If an organizational conflict of interest that Proposer knew, or should have known about, but failed to disclose exists and Proposer has entered into a Pre-Proposal Works Agreement or a Design-Build Contract, SBCTA may terminate the Pre-Proposal Works Agreement or the Design-Build Contract, or

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disqualify one or more Major Participants from continued participation on a Proposer's team, in its discretion. In either case, SBCTA reserves all legal rights and remedies. Proposers should not view the list in Section 14.4 as an exhaustive list of those firm(s) that have or may have conflicts of interest.

14.4. Persons with Organizational Conflicts of Interest

Proposer is prohibited from teaming with, including on its team (as a Major Participant or other contractor, subcontractor, consultant or subconsultant), receiving any advice from, or discussing any aspect relating to the Work or the Project or the procurement of the Work or the Project with any Person or entity with an organizational conflict of interest, including, but not limited to:

a. 2kbrt Consulting, LLC;

b. AECOM;

c. Epic Land Solutions;

d. Exodigo

e. Grimshaw Architects;

f. HNTB Corporation;

g. Kaplan Kirsch & Rockwell LLP;

h. KavPlan, LLC;

i. Lea+Elliott;

j. Leighton Group;

k. LSA Associates;

l. Monument ROW Services;

m. Morgner Construction Management;

n. RailPros;

o. Towill; and

p. any other Person that, to the best of Proposer's knowledge and belief:

   i. was or is engaged by SBCTA or any of the above listed entities in connection with the Project or this RFP; or

   ii. had access to non-public information regarding the same by virtue of an otherwise unrelated engagement; and

q. Affiliates of the foregoing.

15. LIMITATIONS ON PROPOSER TEAM MEMBERSHIP

15.1. Design-Build Team Members on More Than One Team

a. To ensure a fair and competitive procurement process, no Major Participant (or partner or Joint Venture member thereof) or Affiliate of the same, nor any Key Personnel, nor any Person related thereto, may be a member in any capacity or

FOR REFERENCE ONLY

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otherwise participate in the submission of a SOQ for any other Proposer, Shortlisted Design-Build Team, or Operating System Provider, during the course of the procurement process.

b. If a Prospective Proposer is not selected as a Shortlisted Design-Build Team, then following public announcement of SBCTA's shortlisting determination, the members of each unsuccessful Design-Build Team will be free to participate on Shortlisted Design-Build Teams, subject to compliance with the applicable requirements of the Pre-Proposal Works Agreement and this RFP.

15.2. Licensing Requirements

a. SBCTA will not require Prospective Proposer to be licensed as a condition of submitting an SOQ. However, each of the Proposer, Lead Contractor, Lead Designer, and Lead Tunneling Contractor will be required to be licensed and authorized to conduct business in the State as a condition to a Shortlisted Design-Build Team entering into the Pre-Proposal Works Agreement. Before the execution of the Design-Build Contract or any early works agreement, each entity will provide evidence that it has all licenses, registrations, and credentials required to design and construct the Project, including date(s) obtained or anticipated to be obtained, type, number, classification, issuing agency, and expiration date.

b. In addition, members of Shortlisted Design-Build Team and individuals (including professional engineers) that will be undertaking work that requires a California license must be prequalified and licensed prior to performing the applicable work assigned to such member.

c. Proposer's attention is directed to California Public Contract Code Section 20103.5, which provides:

"The first payment for work or material under any contract will not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed will be subject to all legal penalties imposed by Applicable Law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board."

d. Additional licensing requirements with respect to the submission of Proposals will be included in subsequent Addenda to this RFP.

15.3. Other Limitations on Design-Build Team Membership

a. To ensure a fair and competitive procurement process:

i. Lead Contractors, Lead Designers, Lead Tunneling Contractors, Financially Responsible Parties, and legal advisors of Design-Build Teams are forbidden from participating, in any capacity, as a team member of another Shortlisted Design-Build Team during the course of the procurement.

ii. Individuals serving Key Personnel roles on one Shortlisted Design-Build Team may not serve any role on another Shortlisted Design-Build Team.

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iii. Entities that are under direct or indirect common ownership or have the same upstream parent may not be on separate Shortlisted Design-Build Teams or act as Lead Contractors, Lead Designers, Lead Tunneling Contractors, or Financially Responsible Parties on separate Shortlisted Design-Build Teams.

16. DISQUALIFICATION FOR NON-COMPLIANCE

Any violation by any Proposer or other Person (including any Major Participant or Key Personnel) of, or failure to comply with, Sections 13 or 14 may, in SBCTA's discretion, result in the relevant (a) Proposer, (b) Person and/or (c) Proposer with which such Person is affiliated, being disqualified from further participation in the procurement process described in this RFP or the Project.

17. WAGE RATES FOR FEDERAL-AID PROJECTS

a. The U.S. Department of Labor (USDOL) Wage Rates applicable to the Design-Build Contract are listed in Wage Rate Decision Number CA20210026 as modified through ten (10) days prior to the Proposal Submission Deadline. When multiple wage tables are assigned to a contract, general guidance of their use and examples of construction applicability is available on the USDOL website. Contact the Department's Wage Rate Coordinator before responding if there are still questions concerning the applicability of multiple wage tables.

b. The URL for the U.S. Department of Labor is: http://www.dol.gov/compliance/laws/comp-dbra.htm

c. Contact the Department's Wage Rate Coordinator at (850) 414-4492 if the Department's website cannot be accessed or there are questions.

d. The Proposer shall comply with the Davis-Bacon and Copeland Anti-Kickback Acts and Contract Work Hours and Safety Standards Act as further detailed in Exhibit 5 to this RFP.

e. The wage rate tables applicable to the Design-Build Contract are set forth in Exhibit 5 to this RFP.

PART D: RFP SUBMISSIONS

18. RFP SUBMISSION REQUIREMENTS

18.1. Proposal Submission Requirements

Proposer will prepare and submit the Proposal in accordance with the requirements set forth in Exhibit 2 appended hereto.

18.2. Proposal Validity Period

Each Proposal will remain valid for acceptance by SBCTA for the duration of the Proposal Validity Period, provided that any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the date on which the Proposal Validity Period with respect to such Proposal would otherwise expire in accordance with the definition of Proposal Validity Period.

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18.3. Proposal Letter

Proposer will prepare and submit a letter signed by an authorized representative of the Proposer in the form of Form 1 appended hereto (the "Proposal Letter").

18.4. Proposal Forms

a. Proposer should complete the following affidavits and certifications:

Proposal Forms:

i.	Form 4:	Proposal Letter
ii.	Form 5:	Buy America Certification
iii.	Form 6:	Non-Collusion Affidavit
iv.	Form 7-A:	DBE Commitment Form
v.	Form 7-B:	Bidders List
vi.	Form 8:	DBE Certification Form
vii.	Form 9:	Equal Employment Opportunity Certification
viii.	Form 10:	Use of Contract Funds for Lobbying Certification
ix.	Form 11:	Debarment and Suspension Certification
x.	Form 12:	Iran Contracting Certification
xi.	Form 13:	Disclosure of Contributions Form
xii.	Form 14:	Form of Legal Opinion

PART E: EVALUATION & SELECTION

19. EVALUATION PROCESS

19.1. Evaluation Criteria

SBCTA anticipates conducting the evaluation of Proposer's Proposal as set forth in Exhibit 3 appended hereto.[5]

20. SELECTION AND POST-SELECTION PROCESS

20.1. Selection and Announcement of Preferred Proposer

a. Subject to the Reserved Rights, SBCTA intends to, but is not required to, identify a Preferred Proposer following the conclusion of the evaluation process described in Exhibit 3 to this RFP.

b. SBCTA will (in one or more notices) notify Proposer and the public of the results of the evaluations, (the notice officially naming Proposer as *the* Preferred Proposer, the "Notice of Intent to Award").

[5] SBCTA intends to include the degree to which Proposer takes exceptions to the form of the Design-Build Contract provided in the RFP as a scored element in the final evaluation criteria.

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20.2. Finalization of the Design-Build Contract for Execution

a. Under the terms of the Proposal Letter, Proposer will commit to enter into the Design-Build Contract in the form provided in the RFP, without any revisions except:

   i. minor modifications necessary to create a complete and legally binding contract, including modifications to address drafting issues, clarifications or any conflicts between or within documents, or the equivalent of one of these;

   ii. modifications to those Design-Build Contract provisions that, as indicated in the form of Design-Build Contract included in the RFP, require information that can only be provided after the Preferred Proposer has been approved, provided that such modifications are consistent with the terms of the RFP in SBCTA's reasonable discretion;

   iii. modifications necessary to incorporate terms or concepts provided in the Proposal, including ATCs, which have been approved or required by SBCTA for inclusion in the Design-Build Contract in accordance with this RFP; and

   iv. issues or provisions that the Proposer included as identified exceptions to the form in Design-Build Contract in its Proposal (each a "Contract Exception").

b. SBCTA may, in its discretion, initiate or agree to engage in negotiations with Proposer to modify terms of the Design-Build Contract.

c. Negotiations (if any) will be limited to those issues or provisions identified by Proposer as Contract Exceptions. SBCTA may, in its discretion, terminate such negotiations at any time by providing notice to the Proposer that it has been unable to reach agreement to enter into the Design-Build Contract on terms acceptable to SBCTA.

d. In the event SBCTA elects to commence negotiations with a Proposer, then such Proposer will be deemed to have failed to engage in good faith negotiations with SBCTA if Proposer:

   i. fails to attend or actively participate in reasonably scheduled negotiation meetings with SBCTA;

   ii. fails to timely submit deliverables as required by the RFP or SBCTA in the course of negotiations; or

   iii. insists upon terms or conditions for any documents to be negotiated or provided by Proposer hereunder that are inconsistent with the Design-Build Contract as issued in the RFP (including inclusion of assumptions, qualifications, conditions, pricing basis or exceptions in the Design-Build Contract beyond those that expressly exist in the RFP as of the last addenda to the RFP), except to the extent such terms or conditions concern provisions of the Design-Build Contract specifically identified by Proposer as Contract Exceptions in its Proposal.

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20.3. Execution of the Design-Build Contract

a. Within fifteen (15) Business Days after release of the Notice of Intent to Award (or such longer period as the Parties may determine to be reasonable), the Preferred Proposer is required to submit to SBCTA:

i. evidence of all necessary company or partnership action by Proposer to authorize the execution, delivery and performance of the Design-Build Contract;

ii. evidence as to the authority, power, and capacity of the individuals executing the Design-Build Contract on behalf of Proposer;

iii. subject to SBCTA having previously provided to Preferred Proposer execution copies of the same, or otherwise arranged with the Preferred Proposer's production of the same, the Design-Build Contract, duly executed by Proposer;

iv. notice of the name and address of Proposer's agent for service of legal process, if any, and Proposer's Federal Internal Revenue Service employer identification number;

v. a written opinion from counsel for the Proposer in the form of Form 15 (with such changes as agreed to by SBCTA in its sole discretion), which counsel shall be approved by SBCTA (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the entity for which the opinion is rendered (i.e., Lead Contractor, joint venture member, etc.) and the qualification to do business in California, and the delivery and enforceability opinion shall be provided by an attorney licensed in the State of California); and

vi. all documents required to be delivered by Design-Build Contract concurrently with or prior to execution of the Design-Build Contract in accordance with its terms,

in each case in compliance with, and not inconsistent with, the requirements and terms of the RFP.

b. If, prior to SBCTA's counter-execution of the Design-Build Contract, a Proposer Material Adverse Change occurs or exists, the Preferred Proposer will notify SBCTA of such occurrence or existence. If Proposer provides such a notification to SBCTA or they otherwise become aware of the occurrence or existence of any Proposer Material Adverse Change, SBCTA will consider whether such Proposer Material Adverse Change would have resulted in Proposer receiving a "fail" for the Pass/Fail Evaluation. If SBCTA determines that Proposer would have received a "fail", they will notify Proposer of such determination. Following any discussions with Proposer that SBCTA determines are appropriate in such circumstances, SBCTA will (acting reasonably) notify Proposer of the additional security it is required to submit and/or the other measures or actions it is required to take, in each case as deemed necessary (but not more than necessary) by SBCTA (acting reasonably) to address the occurrence of Proposer Material Adverse Change so

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as to maintain Proposer's "pass" rating, provided that any such required additional security, measures, or actions will be consistent with the types of security and assurances reflected in Proposer's Proposal and/or as are otherwise customary and reasonable in equivalent circumstances. Should Proposer fail to comply with any requirement to submit such additional security and/or take any other such measures or actions within ten (10) calendar days of delivery of notice from SBCTA identifying such requirement (or such longer time as may be allowed by SBCTA in its sole discretion), SBCTA may exercise its rights under Section 20.2.b.

20.4. DBE Requirements

Proposer will comply with the SBCTA's goals with respect to the participation of Disadvantaged Business Enterprises (DBE) as set forth in Exhibit 4. Proposer's attention is called to Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs" ("DBE Regulations"). The DBE Regulations in their entirety are incorporated herein by this reference.

PART F: PROTESTS AND RESERVED RIGHTS

21. PROTESTS

21.1. Applicability and Process

a. This Section 21 sets forth the sole and exclusive protest remedies available with respect to this RFP.

b. Only a Proposer who submits a Proposal in response to this RFP are permitted to file protests regarding the RFQ process in accordance with this Section 21.

c. Any protests regarding the RFP process will be addressed to SBCTA and delivered to the SBCTA Procurement Contact no later than fourteen (14) calendar days after the public announcement by SBCTA of the identity of the Preferred Proposer. Any Proposer submitting such a protest is responsible for obtaining proof of delivery.

21.2. Required Early Communication for Certain Protests

Protests may be filed only after the potential protesting party has informally discussed the nature and basis of the protest with SBCTA, following the procedures prescribed in this Section 21. Informal discussions will be initiated by a written request for a one-on-one meeting delivered to the SBCTA Procurement Contact. The written request will include an agenda for the proposed one-on-one meeting. SBCTA will meet with the potential protesting party as soon as practicable to discuss the nature of the allegations.

21.3. Content of Protest

Any protest must include the following in order to be considered complete and delivered by the deadline:

a. the full legal name and address of Proposer that is/are making the protest;

b. a succinct statement of the grounds, legal authority, and factual basis for such protest; and

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

c. all documentation required to establish the merits of the protest.

21.4. Burden of Proof

The protestor has the burden of proving its protest by clear and convincing evidence. SBCTA may discuss the protest with the protestor and other Proposers. No hearing will be held on the protest. The protest will be decided on the basis of written submissions.

21.5. Decision on the Protest

a. SBCTA's Procurement Manager or designee will issue a written decision regarding the protest within thirty (30) calendar days after the filing of the detailed statement of protest.

b. The written decision of SBCTA's Procurement Manager will be final and non-appealable.

21.6. Protestor's Payment of Costs

If a protest is denied, the party filing the protest will be liable for SBCTA's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by SBCTA as a consequence of the protest.

22. SBCTA'S RIGHTS

22.1. SBCTA's Reserved Rights

In connection with the procurement process described in this RFP, SBCTA reserves to itself any and all of the rights set out in this Section 22 and any other rights available to it under Applicable Law (any of which rights will be exercisable by SBCTA in its sole discretion, with or without cause and with or without notice). The rights referred to in the preceding sentence (together, the "Reserved Rights") include the right to:

a. modify the procurement process described in this RFP or any dates set or projected in this RFP (including, if applicable, as previously modified in accordance with this Section 22) to address:

   i. Applicable Law;

   ii. the best interests of SBCTA;

   iii. changes to the preferred alternative that arise from the NEPA and CEQA processes; and/or

   iv. any concerns, conditions or requirements of the SBCTA, FTA or any other State or Federal department or agency;

b. in reviewing and/or evaluating Proposals:

   i. appoint evaluation committees, which may include members of other public agencies, to review Proposals and seek the assistance of outside technical, financial, legal and other experts and consultants;

   ii. terminate evaluation of Proposals received at any time;

FOR REFERENCE ONLY

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iii. waive deficiencies, nonconformities, irregularities, and apparent clerical mistakes in a Proposal, accept and review a Proposal that it could otherwise have determined to have failed the Pass/Fail Evaluation or permit clarifications or additional information to be submitted with respect to a Proposal;

iv. make independent calculations with respect to numbers and calculations submitted in a Proposal for purposes of its evaluation;

v. require confirmation of information submitted by the relevant Proposer, require additional information from such Proposer concerning its Proposal, or require additional evidence of qualifications to perform the work described in this RFP;

vi. contact the firm and personnel references supplied by Proposer as well as other potential references not listed, including internal personnel of SBCTA; and/or

vii. seek or obtain data from any source that has the potential to improve SBCTA's understanding and evaluation of a Proposal;

c. in otherwise conducting the procurement process described in this RFP:

i. modify any and all dates set in this RFP;

ii. add or delete Proposer responsibilities from the information contained in the RFP;

iii. reject any and all submissions, responses, and Proposals received at any time;

iv. not select any Proposer to become the Preferred Proposer in SBCTA's discretion;

v. add as the Preferred Proposer any prospective Proposer that submitted a Proposal in order to replace a previously selected Proposer that withdraws or is disqualified from participation in the procurement process described in this RFP;

vi. engage in negotiations with Preferred Proposer;

vii. suspend and terminate Design-Build Contract negotiations;

viii. negotiate with Preferred Proposer without being bound by any provision in the RFP or its Proposal;

ix. disqualify any Proposer from the procurement process for violating any rules or requirements of the procurement process specified in (A) this RFP, (B) any other communication from SBCTA or (C) Applicable Law;

x. disqualify any Key Personnel from the procurement process at the sole discretion of the SBCTA or for violating any rules or requirements of the procurement process specified in (A) this RFP, (B) any other communication from SBCTA or (C) Applicable Law; and/or

FOR REFERENCE ONLY

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xi. accept, reject or seek additional information regarding a Proposer's request to make any Organizational Change;

d. procure and develop the Project, including any portion thereof, in any manner that it deems necessary, including the right to:

i. modify the scope, structure, schedule and/or specific terms of, or cancel, the procurement process described in this RFP in whole or in part at any time prior to the execution by SBCTA of a Design-Build Contract, without incurring any cost obligations or liabilities;

ii. modify the scope of the Project or the Work during the procurement process;

iii. issue addenda, supplements and modifications;

iv. issue a new request for qualifications, instructions to proposers, or request for proposals after cancellation of the procurement process described in this RFP;

v. elect not to commence or continue Design-Build Contract negotiations with Preferred Proposer, and/or suspend or terminate Design-Build Contract negotiations at any time;

vi. conduct One-on-One Meetings and other meetings at such times, according to such rules of conduct, and with such attendees, as SBCTA may determine are appropriate in its discretion; and/or

vii. develop some or all of the Project itself or through another State or local governmental entity;

e. if SBCTA is unable to negotiate a Design-Build Contract to its satisfaction with Proposer, to:

i. cancel the procurement process described in this RFP;

ii. pursue the development of the Project through a procurement or contracting approach not expressly anticipated by the RFP; and/or

iii. exercise such other rights under the DB Law and other provisions of California law as it deems appropriate;

f. exercise any other right reserved or afforded to SBCTA under this RFP or Applicable Law and regulations; and/or

g. exercise its discretion in relation to the matters that are the subject of this RFP as it considers necessary or expedient in the light of all circumstances prevailing at the time which SBCTA considers to be relevant.

22.2. No Commitment or Liability

a. This RFP does not commit or bind SBCTA to enter into a Design-Build Contract or proceed with the procurement process described in this RFP. SBCTA does not assume any obligations, responsibilities or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by

FOR REFERENCE ONLY

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parties considering a response to and/or responding to the RFP and all such costs will be borne solely by each Proposer.

b. In no event will SBCTA be bound by, or liable for, any obligations with respect to the Project or any portion thereof, until such time (if at all) as a Design-Build Contract (in form and substance satisfactory to SBCTA) has been executed and authorized by SBCTA and then, only to the extent set out in the Design-Build Contract.

PART G: DEFINITIONS AND RULES OF INTERPRETATION

23. DEFINITIONS

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set out in Annex A to this RFP.

24. RULES OF INTERPRETATION

24.1. References to SBCTA

Any reference in this RFP to SBCTA refers to the Board of Directors of SBCTA, acting by and through SBCTA's directors, officers, employees, and other authorized agents or representatives of each.

24.2. SBCTA Discretion

Any reference in this RFP to SBCTA having the right to exercise its "discretion" means SBCTA having the right to exercise its sole and absolute discretion in regard to a particular decision or action, including the ability to refrain from taking any action and the ability (where appropriate) to impose any conditions in the exercise of such discretion.

24.3. Interpretation of Certain References, Terms, Phrases and Types of Language

24.3.1. Headings and Other Internal References

a. Headings are inserted for convenience only and will not affect interpretation of this RFP.

b. Except as otherwise expressly provided in this RFP, a reference to any Section, Part, Form, Annex, or Exhibit within this RFP is a reference to such Section or Part of, or Form or Annex set out in, or Exhibit to, this RFP.

24.3.2. Common Terms

a. When there are references to general words followed by a list, or a reference to a list, to make it clear that those general words "include" the matters set out in that list, then the contents of the list will not, and will not be deemed to, limit the generality of those general words.

b. The singular includes the plural and vice versa.

c. The word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

24.3.3. Professional Language and Terms of Art

Except as otherwise expressly provided in this RFP:

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

a. words and phrases not otherwise defined herein:

   i. that have well-known technical or construction industry meanings will be construed pursuant to such recognized meanings; and

   ii. of an accounting or financial nature will be construed pursuant to Generally Accepted Accounting Principles in the United States as in effect from time to time,

   in each case taking into account the context in which such words and phrases are used; and

b. all statements of or references to dollar amounts or money in this RFP, including references to "$" and "dollars", are to the lawful currency of the United States of America.

24.3.4. References to Agreements, Documents and Laws

Except as otherwise expressly provided in this RFP, any reference:

a. to an agreement or other document will be construed to be a reference to such agreement or other document (including any schedules, annexes or exhibits thereto) as it may be amended, modified, or supplemented from time to time in accordance with its terms; and

b. to any law will be construed as a reference to such law, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time.

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

PART H: EXHIBITS & FORMS

Exhibits:

Exhibit 1: Procurement Schedule
Exhibit 2: RFP Submission Requirements
Exhibit 3: Evaluation Process and Criteria
Exhibit 4: DBE Requirements
Exhibit 5: Federal & State Requirements
Exhibit 6A: OSP RFQ
Exhibit 6B: Lead Operator SOQ Submission Process

Pre-Proposal Forms:

Form 1: RFP Comment Submission Form
Form 2: Supplemental Due Diligence Request Form
Form 3: ATC Submission Form

Proposal Forms:

Form 4: Proposal Letter
Form 5: Buy America Certification
Form 6: Non-Collusion Affidavit
Form 7-A: DBE Commitment Form
Form 7-B: Bidders List
Form 8: DBE Certification Form
Form 9: Equal Employment Opportunity Certification
Form 10: Use of Contract Funds for Lobbying Certification
Form 11: Debarment and Suspension Certification
Form 12: Iran Contracting Certification
Form 13: Disclosure of Contributions Form
Form 14: Form of Legal Opinion

FOR REFERENCE ONLY

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EXHIBIT 1: PROCUREMENT SCHEDULE

[Procurement Schedule for the Pre-Proposal Phase to be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

EXHIBIT 2: RFP SUBMISSION REQUIREMENTS

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

EXHIBIT 3: EVALUATION PROCESS AND CRITERIA

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

EXHIBIT 4: DBE REQUIREMENTS

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

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EXHIBIT 5: FEDERAL & STATE REQUIREMENTS

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement. SBCTA contemplates including all provisions that are required for an FTA administered Federal-aid project.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

EXHIBIT 6A: OSP RFQ

[See attached OSP RFQ, Addendum No. 6 to the SBCTA Request for Qualifications (23-1002878) for the Prequalification of Operating System Providers for the Tunnel to Ontario International Airport Project, dated April 12, 2023.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

EXHIBIT 6B: LEAD OPERATOR SOQ SUBMISSION REQUIREMENTS

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 1: RFP COMMENT SUBMISSION FORM

Instructions:

Please generally see Section 6 of this RFP. In addition:

(1) Proposers shall submit RFP Comments in English and in Microsoft® Word format.

(2) Proposers should use the checkboxes at the top of the Form to indicate the identity and (by filling out the date where indicated) issuance date of all RFP documents to which the RFP Comments relate.

(3) Proposers should divide their comments into three Parts – Part 1 (comments on the RFP); Part 2 (comments on the Design-Build Contract; Part 3 (comments on the Technical Provisions); and Part 4 (comments on the Operating Contract) – as indicated in the Form. Proposers may exercise their judgment as to the Part in which they include a comment that does not clearly fit within only one part, always taking into account, in particular, SBCTA's preference for technical comments to be included in Parts 3 or 4, and other comments to be included in Parts 1 and 2.

(4) Proposers shall use the numbering system set out in the Form.

(5) Under the "Reference" heading, Proposers should:
- (a) if applicable, first, list the "Part", "Form", "Annex", "Schedule" (or equivalent) of or to the RFP/RFP or the Design-Build Contract (or other document, if applicable), and then reference the relevant Section (including any subsection); or
- (b) if not applicable, indicate "N/A".

(6) RFP Comments should be divided into the following categories in accordance with the Category headings in each Part of the Form:
- (a) "Category A" – an issue that, if not resolved in an acceptable fashion, would likely preclude the Proposer from submitting a Proposal;
- (b) "Category B" – an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with other issues (which should be identified to the extent related or possible), would likely preclude the Proposer from submitting a Proposal;
- (c) "Category C" – a substantive issue that does not qualify as a Category A, B or D issue; or
- (d) "Category D" – a drafting issue, a clarification or a comment concerning conflicts between or within documents, or the equivalent of one of these, in each case which a reasonable Proposer would not interpret as intentional (and therefore should be a Category A, B or C comment).

(7) Within each Category within each of Parts 1, 2, 3, and 4 of the Form, RFP Comments should be ordered sequentially by reference to the order in which they appear in the RFP or the Design-Build Contract (or other document, if applicable).

(8) Proposers should consider relevance, brevity and clarity when submitting RFP Comments. As such:
- (a) each comment should address a single issue and therefore comments on multiple parts of a defined term or a provision in the document should be divided into separate comments and (unless substantively related) not aggregated into a single comment;
- (b) any single comment that complies with instruction (8)(a) may include list numbering to facilitate review and response, provided that list bullets should not be used;
- (c) each comment should indicate why it has been made;
- (d) with respect to comments that have previously been submitted (in whole or part), Proposers will (i) include as the first line of such comment "**The following comment was previously submitted as RFP Comment No. [X] in the submission made on [*date*].** We are resubmitting it [*provide brief explanation*]."

(9) Proposers should refer to Section 12 before submitting RFP Comments that contain confidential or proprietary information.

(10) Proposers should delete this instructions box and additional instruction notes prior to submitting any RFP Comments using this Form.

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

Proposer Name: [*Proposer to provide*]
Date: [*Proposer to provide*]

Tunnel to ONT Project: RFP Comment Submission No. [ ][6]

Comments on:
- ☐ RFP ([*date*])
- ☐ Design-Build Contract ([*date*])
- ☐ Technical Provisions ([*date*])
- ☐ Operating Contact ([*date*])

Part 1: RFP/RFP Comments

No.	Reference	RFP Comment	For SBCTA Use Only
Category A Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category B Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category C Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category D Comments			

[6] Proposers to sequentially number each set of Pre-Proposal Period Comments submitted.

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

Part 2: Design-Build Contract Comments

No.	Reference	RFP Comment	For SBCTA Use Only
Category A Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category B Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category C Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category D Comments			

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

Part 3: Technical Provisions Comments

No.	Reference	RFP Comment	For SBCTA Use Only
Category A Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category B Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category C Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category D Comments			

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

Part 4: Operating Contract Comments

No.	Reference	RFP Comment	For SBCTA Use Only
Category A Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category B Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category C Comments			

No.	Reference	RFP Comment	For SBCTA Use Only
Category D Comments			

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 2: SUPPLEMENTAL DUE DILIGENCE REQUEST FORM

Instructions: Please generally see Section 9. In addition:
(1) Proposers should submit a separate Supplemental Due Diligence Request with respect to each requested Supplemental Due Diligence Activity.
(2) Proposers should delete this instructions box and additional instruction notes prior to submitting this Form.

Proposer Name: [*Proposer to provide*]
Date: [*Proposer to provide*]

Tunnel to ONT Project: Supplemental Due Diligence Request No. [ ][7]

Type of Request

☐ Restricted Access Inspection
☐ Public Access Inspection

Overview

[*Provide description.*]

Method(s) of Inspection/Investigation

[*Provide description.*]

Location(s) and Approximate Duration of Activity

[*Provide description.*]

Identity and Qualifications of Participants (if applicable/known)

[*Provide description.*]

Permit(s)/Approval(s) Required

[*Provide description.*]

Potential Benefits to the Procurement

[*Provide description.*]

FOR REFERENCE ONLY

[7] Proposer Counterparty to sequentially number all Supplemental Due Diligence Requests.

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 3: ALTERNATIVE TECHNICAL CONCEPT SUBMISSION FORM

Instructions: Please generally see Section 8. In addition:

(1) Proposers should submit a separate ATC Submission Form for each ATC.

(2) ATC Submissions should be numbered in the format of "X.Y" to indicate iterative versions of the same ATC, where:
- (a) "X" shall be the sequential number of each ATC that is submitted; and
- (b) "Y" shall be the sequential number of the version of such ATC, where the initial submission shall be version "0" and each subsequent resubmission (including resubmission of a Conceptual ATC as a Detailed ATC) shall be, in sequence, "1", "2", "3" etc.

By way of illustration, ATC Submission "7.2" would be the second resubmission (and therefore the third version) of the seventh unique ATC.

(3) Proposers should complete Parts A and B of the Form set out in this Form for both Conceptual ATCs and Detailed ATCs and Part C of such Form for Detailed ATCs only.

(4) In completing Part B of an ATC Submission Form for a Detailed ATC (unless no Conceptual ATC was submitted in respect of such ATC), Proposers should include the following express statement (with the inapplicable square bracketed language deleted) under each heading:
"This information [has been] [has not been] amended since the submission of the previous version of this ATC."

(5) Conceptual ATC submissions shall not exceed three Standard Pages, plus up to two additional Oversized Pages or two pages of Oversized Materials. There is no page limit for Detailed ATC Submissions.

(6) Any attachments should clearly indicate which headings within the ATC Submission Form the materials relate to.

(7) Proposers should delete this instructions box and additional instruction notes, and may delete italicized text in Part B and Part C prior to making an ATC Submission using this Form.

Proposer Name: [*Proposer to provide*]
Date: [*Proposer to provide*]

Tunnel to ONT Project: ATC Submission No. [ ].[ ][8]

A. Background Information

1. Type of Submission

☐ Conceptual ATC

☐ Detailed ATC

2. Prior Submission(s)

☐ None (initial submission of ATC)

☐ Previously Submitted as Conceptual ATC

[8] Proposer to complete in accordance with instruction (2) to this Form.

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

☐ Previously Submitted as Detailed ATC

3. Explanation of Reason for Resubmission

[*Proposer to provide*]

4. Request for Discussion at One-on-One Meeting

☐ Meeting Requested

☐ Meeting Not Requested[9]

FOR REFERENCE ONLY

[9] SBCTA may nevertheless require Proposers to present an ATC Submission at a One-on-One meeting.

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

B. General ATC Submission Requirements

5. Overview Description

Narrative overview description of the proposed ATC.

[*Proposer to provide*]

6. Relevant RFP Requirements

List all material RFP requirements that are inconsistent with, and would require amendment to accommodate, the proposed ATC[10].

[*Proposer to provide*]

7. Rationale

Explanation of how, where, and why the ATC would be used on the Project, including how it aligns with the Project Goals.

[*Proposer to provide*]

8. Impacts

A preliminary analysis of potential environmental, social, economic, community, traffic, safety, operations and maintenance or third-party impacts (positive and negative), including specific separate identification and analysis of any such impacts that are not reflected in the final EIS.

[*Proposer to provide*]

9. Cost and Benefit Analysis

An estimate (which in the case of a Conceptual ATC can be limited to an order of magnitude) of likely costs, and savings, that are likely to result from implementation of such ATC, including reference to assumptions on which such estimate is based.

[*Proposer to provide*]

10. Schedule Analysis

An estimate (which in the case of a Conceptual ATC can be limited to an order of magnitude) of likely design and construction time-period impacts (positive and negative) of such ATC, including reference to assumptions on which such estimate is based.

[*Proposer to provide*]

11. Conceptual Drawings

At Proposer's discretion, unless otherwise requested by the Procuring Authorities, conceptual drawings.

[*Proposer to attach*]

12. Past Use

Identification of other projects on which the ATC (or a substantially similar approach) has been implemented, regardless of the results, and the relevance of such experience.

[*Proposer to provide*]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

13. Additional Information

With respect to previously submitted ATC Submissions only, additional information as requested by SBCTA following review of such prior submissions.

[*Proposer to provide*]

FOR REFERENCE ONLY

[10] Proposers are not required to propose RFP drafting amendments when completing Part B, but are required to do so when completing Section 5 of Part C.

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

C. Detailed ATC Requirements

1. Risks

To the extent not otherwise addressed by the responses to Part B above, an analysis of any additional risks to SBCTA or third parties associated with implementation of the ATC, including discussion of how such risks are, or are proposed to be, allocated under the terms of the Design-Build Contract.

[*Proposer to provide*]

2. Handback – Impact on O&M

Description of any proposed changes in handback procedures and/or the handback requirements associated with the ATC, if any are expected.

[*Proposer to provide*]

3. Right-of-Way

A description, the estimated cost, and the proposed procurement schedule of any additional right-of-way expected to be required to implement the ATC, if any.

[*Proposer to provide*]

4. List of Required Approvals

A list of required, or likely to be required, third party and governmental approvals.

[*Proposer to provide/attach*]

5. Proposed Drafting Revisions

(a) List all RFP requirements that are inconsistent with the proposed ATC and (b) attach in the form of a mark-up (for amendments to existing drafting) and/or a rider (with respect to newly proposed drafting) proposed revisions to address those inconsistencies.

*[*Proposer *to provide/attach]*

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 4: PROPOSAL LETTER

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 5: BUY AMERICA CERTIFICATION

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 6: NON-COLLUSION AFFIDAVIT

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 7-A: DBE COMMITMENT FORM

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 7-B: BIDDERS LIST

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 8: DBE CERTIFICATION FORM

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 9: EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 10: USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 11: DEBARMENT AND SUSPENSION CERTIFICATION

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 12: IRAN CONTRACTING CERTIFICATION

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 13: DISCLOSURE OF CONTRIBUTIONS FORM

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

FORM 14: FORM OF LEGAL OPINION

[To be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement.]

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

ANNEX A: DEFINITIONS

"Addenda" and "Addendum"	mean any supplemental written additions, deletions, and modifications to the provisions of this RFP as described in Section 4.2.
"Affiliate"	"Affiliate" means in relation to any Person: (a) any other Person having Control over that Person; (b) any other Person over whom that Person has Control; (c) any Person over whom any other Person referred to in (a) above also has Control; or (d) any Financially Responsible Party for that Person. in each case where "Control" of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises direct or indirect control over that controlled Person's affairs.
"Applicable Law"	means any: (a) statute, law (including common law), code, regulation, ordinance or rule; (b) binding judgment, judicial or administrative order or decree; (c) written directive, guideline, policy requirement, methodology or other governmental restriction or requirement (including those resulting from an initiative or referendum process, but excluding those by SBCTA within the scope of their administration of this Contract); and (d) similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any governmental authority, in each case that is applicable to or has an impact on the Project or the Work.
"ATC" or "Alternative Technical Concept"	means alternative technical concepts as described in Section 8, which concepts would not (absent SBCTA approval pursuant to Section 8.5) be permitted under the terms of the Contract.
"ATC Submission"	means the submission by a Proposer of an ATC in accordance with Section 8.1.
"ATC Submission Deadline"	means the date set forth in the Procurement Schedule.
"Business Day"	means any day other than a Saturday, Sunday, or legal holiday in the State.
"Conceptual ATC Submission"	means an Alternative Technical Concept that, as submitted in the form of an ATC Submission Form, contains all the information required by of that form.
"Contract Exception"	has the meaning given to it in Section 20.2.a.iv.
"CEQA"	means the California Environmental Quality Act.

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

"DB Law"	has the meaning given to it in the Section 2.
"DB RFQ"	has the meaning given to it in the Section 1.2.
"DBE"	means Disadvantaged Business Enterprises.
"DBE Regulations"	has the meaning given to it in Section 20.4.
"Design-Build Contract"	means the contract that is anticipated to be entered into by SBCTA and the Preferred Proposer following the conclusion of the Pre-Proposal Period in accordance with the terms of the RFP.
"Design-Builder"	means the counterparty to the Design-Build Contract entered into with SBCTA at the conclusion of the procurement in respect of the Project.
"Detailed ATC Submission"	means an Alternative Technical Concept that, as submitted in the form of an ATC Submission Form, contains all the information required by of that form.
"Financially Responsible Party"	means each parent company or other entity (in either case, if any) that provides a letter of support in accordance with the Project RFQs. Each Financially Responsible Party is a Major Participant.
"Form"	means any of the Proposal forms set out in Part H.
"FTA"	means Federal Transit Administration.
"Information Barriers"	means, with respect to any Person, the implementation of internal safeguards and confidentiality protection protocols, including the exclusion of involvement of any individual who himself or herself has consulted or advised on, or otherwise has non-public knowledge of, the Project or this RFP, which barriers are customary and appropriate for the relevant industry of such Person and this Project and which barriers otherwise comply with such Person's obligations under Applicable Law.
"Infrastructure Substantial Completion"	Has the meaning given to it in Section 3.3.
"Joint Venture"	means a consortium, partnership, joint venture or any other unincorporated grouping acting together for a common purpose and, each individual member or partner of such Joint Venture.
"Key Personnel"	means the individuals identified as such by a Proposer in its SOQ.
"Lead Contractor"	means the single entity or joint venture that will be primarily and directly responsible for construction of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Contractor.

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

"Lead Designer"	means the single entity or joint venture that will be primarily and directly responsible for design of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Designer.
"Lead Operator"	means the entity that is identified as a Major Participant on a Shortlisted Design-Build Team pursuant to the process to be set forth in the RFP that is primarily responsible for operations and maintenance of the Operating System and will enter into the Operating Contract.
"Lead Operator SOQ"	has the meaning given to it in Section 10.3.
"Lead Tunneling Contractor"	means the entity that will be primarily and directly responsible for tunnel construction on the Project.
"Major Participant"	means each of Proposer, Lead Contractor, Lead Designer, Lead Tunneling Contractor, and any Financially Responsible Parties. One entity may fill more than one Major Participant role.
"NEPA"	means the National Environmental Policy Act.
"Notice of Intent to Award"	has the meaning given to it in Section 20.1.
"NTP"	means notice to proceed.
"Official Representative"	means the contact for Proposer with respect to this procurement and the ITP as set out in Section 13.1.
"OIAA"	means Ontario International Airport Authority.
"One-on-One Meeting"	has the meaning given to it in Section 7.
"ONT"	means Ontario International Airport.
"Operating Contract"	has the meaning given to it in Section 1.2.
"Operating System"	means the vehicles, control systems, power distribution and vehicle charging, communications systems, station equipment, and maintenance facility fit out and equipment, along with all related equipment and services as required to provide a complete autonomous, on demand transportation system.
"Operating System Provider"	means the entity that will be responsible, in whole or in part, for the design, fabrication, delivery, installation, testing, integration, commissioning, verification of passenger service readiness, permitting, and safety certification, of the Operating System.
"Organizational Change"	means the addition, deletion, or substitution or a Major Participant or other Persons previously identified in its SOQ as being part of Proposer's team or other reorganization to Proposer's team that

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

	would render the organizational charts and descriptions provided in its SOQ inaccurate or incomplete.
"OSP RFQ"	has the meaning given to it in Section 1.2.
"Oversized Materials"	means drawings, schematics, organizational charts or schedules.
"Oversized Page"	means a 11" x 17" sized white piece of paper with at least 1" margins, or the digital equivalent, that: (a) uses fonts that are (i) no smaller than 8-point and (ii) standard-form Arial; and (b) contains only Oversized Materials.
"Pass/Fail Evaluation"	means the evaluation conducted by SBCTA in accordance with the pass/fail criteria set out in the RFP.
"PCM" or "Project and Construction Manager"	means the entity contracted by SBCTA to manage the Project, which includes among other things, administering the Contract, providing design reviews for the Project, and providing construction management and verification of Preferred Proposer's construction operations and product.
"Person"	means any of a natural person, a corporation, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a joint venture, an unincorporated association or any other entity recognized as having legal personality under the laws of the State, in each case as the context may require.
"Preferred Proposer"	means the Proposer that is selected by SBCTA to enter into the Design-Build Contract following the evaluation of all Proposals submitted by Proposers in response to the RFP.
"Pre-Proposal Deliverables"	has the meaning given to it in the Section 1.2.
"Pre-Proposal Period"	means that period from effective date of the Pre-Proposal Works Agreements through the Proposal Submission Deadline under the RFP.
"Pre-Proposal Submissions"	has the meaning given to it in Section 11.
"Pre-Proposal Works Agreement"	has the meaning given to it in the Section 1.2.
"Pre-Qualified Operating System Provider"	means an Operating System Provider that is identified by SBCTA as eligible to proceed in the procurement and be selected as a Major Participant on a Shortlisted Design-Build Team.
"Procurement Schedule"	has the meaning given to it in Section 5.
"Project"	has the meaning given to it in the Section 1.2.

FOR REFERENCE ONLY

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"Project Information"	means any information provided to Proposers during the RFQ stage of this procurement.
"Project RFQs"	has the meaning given to it in the Section 1.2.
"Project Website"	means the limited-access website to be separately notified to Proposer for use in connection with the procurement .
"Proposal"	means, collectively, the submission by Proposer to SBCTA in response to the requirements set forth in the RFP.
"Proposal Letter"	means the letter attached to this RFP as Form 4.
"Proposal Submission Deadline"	has the meaning given to it in the Procurement Schedule.
"Proposal Validity Period"	means with respect to the Proposal, the period commencing at the Proposal Submission Deadline and ending on (and including) the earliest to occur of: (a) the date which is 120 days after the Proposal Submission Deadline or, if after such deadline, the date on which a Proposer submitted its final update to its Proposal (if any) in response to an SBCTA request; (b) the date on which SBCTA publicly announces the cancellation of the procurement process described in this RFP; and (c) the date on which Proposer elects, in its sole discretion, to extend the validity of its Proposal in accordance with Section 18.2.
"Proposer"	has the meaning given to it in the Section 1.2.
"Proposer Material Adverse Change"	means: (a) a change that has occurred or is anticipated in the business, operations, financial condition, liabilities, or capitalization of any Major Participant; or (b) any other condition or circumstance related to any Major Participant, which, in any case, in the SBCTA's reasonable opinion has or is anticipated to have a material adverse impact on Proposer's financial and/or technical capacity to design and build the Project as contemplated by the terms of the Contract.
"Prospective Proposer"	has the meaning given to it in the Section 1.2.
"Public Access Inspections"	means inspections of areas that are physically and legally accessible to members of the general public, to the extent such inspections: (a) would be functionally distinguishable from the lawful activities of most other users of such areas; and/or

FOR REFERENCE ONLY

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10703 : Shortlisting of Design-Build Teams and

(b) would require the use of non-intrusive equipment.

"Public Records Exempt Materials"	has the meaning given to it in Section 12.2.
"Public Records Law"	has the meaning given to it in Section 12.1.
"Readiness for Revenue Service"	has the meaning given to it in Section 3.3.
"Reference Document"	means the documents provided to Proposer through the Project Website or otherwise to assist Proposer in their Project due diligence and to supplement the Project Information previously provided under the Project RFQs.
"Reserved Rights"	has the meaning given to it in Section 22.1.
"Restricted Access Inspections"	means inspections of such areas are not physically and/or legally accessible to members of the general public.
"Restricted Contact Period"	has the meaning given to it in Section 13.2.1.
"Restricted Person"	means each Proposer and Major Participant and any subcontractor otherwise engaged at the relevant time by any of the same in connection with the Project, in each case including each such Person's agents and representatives (including Key Personnel).
"RFP"	has the meaning given to it in the Section 1.2.
"RFP Comments"	has the meaning given to it in Section 6.1.
"RFP Comment Deadline"	means any initial or final RFP Comment Deadline set out in the Procurement Schedule or any interim deadline for Proposer to comment on the ITP established by SBCTA from time to time.
"SBCTA"	means the San Bernardino County Transportation Authority.
"SBCTA Procurement Contact"	has the meaning given to it in Section 13.2.2.
"SBCTA Procurement Manager"	means the SBCTA Procurement Contact.
"Shortlisted Design-Build Teams"	means those Proposer entities and their Major Participants selected at the conclusion of the Design-Builder RFQ procurement process to respond to the RFP.
"SOQ"	means a statement of qualifications submitted by a Proposer in accordance with the DB RFQ.
"Standard Page"	means a 8-1/2" x 11" sized piece of white paper with at least 1" margins, or the digital equivalent, that, subject to the pre-formatting of any Annex or Form, uses: (a) fonts that are (i) no smaller than 11-point (or 8-point in any table, graphic or chart), (ii) standard-form Arial and (iii)

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displayed or printed in black (other than in any heading, table or graphic); and

(b) "single line" spacing (paragraph formatting) 0 points before each line, 6 points after each line (other than in any table, graphic or chart).

"State"	means the State of California.
"Supplemental Due Diligence Activities"	means Restricted Access Inspections and/or Public Access Inspections.
"Supplemental Due Diligence Request"	means a request to conduct Supplemental Due Diligence Activities submitted in accordance with the terms of this RFP.
"Supplemental SOQ"	has the meaning given to it in Section 10.3.
"Technical Provisions"	means the documents included as an annex to this RFP addressing Project administration, design, construction, operations, maintenance, vehicle, and other relevant technical disciplines.
"Vehicle"	means a rubber-tired zero-emission passenger carrying unit capable of autonomous operations as contemplated by the Project RFQs.
"Work"	means the work to be completed by the Design-Builder pursuant to the Design-Build Contract.

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ANNEX B: FORM OF DESIGN-BUILD CONTRACT[11]

This document (the "**Term Sheet**") sets forth the anticipated principal terms and conditions that will be addressed in the Design-Build Contract (the "**Contract**") and subsequently entered into between SBCTA and the Design-Builder concerning the Project (as defined below). The Term Sheet shall remain subject to modification by Addendum as a result of negotiations between SBCTA and the Shortlisted Design-Build Teams during the Pre-Proposal Phase as provided for in the RFP.

This Term Sheet is not intended to, and shall not, create any liability or binding obligation of either Proposer or SBCTA.

This Term Sheet does not purport to include all provisions relative to the structure or terms of the proposed transaction or definitive documentation. No binding agreement will exist until all necessary approvals have been obtained, including approval by SBCTA's board of directors, and the parties have executed and delivered a definitive Contract and any related agreements.

* * *

Please note the following:

- SBCTA intends to prepare the Contract on the basis of this Term Sheet. As necessary, additional and customary provisions, including "boilerplate" and legally required provisions, may be added to the Contract if not included in this Term Sheet.
- To the extent practical, the Contract will be drafted using the principles of brevity and clarity in order to facilitate agreement and later contract compliance and administration.
- Provisions are presented in the approximate order in which they would appear in the Contract.

Sec. Ref.	Subject	Terms
Essential Terms		
1.	**Parties**	The Contract will be entered into between SBCTA and the Design-Builder.
2.	**Role of Omnitrans; the Lead Operator and Entering Into the Operations Contract**	Prior to execution of the Contract, SBCTA will make arrangements with Omnitrans as necessary to give effect to those provisions which concern operational matters that fall within Omnitrans' and not SBCTA's jurisdiction. Omnitrans will be a participant, subject to any Third-Party Requirements as provided in Section 18, alongside SBCTA throughout all stages of the procurement process. Design-Builder will be required to interface with and respond to comments from Omnitrans at all stages through and during implementation.

[11] SBCTA anticipates that the initial release of the RFP will include this Design-Build Contract Term Sheet. The full form of Design-Build Contract, which will be generally consistent with this Design-Build Contract Term Sheet, will be released by subsequent Addendum during the Pre-Proposal Period and will replace this Term Sheet.

FOR REFERENCE ONLY

Sec. Ref.	Subject	Terms
		Design-Builder will be required to solicit and retain a Lead Operator during the term of the Pre-Proposal Works Agreement to provide services from construction through testing and commissioning. The "**Lead Operator**," the entity that is primarily responsible for operations and maintenance of the Operating System, will enter into a separate "**Operating Contract**;" such Operating Contract will be with Omnitrans, the form of which will be agreed on or prior to the issuance date of NTP-5B. In the event that after good-faith negotiations the Lead Operator and Omnitrans fail to agree on a mutually acceptable form of Operating Contract, the Design-Builder may be required to terminate the Lead Operator and/or seek a replacement Lead Operator; however, the Design-Builder will thereafter be relieved of the obligation to retain a Lead Operator. The Design-Builder shall have no obligation to seek a replacement Lead Operator after Infrastructure Substantial Completion. The obligations of the Design-Builder (and the "**Operating System Provider**" functioning as a Major Participant that will be responsible, in whole or in part, for the design, fabrication, delivery, installation, testing, integration, commissioning, verification of passenger service readiness, permitting, and safety certification, of the Operating System) with respect to testing and commissioning of the Operating System, and any warranties related to the Operating System, will remain in full force and effect and will not be altered by any termination of the Lead Operator. The form of Operating Contract between the Lead Operator and Omnitrans will be provided with the RFP, and which will be subject to comment and suggested modification from the Design-Build Teams during the Pre-Proposal Period. The Lead Operator is expected to assume operating responsibility for the "**Operating System**," the vehicles, control systems, power distribution and vehicle charging, communications systems, station equipment, and maintenance facility fit out and equipment, along with all related equipment and services as required to provide a complete autonomous, on-demand transportation system, for a five (5) year period under the Operating Contract. To the extent applicable, negotiation of the Operating Contract will also include negotiation of related commercial terms with the Operating System Provider regarding ongoing support commitments, including, but not limited to, service arrangements, upgrades, maintenance, spare parts, and replacement of Vehicles and/or components of the Operating System.
3.	**Statement of Purpose**	To: • enable the Design-Builder to design, build, test, and commission a tunnel connection from the Rancho Cucamonga Metrolink Station to the Ontario International Airport ("**ONT**") (the "**Project**"); • include a Lead Operator that will separately enter into a transitional five (5) year contract with Omnitrans to operate the Project at the conclusion of construction, testing, and commissioning; and

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Sec. Ref.	Subject	Terms
		• provide for protections of the public interest in connection with the Project. The Contract may otherwise forego the inclusion of recitals.
4.	**Construction of the Contract**	Necessary provisions to confirm Contract's integrated and binding nature, inclusive of Exhibits and the Technical Provisions (together with the Contract, the "**Contract Documents**"), and the integration of provisions required by law (including FTA provisions and FAA provisions relevant to ONT).
Formation of Contract		
5.	**Grant of Rights**	SBCTA will grant the Design-Builder the right, and the Design-Builder will accept the obligation, to design, build, supply, and maintain the Project. The Design-Builder's associated rights of access to and use of the site are detailed further below under the heading "**Project Site**". SBCTA's grant of rights may constitute a license, right of entry and use, and/or other arrangement, but it will exclude interests in real property such as ownership or a leasehold. SBCTA or other governmental authorities will hold any real property interests as indicated under the heading "**Ownership**".
Assurances and Undertakings		
6.	**Reference Materials and Due Diligence**	Without prejudice to Design-Builder's right to claim a Supervening Event under Section 42, Design-Builder: • will acknowledge all information provided by SBCTA during the RFP process up to the execution of the Contract will be deemed to be reference material provided for information and not reliance, without representation or warranty and • will at all times be responsible for conducting Project due diligence in accordance with the Good Industry Practice.
7.	**General Undertakings**	The Design-Builder to undertake to perform all work including design, construction, supply, and maintenance activities (the "**Work**") and to deliver the Project in compliance with: • the Contract and the Exhibits (listed at the conclusion of this Term Sheet) addressing Project administration, design, construction, operations, maintenance, vehicle, and other relevant technical disciplines (the "**Technical Provisions**"); • applicable laws; • permits and approvals, including the NEPA/CEQA environmental approvals once received; • agreed technical standards incorporated by reference in such specifications and the Contract ("**Project Standards**"); and • otherwise, Good Industry Practice. "**Good Industry Practice**" will be defined as the degree of skill, care, prudence, foresight, and practice that would reasonably and ordinarily be expected from time to time of a skilled and experienced professional designer, engineer, constructor, manufacturer, or installer, as applicable,

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Sec. Ref.	Subject	Terms
		engaged in the same (or if none, a reasonably equivalent) type of activity or activities in North America as that of the Design-Builder, or any other Person to which such term relates, never being less than the standard applied by the Design-Builder or such Person, or any of its or their affiliates, under the same or similar circumstances on other projects.
8.	**Specific Undertakings**	The Contract will include lists of affirmative and negative Design-Builder undertakings. To promote brevity and clarity undertakings referenced elsewhere in this Term Sheet may be consolidated into this list if SBCTA determines that such undertakings do not benefit from being drafted as stand-alone provisions. The Design-Builder's undertakings will include: • except where expressly provided otherwise in the Contract, acceptance of all risks, responsibilities, obligations, costs, and liabilities in connection with delivering the Work. • maintenance of and compliance with licenses, certifications, and accreditations; • efforts to execute required certifications and keeping SBCTA informed of any potential or actual debarment; • minimizing any material adverse impacts of the Work and repair or pay for the repair of any damage caused by the Work; • remedy defects and non-conforming work; • cooperation and coordination with SBCTA and other entities with jurisdiction in matters relating to the work, including for the purposes of oversight; • performing work taking into account the context of certain adjacent facilities and transportation services, projects, and communities, including responsibility for designing to and integrating with identifiable interfaces, and cooperation and coordination with those responsible for adjacent facilities and projects and adjacent communities (where applicable in accordance with relevant third party agreements or MOUs as provided for in Section 18); and • avoiding interrupting or impeding ONT facilities, utilities, or operations, and avoiding any other unnecessary adverse impacts or disruptions to adjacent facilities and transportation services, projects, and communities.
Initiation of Work, Scheduling and Completion		
9.	**Sequencing of the Work; Exclusion of Operating System Work**	The Design-Builder's authority to proceed with the scope of work will be sequenced through issuance of sequential notices to proceed (each an "**NTP**") and achievement of work elements and other key conditions. The Design-Builder will be prohibited from undertaking any element of the Work prior to it having satisfied the relevant conditions precedent, including as reflected by issuance of an NTP.

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Sec. Ref.	Subject	Terms
10.	**Commencement and Completion Mechanics**	The Contract will set out procedural mechanics for satisfying conditions precedent to issuance of each NTP or for completion of work. SBCTA anticipates that the identification of all necessary funding for completion of the Work will be a condition to SBCTA's obligation to issue to NTP-2. These mechanics will, as applicable, reference more detailed requirements listed in the Technical Provision Exhibits, but are generally expected to comprise the following NTPs: • "**NTP-1**" will authorize final design work. • "**NTP-2**" will authorize tunnel boring machine procurement. • "**NTP-3**" will authorize certain early works prior to the commencement of construction. • "**NTP-4**" will authorize construction work. • **"NTP-5A"** will authorize assembly of the Vehicle prototype and test track preparation. • "**NTP-5B**" will authorize Vehicle procurement. • "**NTP-6**" will authorize testing and commissioning of the Operating System. (Infrastructure Substantial Completion is anticipated to be a condition precedent to NTP-6). "**Infrastructure Substantial Completion**" will be achieved upon the completion of all construction work authorized by NTP-4, excluding the Operating System.[12] "**Final Acceptance**" means the stage in the Work where the following requirements have been satisfied by the Design-Builder: • all requirements for Infrastructure Substantial Completion have been satisfied; • all construction work is complete including correction of all nonconforming work and the items on the punchlist identified at Infrastructure Substantial Completion will have been completed; • the Design-Builder has submitted and received SBCTA approval of all submittals required by the Contract; • all special tools, equipment, furnishings and supplies purchased and/or used by the Design-Builder as provided in the Contract have been delivered to SBCTA; • all replacement spare parts will have been purchased and delivered to SBCTA free and clear of liens; • the Site will be in good working order and condition; and • all conditions to acceptance by local agencies and utility

[12] The definitions of Infrastructure Substantial Completion, Final Acceptance, Operating System, and related definitions are subject to minor changes necessary to conform to the specific scope delineations of the Design-Builder team with respect to the Operating System and supporting infrastructure.

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Sec. Ref.	Subject	Terms
		owners have been satisfied. Design-Builder will be permitted to achieve Final Acceptance if all conditions have been achieved except those that have not been achieved due to the occurrence of an OSP Event. "**Readiness for Revenue Service**" will be achieved upon completion of testing and commissioning, including successful safety certification and receipt of any other approvals necessary for the commencement of revenue service.
11.	**Deadlines**	The following deadlines will apply to elements of the Work. Each deadline is intended to provide additional time beyond the Design-Builder's scheduled/ anticipated completion dates before such deadline would be missed. • NTP-1 Deadline - no later than [ ].[13] • NTP-5A Issuance Deadline - no later than [24] months after completion of NTP-1 Work. • NTP-5A Completion Deadline (a working vehicle prototype that successfully demonstrates ability to meet the performance requirements in the Technical Provisions; see footnote 14) - no later than [47] months after completion of NTP-1 Work. • NTP-5B Completion Deadline (approved factory final inspection of Vehicles prior to releasing for shipment) - no later than [62] months after issuance of NTP-1. • Infrastructure Substantial Completion Deadline - no later than [63] months after issuance of NTP-1. • Final Acceptance Deadline - no later than [65] months after issuance of NTP-1. • Readiness for Revenue Service Deadline - no later than [73] months after issuance of NTP-1. Deadlines may be extended only through a Change or as the result of a Supervening Event.
12.	**Consequences for Missed Deadlines**	Failure to achieve any of the following deadlines may result in default and termination. • NTP-5 Completion Deadline • Infrastructure Substantial Completion Deadline • Final Acceptance Deadline • Readiness for Revenue Service Deadline Failure to complete the relevant Work by the applicable deadlines set forth in Section 11 will result in liquidated damages for any unexcused delays in completion.

[13] Anticipated in July 2025.

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Sec. Ref.	Subject	Terms
13.	**Vehicle Procurement**	The Design-Builder will be responsible for causing the Operating System Provider to procure and maintain (until handover to the Lead Operator under a separate Operating Contract) a fleet of vehicles capable of meeting or exceeding the Contract performance specifications (including as set out in the Technical Provisions). Ownership and control of the vehicle fleet is addressed below under the "**Ownership**" heading. Vehicle procurement will be conducted as NTP-5 Work within the timelines established by the relevant deadlines. The minimum vehicle requirements will be as set out in the Technical Provisions. The Design-Builder shall be responsible for acquiring a sufficient number of vehicles to satisfy the requirements of the Technical Provisions. Each vehicle procurement must include an option for the acquisition of additional vehicles with the maximum duration permitted by the FTA / USDOT. In undertaking the NTP-5 Work the Design-Builder will comply with the relevant deadlines referenced in Section 11. Failure to adhere to such deadlines may have the consequences indicated in Section 12.
Compliance with Law, Permits, and Third-Party Requirements		
14.	**Compliance with Law**	The Design-Builder's obligation to comply with law will include any "**Change in Law**", meaning the coming into effect of the enactment, promulgation or adoption of any law, a binding change in interpretation of any law, or any modification or repeal of any law that is materially different from or inconsistent with law previously in effect. In limited circumstances, the Design-Builder will be entitled to claim relief and/or time and compensation as a result of a Change in Law that constitutes a Supervening Event. For purposes of the Supervening Event provisions generally, Changes in Law will not include: • any change which was (in the same or substantially similar form and substance) pending, passed or adopted at the time the Contract was executed; • the exercise of discretion and oversight by any United States Federal, State or local government, and any political subdivision of any of them, and any interstate, governmental, quasi-governmental, judicial, public, regulatory or statutory instrumentality, administrative agency, authority, body or entity of, or formed by, any such government or subdivision thereof, in each case other than SBCTA (a "**Governmental Authority**") in any permitting or approval process; or • any change in Federal, State, or local trade, export, customs or sanctions law, labor, tax, building, construction, or zoning law, which does not also satisfy the requirements to be a Compensable Change in Law below.

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Sec. Ref.	Subject	Terms
		All other Changes in Law which qualify as Supervening Events will be treated as a Relief Event, and not a Compensable Event, in accordance with Section 42 (each a "**Non-Compensable Change in Law**"), unless such Change in Law: • applies only to, or the effects of which principally apply to, the Project and/or to the Design-Builder; • it is intended to serve a discriminatory purpose, for which purposes generally applicable regulation of similar innovative facilities and services will not be considered discriminatory; or • constitutes a change in the rules or standards applicable to Design-Builder's safety certification of the Operating System relative to the rules and standards identified in the Design-Builder's Safety Certification Standards deliverable, submitted in accordance with Section 1.3.3.c of Exhibit 3 of the Pre-Proposal Works Agreement, and approved by SBCTA prior to the Contract execution date, (in which case it will be a "**Compensable Change in Law**").
15.	**Project Standards**	The Design-Builder's obligation to comply with Changes in Law will include compliance with Project Standards where compliance with updates to standards specified in the Contract is necessary to maintain compliance with law.
16.	**NEPA/CEQA**	The lead agency for NEPA review is FTA. The lead agency for CEQA review is SBCTA. SBCTA anticipates that Section 163 of the FAA Reauthorization of 2018 ("**Section 163**") may apply to limit FAA approval authority over the proposed Project improvements at ONT.
17.	**Permitting**	The Design-Builder shall be responsible for securing and complying with all permits (other than NEPA and CEQA) required to undertake the Work including all costs associated with securing such permits. In undertaking applications for permits, the Design-Builder shall involve and keep SBCTA informed.

18.	**Third-Party Requirements**	SBCTA presently anticipates entering into third-party agreements setting forth the specific requirements applicable to the Work with certain key stakeholders, including the following:
		• **Omnitrans**
		  ○ Memorandum of Understanding between San Bernardino County Transportation Authority and Omnitrans for the Tunnel to Ontario International Airport Project Oversight Agency for Operations & Maintenance
		• **City of Ontario**
		  ○ Cooperative Agreement between San Bernardino County Transportation Authority and City of Ontario for the Design, Right-of-Way and Construction Phases for the Tunnel to Ontario International Airport Project in the City of Ontario (execution date TBD)

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Sec. Ref.	Subject	Terms

		• **City of Rancho Cucamonga**
		  ○ Cooperative Agreement between San Bernardino County Transportation Authority and City of Rancho Cucamonga for the Design, Right-of-way and Construction Phases for the Tunnel to Ontario International Airport Project in the City of Rancho Cucamonga (no executed date yet)
		• **OIAA**
		  ○ Cooperative Agreement between San Bernardino County Transportation Authority and Ontario International Airport Authority for the Design, Right-of-way and Construction Phases for the Tunnel to Ontario International Airport Project (no executed date yet)
		Additionally, SBCTA anticipates confirm the requirements applicable to the conduct of the Work with additional key stakeholders, including the following identified requirements that will apply to the conduct of the Work:
		
		• **Caltrans**
		  ○ CALTRANS Encroachment Permits, Guidelines and Specifications for Trenchless Technology Projects, August 2018
		• **MWD**
		  ○ Guidelines for Improvements and Construction Projects Proposed in the Area of Metropolitan's Facilities and Rights-of-Way, July 2018
		  ○ MWD Geotechnical Guidelines, March 3, 2014
		• **UPRR**
		  ○ UPRR Public Projects – Plan Submittal Guidelines, January 3, 2019
		  ○ UPRR Public Projects Check Sheet, July 30, 2019
		  ○ UPRR – BNSF Railway, Guidelines for Railroad Grade Separation Projects, May 3016
		
		(collectively, the "**Third-Party Requirements**")
		
		The Design-Builder will comply with all Third-Party Requirements identified by SBCTA, as maybe updates from time to time.
		
		Any new or modified Third-Party Requirement added after the effective date by SBCTA will be subject to Design-Builder's prior approval, not to be unreasonably withheld, to the extent (and only to the extent) that such:
		• imposes an obligation on the Design-Builder which exceeds its prior obligations under this Contract; and
		• such obligation would result in a risk or liability which is not accounted for through the relief and compensation afforded under the Contract.

Project Site		

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Sec. Ref.	Subject	Terms
19.	**Early Access**	Prior to securing access to and use of any part of the Project Site in accordance with Section 20 and subject to such conditions SBCTA may require (including the Design-Builder having in place all necessary insurance coverage), SBCTA will, at the Design-Builder's written request and to the extent it is able, grant the Design-Builder with early access to and use of parts of the Project Site (to the extent such are within the limits of the potential SBCTA-provided property) for purposes of conducting due diligence and otherwise facilitating, and preparing for, the Design-Builder's performance of the Work.
20.	**Project Site; Access and Use**	The "**Project Site**" will be comprised of the outmost limits of the Project necessary for the Work including: • the area within which the Project will be constructed and conducted as identified in accordance with any environmental decision (the "**ROW Limits**"); • additional ROW acquired pursuant to procedures for the acquisition of property by SBCTA on the Design-Builder's behalf to be set out in an Exhibit to the Contract); • other SBCTA-provided property (if any); and • the tunnel portal and shaft construction area, road approaches, areas through where ditches and channels are to be executed. SBCTA will make the Project Site available to the Design-Builder pursuant to the grant of rights under Sections 5 and 21. The parties will acknowledge and agree that any depiction or anticipation of the Project Site in the Contract at execution will reflect multiple possible alternatives under consideration as of the execution date pursuant to CEQA/NEPA and not an impermissible agreement with respect to any particular alternative.
21.	**Design-Builder Rights to Site**	SBCTA's grant rights to the Design-Builder under Section 5 will include a right to access and use, or the equivalent, for the Project Site. The Design-Builder's rights to the Project Site: • will be subject to any applicable rights of other persons, restrictions, or qualifications, including those set out in the Contract, Law, or disclosed in any reference information; • will be non-exclusive outside of the tunnel and limited to conditions set out in each NTP as issued; and • include customary associated obligations (to the extent not otherwise addressed in the Technical Provisions) with respect to matters such as site security, maintenance and repair, and limiting street and lane closures. During the period of the Design-Builder's access to and use of the Project Site, the Design-Builder shall have sole responsibility for risk of damage and loss, subject to the terms of the Contract.
22.	**Additional Properties**	SBCTA will entertain requests for acquisition of certain other parcels ("**Additional Properties**") provided Design-Builder provides notice and

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		can demonstrate to SBCTA's reasonable satisfaction, that such Additional Properties are required for permanent improvements for the Project or for temporary construction or conduct of the Work, and that acquisition of Additional Property is otherwise consistent with applicable law and governmental approvals. Design-Builder shall support any requests for acquisition of Additional Properties with such information as may be reasonably required by SBCTA. In all cases, SBCTA's obligation to provide such access is subject to the following conditions: • if requested by SBCTA, Design-Builder's providing an analysis regarding alternative courses of action; • SBCTA's agreement that the property acquisition is in the best interest of the Project; and • Design-Builder's providing such evidence as SBCTA may require to enable issuance of a determination of necessity. Except as a consequence of a Supervening Event, the Design-Builder will not be entitled to any increase in the Contract Price or any time extension as a result of any risk, delay, cost, liability or obligation that arises due to the acquisition, or attempted acquisition, of any Additional Properties. Design-Builder shall pay directly all costs in connection with acquiring Additional Properties and additional governmental approvals. Such costs will be determined in accordance with the California Relocation Assistance Law (Cal. Gov. Code Sections 7260 et seq.), the Uniform Act, the California Eminent Domain Law (Cal. Code of Civ. Proc. Sections 1230.010 et seq.), and SBCTA and FHWA and Caltrans policies for federal-aid projects. If SBCTA incurs any such costs on Design-Builder's behalf, SBCTA may submit invoices for such costs to Design-Builder, in which case Design-Builder shall pay such invoices within ten (10) days of SBCTA's submission to Design-Builder. The process for scheduling provision of site access as described above shall apply to Additional Properties except that (i) SBCTA shall provide Design-Builder with notice of the minimum time necessary for provision of access upon its approval of the acquisition, which shall be no less than fifteen (15) months, and (ii) delay in acquisition is not considered to be caused by SBCTA except to the extent that the delay was directly attributable to negligent actions affirmatively taken by SBCTA.
Design and Construction		
23.	**Environmental**	The Design-Builder is responsible for compliance with all environmental requirements (being environmental laws and associated government approvals, including pursuant to NEPA/CEQA and any mandated mitigation measures), including as provided in the Technical Provisions. The Design-Builder is responsible for all identification, investigation, removal, treatment, storage, transportation, management, and/or disposal of hazardous materials.

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24.	**Generator Status**	The Design-Builder will not be considered the generator and arranger of: • hazardous materials that existed on the site prior to its occupancy; and • any release of hazardous materials by SBCTA or a third party that constitutes a Supervening Event. However, the foregoing does not alter the Design-Builder's obligations to undertake hazardous materials management. The Design-Builder will be considered the generator and assume generator and arranger responsibility any release(s) of hazardous materials by itself or its agents or for any conditions which it is otherwise responsible pursuant to the indemnity.
25.	**Utilities**	SBCTA anticipates conducting advance relocation of certain known dry utilities, which will be identified in a utility matrix provided in the Reference Documents. The Design-Builder will be responsible for all utility work (including primarily the obligation to protect-in-place and not disturb) associated with water, sewer, stormwater, and gas utilities that are required to complete the Project, including as provided in the Technical Provisions. The cost and risk associated with utility relocation or other utility work not specifically contemplated in the Technical Provisions or in the utility matrix that is necessitated as a result of the Design-Builder's design for the Project or its construction means and methods will be the sole responsibility of the Design-Builder (provided that SBCTA may complete such relocations on Deign-Builder's behalf). Specific provisions regarding notice of required relocations will be included in the Contract. As part of its general undertakings, the Design-Builder will not impermissibly interrupt operations, utilities, or facilities at ONT or along the right-of-way.
26.	**Site Conditions**	Without limiting the Developer's notice obligations with respect to Supervening Event provisions described in Section 42, if the Design-Builder discovers or encounters during the course of the Work any subsurface or physical site conditions or "**Differing Site Conditions**," which will be comprised of the encountering or discovery of any: • utility condition not identified through required due diligence under Section 6; and • buried obstruction of man-made origin (other than a utility of any kind) that requires specialized or large-scale excavation equipment or blasting for removal, • latent naturally occurring geological conditions (excluding groundwater), • any Environmental Impairment (as defined) in soil or surface water, or in groundwater to the extent at concentration levels above the applicable value permitted by Law, requiring Design-

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		Builder's management of hazardous materials; to the extent such were not known by the Design-Builder prior to execution of the Contract and could not have reasonably been identified or anticipated. Design-Builder will be required immediately to: • notify SBCTA, • stop Work in and secure the area absent contrary instructions, and • provide SBCTA with details regarding the location and nature of the discovery or encounter, the Design-Builder's proposed course of action, and any required notices to any entities that may have jurisdiction. Failure to timely notify SBCTA will bar the Design-Builder from relief. SBCTA will use reasonable efforts to notify the Design-Builder within five (5) days after receiving the Design-Builder's notice as to whether Work should be resumed, whether further investigation is required, and/or whether additional action is required to be undertaken by the Design-Builder. SBCTA may require the Design-Builder to recommence Work in the area at any time, even though an investigation may still be ongoing. The Design-Builder shall promptly recommence Work in the area upon notice from SBCTA to do so.

27.	**PCC Section 7104 Compliance**	The Contract will incorporate detailed terms and provisions intended to fully comply with Public Contract Code Section 7104 as provided below.
		
		For purposes of compliance with Public Contract Code Section 7104(a):
		
		• the Design-Builder's obligation to notify SBCTA in writing of the conditions set out in Public Contract Code Section 7104(a) will be satisfied by the Design-Builder's compliance with Section 26 (which, can be satisfied through notices given pursuant to Section 42);
		• SBCTA will waive the Design-Builder's obligation to provide written notice of certain conditions under Public Contract Code Section 7104(a) in advance of disturbing such conditions to the extent necessary to give effect of any provision of the Contract which expressly requires or expressly permits the Design-Builder to continue with Work which would cause such disturbance;
		• hazardous waste material of the kind described in Public Contract Code Section 7104(a)(1) constitutes an "**Environmental Impairment**" that is subject to Section 26;
		• subsurface or latent physical conditions of the kind described in Public Contract Code Section 7104(a)(2) and unknown physical conditions of the kind described in Public Contract Code Section 7104(a)(3):
		  ○ constitute a subset of Differing Site Conditions and of such other related site conditions that are subject to Section 26; and
		  ○ will, as applicable for Public Contract Code Sections 7104(a)(2) and 7104(a)(3), be considered to be differing from

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FOR REFERENCE ONLY

Sec. Ref.	Subject	Terms
		those indicated by information about the Site made available to bidders prior to the deadline for submitting bids or, as applicable, will be considered to be unknown, of an unusual nature and different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract, if, and only if, such conditions were neither (A) disclosed, identified, or indicated in the Contract or any documents/information made available to Design-Builder on or prior to the Contract Date (each a "**Reference Document**") nor (B) could have reasonably been, or was in fact, known, identified, observed, expected or anticipated by the Design-Builder undertaking (including through Design-Builder related entities) due diligence pursuant to Good Industry Practice in either case (A) and (B) on or prior to such identified date, (the "**Setting Date**"). For purposes of compliance with Public Contract Code Section 7104(b): • SBCTA's rights and obligations under Section 26 and Section 42 with respect to any related Supervening Event claim, and its other express rights under the Contract, to oversee and inspect the Work, constitute the means by which it will investigate conditions which are subject to Public Contract Code Section 7104(a); • for purposes of Public Contract Code Section 7104(b), the Supervening Event procedures under Section 42 constitute the relevant "change order" "procedures described in the contract" and therefore constitute the Design-Builder's sole right to claim and receive any extension of time, relief, and/or compensation due to any condition which is subject to Public Contract Code Section 7104(a); and • any decrease or increase in the Design-Builder's cost of, or the time required for, performance of any part of the Work which arises as a result of a condition, which is subject to Public Contract Code Section 7104(a), but which does not entitle the Design-Builder to any extension of time, relief and/or compensation in connection with a Supervening Event under the terms of the Contract is a cost or delay: ○ which the Design-Builder considered, priced (including through contingencies) and/or scheduled (including through allocation of float), or otherwise agreed to bear in consideration of award and entry into this Contract, in harmony with the design-build method of project delivery when bidding for and agreeing to enter into this Contract; and ○ which therefore is taken into account under Section 41 (which constitute the "change order" "procedures described in the contract" for purposes of Public Contract Code Section 7104(b)) notwithstanding the fact that the Design-Builder may not in certain circumstances be entitled to an increase in the Contract Price or extension of the completion deadlines as a

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Sec. Ref.	Subject	Terms
		result. For purposes of compliance with Public Contract Code Section 7104(c) and in accordance with any limitations to Supervening Event claims and any continuing performance, the Design-Builder acknowledges and agrees that in the event that a dispute arises between SBCTA and itself whether as described in Public Contract Code 7104(a) conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the Work, the Design-Builder will not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all work to be performed under the Contract, provided that the Design-Builder will retain any and all rights provided either by this Contract or by Law which pertain to the resolution of disputes and protests between the Parties.
Ownership		
28.	**Ownership of Vehicles**	With respect to Vehicles, ownership of and title to each Vehicle which has been procured by the Operating System Provider shall immediately and automatically vest in the Omnitrans, free of all Encumbrances, upon payment for the same. The terms of purchase shall be set out in the Contract.
29.	**Work Product and Intellectual Property (IP)**	All submittals, and other information or material of any kind, in any medium, acquired, collected, created or prepared by on behalf of the Design-Builder in the performance of the Work, including any draft, in each case to the extent acquired, collected, developed or prepared in whole or in part during performance of and arising out of the Work, shall be considered "**Work Product**", in which the Design-Builder transfers ownership rights and claims to SBCTA upon creation, and all such Work Product shall be the property of SBCTA. Work Product does not include and SBCTA will not obtain title to any proprietary intellectual property or third-party intellectual property. Notwithstanding ownership of Work Product by SBCTA, risk of loss associated with Work Product shall remain with the Design-Builder until the end of the Term. The Design-Builder shall execute such documents and take such further actions as may be reasonably requested by SBCTA to give effect to the foregoing. Design-Builder shall grant (or, with respect to any third-party intellectual property, will provide to or obtain for) SBCTA and any successor operator, its and their successors and assigns, a fully paid up, perpetual license to use any proprietary intellectual property or third-party intellectual property held, used developed, owned, or provided by the Design-Builder in connection with the Project for the purposes of: • enabling connectivity between the system and ONT (or any adjacent project, any adjacent facility, or any existing or future public transportation facilities) and/or • completing, operating, modifying, expanding, maintaining and/or decommissioning the Project following the early termination date or the end of the Term.

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Sec. Ref.	Subject	Terms
		To the extent Design-Builder is reasonably unable to comply with the foregoing with respect to any third-party intellectual property, it may comply with its obligations through functionally equivalent alternative arrangements subject to the consent of SBCTA. Design-Builder will not take any action (or refrain from taking any action) with respect to intellectual property in a manner that is calculated or intended to directly or indirectly prejudice, frustrate, or interfere with the purposes stated above. SBCTA, in its discretion, may make certain other intellectual property available to the Design-Builder for use on the Project, pursuant to a license, grant, assignment or other arrangement, to be determined by SBCTA, acting reasonably.
Economic Matters		
30.	**Payment Provisions**	The Contract is a design-build contract with a total lump sum price, subject to any allowances, shared contingencies, and/or escalation regimes agreed in the final form of Contract. Design-Builder will acknowledge that the lump sum amount includes all costs necessary to complete the Work without any right to adjustment, except as specified. Such lump sum price, as it may be adjusted under the Contract, is the total amount payable by SBCTA to the Design-Builder for completion of the Work, the ("**Contract Price**"). The Contract Price may be adjusted only to account for compensation payable with respect to any Change Order, Directive Letter, Supervening Event, or for a sharing of cost savings from a reduction in the Design-Builder's scope of Work. Except as otherwise provided, Design-Builder will not be entitled to Contract Price increases, time extensions, or the right to terminate the Contract for any delay in NTP issuance caused by its own acts or omissions or those of any related entity. Submission of all documents, information, and materials indicated in the Contract, without false, inaccurate, or materially misleading information or certifications, are conditions precedent to SBCTA's obligation to make the relevant payments. SBCTA may make customary deductions of payment as required by law and as enumerated under the Contract. Failure to deduct such sums from any progress payments will not constitute a waiver of SBCTA's rights to such sums or to any related breach or default. Any amounts that Design-Builder owes to SBCTA under the Contract shall earn interest from the date such amounts are due to SBCTA at the lesser rate of ten percent (10%) per annum, or (ii) the maximum rate allowable under Law. SBCTA will not pay for materials not yet unincorporated in the Work unless such materials are: • delivered, promptly stored by Design-Builder in bonded storage at a location approved by SBCTA, and accompanied by certified bill; • meet the requirements of the Contract, become the property of SBCTA, and are delivered with proper bills of sale or other written

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Sec. Ref.	Subject	Terms
		instruments (in a form acceptable to SBCTA) conveying title to SBCTA free and clear of all liens; • deducted from succeeding invoices if material is subsequently lost, damaged, or unsatisfactory; and • invoiced properly, in that payment to the Design-Builder has not exceed the amount paid by the Design-Builder as evidenced by a bill of sale supported by a paid invoice. Progress payments will be made based on duly certified and approved estimates of the Work performed. SBCTA will retain five percent (5%) of the amount of each such estimate as retainage until the Work is complete and accepted ("**Retainage**"). SBCTA will make partial payments of Retainage amounts for distinct portions of the Work that have been, in the sole opinion of SBCTA, satisfactorily completed by the Design-Builder. The Design-Builder may request such a partial release of retainage for Work completed by any Subcontractor. The percentage of retainage specified in the Design-Builder's Subcontracts for the Work must not exceed five percent (5%). SBCTA will release 50% of the Retainage (less the amount of prior releases) 30 days after Substantial Completion and will release all remaining Retainage (other than amounts eligible to be withheld) on the date that Final Payment is due. Except as provided above, no portion of the Retainage will be released while a good faith dispute exists as to work that is not approved or accepted by SBCTA in accordance with the Contract. SBCTA may withhold an amount not to exceed 150 percent (150%) of the value of any disputed amount of work from the Final Payment. Final payment for all Work shall not become due to Design-Builder under the Contract until Design-Builder submits an Application for Final Payment along with all required supporting documentation to SBCTA, showing the proposed total amount due to Design-Builder, including Retainage. If after Final Payment, it is determined through the claims process that either Party is entitled to payment from the other Party, such Party shall pay the amounts determined to be owing to the other Party within ten (10) Business Days after such determination. Design-Builder will promptly pay subcontractors upon receipt of payment from SBCTA and certify such payment with each invoice submitted per Section 39 below. Any breach of prompt payment requirements will subject Design-Builder to the penalties, sanctions and other remedies under Law. Portions of any payment to Design-Builder that are identified as undisputed by SBCTA will be paid in accordance with Pub. Cont. Code § 9204 as required. Disputed payments will be determined pursuant to an agreed-upon dispute resolution procedure, including informal

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Sec. Ref.	Subject	Terms
		processes and mediation. Upon resolution of any payment dispute, each Party shall pay any amount owed to the other Party. Design-Builder's obligation to perform the Work in accordance with the Contract is not relieved if SBCTA does pay disputed amounts. SBCTA's release of any payment or Retainage will in no way constitute "acceptance" of the Work or otherwise relieve the Design-Builder of any obligation with respect to such portion of the Work.
31.	**Invoicing Mechanism**	Design-Builder will submit to SBCTA, on or before the 25th day of each month, a draft invoice and a draft invoice certificate, using forms attached as an Exhibit, that includes the portion of the Work actually completed, documentation establishing the estimated value of the Work completed and showing invoiced materials adhere to established quality standards, amounts paid to Subcontractors along with a "**Prompt Pay Certification**," a form attached as an Exhibit, and any other supporting documentation reasonably requested by SBCTA. Design-Builder will also require a Prompt Pay Certification in a form attached as an Exhibit from Subcontractors. Invoicing documents will be reviewed at periodic meetings held between the Design-Builder and SBCTA ("**Progress Meetings**") and the draft invoice will be signed by the Parties' representatives indicating the portions which are approved and the proposed total payment amount. Within seven (7) days after the Progress Meeting, Design-Builder will submit an updated form of invoice based on the draft invoice reviewed at the Progress Meeting. Within 15 days of receipt of such invoice, SBCTA will review it, notify Design-Builder of the approved amount for payment, and specify the reason for any disapproved amounts. Such disapproved amounts may be included in the next month's invoice after any deficiencies are corrected. Within thirty (30) days after SBCTA's receipt of the updated invoice, SBCTA will pay the approved amount less any amounts that SBCTA is entitled to withhold or deduct under the Contract.
32.	**Tax**	The Design-Builder will pay, prior to delinquency, all taxes levied or imposed on it or otherwise in respect of or arising from the Design-Builder's interests in and rights to all Project and Work Areas, the Project and the Contract. SBCTA will not be responsible for any taxes of the kind referenced above or otherwise levied or imposed on the Design-Builder.
Public Interest Protections		
33.	**Bonds and Other Security**	Design-Builder shall obtain and maintain, or cause to be obtained and maintained, payment and performance bonds securing faithful performance with respect to: i. all administrative, design, installation, compliance, permitting, construction, tunnel systems, commissioning, and related

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		obligations, and all other work and services required to comply with the design and construction requirements set out in the Technical Provisions, excluding the Operating System, in the full amount of the work value; and ii. all work and services required to comply with the Vehicle, Operating System, and associated testing, commissioning, and regulatory approval requirements for achieving Readiness for Revenue Service as set out in the Technical Provisions, in the full amount of the Operating System work value; provided that, with respect to the payment and performance security for Operating System Work, the Design-Builder (or the Operating System Provider) may satisfy its obligations by delivering to SBCTA: • alternative surety bond(s) from a surety which is authorized to issue surety bonds in the State having the following: (x) a rating of no less than "A-" as to management and no less than "VIII" as to strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, (y) a bonding limit not to exceed five percent (5%) of the policyholder surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide, and (z) an outlook of "stable" or better; • one or more irrevocable on demand letters of credit; or • other security in form and substance acceptable to SBCTA (including cash or cash equivalents). SBCTA will release the payment and performance bonds securing the construction work upon Final Acceptance (for the avoidance of doubt, whether or not Readiness for Revenue Service is achieved), provided that the Design-Builder is not in default and no event has occurred which, with the passage of time or the giving of notice, would constitute a Design-Builder default.
34.	**Remedial Plans**	SBCTA reserves the right to request a remedial plan in the event that: • there are material defects in the Work; or • a Design-Builder default or other material fault event has occurred and not been cured. In such event, SBCTA also reserves the right to increase oversight of the project and/or suspend the Work.
35.	**Warranties**	The Design-Builder shall warranty all Work (except for Work with respect to the Operating System and Vehicles, which are provided for separately below) under the Contract for a period ending two (2) years after Final Acceptance. The Design-Builder will also be obligated to secure and assign to SBCTA or Omnitrans (as applicable) all warranties from manufacturers. TheDesign-Builder shall cause the Operating System Provider to: • warranty all aspects of the Operating System for a period ending

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		two (2) years after Final Acceptance; and • obtain manufacturers extended warranties for all Vehicles for a period ending seven (7) years from the date of delivery.
36.	**Inspection, Oversight and Record Keeping**	SBCTA and its authorized agents will have an unrestricted right to enter the Project Site for reasonable inspection purposes. The Design-Builder will maintain all project records and make such available for inspection by SBCTA upon reasonable notice from SBCTA.
Subcontracting, Personnel, Labor, and Legal Requirements		
37.	**Personnel**	"**Key Personnel**," such personnel identified in the RFQ/RFP, shall be seconded to or employed by the Design-Builder at all relevant times, occupying the role and performing the function of their position. The Design-Builder shall not remove or replace Key Personnel without SBCTA's prior approval, provided that removal without notification may occur as required by Law or pursuant to good industry practice.
38.	**Subcontracting**	The Design-Builder will be responsible for the engagement and management of all subcontracts. Subcontracting of the work will not limit the Design-Builder's liability. All subcontracts must include terms required by law or necessary to comply with the Contract. The Design-Builder shall have the right to have work directly or indirectly performed by affiliates only if such affiliate is qualified, experienced and capable in the performance of such part of the work and such affiliate shall execute a subcontract that is in form and substance similar to subcontracts that are being used by the Design-Builder for similar work or services with unaffiliated subcontractors.
39.	**Workforce and Labor Requirements**	The Design-Builder will provide representations that it will not discriminate in the selection of subcontractors and the performance of Work and will comply with law with respect to the same; failure of which will be a Design-Builder breach. These provisions shall be included in all subcontracts. The Design-Builder shall comply will all applicable laws relating to EEO and nondiscrimination. The Design-Builder will comply, and cause its subcontractors to comply, with the California Labor Code. Pursuant to the prevailing wage laws, all workers shall be paid at least the minimum hourly wage, as determined by the California Department of Industrial Relations and any superseding federal law or regulation.
40.	**DBE Program**	As a sub-recipient of Federal Transit Administration (FTA) funds, SBCTA is obligated to comply with the regulations set forth by Omnitrans, the direct recipient of federal funds. As Omnitrans has established a Race-Neutral FTA DBE program, there is no Race Conscious DBE goal on this project; however, the Omnitrans 2.9% Race Neutral Goal is applicable to

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		this Project. As the sub-recipient, SBCTA highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this Project. Any DBEs on this Project will be used to satisfy Omnitrans' overall agency DBE goal of 2.9%.
Changes and Supervening Events		
41.	**Changes**	SBCTA may, in its discretion, submit a written request to the Design-Builder to propose a change to the means, methods, or scope of the Work (a "**Change**") through issuance of a ("**Change Proposal**") to the Design-Builder. The issuance of a Change Proposal will be subject to the Design-Builder's consent which shall not be unreasonably withheld. If the Parties agree on the terms of such request, they will, in a form prepared by SBCTA, memorialize the agreement in writing. Absent agreement on the terms of a Change Proposal, SBCTA may compel a Change by a directive order through issuance of a "Directive Letter" to the Design-Builder. Such order will constitute a Compensable Event.
42.	**Supervening Events**	The Contract will define two categories of "**Supervening Events**", Relief Events and Compensable Events (each as described below) which will entitle the Design-Builder to relief from its obligations and/or schedule relief and compensation. All Supervening Event claims will be subject to timely notice, use of a form of claim attached as an Exhibit, efforts to mitigate, and an absence of Design-Builder fault. "**Relief Events**" will relieve the Design-Builder of its affected obligations and entitle Design-Builder to deadline schedule relief, but not result in compensation. Relief Events will be limited to: • a Non-Compensable Change in Law (as previously defined) and • force majeure. "**Compensable Events**" will relieve the Design-Builder of its affected obligations, and also result in compensation and deadline schedule relief. Compensable Events will be limited to: • Differing Site Conditions; • Compensable Change in Law; • material breach of the Contract or law by SBCTA; • failure by SBCTA to provide access to the Project Site as and when it is obligated to do so; • Generator Status Liability; • Species and Remains; • subject to Design-Builder's timely submission of a complete submittal or application meeting all applicable quality requirements (as determined by reference to any applicable Third-Party Requirements): ○ the failure of a Governmental Authority to review submittals and/or issue any Permit within the timeframes set forth in the applicable Third-Party Requirements;

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		○ any unreasonable delay by a utility or railroad in performing any work required by it; and • imposition of a new or modified Third-Party Requirement Where a Supervening Event affects or will affect the Design-Builder's performance of obligations under the Contract, the Design-Builder will be relieved from the performance of such obligations only to the extent and duration that the Design-Builder's inability to perform such obligations is directly resultant from the Supervening Event. Where a Compensable Event affects or will affect achievement of a deadline, the relevant deadline will be extended on a day for day basis to reflect the period of delay.
43.	**OSP Events**[14]	The Contract will include categories of Supervening Events specific to the performance of the Operating System Provider, which will entitle the Design-Builder to relief from its obligations and/or schedule relief and compensation. The following is a non-exhaustive list of the OSP-related Deliverables or other milestones that will be required in the Technical Provisions: • Final Concept of Operations and Final Vehicle Product Specification (approval by SBCTA is anticipated to be a condition to NTP-2); • Buy America Application Submittal (subject to SBCTA approval prior to submittal; submittal is anticipated to be a condition to NTP-5A); • Buy America Approval (approval by the relevant governmental authority is anticipated to be a condition to NTP-5B); • Vehicle Prototype Production; • Test Track Testing with Approved Vehicle Prototype (demonstrated performance satisfying the technical requirements for the Operating System is anticipated to be a condition to NTP-5B)[15]; • Factory Acceptance of Vehicles; • On-Site Delivery of (all) Vehicles; • On-Site Field Testing of Vehicles; Occurrence of the following **"OSP Relief Events**" will relieve the Design-Builder of its affected obligations and entitle Design-Builder to deadline schedule relief, but not result in compensation, provided such occurrence is caused by the performance or non-performance of the

[14] Durations identified with square brackets are subject to modification during the Pre-Proposal Period.

[15] To include demonstrated performance satisfying criteria (2), (4), (6), (7), (8), (9), (10), (11), (12), and (13) in Section 29.1.2 (OSP Technical Pass/Fail Evaluation Criteria) included as Exhibit 6A to the draft RFP. Additional detail may be provided in the Technical Provisions.

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		Operating System or the Operating System Provider and not by the performance or non-performance of the Design-Builder of its obligations: • A failure to obtain SBCTA approval of the Final Concept of Operations and Final Vehicle Product Specification prior to the scheduled date for achieving NTP-2 identified in the Design-Builder's baseline schedule (which date shall be subject to approval by SBCTA).[16] • Failure to obtain approval of its Buy America Application (which will be subject to SBCTA approval prior to its submission) within [47] months following issuance of NTP-1. • Failure to complete production of a working Vehicle prototype within [6] months following NTP-5A.***** • Failure of the off-site/test track testing to demonstrate performance satisfying the technical requirements for the Operating System within [24] months following NTP-5A.***** • Failure to achieve factory acceptance of the Vehicles within [15] months following NTP-5B.***** In the event those OSP Relief Events denoted with (*) continue for a period of [120] days, such occurrences shall be deemed to constitute Extended OSP Events. Upon the occurrence of any Extended OSP Event, SBCTA may, in its discretion, require the Design-Builder to terminate the Operating System Provider; seek out a replacement Operating System Provider; and/or assign the Operating System Provider contract to SBCTA. The Design-Builder's contract with the Operating System Provider shall provide for such termination and/or assignment and assumption by SBCTA, including allowing for such modifications to the contract as may be reasonably required by SBCTA to enable such assignment and assumption. To the extent SBCTA direction in response to the occurrence of an Extended OSP Event (including, but not limited to, direction to the Design-Builder to seek out a replacement Operating System Provider) causes the Design-Builder to incur additional incremental costs and/or delays the Design-Builder's achievement of Infrastructure Substantial Completion, the Design-Builder shall be entitled to deadline schedule relief and/or equitable daily compensation, but only to the extent that reasonable efforts between SBCTA and the Design-Builder (including decisions by SBCTA to modify the Project's technical requirements in response to the change in Operating System Provider) are unable mitigate the incurrence of costs and/or delay.

[16] SBCTA approval of the Final Concept of Operations Report and Final Vehicle Product Specifications will be require demonstrated compliance with criteria (1), (2), (3), (4), (5), (6), (8), (9), (10), (11), and (14) in Section 29.1.2 (OSP Technical Pass/Fail Evaluation Criteria) included as Exhibit 6A to the draft RFP. Additional detail may be provided in the Technical Provisions.

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		Occurrence of the following **"OSP Compensation Events**" will relieve the Design-Builder of its affected obligations and entitle Design-Builder to deadline schedule relief and pre-agreed daily compensation from the OSP Delay Allowance established by SBCTA below. • Failure of the Operating System Provider to deliver the Vehicles to the Site as required to commence field testing at least [30] days prior to the scheduled date for achieving Infrastructure Substantial Completion identified in the Design-Builder's baseline schedule (which date shall be subject to approval by SBCTA). • Failure of the Operating System Provider to complete testing and commissioning and achieve safety certification within [10] months of commencement of field testing. SBCTA will establish an allowance equal to [$] to compensate Design-Builder for delays caused as a result of the occurrence of OSP Compensation Events. Delay costs shall be payable at a pre-agreed rate of [$ /day][17] for days of delay following Design-Builder's achievement of Infrastructure Substantial Completion. Entitlement to relief for the occurrence of any OSP Relief Event or OSP Compensation Event shall be subject to Design-Builder's obligation to mitigate performance failures by the Operating System Provider. The Design-Builder shall not be entitled to relief for the occurrence of any OSP Relief Event or OSP Compensation Event to the extent such occurrence is caused, directly or indirectly, by the actions of the Design-Builder. Schedule relief for any OSP Relief Event or OSP Compensation Event will be granted only with respect to delays affecting activities and deadlines on the critical path; delays that only impact OSP-related activities or milestones will not result in extension of the deadline for Infrastructure Substantial Completion. Schedule relief will be subject to customary provisions regarding mitigation and reduction for concurrent delay.[18] If the OSP Delay Allowance is fully expended prior to Readiness for Revenue Service, either (a) SBCTA and Design-Builder will mutually

[17] Daily rate to be agreed during the Pre-Proposal Period and is intended to reflect ongoing unanticipated cost of Design-Builder oversight of the OSP following Final Acceptance.

[18] It is expected that the timeframes included in the definitions of the OSP Relief Events and OSP Compensation Events described in this section will be agreed during the Pre-Proposal Period and will align with reasonable expectations for such durations provided by the Operating System Provider and integrated into the Design-Builder's baseline schedule, which will be subject to approval by SBCTA.

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		agree to increase the amount of such allowance as necessary to compensate the Design-Builder for the additional delay, or (b) the Design-Builder will be under no further obligation with respect to the Operating System, including the obligation to achieve Readiness for Revenue Service; provided that the Design-Builder shall reasonably cooperate to cause the termination and/or assignment and assumption of the Operating System Provider contract to SBCTA as provided for above. The Contract will provide that this paragraph shall take precedence over any other provision of the Contract to the contrary.
Indemnity and Insurance		
44.	**Insurance**[19]	The Contract, by reference to an insurance exhibit, will require the Design-Builder to furnish insurance coverage and limits as follows: (i) Builder's Risk (course of construction) policy [covering all real and personal property related to the construction of the Project] in an amount equal to the contract value. (ii) Commercial General Liability policy written on an occurrence form that shall provide coverage at least as broad as the coverage provided by ISO form CG 00 01 with limits of not less than $2,000,000 per occurrence and 4,000,000 general aggregate. (iii) Commercial Umbrella/Excess Liability policy or policies [covering bodily injury, personal injury, property damage, and advertising injury liability coverage at least as broad as the primary coverages set forth above with limits of not less than $100,000,000 per occurrence and general aggregate]. (iv) Commercial Automobile Liability policy with limits of liability of not less than $10,000,000 combined single limit for Design-Builder and Subcontractors. (v) Worker's Compensation and Employer's Liability insurance [for Design-Builder and Subcontractors as required by applicable Law, and employer's liability insurance having coverage limits of $1,000,000 for each accident, $1,000,000 for disease (each employee), and $1,000,000 for disease (policy limit)]. (vi) Professional Liability errors and omissions insurance in one or more project-specific policies, at Design-Builder's discretion. Limits shall be no less than $25,000,000. (vii) Pollution Liability policy with a total limit of liability of no less than $ 10,000,000 per claim, or per occurrence, and $ 10,000,000 in the aggregate per policy period. (viii) Railroad Protective Liability coverage as may be required by UPRR pursuant to any Third-Party Requirement or otherwise as a condition of the railroad's consent for entry into railroad facilities or property. (ix) Cyber Liability policy of not less than $3,000,000.

[19] A project-specific policy will be permitted, but not required. All Principal Subcontractors will be required to be covered by and/or provide similar coverages as specified for the Design-Builder.

FOR REFERENCE ONLY

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Sec. Ref.	Subject	Terms
		(x) Deductibles or self-insured retention above $10,000 or one percent (1%) of the contract value, whichever is less, are allowable once declared to and approved in writing by SBCTA's Risk Manager. (xi) All insurance coverage required to be provided by Design-Builder, with the exception of automobile liability and worker's compensation, shall apply specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits dedicated solely to the Project. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated Project-specific limits and identified premiums and meets all requirements described in contract. (xii) Additional Insured Coverage - All policies, except those for Workers' Compensation and Professional Liability insurance, shall name San Bernardino County Transportation Authority (SBCTA), City of Rancho Cucamonga, Southern California Regional Rail Authority, Ontario International Airport Authority and any other entity required by contract, permit, easement or SBCTA, their respective officers, directors, members, employees, and agents, as additional insureds ("**Additional Insureds**"). The Indemnified Parties shall be named, by specific endorsement, as additional insureds using ISO form CG 20 10 10 01 and ISO form CG 20 37 10 01, or their respective equivalent forms. With respect to general liability arising out of or connected with work or operations performed by or on behalf of the Design-Builder under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for the indemnified parties to vicarious liability, but shall allow coverage for the indemnified parties to the full extent provided by the policy. Without limiting the generality of the foregoing, the Design-Builder will be required to verify that subcontractors engaged or employed to provide work for the Project will carry and maintain similar insurance set forth in the Contract.
45.	**Authority Indemnity**	SBCTA will not have any obligation to indemnify the Design-Builder.
46.	**Design-Builder Indemnity**	The Design-Builder shall indemnify Omnitrans, OIAA, the City of Rancho Cucamonga, the City of Ontario, and SBCTA (each an "**Indemnified Party**" and collectively, "**Indemnified Parties**") and each of their employees and officers from and against any and all claims and/or losses arising from the Design-Builder's: • design and construction of the Project, • breach of the Contract, and • introduction to or exacerbation of hazardous materials at the Project Site or any other land required for construction or

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Sec. Ref.	Subject	Terms
		operation of the Project; such claims and losses shall include those that are in respect to: ○ death or personal injury ○ loss or damage to property ○ disruption to or interruption of performance of public services and activities ○ third party claims. The foregoing indemnities operate as agreements pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Any claim or loss that arises from any of the following shall be excluded from the Design-Builder's indemnity: • where the loss was already subject to an indemnity claim from another indemnified party; and • directly caused by: ○ the occurrence of a Supervening Event; ○ fault, fraud, willful misconduct, recklessness, bad faith, or negligence of an Indemnified Party; ○ violation of any Law by an Indemnified Party; or ○ performance or non-performance by SBCTA of its obligations under the Contract. With respect to design professional liability, where defense and indemnification obligations with respect to design professionals will be limited to those permitted under CA Civil Code 2782.8, the indemnification will be similarly limited.
Default and Termination		
47.	**Design-Builder Defaults**	The Contract will include usual and customary events of default by the Design-Builder, subject to applicable notice and cure periods to be agreed by the parties. "**Design-Builder Defaults**" will include, but be not limited to: • the Design-Builder breaches any material term, covenant or condition of the Contract; • the Design-Builder abandons the Project; • the Design-Builder fails to achieve certain deadlines in accordance with Section 12; • the Design-Builder liability to SBCTA for deficiencies or damage exceeds a specified threshold; • bankruptcy or insolvency; • final legal judgements rendered against the Design-Builder for intentional or reckless misconduct, violation of false claims acts, or criminal activity; • disqualification, suspension, or debarment.
48.	**SBCTA Defaults**	Subject to applicable notice and cure periods to be agreed by the parties, SBCTA defaults will be limited to a failure by SBCTA to pay any amount due and owing provided that either:

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Sec. Ref.	Subject	Terms
		• SBCTA's obligation to make such payment has been confirmed in a binding settlement agreement or by the issuance of a final, non-appealable court order by a court of competent jurisdiction, and SBCTA subsequently failed to pay such confirmed amount within 30 days of the date required in such settlement agreement or by such court order; or • such failure continued undisputed for at least 30 days, the Design-Builder notified SBCTA of such failure, and such failure continued without dispute for a further 30 days.
49.	**Remedies upon Default**	If a counterparty default is not cured within the applicable cure period, if any, the Contract will grant the non-defaulting party usual and customary remedies including but not limited to termination of the Contract and such other remedies as are included in this Term Sheet.
50.	**Termination Events**	The Contract may be terminated early in the event of the following (subject to notice and, as applicable, rights to cure): • Termination for Design-Builder failure to achieve certain deadlines in accordance with Section 12 above • Termination at SBCTA's option • Termination as a result of Design-Builder Default • Termination as a result of SBCTA Default • Termination as a result of an adverse court ruling For expediency, SBCTA will be permitted to exercise an optional termination right in the event of a dispute regarding a Design-Builder Default. If the dispute is resolved favorably for SBCTA, the termination will be deemed to have been for Design-Builder Default.
51.	**Termination Payments**	In the event of termination due to Design-Builder default or fault, or any adverse court ruling, SBCTA will only be obligated to pay the Design-Builder for any completed Work with respect to the Construction Period, adjusted to account for defective Work not remedied and for permitted set-off, as reduced by the amount of payments otherwise made and net of any costs and charges incurred by SBCTA, together with the cost of completing the Work under the Contract. In the event of termination due to SBCTA's option or default, SBCTA will only be obligated to pay the Design-Builder for completed work (as above), employee redundancies, and subcontractor breakage costs, adjusted to account for defective Work not remedied and for permitted set-off.
Remedies and Limitations on Liability		
52.	**Remedies**	The Design-Builder's remedies will be limited to those expressly set out in the Contract.
53.	**Liability**	Customary waiver of consequential damages. If the Design-Builder, or any successor or assign, is at any time a joint venture, members to be jointly and severally liable.

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Sec. Ref.	Subject	Terms
		No personal liability for personnel, contractors, employees of the parties.
Assignments and Change of Control		
54.	**Limitation on Liability**	Under the Contract, Design-Builder's total aggregate liability to the SBCTA including for default, breach of contract, negligence, any liquidated damages, pursuant to any indemnity obligations related to claims asserted and/or losses suffered by any indemnified parties, or otherwise in connection with the Project, will not exceed an amount equal to fifty percent (50%) of the contract price. This limitation on liability will not apply: • To losses to the extent (i) such losses are required to be covered by insurance under the contract, (ii) such losses are covered by proceeds of insurance carried or insuring the Design-Builder under Project-related policies regardless of whether such policies are required under the Contract, or (iii) Design-Builder has self-insured such losses pursuant to the Contract; • under any indemnity pursuant to this Contract to the extent such indemnity relates to a claim asserted and/or losses suffered by any third party, or claims arising from death or bodily injury; • for loss arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith or gross negligence (including that of any Design-Builder related entity); or • to costs, liabilities or obligations arising from Design-Builder's abandonment of the Project.
55.	**Assignments and Change of Control**	The Contract will restrict any voluntary or involuntary, direct or indirect sale; transfer; assignment; conveyance; or encumbrance (including through change of control) of Design-Builder's interests in and to: • the Contract in whole or in part, • any Contract funds or claims due, or to become due, under the Contract, or • its rights to access and use the SBCTA-provided property and easements, in each case without the approval of SBCTA. Such sale, transfer, assignment, conveyance, or encumbrance shall be null and void and may, in SBCTA's discretion, constitute a Design-Builder default for breach. Approval of any such sale, transfer, assignment, conveyance, or encumbrance by SBCTA will, in no case, relieve the Design-Builder (or any Guarantor or Surety) from its or their obligations or liabilities under or in relation to the Contract.
Legal Matters		
56.	**Design-Builder Representations and Warranties**	The Design-Builder representations and warranties as to: • Organization, power, and authority • Authorization and due execution • No conflicts • Consents and approvals • Compliance with law; no litigation • Debarment; anti-money laundering etc. • Additional legal assurances (re: organizational conflicts, violations

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Sec. Ref.	Subject	Terms
		of California Government Code Sections 1090 through 1099, 84308, or 87100 through 87105 or California Code of Regulations Sections 18438.1 through 18438.8, recent criminal convictions, civil judgments, or terminations for cause)
57.	**SBCTA Representations and Warranties**	SBCTA representations and warranties as to: • Power and authority • Authorization and due execution
58.	**Governing Law**	The Contract will be governed in accordance with the laws of California.
59.	**Subordination Principle**	The Contract will be subordinate to the provisions of any existing or future agreements between OIAA and the US, relative to the operation and maintenance of ONT, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to SBCTA, OIAA and/or ONT of federal funds for the development of the airport ("**Grant Assurances**"). In the event that the Contract conflicts with or violates such Grant Assurances, SBCTA will promptly notify the Design-Builder of such conflict or violation, and work with the Design-Builder to amend, alter or otherwise modify the terms of the Contract in order to resolve such conflict or violation in a manner reasonably acceptable to both SBCTA and the Design-Builder.
60.	**Dispute Resolution Procedure**	The dispute resolution procedures will comply with Public Contract Code Section 9204 to the extent applicable. An early resolution process shall require the Design-Builder to submit notice of potential claim to SBCTA for response and, if required, conference for resolution. Unresolved claims that become disputes shall be submitted to SBCTA through the dispute resolution process. The dispute resolution process shall require project level negotiation followed by, if required, executive level negotiation. SBCTA will issue a final decision following the project level or executive level negotiation. The Design-Builder shall have the right to submit the SBCTA decision to the disputes review board, which shall have one member selected by each of the parties and a third member selected by the first two members. Disputes exceeding $375,000 may be submitted to judicial reference following a recommendation by the disputes review board. Disputes involving less than $375,000 may be submitted by either party to the disputes review board for a binding decision in accordance with the State Arbitration Act. The dispute resolution process shall exclude matters that are excluded from such under the Contract, claims for injunctive relief, matters

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		regarding compliance with law or indemnification, DBE participation, claims against insurance companies and any claim or dispute that does not arise under the Contract. The disputes resolution process will not apply to matters which do not constitute claims under Public Contract Code Section 9204, such as disputes regarding matters which are expressly excluded under the terms of the Contract, compliance with law, rights of termination and indemnification, claims for injunctive relief or insurance claims, surety claims, certain claims involving third parties as necessary parties, issues regarding DBE participation, Cal-OSHA jurisdictional matters, issues related to subcontractor substitutions governed by Public Contract Code Section 4100 et seq.
61.	**Consent to Jurisdiction, Joinder, Service of Process**	The parties shall consent to the jurisdiction of local State courts and to the Central District of California.
Rules and Definitions		
62.	**Rules for Submittals and Approvals**	Essential rules to establish baseline submittal review time and standards expectations, and expectations regarding consent procedures and standards.
63.	**Rules of Interpretation**	Essential set of rules for contract interpretation and resolution of drafting conflicts, including those that promote brevity overall by reducing repetitive drafting (e.g. "includes" means "not limited to", references to agreements and laws are "as amended" etc.).
64.	**Definitions**	List of defined terms.
Miscellaneous		
65.	**Various**	Necessary "boilerplate" and other miscellaneous provisions, include: • Mandatory State and Federal Provisions (to the extent not otherwise addressed, including with respect to labor, subcontracting, and Buy America) • Provisions related to nature of relationship (independence of the Design-Builder, third party beneficiaries) • Provision related to construction of Contract (counterparts, entire agreement, severability, amendments and waivers, and survival clauses) • Notice provision • Setoff

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List of Contract Exhibits and Technical Provisions

Exhibits
Exhibit 1: Definitions and Contract Particulars
Exhibit 2: Proposal Schedule
Exhibit 3: Payments
Exhibit 4: Insurance Requirements
Exhibit 5: DBE Performance Plan
Exhibit 6: ATCs
Exhibit 7: Legal Requirements
Exhibit 8: Forms
Exhibit 9: List of Reference Documents
Technical Provisions
1. General
2. Project Management
3. Submittals and Reviews
4. Project Controls
5. Quality Management
6. Environmental Compliance
7. Site Safety and Security
8. Site Clearing and Demolition
9. Earthwork
10. Survey and Mapping
11. Geotechnical
12. Utilities
13. Roadways
14. Stormwater and Drainage
15. Structures
16. Landscaping and Restoration
17. Illumination
18. Staging and Maintenance of Traffic
19. Third Party Coordination
20. Right-of-Way
21. Maintenance During Construction
22. Vibration Monitoring and Control
23. Settlement Monitoring and Mitigation
24. Corrosion
25. U-Sections and Cut-and-Cover Tunnels
26. Bored Tunnels
27. Tunnel Systems
28. Tunnel Power

FOR REFERENCE ONLY

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29. Tunnel Ventilation
30. Tunnel Communication
31. Vehicle Technology and Systems Engineering
32. Testing and Commissioning
33. Ticketing and Fare Collection
34. Storage and Maintenance Facility
35. Stations
36. Safety and Security Certification

FOR REFERENCE ONLY

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ANNEX C: FORM OF OPERATING CONTRACT

[To be released during the Pre-Proposal Period.]

FOR REFERENCE ONLY

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Minute Action

AGENDA ITEM: 23

Date: July 3, 2024

Subject:
Dedicated Law Enforcement for Metrolink Service

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Direct staff to continue seeking dedicated law enforcement services provided by the San Bernardino County Sheriff's Department for Metrolink service within San Bernardino County, up to the county line**, and return to the Board with a report on how the law enforcement resources are being used.**

Background:
On November 2, 2022, the San Bernardino County Transportation Authority (SBCTA), Board of Directors (Board) directed staff to look into having the San Bernardino County Sheriff's Department provide dedicated law enforcement for Metrolink services within San Bernardino County, with the caveat that SBCTA will not need to reimburse Los Angeles County Sheriff's Department (LASD) for Metrolink services, effective Fiscal Year (FY) 2023/2024. Since this Board action, staff has worked with the Southern California Regional Rail Authority (SCRRA) and the San Bernardino County Sheriff's Department (SBCSD) to develop a cost estimate to provide dedicated law enforcement services within San Bernardino County, up to the county line. As part of this discussion, SBCTA and SCRRA have discussed reimbursement for the LASD, which currently provides law enforcement services for Metrolink. As the LASD is contracted by SCRRA to provide law enforcement services for the entire Metrolink system in six counties, it is considered an all-share cost, which is one of several operating costs shared by all five member agencies. Therefore, it has been determined that as an all-share cost, SBCTA would need to continue reimbursement to the LASD for law enforcement services, and that any additional dedicated service provided by SBCSD would need to be borne by SBCTA.

Since the launch of Arrow Service in October 2022, SBCTA has worked with SCRRA and SBCSD to provide dedicated law enforcement for the line. This includes one sergeant, five deputies, and six unmarked vehicles to cover the nine-mile rail segment between Redlands University and the San Bernardino – Downtown stations for both onboard train safety and right-of-way patrol. The cost to provide this service for the first full FY 2023/2024 was $2,393,207. The estimated cost to continue providing this service for FY 2024/2025 is $2,624,819. These costs and their respective escalations are set by the San Bernardino County Board of Supervisors. Additional details can be found in the SBCSD Scope of Work attached hereto as Attachment A.

SCRRA currently utilizes the LASD to provide law enforcement services throughout its Metrolink system. SBCTA's share of the total cost to provide this service for FY 2022/2023 was $1,147,568, for FY 2023/2024 it was $1,306,173, and the estimated cost for FY 2024/2025 is $1,629,130. The contract consists of 23 total field staff, with seven deputies working per shift to conduct train rides, grade crossing, and fare enforcement, and six deputies dedicated to right-of-way. LASD also provides weekend service on the Orange County, Antelope Valley (AVL), San Bernardino (SBL), and Ventura lines. LASD resources are typically allocated to hot spots across the system – trains and areas where there tends to be more activity – and are

dispatched to respond to incidents or concerns based on need. While Metrolink has taken a more active role in allocating resources in order to have a more balanced approach, SBCTA remains concerned with the level of resources allocated to issues within San Bernardino County. Additional details can be found in the LASD Scope of Work attached hereto as Attachment B.

In October 2022, SBCTA received a preliminary cost estimate comparison from SCRRA of SBCSD and LASD services on Arrow, as well as extending those services to the county line, attached hereto as Attachment C. Staff originally budgeted to have a similar level of law enforcement service on Arrow as compared to Metrolink service, which was provided by LASD at a cost of approximately $1.1 million under the LASD-2 scenario on the attachment. The estimated cost for SBCSD services was estimated to be $2,565,944. In both scenarios, SBCTA would include the additional cost of $98,676 for Allied Security to supplement the law enforcement resources. However, on November 2, 2022, the SBCTA Board approved Contract No. 23-1002921 between SBCTA and SBCSD to provide law enforcement services on Arrow in the amount of $2,393,207 for FY 2023/2024, which resulted in a cost differential of approximately $1.29 million. The current agreement with SBCSD assumes an escalation rate of 10% from FY 2023/2024 to FY 2024/2025 but will ultimately be based on the annual increases approved by the San Bernardino County Board of Supervisors. Assuming an escalation range of 5% - 10%, this results in a net increase of $36 - $68 million, respectively, through 2040 as compared to the initial estimate for LASD, or a total of $64 - $97 million through 2040. Based on current operations cost estimates for Arrow, the Measure I Rail Program can fund this increase as long as future Gold Line operations are funded with the Local Transportation Fund (LTF) as is currently programmed under the 10-Year Delivery Plan.

In October 2023, SCRRA received a formal estimate from the SBCSD to extend service to the county line with an estimated additional cost of $2,879,766, for a total cost of $5,221,525 in FY 2023/2024 dollars. Attachment D provides additional details. This cost would be in addition to the $1,629,130 of SBCTA's share of the LASD contract anticipated to be for FY 2024/2025, for a total cost of $6,850,655 for the year. Assuming an escalation range of 5% - 10%, this results in a net increase of $75 - $114 million, respectively, through 2040 for the Metrolink service operating cost. Because this is related to existing service, it would not be eligible for funding from Measure I, but would have to be funded with LTF, the only remaining discretionary source eligible for operations projected to have an available balance through 2040. The current projected available balance of LTF in 2040 is $135 million before funding the proposed dedicated law enforcement, but it is important to note that assumptions of LTF spending have not been reduced by the potential allocations of Senate Bill 125 funds for operations.

This discussion was originally prompted by staff concerns about the distribution of LASD resources and response times to right-of-way and train incidents within San Bernardino County. This topic was brought forth to the SCRRA Member Agency Advisory Committee (MAAC) in September 2023, where SCRRA staff provided additional information on the existing LASD contract structure, distribution of resources, and latest activity update. According to the presentation provided to the MAAC, attached hereto as Attachment E, the SBL and the AVL receive the highest number of resources. In particular, the SBL experiences a high number of crimes against society and right-of-way arrests. Given that the Metrolink system consists of a 538-mile network, SBCTA staff is concerned that seven deputies to conduct train ride enforcement and six deputies to conduct right-of-way patrols might not be adequate to address safety concerns within San Bernardino County. The SBCSD presence on the Arrow service has been able to address crimes, fare enforcement, and right-of-way incidents within a timely

manner, the statistics of which are included in Attachment E. The nine-mile Arrow segment has received almost the same number of responses to crimes and right-of-way arrests as the 24-mile segment of the SBL that runs within San Bernardino County, and over twice as much fare enforcement activity. Furthermore, in June 2023, SCRRA conducted a customer survey focusing on barriers to new riders and barriers preventing the return of former riders, and one of the highest-ranking concerns noted by Metrolink riders was safety of the Metrolink system. The results found that while Metrolink is perceived as safer than Metro, potential riders evaluate security for the total trip, which includes security onboard Metrolink, at stations, as well as on connecting services. Additionally, riders are less concerned by who is operating the service and more concerned with their experience within the transit network, with women and families with children most likely to cite concerns about safety. The survey is attached hereto as Attachment F.

~~Staff is seeking direction on the approach to the provision of dedicated law enforcement services provided by SBCSD for Metrolink service within San Bernardino County, up to the county line.~~ **On June 13, 2024, the Transit Committee recommended moving forward with a recommendation to provide additional dedicated law enforcement services on the Metrolink system within San Bernardino County using SBCSD, and directed staff to monitor how the resources are used and report back to the Committee and Board. Upon Board approval, staff will work with SCRRA to amend the existing law enforcement services contract with SBCSD to include the Metrolink Service and a Fiscal Year budget amendment to provide the additional funding for the dedicated law enforcement services**

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the Transit Committee on June 13, 2024.

Responsible Staff:
Victor Lopez, Director of Transit & Rail Programs

ATTACHMENT A
SBCSD SCOPE OF WORK

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

REDLANDS PASSENGER RAIL
LAW ENFORCEMENT SERVICES

I. INTRODUCTION

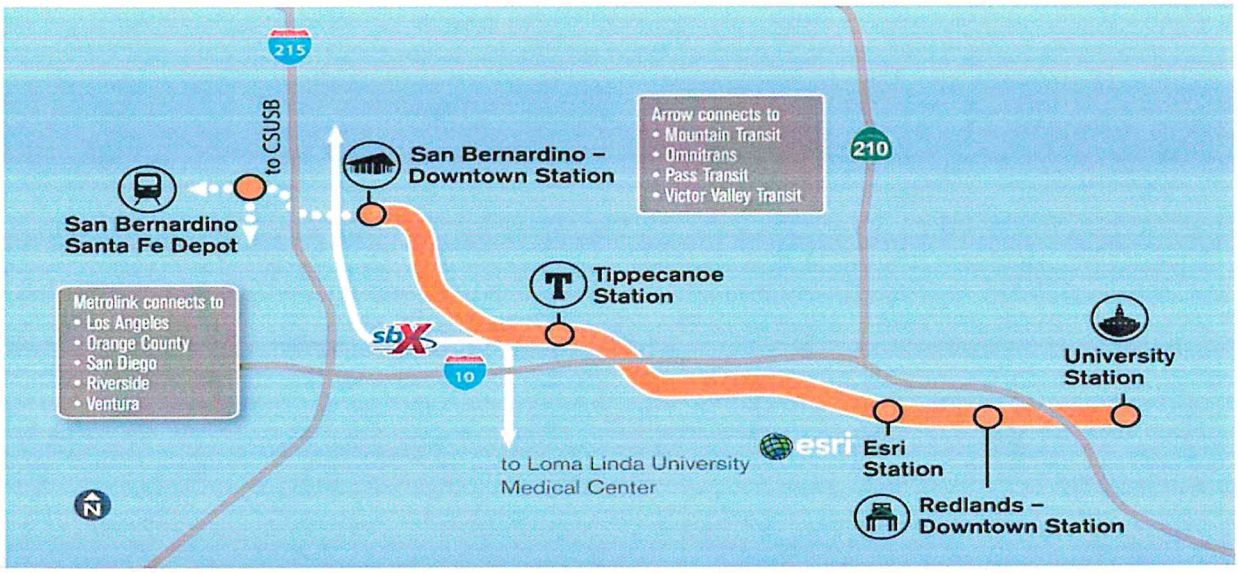
Redlands Passenger Rail (RPR)- Arrow Service, is a nine-mile rail corridor extending along an existing railroad Right-of-Way (ROW) owned by San Bernardino Associated Governments General Assembly (SANBAG) east from the City of San Bernardino to the City of Redlands within the southwestern corner of the County of San Bernardino, California.

The RPR encompasses the following:

- Five stations:

1. San Bernardino Transit Center: 140 S. E Street, San Bernardino
2. Tippecanoe Station: 1498 S. Tippecanoe Avenue, San Bernardino
3. Esri Station: 601 New York Street, Redlands
4. Downtown Redlands Station: 351 North Orange Street, Redlands
5. University Station at the University of Redlands: 1100 East Park Avenue, Redlands

Chart 1: Redlands Passenger Rail System Map



Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

- During morning and afternoon peak commute hours (approximately 0700 to 0900 and 1600 to 1800), trains will operate twice per hour. During non-commute or off-peak hours, trains will operate once per hour. Weekday and weekend service are planned to start at 5 a.m. and run until 10 p.m.
- Trains per day: 25 Diesel Multiple Units (DMU) trains per day (50 trips) and 2 Metrolink trains per day (one morning, one evening, 4 trips).
- Ridership estimates are approximately 1600 passengers per day
- Redland Passenger Rail schedule: metrolinktrains.com/rider-info/arrow/?epsremainingpath=arrow-service

II. SCOPE OF WORK

Law enforcement agency shall provide a detail policing plan for the Redlands Passenger Rail. Specific personnel and vehicles are assigned at the sole discretion of the Contractor, who shall give due consideration to the needs of Authority. The policing plan shall address how your agency will ensure the safety of our passengers and employees by:

- Efficient deployment of law enforcement resources
- Adequate response time
- High visibility to deter and prevent crimes on the system and facilities
- Prevent and deter trespassing on Authority's right-of-way and grade crossings

A. BASE LAW ENFORCEMENT SERVICES

The contracted law enforcement agency will coordinate all local law enforcement efforts along the Redlands Passenger Rail. The agency will have jurisdictional responsibility for all on-board incidents.

An arrest made by Contractor's personnel while engaged in the performance of this Contract shall constitute an arrest by an officer employed by Authority, and not an arrest by County officer, within the meaning of California Penal Code section 1463 and any similar or related statute.

Law enforcement must provide equal coverage Monday-Sunday and must have the ability to provide the Authority the advantages of a full-service law enforcement agency.

Contracted services will be provided from the San Bernardino – Downtown Station through the Redlands University Station route during the Arrow service operating hours which are initially anticipated to be from 6:00 AM to 9:00 PM. Upon implementation of quiet zones, the above hours may be modified.

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

In specific incidents involving Authority equipment, any of the specialized resources could be called upon to expand Metrolink's law enforcement unit.

Other related services include the following:

1. Directly respond to all incidents aboard Redlands Passenger Rail requiring law enforcement presence or services.

2. As allowed by law, receive and file with the Authority the police and coroner reports for each strike that occurs on the Redlands Passenger Rail.

3. Investigate, follow-up, and prepare legal documents and case filings for Authority - related crimes including on-board incidents and those along the Authority ROW patrolled by other agencies.

4. Participate in rail safety, crime prevention, advocacy, and traffic safety programs.

5. Provide grade crossing enforcement details in areas identified by Authority. Coordinate these sweeps with the local police agency and Authority operations.

6. Perform traffic enforcement and community outreach relative to Authority operations.

7. Provide Authority the advantages of a full-service law enforcement agency including specialized personnel and equipment resources that will be available for deployment to any location on the Redlands Passenger Rail on an as needed basis as determined by Contractor.

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

B. FARE ENFORCEMENT

1. Provide on-board fare enforcement including issuance of citations for fare violations and other quality of life matters in conjunction with Authority' s operations contractor and on an as-needed basis. The contractor shall provide a monthly report of all fare enforcement activities. Activate periodic Fare Enforcement "sweeps" independent of Authority's operations contractor. These sweeps must be coordinated with the Authority's Manager of Security.

2. Provide training, on Penal Code 832 (Arrests and Firearms).

3. Provide monthly report on citations and warnings, locations, time spent, data and comparison of fare violations by line, train, type of infraction, fare evasion rate, and the number of fare activities.

C. SECURITY COORDINATION

1. Develop and update Memoranda of Understanding (MOUs) with all law enforcement agencies from City of San Bernardino to the City of Redlands within the southwestern corner of the County of San Bernardino, California.

2. Coordinate and provide daily required communication with local law enforcement, coroner's office and other public agencies in response to Authority's needs.

3. Respond and coordinate the response of local law enforcement agencies to all Redlands Passenger Rail -related crimes, accidents, and establish jurisdiction.

4. Establish jurisdiction with local police jurisdictions and coordinate with each court of competent authority.

5. Establish, manage and maintain filing and prosecutorial procedures with the city and district attorneys, and courts in each jurisdiction.

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

6. Collect and provide periodic incident reporting for Authority to assist in the development of preventative strategies such as the Engineering and Education efforts and provide this information to all law enforcement agencies within the jurisdiction(s) that the Redlands Passenger Rail Line covers. Provide Authority with a monthly report of on-board crimes by line, date, time, and type of crime. Provide Authority with a monthly report of ROW crimes by line, date, time and type of crime.

7. Provide Authority with monthly report on right-of-way citations, right-of-way warnings, number of right-of-way enforcement operations, and traffic citations at Highway-Rail Grade Crossings issued.

D. RIGHT-OF-WAY LAW ENFORCEMENT SERVICES

Services included within this scope of work include patrolling the Rights-of-Way, homeless encampment joint operations with Authority, and law enforcement on Railroad property (off the train).

Authority shall provide decentralized or centralized, locally situated facilities to house officers and equipment dedicated to Redlands Passenger Rail Line to ensure geographic coverage.

The types of issues to be dealt with are:

- Vandalism control and adjudication
- Crowd control and civil disorder response
- Hazardous materials incident response
- Identify and report visual and other right-of-way obstructions
- Terrorism/threats to transit systems
- Train accidents and derailments
- Grade-crossing safety
- Car theft and abandonment on the right-of-way
- Traffic enforcement
- Tunnel and bridge security and incident response
- Vice activities, pickpockets, prostitution, gambling, homicide, drug trafficking

- Trespassing related matters

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

E. PROJECT MANAGER (Command Staff)

The Contractor, in its sole discretion, but giving due consideration to the needs of Authority, will assign key personnel, including a Project Manager, to provide Services under this contract. Authority shall have the opportunity to interview Contractor's Project Manager. Contractor Command staff agrees to meet with Authority to address any concerns regarding personnel who are assigned to perform services under this Contract.

SCRRA shall be notified within 24 hours when there is a change to the command staff. The Contractor shall provide a mitigation plan to address the transition within 5 days of the notification.

F. REPORTING REQUIREMENTS

The Authority Project Manager will require your agency to provide daily, weekly, monthly, and annual compliance reporting. The daily, monthly, and annual reporting includes, but is not limited to the following:

Daily

- Deployment Schedule
- Daily Performance/Activities
- Identified Daily Deployment to focus areas
- Reporting All Personnel Injured on Duty to SCRRA Security Manager and SCRRA Security Operations Center within 24 hours
- Provide Supervisors on Duty List

Monthly

- Monthly Key Performance Indicators and Crime Statistics Report is due by the 10th of following month
- Fare Enforcement Activities report is due by the 1st of following month
- Detail Report on Labor Hours Provided by 15th of the following month
- Identified Area of Focus for Targeted Enforcement is due by the 30th of each month
- Trend Analysis: Crimes, Strikes, and Fare Evasion is due by the 10th of following month.
- Standing Operations and Coordination Meeting on the 2nd week of each month, at a mutually agreed date, time and location (in San Bernardino County or remotely). The Meeting will cover, but not Limited to the following:
    - Operational Issues
    - Review trends and Key Performance Indicators from previous month
    - Discuss planned operations
    - Communication/Coordination Issues
    - Identify Area(s) of Focus
    - Compliance Issue(s)

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

Annual

- Billing/Invoice Reconciliation and Audit: Schedule to be Provided by SCRRA, at a mutually agreed date, time and location (in San Bernardino County or remotely).

- Training – Including standard rail operations training and other topics required by FRA as provided by the Authority to Contractor. Reporting will be held at a mutually agreed date, time and location (in San Bernardino County or remotely).

- Contract Performance Review: Schedule to be Provided by SCRRA, at a mutually agreed date, time and location (in San Bernardino County or remotely).

II. STANDARDS OF PERFORMANCE

The standards of performance, methods of performance, discipline of officers, control of personnel, advancement in compensation of personnel, determination of proper law enforcement practices and procedures, and all other matters incidental to the manner of performance of services by Contractor hereunder shall be determined by the Contractor at his sole discretion. The responsibility of the Contractor, and of County, to Authority hereunder shall be to provide, as an independent contracting agency, the services herein contracted, and Authority shall not have the right to determine or direct the manner or means of performance.

The services to be provided by Contractor hereunder shall also include all equipment (including repairs thereto or depreciation thereon), supplies, communications, administration, labor, any County retirement contributions, travel expenses, and all other services, obligations, or expenditures necessary or incidental to the performance of the duties to be performed by Contractor under the terms of this Agreement. There shall be no reduction in Contractor compensation under this Agreement for normal downtime of vehicles. In all instances where special supplies, stationary, notices, forms, and any other similar items are to be issued in the name of the Authority and approved by the Contractor, the same shall be supplied by Authority at its own cost and expense.

In the event of riot, civil commotion, or other emergency on Authority property which requires additional emergency or "back-up" service, Contractor shall provide the same. In the event of such an emergency, Contractor's property, personnel or equipment assigned by Contractor for the performance of Contractor's duties hereunder, may be utilized by Contractor in connection with such an emergency. In cases where the Authority or its designee cannot be consulted prior to such deployment, such advisement must be made to the Authority or its designee immediately or as soon as possible thereafter. In any case, the Authority must be informed of the situation immediately or as soon as possible thereafter.

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

III. CONTRACT PRICING MODEL

The Authority intends to award a Contract for the services outlined in this Scope of Work.

For the remaining of the Fiscal Year 2022 – 2023 (March 15, 2023 to June 30, 2023) of this contract, the Contractor shall to be paid based upon billing rates in the Schedule B – Cost Schedule.

For Fiscal Year 2023-24 and Fiscal Year 2024-25 of the contract base term, the Contractor shall provide the Project Manager an estimated cost each May of the contract term for the upcoming Authority fiscal year, based on level of service assumptions agreed upon by the Authority and Contractor.

Compensation for additional services beyond the baseline service level described in Section II will be based upon the billing rates provided by the Contractor in the Schedule B – Cost Schedule.

The Authority and Contractor may renegotiate the budget in the event of an increase or decrease in Metrolink service of 10 percent or more, according to Section 14 of this Agreement

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

ATTACHEMENT B
COST SCHEDULE

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT

ATTACHMENT B
LAW ENFORCEMENT SERVICES CONTRACT

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY - REDLANDS COMMUTER TRAIN LINE

LEVEL OF SERVICE		FY2022-23 COST
1	- Sergeant	315,053 [1]
5	- Deputy Sheriff	1,102,715 [1]
6	- Unmarked Unit - Slick Top	107,366
	Indirect Cost (37.69% of Direct Salaries and Benefits)	534,357
	Subtotal for FY2022-23	$ 2,059,491
	Credit 07/01/22 to 03/14/23	(1,458,806)
	Adjusted Cost for FY2022-23	$ 600,685
	Overtime March 15 to June 30, 2023	27,231
	Indirect Cost (37.69% of Overtime)	10,263
	Cost for FY2022-23	**$ 638,179** [1]

ESTIMATED COST FOR FY2023-24 AND FY2024-25
SUBJECT TO CHANGE[1]

LEVEL OF SERVICE		FY2023-24 COST
1	- Sergeant	346,558 [1]
5	- Deputy Sheriff	1,212,987 [1]
6	- Unmarked Unit - Slick Top	118,103
	Indirect Cost (37.69% of Direct Salaries and Benefits)	587,792
	Overtime	92,793
	Indirect Cost (37.69% of Overtime)	34,974
	Estimated Cost for FY2023-24	**$ 2,393,207** [1]

LEVEL OF SERVICE		FY2024-25 COST
1	- Sergeant	381,214 [1]
5	- Deputy Sheriff	1,334,285 [1]
6	- Unmarked Unit - Slick Top	129,913
	Indirect Cost (37.69% of Direct Salaries and Benefits)	646,572
	Overtime	96,474
	Indirect Cost (37.69% of Overtime)	36,361
	Estimated Cost for FY2024-25	**$ 2,624,819** [1]

	Estimated Total cost 03/15/2023 through 06/30/2025	**$ 5,656,205**

Southern California Regional Rail Authority (SCRRA) will be billed on a quarterly basis for actual hours of overtime worked for services provided under this Agreement.

[1] Personnel costs include salary and benefits and are subject to change by Board of Supervisors' action. Changes in salary and benefit costs will be billed to SCRRA on a quarterly invoice.

Attachment: Attachment A - SBCSD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

ATTACHMENT B

LASD SCOPE OF WORK

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM

CONTRACT NO. SP545-22

LAW ENFORCEMENT SERVICES

SCOPE OF WORK

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

1. PURPOSE

The Southern California Regional Rail Authority (Authority) is issuing this procurement solicitation to secure the multi-faceted services of a public law enforcement agency that will support the operation of commuter rail service, known as Metrolink. The objective of law enforcement will be to ensure riders and employees that Metrolink is a safe, efficient, dependable, and on-time transportation service that offers outstanding customer experience and enhances quality of life. The law enforcement services are to align with the Authority's Mission and Vision, and Values:

1.1 Our Mission and Vision

OUR MISSION

Our mission is to provide safe, efficient, dependable and on-time transportation service that offers outstanding customer experience and enhances quality of life.

OUR VISION

Our vision is to be Southern California's preferred transportation system built upon safety, reliability, customer service, leading-edge technology and seamless connectivity.

1.2 Our Values

People & Safety	Quality	Efficiency	Growth
Safety is foundational. Everything we do demonstrates an appreciation for quality of life, and every act values the lives of our employees, contractors, co-workers, customers, and communities.	We operate on best practices and principles with a continued focus on providing high-quality service to our customers every day on every ride.	As responsible stewards of public funds, we embrace innovative solutions and continuous improvement for the lowest cost and most efficient operations.	We continuously seek creative, progressive, and collaborative solutions to promote investment, develop partnerships, and increase capacity to improve the mobility of Southern Californians.

2. BACKGROUND

The Authority is governed by the Southern California Regional Rail Authority (SCRRA), a joint powers authority made up of an 11-member board representing the transportation commissions of Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. Metrolink trains operate on seven routes across a six-county, 538 route-mile network,

which includes a portion of northern San Diego County (Figure 1). Metrolink is a regional rail commuter service that serves the counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Northern San Diego. Metrolink runs seven days a week with limited service on Saturday and Sundays.

Figure 1: SCRRA System Map

In calendar year 2021, Redlands Passenger Rail Project (RPR) is anticipated to start revenue service of a nine-mile rail corridor extending along an existing railroad right-of-way (ROW) owned by San Bernardino Associated Governments (SANBAG) east from the City of San Bernardino to the City of Redlands within the southwestern corner of the County of San Bernardino, California (Figure 2).

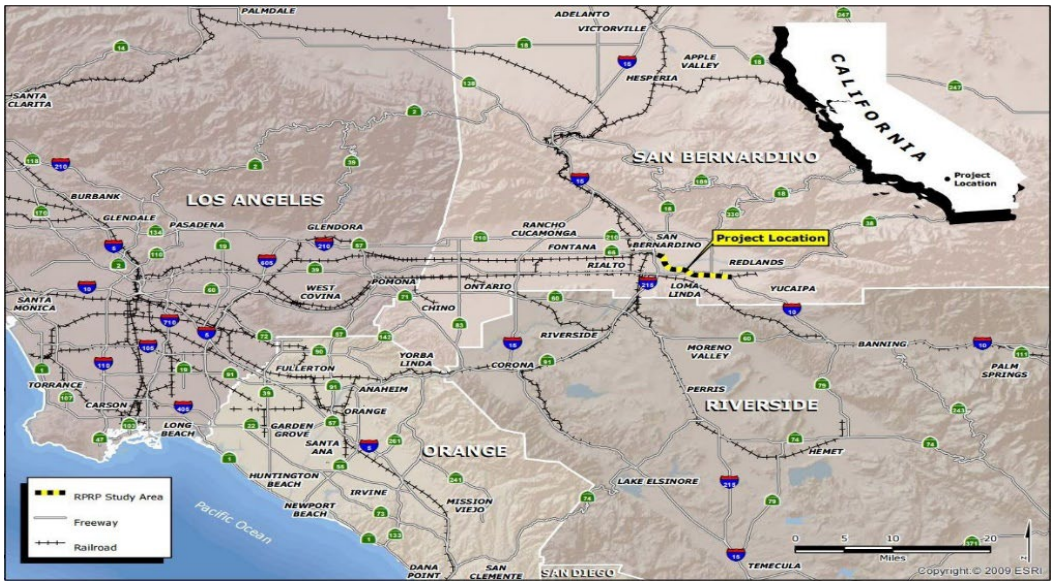


Figure 2 Redlands Passenger Rail Project Map

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

Metrolink routes are:

- **Ventura County Line:** Trains run from Oxnard to Los Angeles on the former Southern Pacific Coast Main Line, paralleling the Simi Valley Freeway (118). The 66-mile trip takes 90 minutes. Stations at Oxnard, Camarillo, and Northridge were added after the Northridge Earthquake in January 1994.

- **Antelope Valley Line:** Trains run from Lancaster to Los Angeles on the former Southern Pacific Valley Line, paralleling the Golden State Freeway (I-5). The 76.5-mile trip takes about 1-3/4 hours. Stations at Lancaster, Vincent Grade/Acton, and Via Princessa were added after the Northridge Earthquake in January 1994.

- **San Bernardino Line:** Trains run from San Bernardino to Los Angeles, paralleling the San Bernardino Freeway (I-10). The 57-mile commute from San Bernardino to Los Angeles takes 85 minutes.

- **Riverside Line:** Trains run from Riverside to Los Angeles, paralleling the Pomona Freeway (60). The 59-mile trip takes about 65 minutes.

- **Orange County Line:** Trains run from Oceanside to Los Angeles, paralleling the Santa Ana Freeway (I-5). The 87-mile trip takes just under two hours.

    - **Inland Empire–Orange County Line:** Trains run from San Bernardino to Oceanside, paralleling the 91 Freeway and I-5. The 100-mile trip takes about 2 hours and 20 minutes.

    - **91/Perris Valley Line:** Trains run from Riverside to Los Angeles via Fullerton, paralleling the Riverside Freeway (91) and the Santa Ana freeway (I-5). The 60-mile trip takes approximately 90 minutes. The Perris Valley Line is an extension off the 91 Line that runs rail service 24 miles from the downtown Riverside station to south Perris.

- **Redlands Passenger Rail (RPR):** The Redlands Passenger Rail is a nine-mile rail corridor extending along an existing railroad ROW owned by SANBAG east from the City of San Bernardino to the City of Redlands within the southwestern corner of the County of San Bernardino, California. Train operations are estimated to commence in the middle of Fiscal Year (FY) 2022.

  The RPR encompasses the following:

    - Five stations:

        1. San Bernardino Transit Center

        2. Tippecanoe Station

        3. New York Street Station

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

4. Downtown Redlands Station

5. University Station at the University of Redlands at the south end of campus near North University Street.

- During morning and afternoon peak commute hours (approximately 0700 to 0900 and 1600 to 1800), trains will operate twice per hour. During non-commute or off-peak hours, trains will operate once per hour. Weekday and weekend service are planned to start at 5 a.m. and run until 10 p.m.

- Trains per day: 25 Diesel Multiple Units (DMU) trains per day (50 trips) and 2 Metrolink trains per day (one morning, one evening, 4 trips).

- Ridership estimates are approximately 1600 passengers per day

The Authority's major facilities are:

SCRRA General Offices	**Address**
Metrolink Headquarters	900 Wilshire Blvd., Suite 1500 Los Angeles, CA 90017 Metrolink Web Site: www.metrolinktrains.com
Central Maintenance Facility (CMF)	1555 San Fernando Rd. Los Angeles, CA 90065
Eastern Maintenance Facility (EMF)	1945 Bordwell Ave. Colton, Ca 92324
Dispatch Operations Center (DOC)	2704 N Garey Ave. Pomona, CA 91767 909-596-3584 (Office) - Chief Dispatcher 888-446-9721 – Highway Rail Grade Crossing Hotline
Security Operations Center (SOC)	2558 Supply Street, Pomona, CA 91776 866-640-5190
Metrolink Operations Center (MOC) – Designated Backup Facility for DOC	2558 Supply Street, Pomona, CA 91776
Melbourne Facility-SCRRA	2700 Melbourne Pomona, CA 91767
Los Angeles Union Station (LAUS)	800 N. Alameda St. Los Angeles, CA 90012
Maintenance of Way: Marine Way Location	6894 Marine Way Irvine, CA 92618
Maintenance of Way: Lang Yard Location	13903 Lang Station Road Canyon Country, CA 91387
Redlands Rail Project: Inland Empire Maintenance Facility	TBD
SCRRA Layover Facilities	**Address**
Lancaster	44812 N. Sierra Highway, Lancaster, CA 93534
Moorpark	585 Moorpark Ave., Moorpark, CA 93201
Montalvo	6175 Ventura Blvd. Ventura, CA 93003
Riverside	4066 Vine St., Riverside, CA 92506

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

3. SCOPE OF WORK

The selected agency must be a public law enforcement. The Authority is seeking a policing plan that addresses the following requirements:

- Provide a policing strategy by Lines, or
- System-wide based

Policing by Lines focuses on dedicated law enforcement personal and resources specific to each of the Authority's service Lines. The Authority reserves the right to shift resources between Lines based on the needs of the Agency. System-wide based policing focus on the deployment of personal and resources throughout the Authority's entire system and is not specific to the Authority's service Lines.

The policing plan shall address how your agency will ensure the safety of our passengers and employees by:

- Efficient deployment of law enforcement resources
- Ensure adequate response time based on the industry best practices
- High visibility to deter and prevent crimes on the system and facilities
- Prevent and deter trespassing on Authority's right-of-way, grade crossings, and facilities

It is important to note that the law enforcement agency must provide a minimum of seventy five percent (75%) services as the Prime contractor.

3.1 BASE LAW ENFORCEMENT SERVICES

The contract law enforcement agency that serves as the Authority's law enforcement agency will coordinate local law enforcement efforts along the Metrolink service corridor throughout the six counties. The law enforcement organization will have jurisdictional responsibility for all on-board incidents regardless where they occur.

The law enforcement agency must provide equal coverage throughout the work week (Monday-Friday). In addition, the law enforcement agency shall submit a plan for weekend coverage that requires the Authority's approval.

The law enforcement agency must have the ability to provide the Authority the advantages of a full-service law enforcement agency.

In specific incidents involving Authority equipment, any of the specialized resources could be called upon to expand Metrolink's law enforcement unit without additional cost to the Authority. For this Scope of Work, specialized units can be provided by other agencies under mutual aid agreements.

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

Other related services include the following:

3.1.1 Directly respond to all incidents aboard commuter rail trains requiring law enforcement presence or services.

3.1.2 Receive and file with the Authority the police and coroner reports for each strike that occurs on the Metrolink system.

3.1.3 Investigate, follow-up, and prepare legal documents and case filings for Authority - related crimes including on-board incidents and those along the Authority ROW patrolled by other agencies.

3.1.4 Participate in rail safety, crime prevention, advocacy, and traffic safety programs.

3.1.5 Provide grade crossing enforcement details in areas identified by Authority. Coordinate these sweeps with the local police agency and Authority operations.

3.1.6 Perform traffic enforcement and community outreach relative to Authority operations.

3.1.7 Provide Authority the advantages of a full-service law enforcement agency including the following personnel and equipment resources that must be available for deployment to any location on the Metrolink system on an as needed basis. As needed, specialized units should include:

- Homicide investigators
- Air units
- Motorcycle details
- Off-road units
- Mounted posse
- Gang enforcement teams
- Special weapons teams
- Undercover detective operations
- Arson/Explosives experts
- Reserve units for crowd control and major events
- K-9 Unit
- Counterterrorism

3.2 FARE ENFORCEMENT

3.2.1 Provide on-board fare enforcement including issuance of citations for fare violations and other quality of life matters in conjunction with Authority' s operations contractor and on an as-needed basis. The contractor shall provide a monthly report of all fare enforcement activities. Activate periodic Fare Enforcement "sweeps" independent of Authority's

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

operations contractor. These sweeps must be coordinated with Manager of Security.

3.2.2 Provide training, education, and direction for Authority conductors engaged in fare enforcement as mandated by law. Participate in fare enforcement classes (8-10 hours each) for new conductors and remedial classes as needed.

3.2.3 Provide training on Penal Code 832 (Arrests and Firearms) training.

3.2.4 Provide monthly reports on citations and warnings, including data and comparison of fare violations by line, train, type of infraction, fare evasion rate, and the number of fare activities.

3.3 SECURITY COORDINATION

3.3.1 Develop mutual aid agreements and other cooperative agreements with all law enforcement agencies and coroner's offices in each county and/or city through which Metrolink passes.

3.3.2 Develop and update Memoranda of Understanding (MOUs) with all law enforcement agencies system wide.

3.3.3 Coordinate and provide daily required communication with local law enforcement, coroner's office and other public agencies and dispatch those agencies in response to Authority's needs.

3.3.4 Respond and coordinate the response of local law enforcement agencies to all Metrolink-related crimes, accidents, and establish jurisdiction.

3.3.5 Establish jurisdiction with local police jurisdictions and coordinate with each court of competent authority throughout the six counties in the Metrolink system.

3.3.6 Establish, manage and maintain filing and prosecutorial procedures with the city and district attorneys, and courts in each jurisdiction through which Metrolink passes.

3.3.7 Collect and provide periodic incident reporting for Authority to assist in the development of preventative strategies such as the Engineering and Education efforts and provide this information to all law enforcement agencies. Provide Authority with a monthly report of on-board crimes by line, date, time, and type of crime. Provide Authority with a monthly report of ROW crimes by line, date, time and type of crime.

3.3.8 Provide Authority with monthly reports on right-of-way citations, right-of-way warnings, number of right-of-way enforcement operations, and traffic citations at Highway-Rail Grade Crossings issued.

3.4 TRAINING

3.4.1 Provide ongoing training and direction to Metrolink law enforcement personnel, appropriate Authority employees, and other law enforcement subcontractors in the following areas:

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

- Corridor gangs and related problems
- Crowd control and civil disorder
- Fare inspection/enforcement
- Hazardous materials situations
- Incident command principles
- Jurisdictional and interagency operations issues
- Service oriented policing
- Terrorism/threats to transit systems
- Train accidents and derailments
- Transit law
- Weapons training/laws
- Radio procedures
- Vice activities, pickpockets, prostitution, gambling, etc.

3.4.2 Conduct training for outside (local) law enforcement and participate in multi-agency (mass casualty) drills, First Responder (emergency) training, and transit laws.

3.4.3 Provide de-escalation and Penal Code 832 (Arrests and Firearms) training.

3.4.4 Provide required training for personnel. All law enforcement personnel must be POST certified or have acceptable equivalent.

3.5 COMMUNICATIONS & INVENTORY CONTROL

3.5.1 Provide for membership in all local, state, and federal law enforcement telecommunication networks; as well as provide appropriate hardware for necessary transmissions and communications.

3.5.2 Establish and provide coverage for a 24-hour central communications center serving the six counties area to dispatch and coordinate law enforcement personnel and mutual aid emergency response teams. Provide radio coverage for all law enforcement personnel and vehicles in six county areas.

3.5.3 Provide a unique phone number for incoming calls to the Contractor's central communication center.

3.5.4 Furnish all supervision, equipment, and supplies to maintain the level of required service.

3.5.5 Provide Asset Tracking system of all Authority issued equipment.

3.6 RIGHT-OF-WAY LAW ENFORCEMENT SERVICES

Services included within this scope of work include patrolling the Rights-of-Way, homeless encampment joint operations with Authority, and law enforcement on Railroad property (off the train) in the six counties Metrolink serves.

The Contractor can provide decentralized or centralized, locally situated facilities to house officers and equipment dedicated to Metrolink to ensure geographic coverage within the Counties.

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

The issues to be dealt with are:

- Vandalism control and adjudication
- Crowd control and civil disorder response
- Hazardous materials incident response
- Identify and report visual and other right-of-way obstructions
- Terrorism/threats to transit systems
- Train accidents and derailments
- Grade-crossing safety
- Car theft and abandonment on the right-of-way
- Traffic enforcement
- Tunnel and bridge security and incident response
- Vice activities, pick-pockets, prostitution, gambling, homicide, drug trafficking
- Trespassing related matters: truancy, homeless, vagrancy, and gang related matters

The police departments along the right of way are expected to provide routine and emergency service to the trains, stations, and parking lots within their jurisdictions (as defined in the respective MOU's).

4. PROJECT MANAGER

The Contractor shall name a Project Manager (Captain level position) and a support staff (Lieutenant level position) who shall be responsible for administration of the proposed services. The Project Manager is subject to the Authority's approval.

5. RIGHT OF APPROVAL

The Authority project manager or his or her designee shall participate in the interviews of the law enforcement command staff.

6. STANDARDS OF PERFORMANCE

The Authority Project Manager, annually, in consultation with the law enforcement agency, will review the performance of the selected law enforcement agency and develop standards of performance for the forthcoming year. The standards of performance shall be as follows unless otherwise modified by the parties in writing. Failure to achieve the

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

required performance measures shall result in the law enforcement agency providing the Authority with the additional services not obtained for the month at no expense to Authority. The contractor and contract will be audited annually for compliance.

6.1 Key Performance Indicators (KPIs)

Key Performance Indicators (KPIs) shall be provided to the law enforcement agency that are awarded this contract. Authority shall have the final authority to implement the KPIs. The KPIs are:

Outputs	Performances Measures	Explanation
Train Rides	The number of trains ridden (as needed) and is dependent on the overall policing concerns compared to the total number of trains operated each week	The purpose is to measure the frequency of trains ridden within the operational system
ROW Enforcement	A minimum of eight (8) dedicated ROW staff each week.	The purpose is to measure the number of hours dedicated to the ROW's
Row Enforcement/Trespass Encampment Enforcement	95 percent of all calls handled within 48-hours	The purpose is to respond and investigate trespassers
Street Car Details/VIPR Fare Enforcement Operations	Conduct two (2)/per week Enforcement Details/Operations each week	The purpose is to conduct street Car/VIPR enforcement Details/Operations
Grade Crossing Details	Conduct two (2)/per week grade crossing Details per month	The purpose is to conduct grade crossing details each month based on identified risk locations
Directly respond to all incidents aboard commuter rail trains requiring law enforcement presence or services	95 percent of all calls responded to within 1-hour	The purpose is to respond and investigate incidents
Investigate, follow-up, and prepare legal documents and case filings for Authority	The total number of case filings follow-up for all applicable criminal activity.	The purpose is to measure the number of follow-ups and case filing within a timely matter
Perform grade crossing enforcement relative to Authority operations solely at time and locations designated in conjunction with Authority	Conduct a minimum of two (2)/per week traffic enforcement	The purpose is to address areas of high risk of vehicles, pedestrians, and/or trespassers
Fare Enforcement	Conduct daily on-board fare enforcement including issuance of citations for fare violations and other quality of life matters on "As needed" and dependent on overall policing concerns.	The purpose is to ensure fare compliance and safety

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

Develop Memoranda of Understanding (MOUs) to include Mutual Aid Agreement with all law enforcement agencies system-wide	Annual review of MOUs	The purpose is to ensure there are established communications and resource allocations
Provide Authority with a monthly report of on-board crimes by line, date, time, and type of crime.	Monthly Report	The purpose is to reduce crime and assign proper resources
Deployment of Personnel	Meet 98-100 percent of targeted deployment filled	The purpose is to ensure available law enforcement services system-wide

6.2 Reporting Requirements

The Authority Project Manager will require law enforcement contractor to provide daily, weekly, monthly, and annual compliance reporting. The daily, weekly, monthly, and annual reporting includes, but is not limited to the following:

Daily

- Deployment Schedule
- Daily Performance/Activities and Compliance Measures of Services
- Identified Daily Deployment Target

Monthly

- Monthly Key Performance Indicators and Crime Statistics
- Fare Enforcement Activities
- Detail Report on Labor Hours Provided

Annual

- Billing/Invoice Reconciliation and Audit
- Training Conducted

7. NOT USED

8. CONTRACT PRICING MODEL

The Authority intends to award a Fixed Price based Contract for the services outlined in this Scope of Work.

The Authority's Board of Directors approves budget estimates for each Authority fiscal year, which begins on July 1st and ends on June 30th. For Year 1 of this contract, the Contractor shall specify a fixed price in the Price Proposal Form.

For Years 2 and 3 of the contract base term, and Option Years 4 and 5, the Contractor shall provide the Project Manager an estimated cost each January of the contract term

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

for the upcoming Authority fiscal year, based on level of service assumptions provided by the Authority Project Manager. The final cost for the upcoming Authority fiscal year shall be subject to negotiations between the Authority and the Contractor. The annual increase may not exceed three percent (3%) of the current year Consumer Price Index (CPI).

Compensation for additional services beyond the baseline service level described in Section 3.0 will be based upon the billing rates provided by the Contractor in the Price Proposal Form.

The Authority reserves the right to renegotiate the budget in the event of an increase or decrease in Metrolink service of 10 percent or more.

Attachment: Attachment B - LASD Scope of Work (10704 : Dedicated Law Enforcement for Metrolink Service)

ATTACHMENT C

PRELIMINARY COST COMPARISON OF SBCSD AND LASD LAW ENFORCEMENT SERVICES

Arrow Service Sheriffs Cost Comparison

	SBSD-Service to County Line	SBSD-Dedicated Service	LASD-Dedicated Service	LASD-1	LASD-2	Allied Security (temp service)
Deputy Qty	5.0	4.0	4.8	3.264	3.264	1
Deputy Cost	$1,308,220	$1,224,708	$1,518,130	$1,012,087	$1,012,087	
Sergeant + (1) Detective/ Corporal	2.0	1.0	1.0	1.0	1.0	
Sergeant + Det Cost	$663,398	$434,427	$405,790*	$405,790*	$0	
Office Specialist Qty	1.0	1.0	0	0	0	
Office Specialist Cost	$195,026	$111,514	0	0	0	
Vehicle Qty	7	3	3	2	1	
Vehicle Cost	$55,038	$55,038	281,440*	$187,556*	$93,884*	
Year 1 Cost =	**$2,565,944**	**$1,825,687**	**$2,205,306**	**$1,605,971**	**$1,105,971**	**$98,676 (Sep-June)**
Year 2+ Cost =	**$2,565,944**	**$1,825,687**	**$1,518,076**	**$1,012,087**	**$1,012,087**	

* - First Year Cost Only (doesn't include annual costs of living increases)

METROLINK 2

Attachment: Attachment C - Preliminary Cost Comparison of SBCSD and LASD (10704 : Dedicated Law Enforcement for Metrolink Service)

SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT

ATTACHMENT D
LAW ENFORCEMENT SERVICES CONTRACT

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY - REDLANDS COMMUTER TRAIN LINE
FY 2023/24

CURRENT LEVEL OF SERVICE			COST	PROPOSED INCREASES LEVEL OF SERVICE			COST	Total Cost
1	-	Sergeant	338,832 [1]	0	-	Sergeant	- [1]	338,832
0	-	Detective/Corporal	- [1]	1	-	Detective/Corporal	284,730 [1]	284,730
5	-	Deputy Sheriff	1,184,025 [1]	7	-	Deputy Sheriff	1,657,635 [1]	2,841,660
6	-	Unmarked Unit - Slick Top	114,930	2	-	Unmarked Unit - Slick Top	38,310	153,240
		Indirect Cost (37.69% of Direct Salaries and	573,965			Indirect Cost (37.69% of Direct Salaries and	732,077	1,306,042
		Overtime	94,420			Overtime	121,297	215,717
		Indirect Cost (37.69% of Overtime)	35,587 [1]			Indirect Cost (37.69% of Overtime)	45,717 [1]	81,304
		Current Cost for FY2023-24	**$ 2,341,759**			**Proposed Increases for FY2023-24**	**$ 2,879,766** [2]	**$ 5,221,525**

Southern California Regional Rail Authority (SCRRA) will be billed on a quarterly basis for actual hours of overtime worked for services provided under this Agreement.

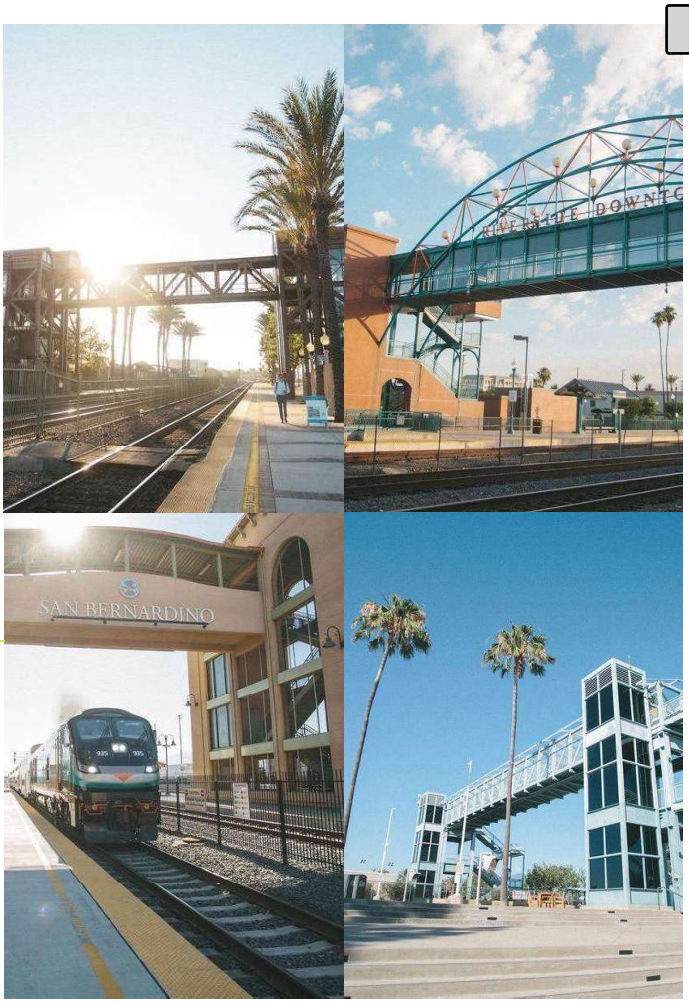
[1] Personnel costs include salary and benefits and are subject to change by Board of Supervisors'

[2] Annualized cost.

Attachment: Attachment D - SBCSD Formal Cost Estimate to Extend SBCSD Services (10704 : Dedicated

Attachment E

SCRRA Law Enforcement Update



Safety, Security and Compliance Department

METROLINK

All-share Policing Model

Current System-Wide Directed Patrol: Officers utilizing crime analysis data, and location-specific activities to deter crime and respond to incidents that occur.

Daily coverage of all lines by LASD (Average):

- 7 Patrol Deputies (Train Ride, Grade-crossing, fare enforcement)/Per Shift
- 6 Right-of-Way Deputes: Day Shift Only

North Office Coverage:

- Area 610- K-9 Unit and Right-of-Way Team
- Area 611- AV Line
- Area 612- AV & Vent Line
- Area 613- Vent Line

East Office Coverage:

- Area 614- OC & IEOC Line
- Area 615- 91- Riv. & IEOC Line
- Area 616- SB Line
- Area 617-Perris Valley & Riv. Line

Hours of Operation:

- 7 Days a week
- 2 Shifts per day

*San Bernardino Sheriff's Department- Arrow Line: 5 Deputies & 1 Sergeant

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Los Angeles County Sherriff's Department Metrolink Bureau
Jurisdiction

- LASD Jurisdiction:
  - All Metrolink Trains
  - All Metrolink Facilities

- Local Police Department Jurisdiction
  - Stations
  - Station Parking Lots
  - Crimes occurring on Right-of-Way
- Train Line by County

County	Train Line
Ventura/Los Angeles:	Ventura Line
Los Angeles:	Antelope Valley Line
Los Angeles/San Bernardino:	San Bernardino Line
Los Angeles/San Bernardino/Riverside:	Riverside Line
Los Angeles/Orange:	OC Line
San Bernardino, Riverside/OC/San Diego:	IEOC
Los Angeles/Orange/Riverside:	91/Perris Valley Line

METROLINK

Law Enforcement Activities and Focus

1. Increase Presence on Trains

   - Objective: Reduced crimes and conductor assaults

   - Outcomes:
     A. Crimes (FY22 vs FY23)
        - Crimes Against Person: Decrease of -13%
        - Crimes Against Property: Decrease of -9%
        - Crimes Against Society: Decrease of -16%

     B. Reported Conducted Assaults
        - In CY 23, downward trend in reported conductor assaults compared to CY 22.

2. Direct Enforcements on Right-of-Way

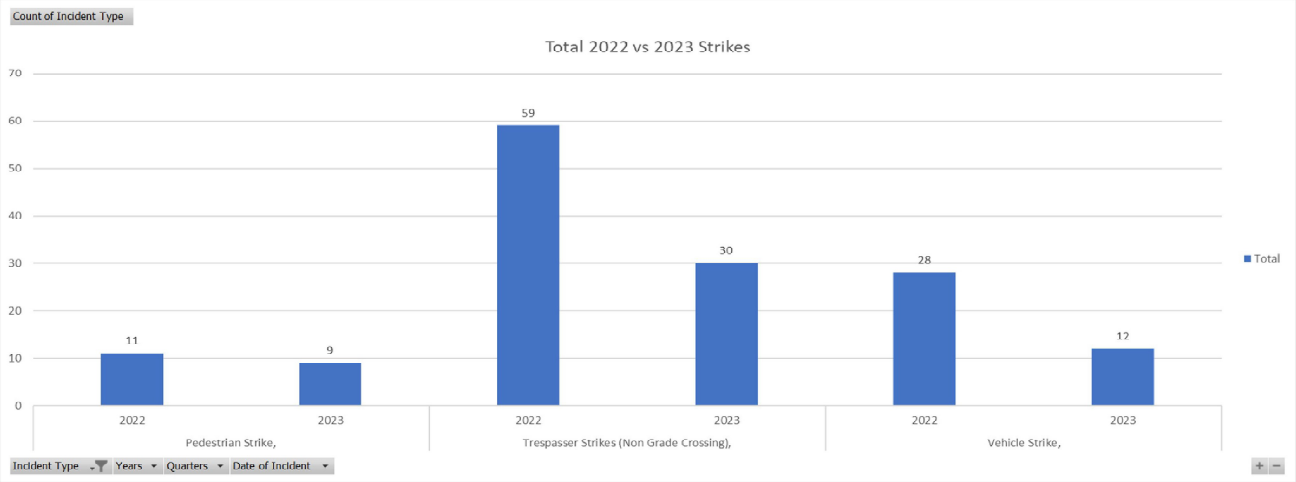
   - Objective: Reduce system-wide strikes

   - Outcome:
     A. CY 2023: Downward trend in system-wide strikes.

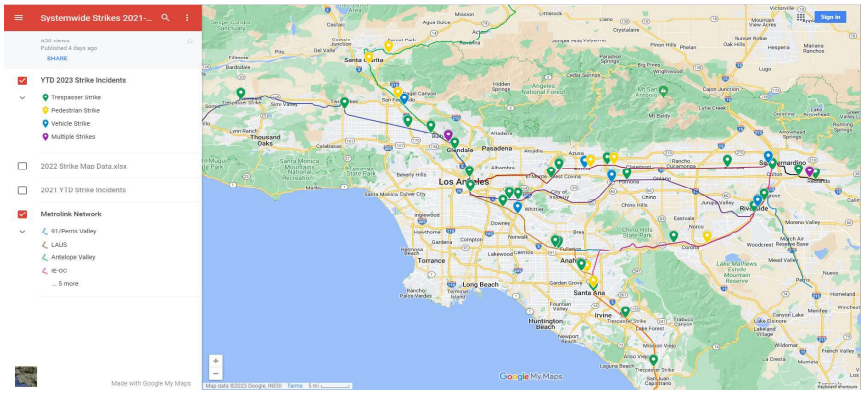
METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

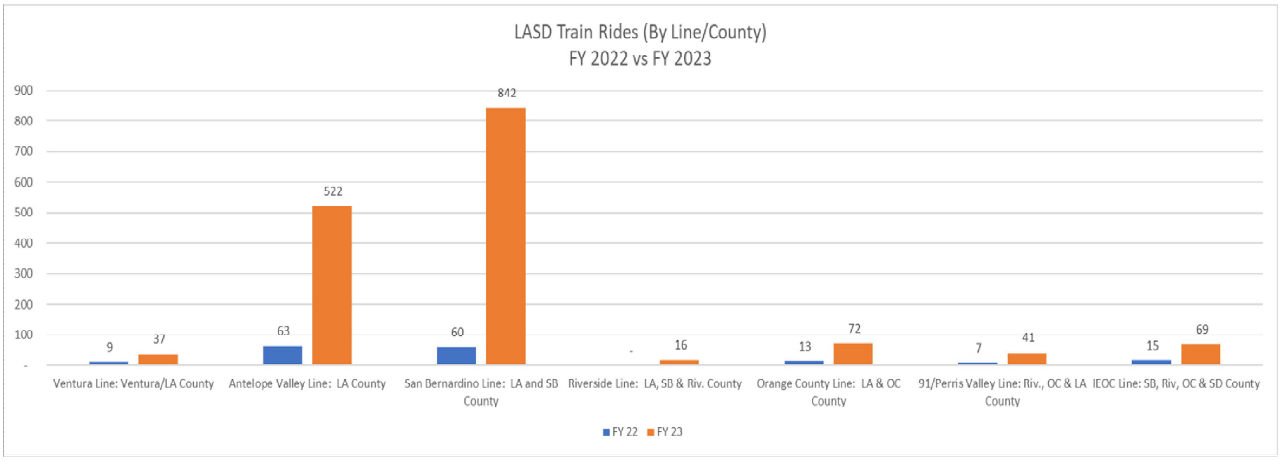
2022 vs 2023 Strikes (CY)



- CY 2023: Downward trend in system-wide strikes.



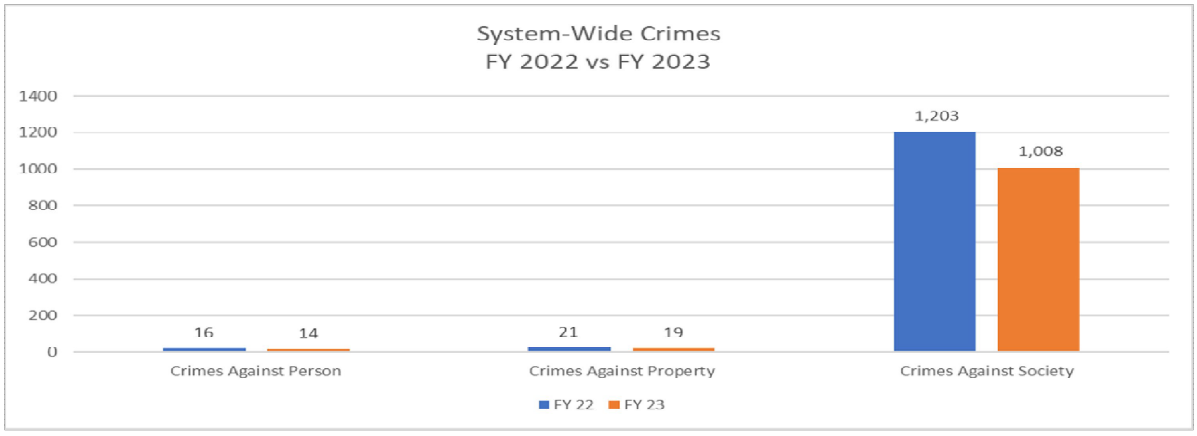
LASD Train Rides (By Line/County) FY 2022 vs FY 2023



In FY 23, LASD increased presence on trains to reduce crimes.

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

System-wide Crimes
FY 2022 vs FY 2023

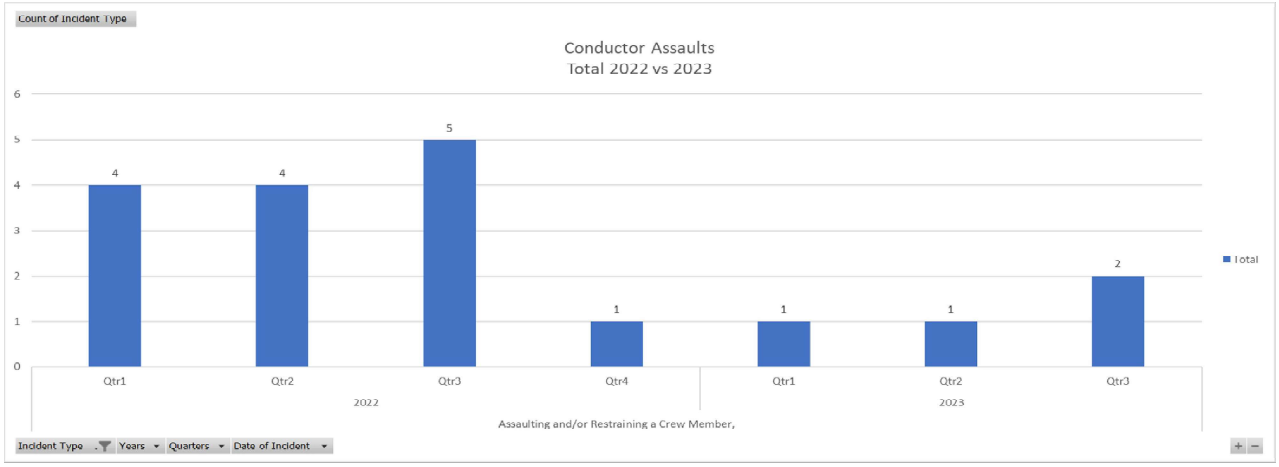


*Crimes Against Society
- FY 22: 1,197 of 1,203 are for trespassing.
- FY 23: 1,008 of 1,008 are for trespassing.

- Crimes Against Person: Decrease of -13%
- Crimes Against Property: Decrease of -9%
- Crimes Against Society: Decrease of -16%

METROLINK

Reported Conductor Assaults
CY 2022 vs CY 2023



- In CY 23, downward trend in reported conductor assaults compared to CY 22.

METROLINK

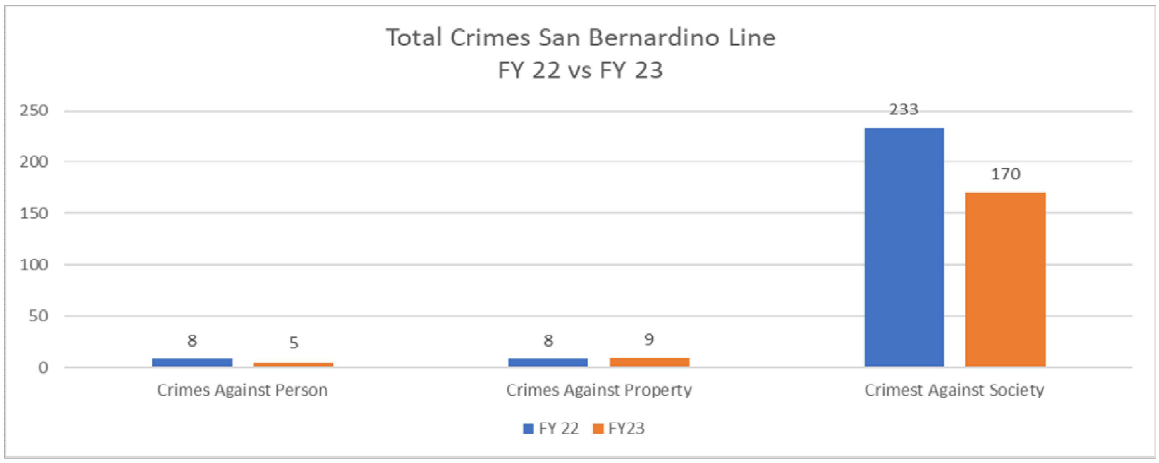
Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Appendix

- LASD Crime Statistics by Line
- LASD Fare Enforcement Activities by Line
- LASD Right-of-Way Enforcement
- San Bernardino Sheriff's Department Activities: Arrow Line

San Bernardino Line Incidents

- Total Crimes: FY22 vs FY23

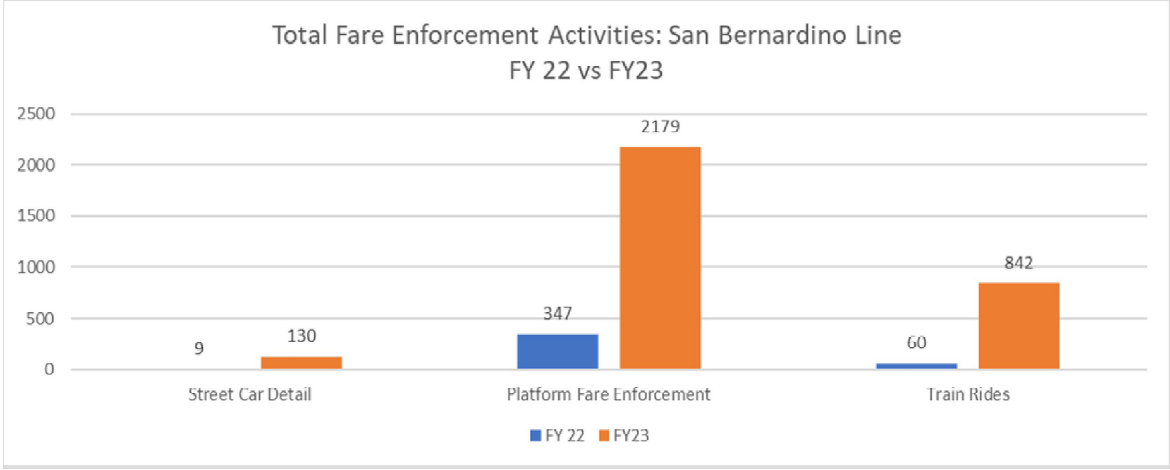


Crimes Against Person: Decrease of -37.5%
Crimes Against Society: Decrease of -27%

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

San Bernardino Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

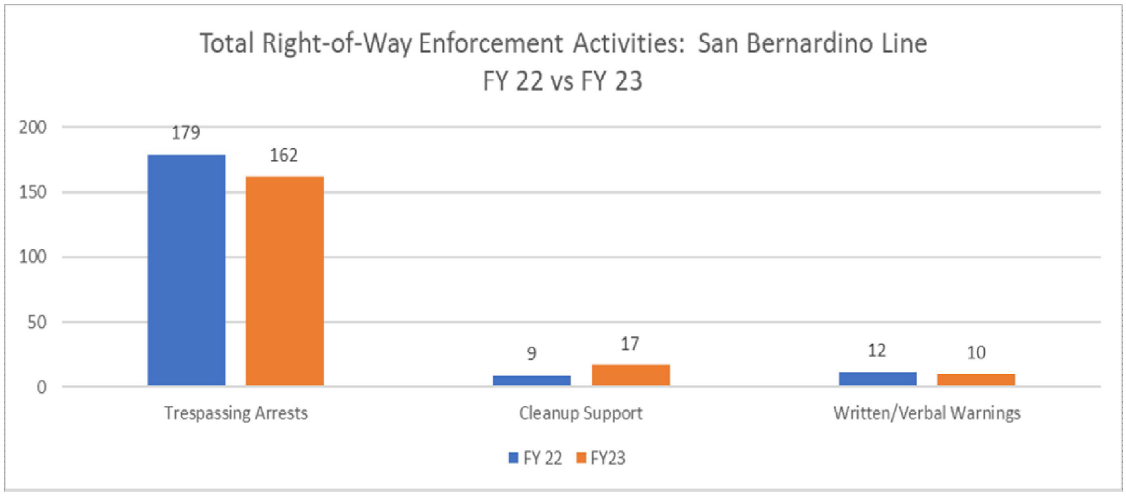


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

San Bernardino Line Incidents

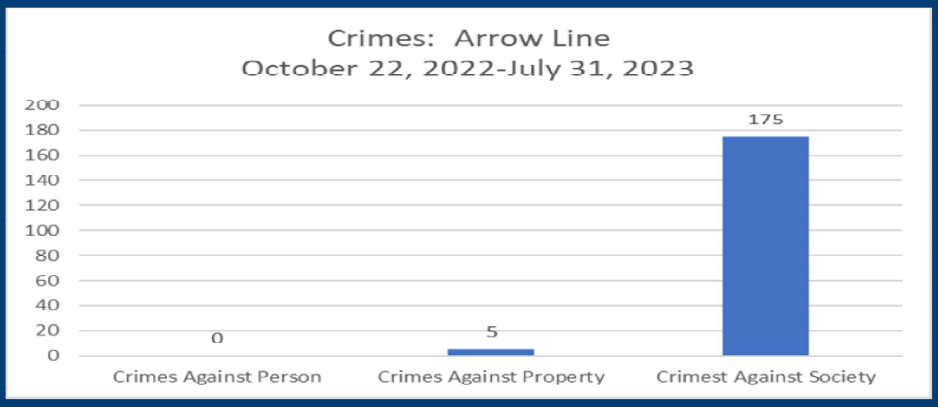
- Total Right-of-Way Enforcement Activities: FY22 vs FY23

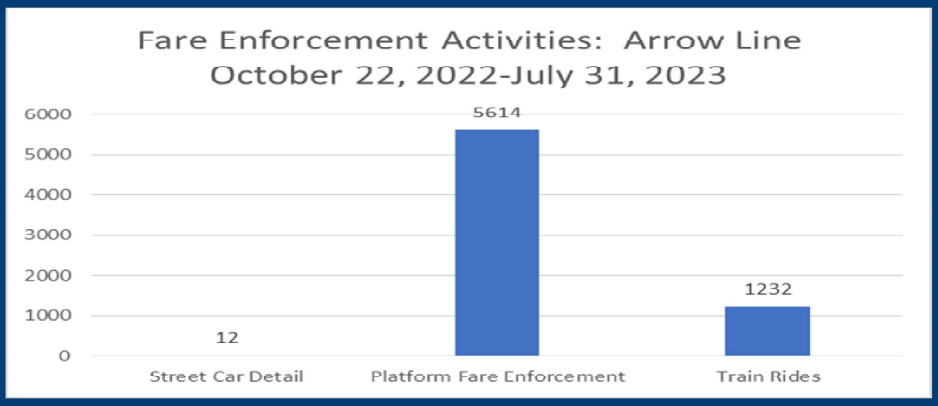


METROLINK

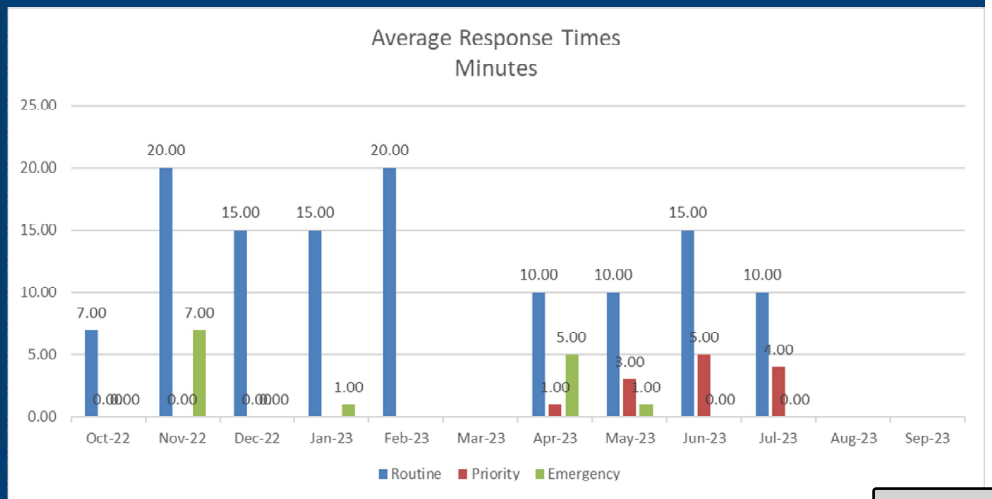
Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Arrow Line





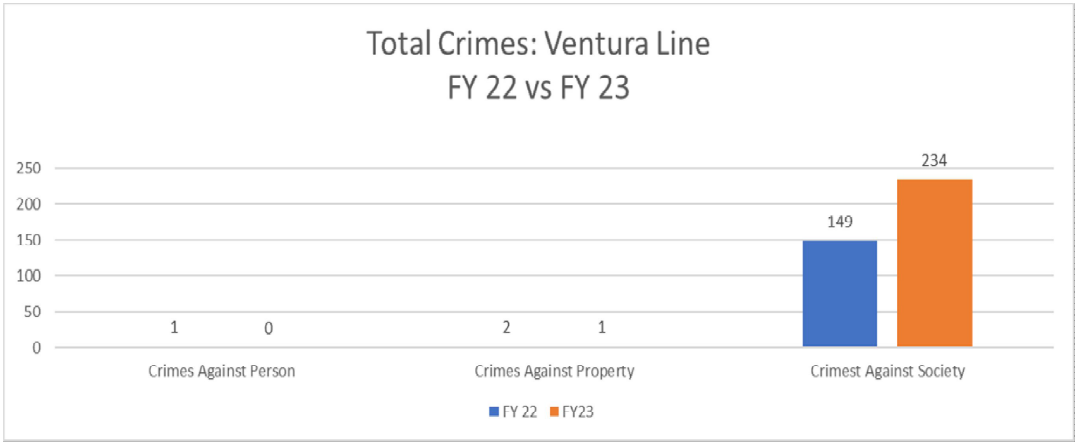
Arrow Line



Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Ventura Line Incidents

- Total Crimes: FY22 vs FY23

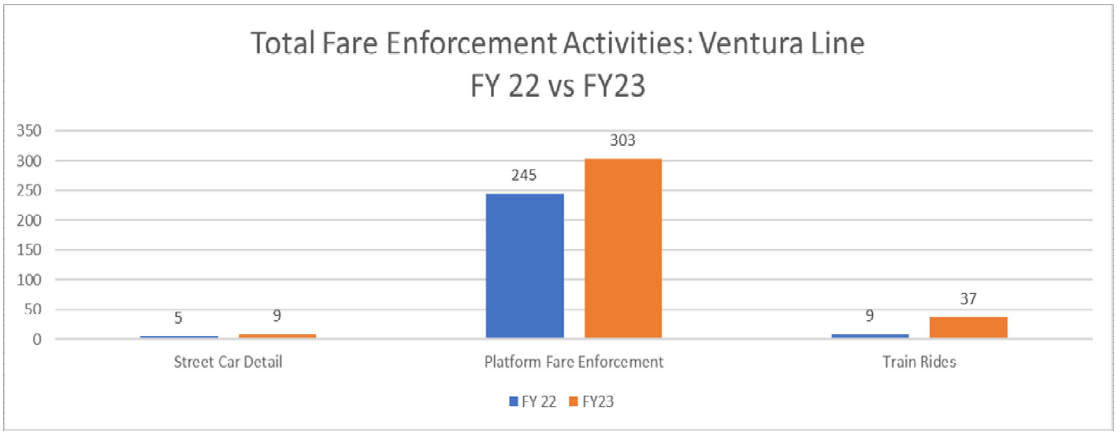


Crimes Against Society: Increased of 57% for FY 2023 compared to FY 2022. Contributing factor is trespassing.

METROLINK

Ventura Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23



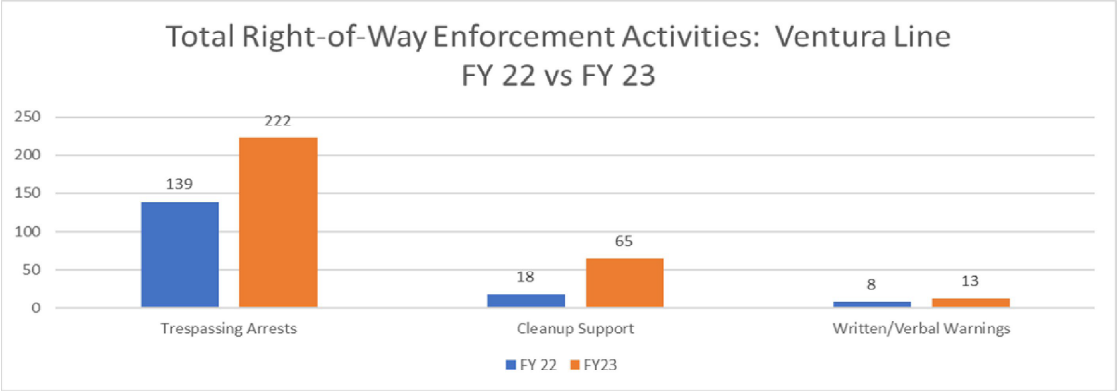
Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Ventura Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

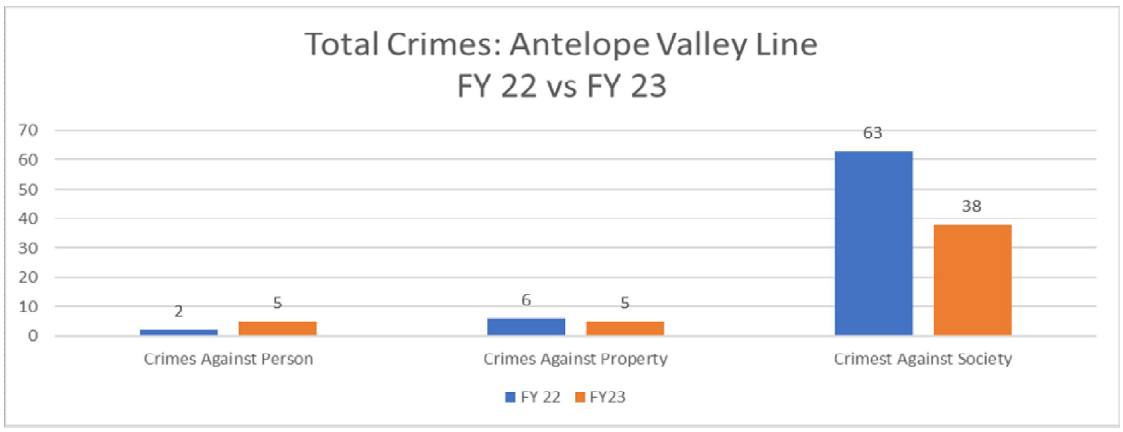


Increased focus on Right-of-Way enforcements and homeless encampment cleanups in FY 2023.

METROLINK

Antelope Valley Line Incidents

- Total Crimes: FY22 vs FY23



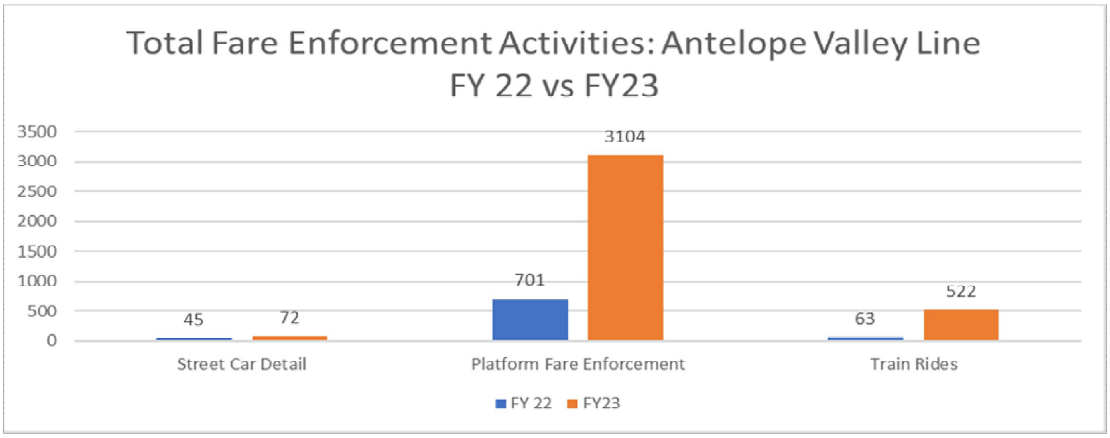
Crimes Against Society: Decrease of -40% for FY23 compared to FY 2022.

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Antelope Valley Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

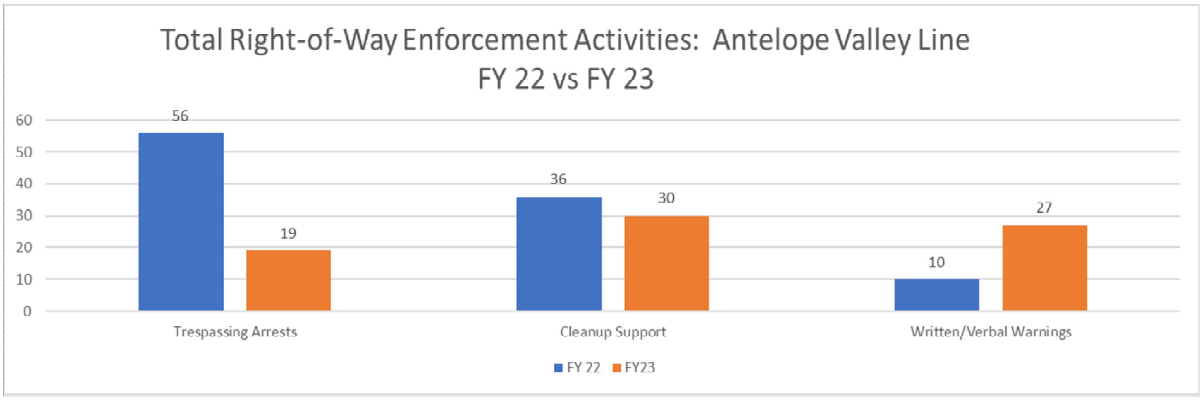


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

Antelope Valley Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23



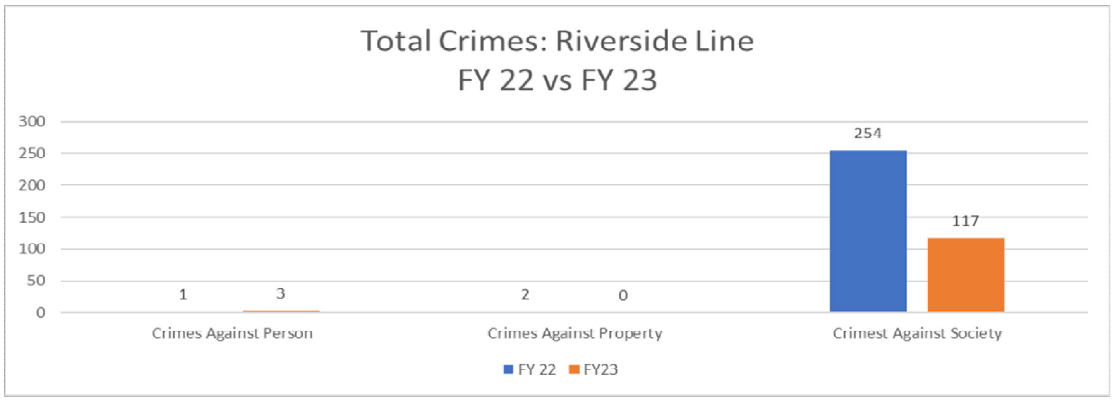
Decrease of -66% trespassing arrests in FY 2023 compared to FY 2022

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Riverside Line Incidents

- Total Crimes: FY22 vs FY23

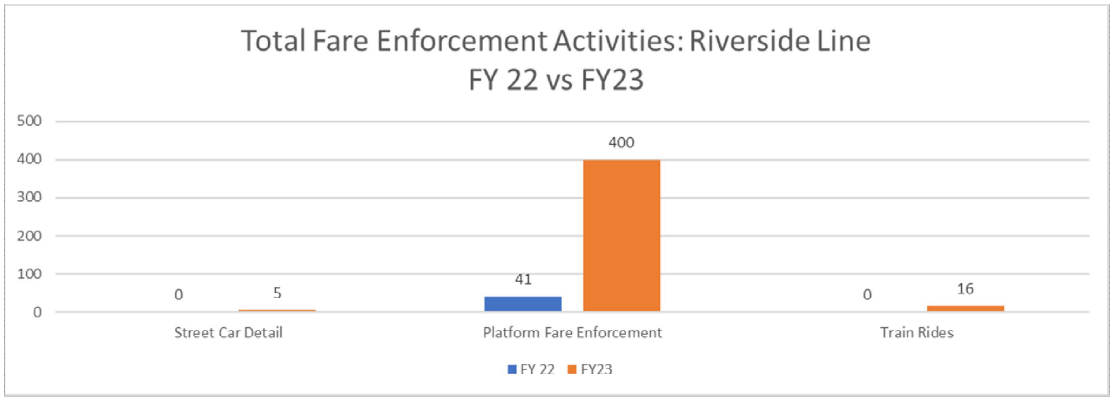


Crimes Against Society: Decrease of -54%. Contributing factor is the reduction of number of trespassing crimes.

METROLINK

Riverside Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23



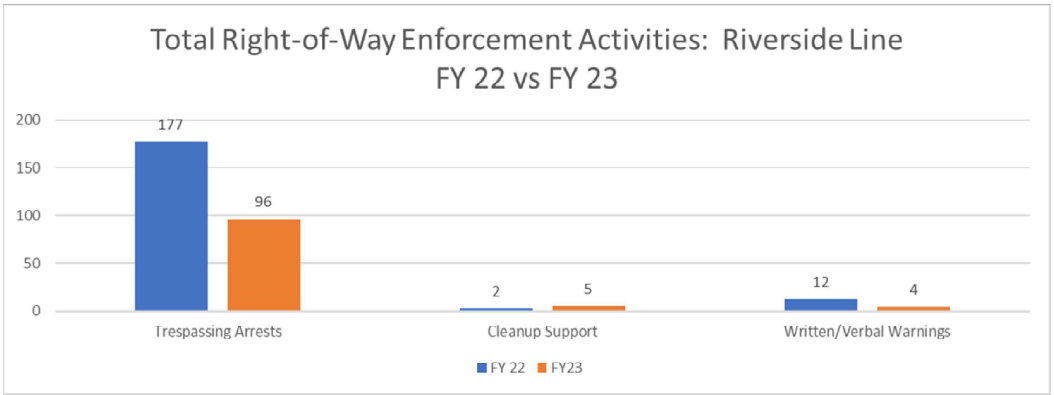
Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Riverside Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

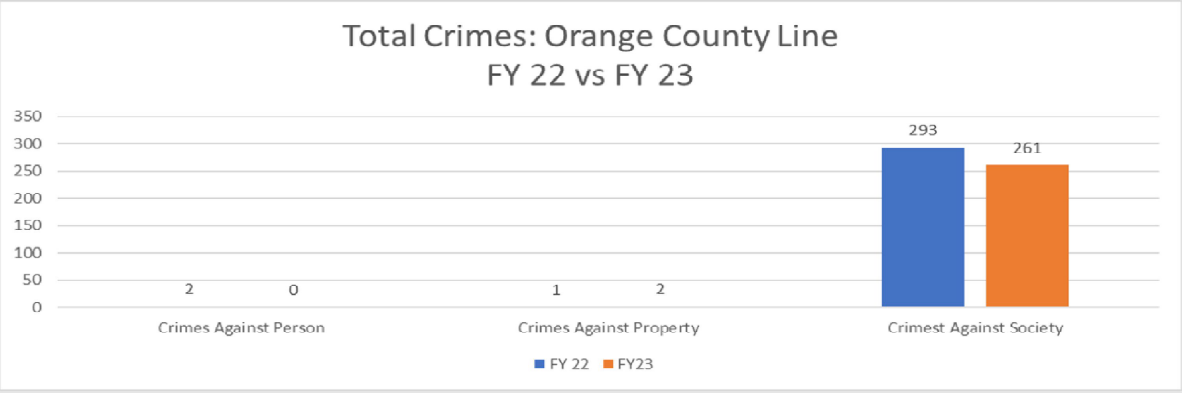


Decrease of -46% trespassing arrests in FY 2023.

METROLINK

Orange County Line Incidents

- Total Crimes: FY22 vs FY23

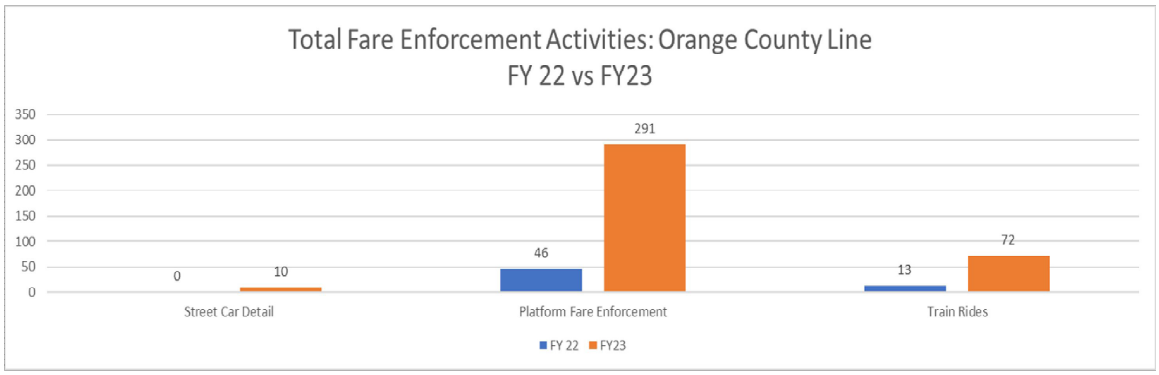


Crimes Against Society: Decrease of -11%. Contributing factor is the reduction of number of trespassing crimes.

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

Orange County Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

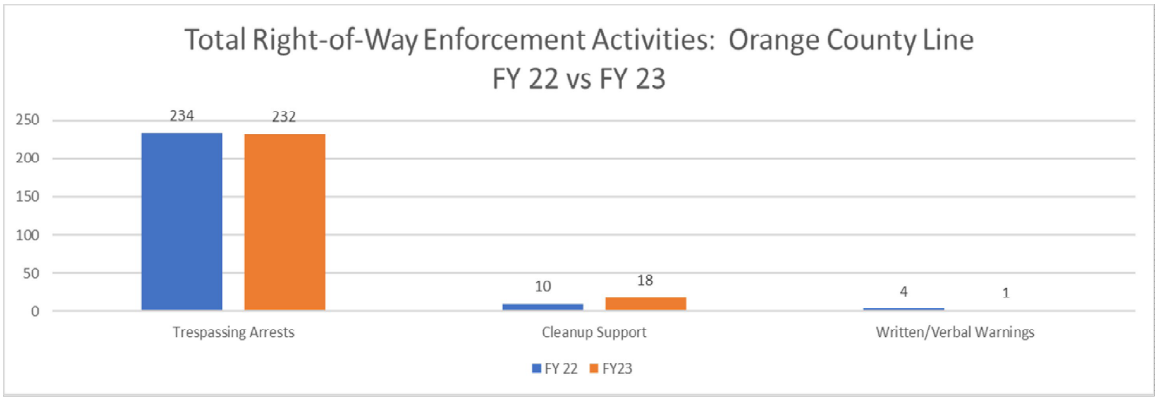


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

Orange County Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23



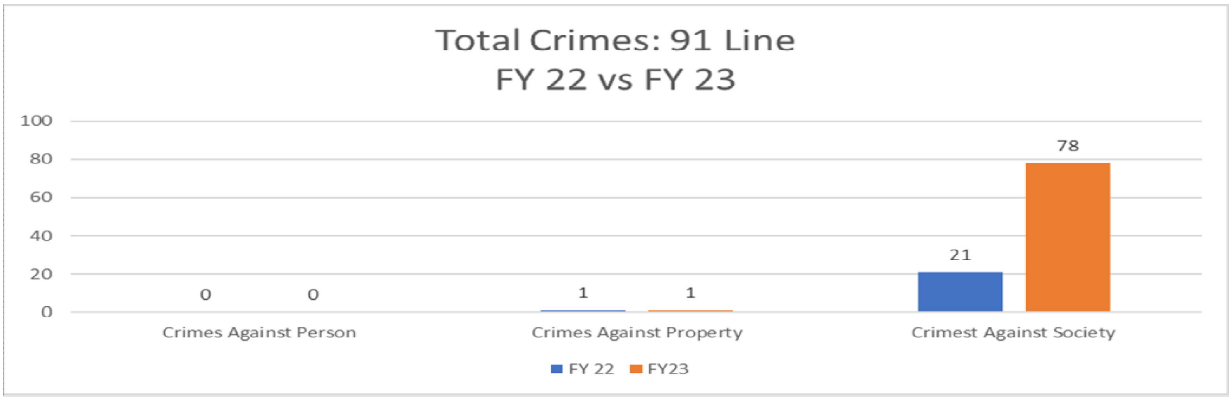
No noticeable change in trespassing arrests for FY 2023 compared to FY 2022.

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

91 Line Incidents

- Total Crimes: FY22 vs FY23

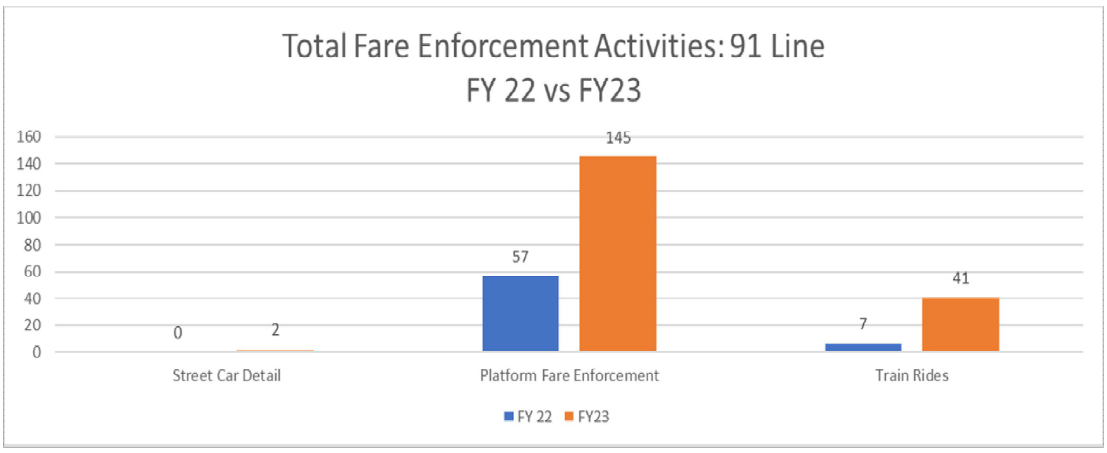


Crimes Against Society: Increase of 271%. Contributing factor is the increase in trespassing crimes.

METROLINK

91 Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23



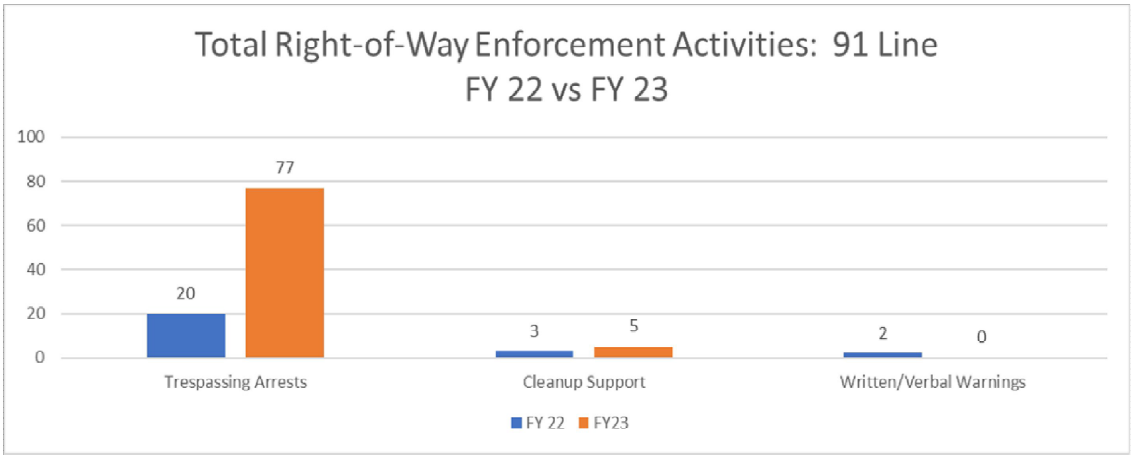
Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

91 Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

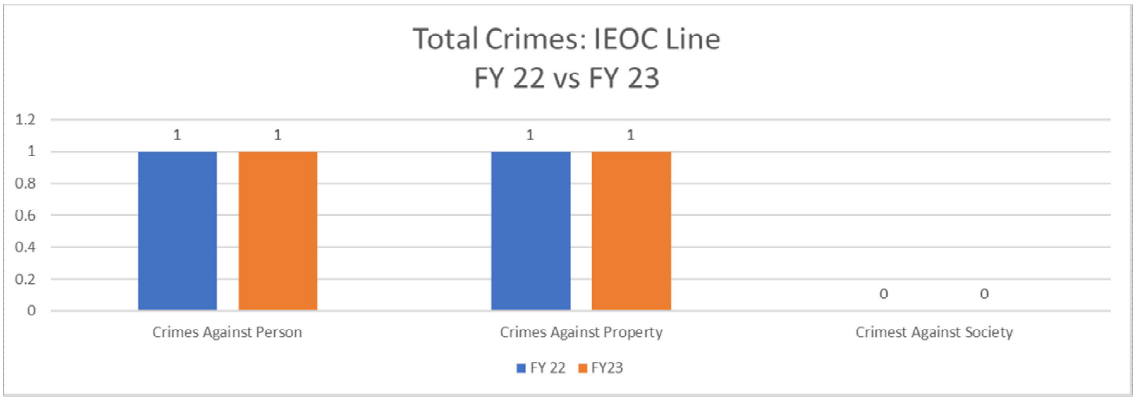


Increase of 285% trespassing arrests in FY 2023 compared to FY 2022.

METROLINK

IEOC Line Incidents

- Total Crimes: FY22 vs FY23



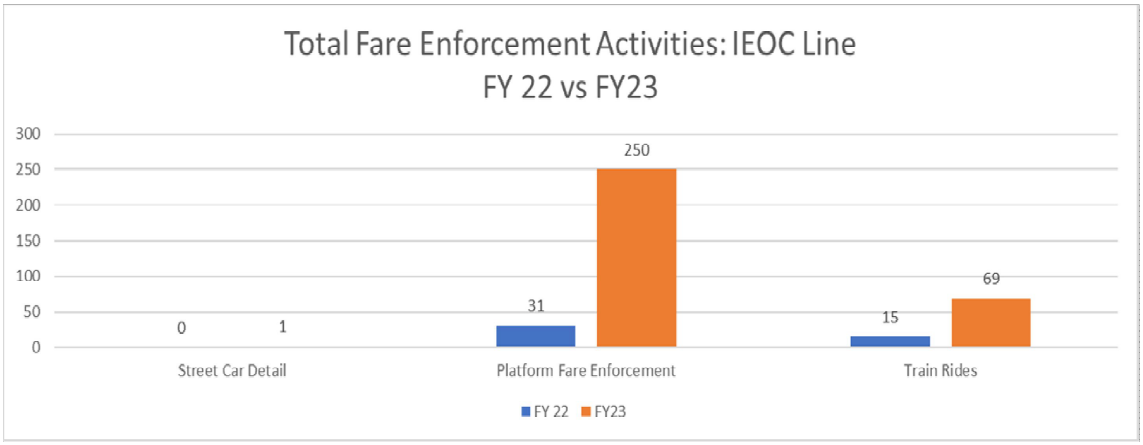
*Crimes Against Society: Does not include trespassing arrests

METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

IEOC Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

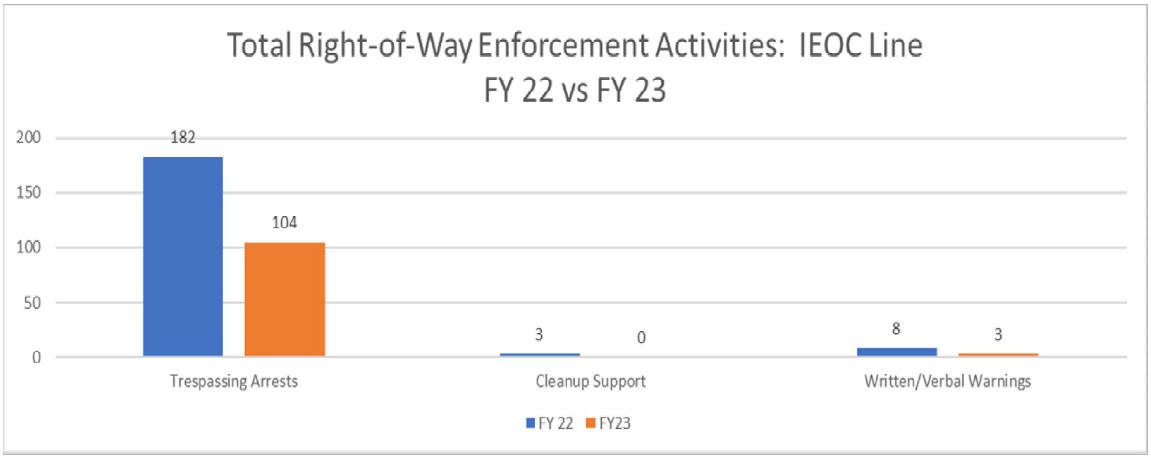


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.

METROLINK

IEOC Line Incidents

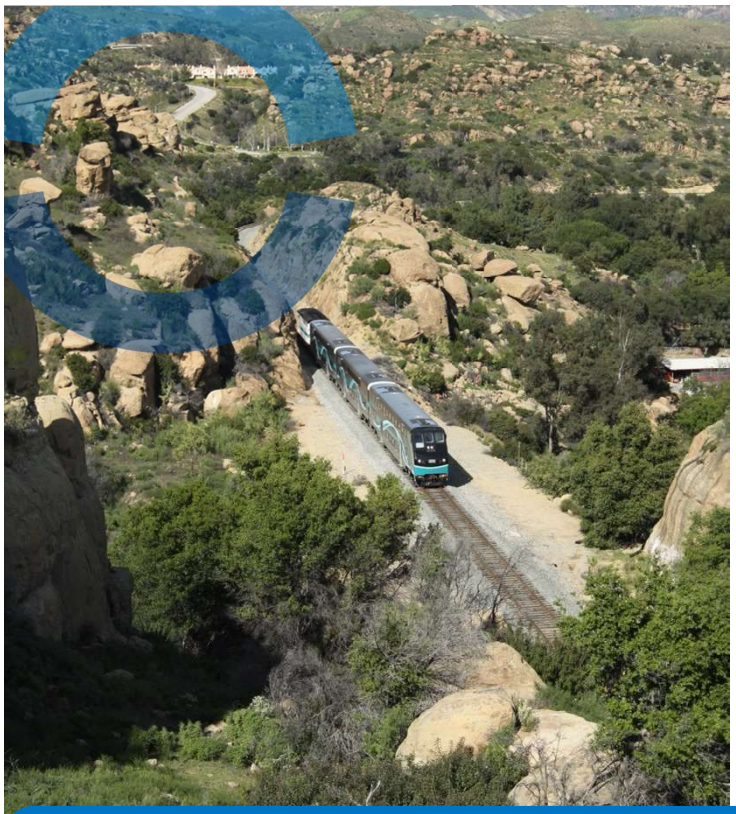
- Total Right-of-Way Enforcement Activities: FY22 vs FY23



Decrease of 42% trespassing arrests in FY 2023 compared to FY 2022.

METROLINK

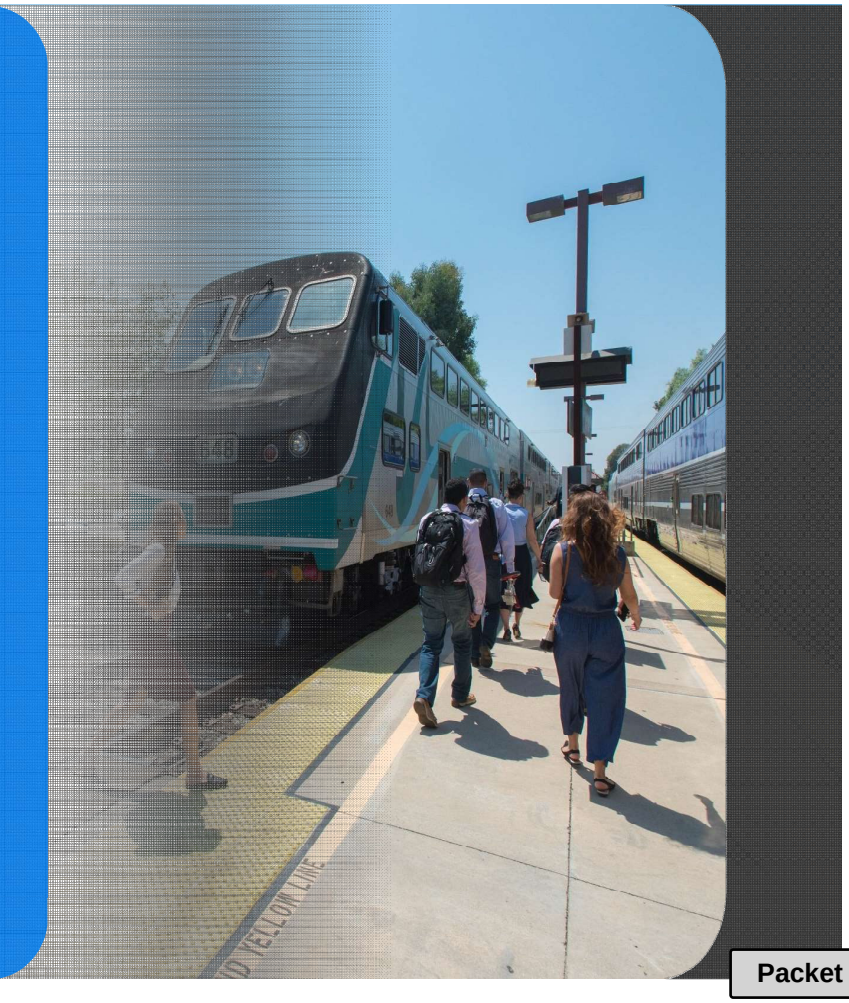
Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)



End of PowerPoint

METROLINK

Thank you .



METROLINK

Attachment: Attachment E - SCRRA Law Enforcement Presentation (10704 : Dedicated Law Enforcement for Metrolink Service)

2023 Potential Rider Study

Summary of Findings

Member Agency CEOs
June 16, 2023

METROLINK

Background

- Over 7 million people live within 3 miles of a Metrolink station.
- Most will not take Metrolink, and less than half who try Metrolink will become repeat riders.

Research Objective:

What are the reasons that keep potential riders from riding?

METROLINK

Attachment: Attachment F - Potential Rider Study Summary of Results (10704 : Dedicated Law Enforcement for Metrolink Service)

Methodology

Online survey
Potential Riders
3,392 responses

Predictive Statistics
Perceptions
Attitudes
Values

Market Segmentation
K-Means Clustering
Potential for Ridership

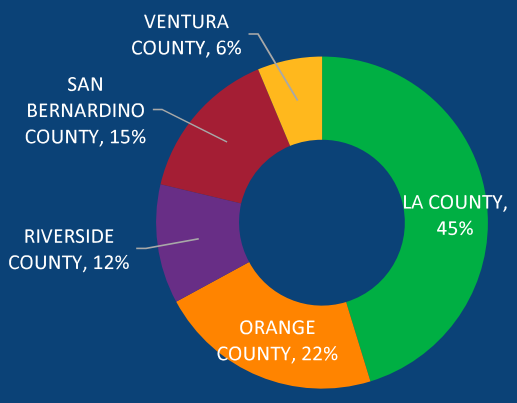
Focus Groups
Deep Dive Analysis
35 participants

METROLINK

Online Survey

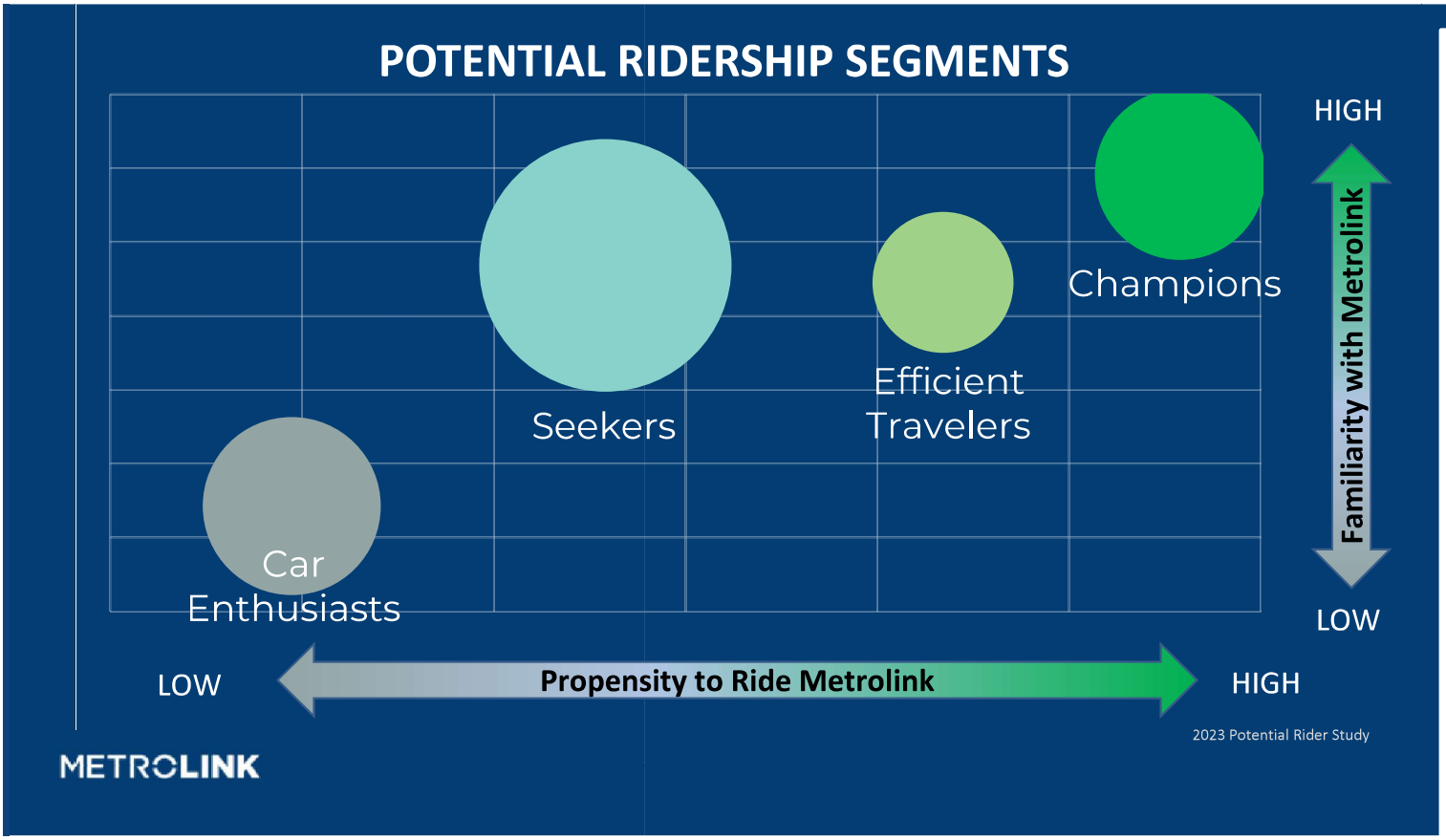
- January 17 – February 11, 2023
- Covered entire service area
- Target population near Metrolink stations
- Non-riders, trial riders, lapsed riders
- Received 3,392 completed surveys

RESPONDENTS BY COUNTY



METROLINK

Attachment: Attachment F - Potential Rider Study Summary of Results (10704 : Dedicated Law Enforcement for Metrolink Service)



Attachment: Attachment F - Potential Rider Study Summary of Results (10704 : Dedicated Law Enforcement for Metrolink Service)

Key Findings

1. **Demographics are not predictive of ridership.**
   Demographic characteristics (such as age, income, race) are not correlated with Metrolink ridership.
2. **Intent to ride is better explained by attitudes, perceived control, and values.**
   1. Perceptions/attitudes: positive or negative feelings about taking Metrolink
   2. Behavioral control: perceived ease of use and ability to overcome obstacles
   3. Subjective norms: values and social desirability as motivation to ride Metrolink
3. **Concerns about personal security are an important obstacle.**
   Metrolink is perceived as safer than Metro, but potential riders evaluate security for the total trip, that includes security onboard Metrolink, at stations, as well as on connecting services.
4. **Limited schedules for evening and weekend travel.**
   Metrolink is perceived as catering to commuters only. Potential riders mention the effort involved in trip planning and fear they may get stranded because of the lack of later travel options.
5. **Lack of station signage and how-to-ride information.**
   Potential riders indicate a lack of information where to catch the train, how to transfer, and how to buy fares.
6. **Potential riders over-estimate the cost of riding Metrolink.**
   Many potential riders are unaware of available discounts and the free use of Metrolink fares on other transit services.

METROLINK

Takeaway: Security Concerns

Riders are less concerned by who is operating the service and more concerned with their experience within the transit network.

Women and families with children are most likely to cite concerns about safety.

> Crime is the main factor that keeps me from using the train.

> I love the service, but have recently stopped using it for my safety concerns.

> Union station, there's a lot of people there who are not there for taking the train.

> Police activity and homeless people inside the train and at the station. My family's safety is my first priority.

> The last time I took Metrolink, I was attacked by a mentally ill homeless person.

> I NEVER see any law enforcement on Metrolink. There are sometimes mentally ill people on the train, or people who never have a ticket and fight with the conductor. Usually, the conductor walks away.

METROLINK

Takeaway: Schedule Convenience

68% of non-riders say Metrolink trains don't go where they need to go.

The limited train schedules prevented both survey respondents and focus group participants from using Metrolink as often as they would like to.

Weekend trains and evening trains were the most frequently mentioned unmet needs.

Metrolink shuts down too early at night, so taking it in to Los Angeles for Theater or Sporting events leaves me stranded late at night.

I wish I could use Metrolink to go to LA for sporting events, museums, and such and return the same day. Metrolink schedules do not support this.

I can't even go to a 2:00 matinee performance at Disney Concert Hall because the last train leaves Union Station at 4:40 p.m.

Train schedules are sparse...I need to get to Riverside on weekends, but they only have two trains going on Saturdays...both in the afternoon...no morning trains...

Not running late enough. I often want to go places then come back in the evening. There are *very* few Metrolink trains scheduled to come back to LA in the evening and I don't want to get stranded.

METROLINK

Takeaway: Station Access and Information

Pre-ride logistics overwhelm and frustrate and can be a deterrent to potential riders.

Potential riders say that better signage and how-to-ride information would make them more likely to ride.

I don't know how trains work. Do we transfer at Union Station to take another line? Do we have to pay again to transfer to another line?

The station in Covina had very little signage and we were unsure of how to get a ticket.

It needs to be more top of mind for me, I just often forget it's an option. I visit the MTA website a lot, maybe offer Metrolink information there.

Show the public how to get to events by train. What station, what train or trains connect to where they want to go. I have a frustrating time just trying to figure out what ticket to buy and what trains to use.

There should be better signage about where the train will arrive. Like at an airport where the screens tell you the gate. I've missed trains because I did not know what track to stand on.

METROLINK

Takeaway: Reliability

Just one in four non-riders think Metrolink trains are reliable enough to get them to work on-time.

Anxiety around becoming stranded if a bus or train was missed was expressed overwhelmingly by all audience segments.

Unfortunately, the Metrolink trains in my area are not a reliable form of transportation. They are often late due to problems along the line.

The times we have taken the train we have had delays.

Trains need to be more reliable when it comes to the mechanical issues. Unruly passengers holding up an entire group of people should not be allowed causing other passengers delayed in getting to work on time or getting home at their planned time.

Last time we went we had a very bad experience. We were left in Union Station waiting for hours. It was a Sunday and didn't know there wasn't many trains coming. The train was late because it hit a person in the track. I had my children and they got scared. I had to call a family member to pick us up because it was past 9 pm and we were still waiting.

The trains I've taken frequently have mechanical issues, delays with unruly passengers, system issues, striking a person etc. Add all of these together complicates my life and adds more stress to a long commute.

METROLINK

Takeaway: Affordability

The perceived cost of a Metrolink ride includes parking and first/last mile costs.

Many potential riders are unaware of available fare discounts and free transfers.

Cheaper ticket price and discount for disabled passengers.

Free or reduced price bus ride to train station

Lower student fares!

I would travel via train if there was a free, safe parking lot at the station.

Maybe free/reduced fare transfers between it + local buses/rail?

If I have to pay to park at the Metrolink station, then pay to take a bunch of busses, trains, or Ubers on the other side, what's the point?

METROLINK

Recommendations

To attract potential riders to Metrolink, we have to:

1. Make them become AWARE of Metrolink as a mode choice
2. Move them to CONSIDER Metrolink for their travels
3. CONVERT them to become a rider

This is a multi-departmental strategy.

	Awareness	Consideration	Conversion
MarCom	X	X	X
Strategy	X	X	X
Operations		X	X
IDTS		X	X

METROLINK

Awareness

- **Raise awareness of Metrolink as a viable transportation option**
  - Show the cities and destinations served
  - Associate Metrolink with different types of travel and reasons to ride
  - Show the variety of riders taking Metrolink
  - Work with station cities, community groups, and local businesses to promote Metrolink stations within a neighborhood
- **Communicate Metrolink's brand identity**
  - Show Metrolink's identity as distinct from Metro
  - Position Metrolink as part of the community and foster a sense of *belonging*
  - Build trust and positive brand associations

METROLINK

Attachment: Attachment F - Potential Rider Study Summary of Results (10704 : Dedicated Law Enforcement for Metrolink Service)

Consideration

- **Promote opportunities to take Metrolink**
  - Offer sales and promotions to incentivize ridership
  - Highlight destinations and special events for *convenient* day trips on Metrolink
- **Optimize schedules to better meet customer needs**
  - Enhance evening and weekend schedules where feasible
- **Increase perception of security**
  - Increase visibility of staff and security personnel onboard and at station
  - Prominently feature video surveillance cameras, emergency phones, and phone numbers
- **Promote the benefits of taking Metrolink**
  - Key-message: ride Metrolink for a stress-free, reliable, and a better use of time
  - Taking the train is fun!
  - Taking Metrolink is the smart choice
- **Visualize the positive onboard experience**
  - Use photos and videos to illustrate the welcoming, comfortable, and clean ride experience
  - Show conductors and security personnel to create a sense of safety

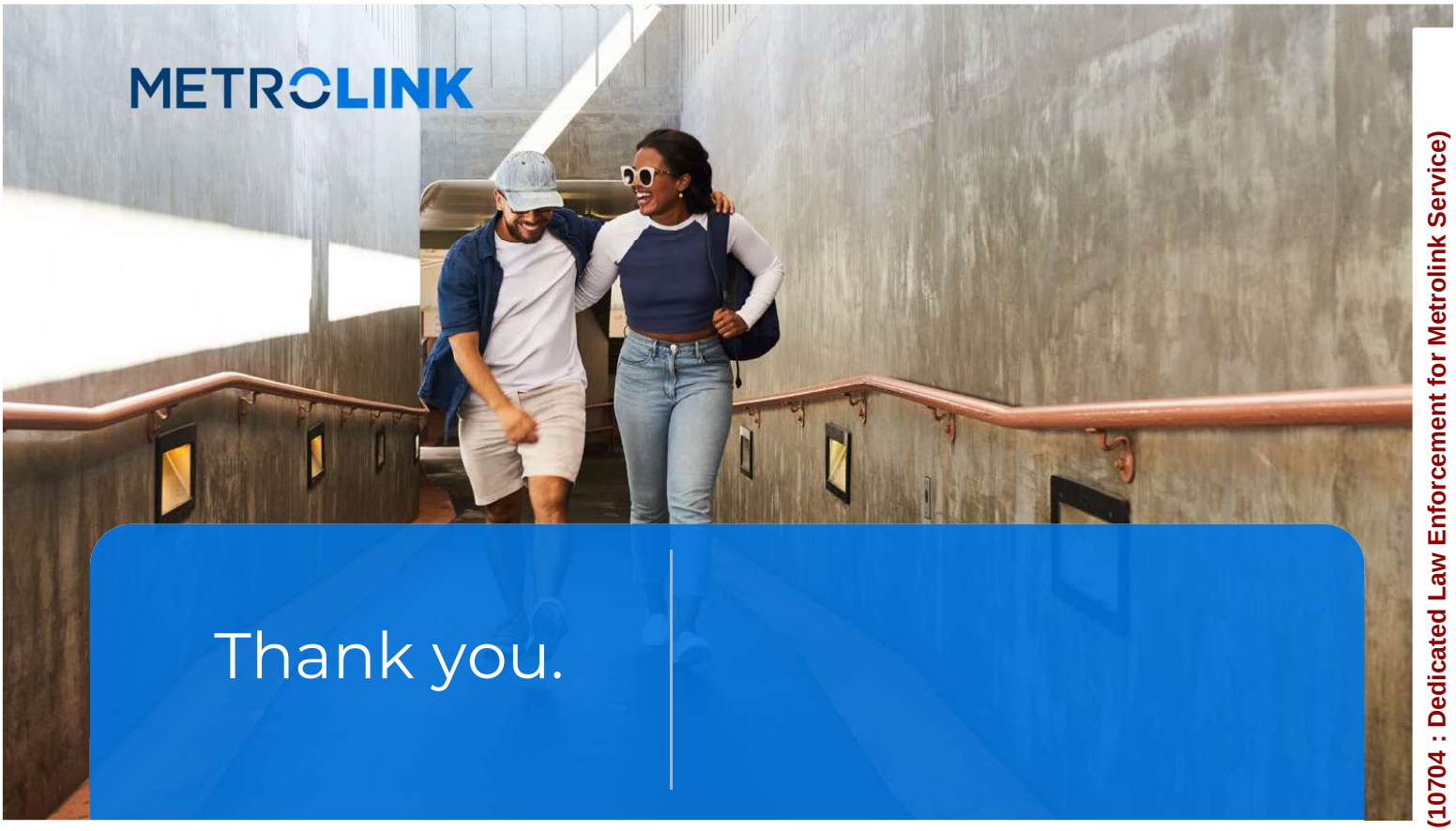
METROLINK

Conversion

- **Improve way-finding signage**
  - Directions to the nearest station
  - Directions between platform and parking and transit
  - Where to purchase the tickets and at what platform to take the train
- **Improve access to information for riders of all abilities**
  - Schedule information, maps, and trip planning
  - Fares and discounts
  - Station parking, free transit connections
- **Create Onboarding strategy for new customer**
  - Onboarding strategy: welcome, feedback, offers, anniversaries, etc.
  - Address problems that may have been experienced
- **Communicate the free use of connecting transit**
  - Use the same message on all collateral (tickets, schedules, maps, ads, electronic devices)
- **Empower new riders to make the most out of their Metrolink ride**
  - FAQs and How-tos, tech tools, rewards club, information resources and feedback channels.
  - Create ongoing content series on topics that matter most to riders, such as personal safety, navigating the system, etc.

METROLINK

Attachment: Attachment F - Potential Rider Study Summary of Results (10704 : Dedicated Law Enforcement for Metrolink Service)



Thank you.

Attachment: Attachment F - Potential Rider Study Summary of Results (10704 : Dedicated Law Enforcement for Metrolink Service)

Minute Action

AGENDA ITEM: 24

Date: July 3, 2024

Subject:
Measure I 2024 Population Estimates

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Adopt the 2024 Population Estimates in Attachment B for use in the allocation of Measure I Local Street Projects Program and Transportation Development Act funds and in the apportionment of shares of certain State and Federal funds.

Background:
Allocation of Measure I revenue is estimated within the Transportation Expenditure Plan authorized by Ordinance No. 04-01, but funds are allocated by percentage of the actual revenue received. Population estimates for the cities and unincorporated territory within each Measure I Subarea are used in the allocation of Measure I Local Street Projects Program funds, commonly referred to as local pass-through funds. The Valley distribution formula for local pass-through funds is based strictly upon population, while the Mountain/Desert formula contains both population and point of generation components as detailed below:

San Bernardino Valley Subarea Expenditure Plan, Section F "Local Street Projects" states:
"Allocations to local jurisdictions shall be on a per capita basis using the most recent State Department of Finance (DOF) population estimates for January 1, with the County's portion based upon unincorporated population in the Valley Subarea. Estimates of unincorporated population within the Valley Subarea shall be determined by the County Planning Department, reconciled with the State Department of Finance population estimate for January 1 of each year."

Mountain/Desert Expenditure Plan, Section C "Local Street Projects" Paragraph 2 states:
"…funds in the general Local Street Projects category shall be allocated to local jurisdictions based upon population (50 percent) and tax generation (50 percent). Population calculations shall be based upon the most current State Department of Finance estimates for January 1 of each year. Estimates of unincorporated population within each subarea shall be determined by the County Planning Department, reconciled with the State Department of Finance population estimates. Tax generation calculations shall be based upon State Board of Equalization data."

Additionally, San Bernardino County Transportation Authority (SBCTA) uses population as a factor in the allocation and/or apportionment of Transportation Development Act (TDA) funds (Local Transportation Fund and State Transit Assistance Fund) and for tracking the equitable distribution of certain State and Federal funds (Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, State Transportation Improvement Program, Local Partnership Program, Federal Transit Administration Section 5311 Rural Grants, Senate Bill 1 State of Good Repair, Low Carbon Transit Operations Program, and most recently Senate Bill 125 funds).

The formulas are updated annually using the State DOF population estimates as of January 1 of each year. The DOF estimating process begins with a county estimate that is produced by using customary demographic data inputs (births, deaths, school enrollment, administrative data, etc.) and applying standard demographic methodology. Growth or decline at the local level (city/unincorporated area) is estimated using data collected from local jurisdictions, mainly

housing unit change and annexations, and group quarters changes (college dorms, prisons, military barracks, etc.) collected from a variety of government agencies and educational segments. That local estimate is then aligned to the county-level figure which is based on changes in annual counts for births, deaths, school enrollment, migration, medical care enrollment data, and group quarters population. Once DOF has the data necessary to produce the annual sub-county report, the DOF timeframe for actually calculating and producing the estimates is very limited due to the timing of the data collection (as it becomes available) and the statutory deadline that they are under. Additional information from the DOF website is included as Attachment A to this agenda item.

According to DOF, local agencies that have comments or feedback pertaining to a population estimate are encouraged to first contact their planning department, building department or community development department locally to express their concerns. The housing unit changes that drive population estimates locally come directly from a survey completed by local planning, building, and community development departments. In the event that a number of housing units were not reported by the local jurisdiction, DOF can revise a previous year to include those units given the proper documentation. This may result in a higher population for a previous year but does not directly impact current year transportation funds to the jurisdiction for the current year.

The San Bernardino County Demographic Research Unit takes the DOF estimates and disaggregates the unincorporated population by Measure I Subarea based on building permit activity. Urban areas are defined by the California Department of Transportation (Caltrans) using Urban Area Boundaries within the unincorporated areas. Both unincorporated and urban populations are adjusted to match the total population estimate provided by DOF for each unincorporated region.

The January 1, 2024 population estimates are recommended for approval and use in allocation of Measure I Local Street Projects Program funds and the other TDA, State, and Federal funds. Both the 2024 population estimates (Attachment B) and the 2023 population estimates (Attachment C) are attached to this agenda item for comparison purposes. As there are no major changes in the population statistics, there should be no significant shift in Measure I fund allocations related to population. The distribution of Measure I funds will be adjusted retroactively to January 1, 2024, to reflect each jurisdiction's relative proportion of population within the Measure I Subarea.

This item has no direct impact on the SBCTA budget. The adopted population estimates are incorporated into the allocation formula for distribution to local jurisdictions.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and recommended for approval by the General Policy Committee on June 12, 2024.

Responsible Staff:
Marc Lucius, Management Analyst II

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

ATTACHMENT A

Department of Finance Population Estimate Methodology

Source: State of California, Department of Finance, April 30, 2024:
May 2024 Population Estimates Release (ca.gov)

Overview

For the first time since 2020, California has once again experienced positive population growth in 2023: driven by decreased mortality and a rebound in legal foreign immigration, California's population in 2023 grew by just over 67,000 (an annual rate of 0.17 percent) to 39,128,162, according to new data released today by the California Department of Finance.

These population estimates are produced annually by Finance for use by local areas to calculate their annual appropriations limit. The State Controller's Office uses Finance's estimates to update their population figures for distribution of state subventions to cities and counties, and to comply with various state codes. Additionally, estimates are used for research and planning purposes by federal, state, and local agencies, the academic community, and the private sector.

Changes to the housing stock are used in the preparation of the annual city population estimates. Estimated occupancy of housing units and the number of persons per household further determine population levels. Changes in city housing stock result from new construction, demolitions, housing unit conversions, and annexations. The sub-county population estimates are then adjusted to be consistent with independently produced county estimates.

Comparing Census Bureau's recently released July 1, 2023 estimates with Finance's January 1, 2024 estimates should generally be avoided since they refer to different points in time. In addition, there are numerous differences between the two series including the effects of natural disasters, changes in migration patterns, and accelerating slowdown in births. All Finance population and housing estimates are benchmarked to a decennial census. The estimates in this report are benchmarked to the 2020 decennial census.

Related population reports are available on the Department's website:
http://www.dof.ca.gov/Forecasting/Demographics/

Contents

The report contains preliminary year-over-year January 2024 and revised January 2021 through January 2023 population data for California cities, counties, and the state. These estimates are based on information through January 1, 2024.

Methodology

City and Unincorporated Area Estimates. The Housing Unit Method (HUM) is used to estimate total and occupied housing units, household size, household population, and group quarters population. American Community Survey (ACS) data were used to distribute 2020 Census housing units into our standard housing types (single detached units, single attached units, two to four units, five plus or apartment units, and mobile homes). Housing units are estimated by adding new construction and annexations and subtracting demolitions, and adjusting for units lost or gained by conversions. Annual housing unit change data are supplied by local jurisdictions and the U.S. Census Bureau. Occupied housing units are estimated by applying a derived civilian vacancy rate to the estimated civilian housing units. Vacancy rates are based on 2020 Census benchmark data, adjusted to incorporate the directional changes described by the latest available ACS data. Exact data on foreclosures or other housing market indicators are not reliably available to adjust vacancy rates and are not used.

Attachment: Attachment A - Census Data Info (10716 : Measure I 2024 Population Estimates)

Military occupied housing units are added to civilian occupied housing units to calculate total occupied housing units. Military surveys are used to track military changes including base realignments and closures. Household population estimates are derived by multiplying the number of occupied housing units by the current persons per household. The persons per household estimates are based on 2020 Census benchmark data and are adjusted by raking the current county population series into these estimates. The group quarters population is based on the Census Bureau's 2020 P.L.94-171 File counts on group quarters and annually adjusted using reported changes for group quarters by state, federal, and local agencies. The household and group quarters populations are summed to produce the initial city population estimates. These estimates are aligned to the county estimates described below.

State Estimate. The state population is estimated using the Driver License Address Change (DLAC) Method. This composite method separately estimates the population under age 18, 18 through 64, and 65 years and older. Administrative records such as births, deaths, driver license address changes, tax return data, Medicare and Medi-Cal enrollment, immigration reports, school enrollments, and group quarters population are among the data used in this method. All data used to develop these estimates are in summary tables and do not reveal the identity of any individual.

County Estimates. Most of county populations estimates result from averaging the first three methods below. We use a Vital Statistics Method in nine counties (Alpine, Calaveras, Inyo, Mariposa, Modoc, Sierra, Siskiyou, Trinity, and Tuolumne) with populations 65,000 or less.

DLAC Method. A modified version of the state Driver License Address Change (DLAC) method is used for counties. County proportions of the state total result from changes in county population values for births, deaths, school enrollment, foreign and domestic migration, medical care and medical aid enrollments, and group quarters population.

Ratio-Correlation Method. This method models changes in household population as a function of changes in the distributions of school enrollments, labor force, and housing units. Estimates of county group quarters are added.

Tax Return Method. County proportions are derived by the U.S. Census Bureau using matched federal income tax returns to estimate inter-county migration along with vital statistics, group quarters, and other information for the population aged 65 and over.

Vital Statistics Method. County population estimates result from changes in county population values for births, deaths, and group quarters population.

Data Considerations

Sources. Data used in estimation models come from administrative records of several state and federal government departments and agencies, and from the local jurisdictions for which Finance produces population estimates. Because timeliness and coverage in these series vary, corrections, smoothing, and other adjustments may be applied. Changes to 2020 P.L. 94-171 data in the classification of student housing on or near campus was necessary to remain consistent with the census group quarters definition. In only a few instances, some student housing (residence hall and apartment units) counted as household population in the census was redefined as group quarters student housing population. College dorm group quarters population is defined as student population living in residence halls and apartment units located on or near college campuses.

Suggested Citation

State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2023 and 2024. Sacramento, California, May 2024.

Attachment: Attachment A - Census Data Info (10716 : Measure I 2024 Population Estimates)

ATTACHMENT A

Contact Information

For questions on the E-1, contact Doug Kuczynski, John Boyne, or Jordan Bruhn in the Demographic Research Unit at (916) 323-4086 or e-mail at ficalpop@dof.ca.gov.

Attachment: Attachment A - Census Data Info (10716 : Measure I 2024 Population Estimates)

ATTACHMENT B

MEASURE I 2024 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

PLANNING REGION	(1) DOF/CO 2024	(2) ADJUSTMENT	2024 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2023	%SUBAREA CHANGE FROM 2023
WEST VALLEY							
CHINO	92,585		92,585	5.87%	4.244%	(552)	-0.04%
CHINO HILLS	76,414		76,414	4.85%	3.503%	(644)	-0.05%
FONTANA	214,223		214,223	13.58%	9.820%	372	0.01%
MONTCLAIR	37,211		37,211	2.36%	1.706%	(283)	-0.02%
ONTARIO	181,224		181,224	11.49%	8.308%	507	0.02%
RANCHO CUCAMONGA	173,316		173,316	10.99%	7.945%	(229)	-0.02%
UPLAND	78,285		78,285	4.96%	3.589%	(91)	-0.01%
UNINCORPORATED URBAN	42,857	(6)	42,857	2.72%	1.965%	(249)	-0.02%
UNINCORPORATED RURAL	1,772	(7)	1,772	0.11%	0.081%	(10)	0.00%
TOTAL WEST VALLEY			897,887	56.93%	41.160%	(1,179)	-0.12%
EAST VALLEY							
COLTON	52,778		52,778	3.35%	2.419%	(376)	-0.03%
GRAND TERRACE	12,771		12,771	0.81%	0.585%	(43)	0.00%
HIGHLAND	55,676		55,676	3.53%	2.552%	(308)	-0.02%
LOMA LINDA	24,965		24,965	1.58%	1.144%	(263)	-0.02%
REDLANDS	72,696		72,696	4.61%	3.332%	724	0.04%
RIALTO	103,097		103,097	6.54%	4.726%	112	0.00%
SAN BERNARDINO	226,541		226,541	14.36%	10.385%	3,311	0.20%
YUCAIPA	53,810		53,810	3.41%	2.467%	(181)	-0.01%
UNINCORPORATED URBAN	75,786	(6)	75,786	4.81%	3.474%	(440)	-0.03%
UNINCORPORATED RURAL	1,127	(7)	1,127	0.07%	0.052%	(7)	0.00%
TOTAL EAST VALLEY			679,247	43.07%	31.138%	2,529	0.12%
TOTAL VALLEY			1,577,134	100.00%	72.298%	1,350	0.08%
MOUNTAINS							
BIG BEAR LAKE	4,958		4,958	9.98%	0.227%	44	0.13%
UNINCORPORATED URBAN	35,902	(6) (3)	35,902	72.28%	1.646%	(209)	-0.11%
UNINCORPORATED RURAL	8,811	(7) (3)	8,811	17.74%	0.404%	(51)	-0.03%
TOTAL MOUNTAINS			49,671	100.00%	2.277%	(216)	-0.01%
NORTH DESERT							
BARSTOW	24,669		24,669	42.63%	1.131%	(249)	-0.10%
UNINCORPORATED URBAN	22,763	(6)	22,763	39.34%	1.043%	(133)	0.07%
UNINCORPORATED RURAL	10,434	(7)	10,434	18.03%	0.478%	(60)	0.03%
TOTAL NORTH DESERT			57,866	100.00%	2.653%	(442)	-0.02%

Attachment: Attachment B - 2024 Population Estimates (10716 : Measure I 2024 Population Estimates)

ATTACHMENT B

MEASURE I 2024 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

PLANNING REGION	(1) DOF/CO 2024	(2) ADJUSTMENT	2024 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2023	%SUBAREA CHANGE FROM 2023
COLORADO RIVER							
NEEDLES (RURAL)	4,769		4,769	68.86%	0.219%	13	0.19%
UNINCORPORATED URBAN	0	(6)	0	0.00%	0.000%	0	0.00%
UNINCORPORATED RURAL	2,157	(7)	2,157	31.14%	0.099%	(13)	-0.19%
TOTAL COLORADO RIVER			6,926	100.00%	0.317%	0	0.00%
MORONGO BASIN							
TWENTYNINE PALMS	25,346	(4)	25,346	35.50%	1.162%	(583)	-0.43%
YUCCA VALLEY	21,594		21,594	30.24%	0.990%	(41)	0.26%
UNINCORPORATED URBAN	7,728	(6)	7,728	10.82%	0.354%	(45)	0.05%
UNINCORPORATED RURAL	16,732	(7)	16,732	23.43%	0.767%	(97)	0.11%
TOTAL MORONGO BASIN			71,400	100.00%	3.273%	(766)	-0.03%
VICTOR VALLEY							
ADELANTO	36,131	(5)	36,131	8.63%	1.656%	(525)	-0.11%
APPLE VALLEY	74,322	(5)	74,322	17.76%	3.407%	(674)	-0.14%
HESPERIA	100,087	(5)	100,087	23.92%	4.588%	46	0.04%
VICTORVILLE	138,202	(5)	138,202	33.03%	6.335%	1,009	0.28%
UNINCORPORATED URBAN	36,821	(6) (5) (3)	36,821	8.80%	1.688%	(214)	-0.04%
UNINCORPORATED RURAL	32,873	(7) (5) (3)	32,873	7.86%	1.507%	(191)	-0.04%
TOTAL VICTOR VALLEY			418,436	100.00%	19.182%	(549)	-0.02%
TOTAL DESERT			554,628			(1,757)	
TOTAL MOUNTAIN/DESERT			604,299		27.702%	(1,973)	-0.08%
SUMMARY:							
TOTAL INCORPORATED	1,885,670		1,885,670		86.442%	1,096	0.07%
TOTAL UNINCORPORATED	295,763		295,763		13.558%	(1,719)	-0.07%
TOTAL COUNTY	2,181,433		2,181,433		100.000%	(623)	0.00%

(1) - CITY FIGURES FROM DOF JANUARY 1, 2024 ESTIMATES; UNINCORPORATED FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTAL.
(2) - THIS COLUMN CONTAINS ADJUSTMENTS NECESSARY TO MODIFY CITY TOTALS AS SPECIFIED IN MEASURE I.
(3) - THE WRIGHTWOOD COMMUNITY AND AREAS NORTH OF LONE PINE CANYON ROAD WERE EXCLUDED FROM THE MOUNTAIN AREA AND INCLUDED IN THE VICTOR VALLEY AS SPECIFIED IN MEASURE I.
(4) - THE POPULATED PORTIONS OF THE TWENTYNINE PALMS MARINE BASE HAVE BEEN ANNEXED BY THE CITY OF TWENTYNINE PALMS.
(5) - WITH THE CLOSING OF GEORGE AIR FORCE BASE, THERE IS NO LONGER AN ALLOCATION OF POPULATION TO THE CITIES IN THE VICTOR VALLEY.
(6) - UNINCORPORATED URBAN FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND CALTRANS URBAN AREA BOUNDARIES.
(7) . - UNINCORPORATED RURAL FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND BASED ON AREAS OUTSIDE THE CALTRANS URBAN AREA BOUNDARIES.

Attachment: Attachment B - 2024 Population Estimates (10716 : Measure I 2024 Population Estimates)

MEASURE I 2023 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

ATTACHMENT C

PLANNING REGION	(1) DOF/CO 2023	(2) ADJUSTMENT	2023 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2022	%SUBAREA CHANGE FROM 2022
WEST VALLEY							
CHINO	93,137		93,137	5.91%	4.268%	1,139	0.10%
CHINO HILLS	77,058		77,058	4.89%	3.531%	(906)	-0.03%
FONTANA	213,851		213,851	13.57%	9.800%	1,042	0.14%
MONTCLAIR	37,494		37,494	2.38%	1.718%	(352)	-0.01%
ONTARIO	180,717		180,717	11.47%	8.282%	1,201	0.14%
RANCHO CUCAMONGA	173,545		173,545	11.01%	7.953%	(931)	0.00%
UPLAND	78,376		78,376	4.97%	3.592%	(763)	-0.02%
UNINCORPORATED URBAN	43,106	(6)	43,106	2.74%	1.975%	2,766	0.19%
UNINCORPORATED RURAL	1,782	(7)	1,782	0.11%	0.082%	(393)	-0.02%
TOTAL WEST VALLEY			899,066	57.06%	41.203%	2,803	0.49%
EAST VALLEY							
COLTON	53,154		53,154	3.37%	2.436%	(463)	-0.01%
GRAND TERRACE	12,814		12,814	0.81%	0.587%	(228)	-0.01%
HIGHLAND	55,984		55,984	3.55%	2.566%	(562)	-0.02%
LOMA LINDA	25,228		25,228	1.60%	1.156%	(121)	0.00%
REDLANDS	71,972		71,972	4.57%	3.298%	(613)	-0.01%
RIALTO	102,985		102,985	6.54%	4.720%	(969)	-0.03%
SAN BERNARDINO	223,230		223,230	14.17%	10.230%	2,390	0.23%
YUCAIPA	53,991		53,991	3.43%	2.474%	(503)	-0.01%
UNINCORPORATED URBAN	76,226	(6)	76,226	4.84%	3.493%	(4,104)	-0.23%
UNINCORPORATED RURAL	1,134	(7)	1,134	0.07%	0.052%	(6,326)	-0.40%
TOTAL EAST VALLEY			676,718	42.94%	31.013%	(11,499)	-0.49%
TOTAL VALLEY			1,575,784	100.00%	72.216%	(8,696)	-0.21%
MOUNTAINS							
BIG BEAR LAKE	4,914		4,914	9.85%	0.225%	(127)	-0.05%
UNINCORPORATED URBAN	36,111	(6) (3)	36,111	72.39%	1.655%	(411)	0.63%
UNINCORPORATED RURAL	8,862	(7) (3)	8,862	17.76%	0.406%	(472)	-0.57%
TOTAL MOUNTAINS			49,887	100.00%	2.286%	(1,010)	-0.04%
NORTH DESERT							
BARSTOW	24,918		24,918	42.74%	1.142%	(284)	-2.62%
UNINCORPORATED URBAN	22,896	(6)	22,896	39.27%	1.049%	692	-0.69%
UNINCORPORATED RURAL	10,494	(7)	10,494	18.00%	0.481%	2,329	3.30%
TOTAL NORTH DESERT			58,308	100.00%	2.672%	2,737	0.13%

Attachment: Attachment C - 2023 Population Estimates (10716 : Measure I 2024 Population Estimates)

MEASURE I 2023 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

ATTACHMENT C

PLANNING REGION	(1) DOF/CO 2023	(2) ADJUSTMENT	2023 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2022	%SUBAREA CHANGE FROM 2022
COLORADO RIVER							
NEEDLES (RURAL)	4,756		4,756	68.67%	0.218%	(120)	-2.30%
UNINCORPORATED URBAN	0	(6)	0	0.00%	0.000%	0	0.00%
UNINCORPORATED RURAL	2,170	(7)	2,170	31.33%	0.099%	175	2.30%
TOTAL COLORADO RIVER			6,926	100.00%	0.317%	55	0.00%
MORONGO BASIN							
TWENTYNINE PALMS	25,929	(4)	25,929	35.93%	1.188%	(1,756)	-2.62%
YUCCA VALLEY	21,635		21,635	29.98%	0.991%	(178)	-0.39%
UNINCORPORATED URBAN	7,773	(6)	7,773	10.77%	0.356%	538	0.70%
UNINCORPORATED RURAL	16,829	(7)	16,829	23.32%	0.771%	1,740	2.31%
TOTAL MORONGO BASIN			72,166	100.00%	3.307%	344	0.02%
VICTOR VALLEY							
ADELANTO	36,656	(5)	36,656	8.75%	1.680%	299	0.05%
APPLE VALLEY	74,996	(5)	74,996	17.90%	3.437%	(632)	-0.19%
HESPERIA	100,041	(5)	100,041	23.88%	4.585%	(283)	-0.12%
VICTORVILLE	137,193	(5)	137,193	32.74%	6.287%	632	0.08%
UNINCORPORATED URBAN	37,035	(6) (5) (3)	37,035	8.84%	1.697%	(2,060)	-0.51%
UNINCORPORATED RURAL	33,064	(7) (5) (3)	33,064	7.89%	1.515%	3,005	0.70%
TOTAL VICTOR VALLEY			418,985	100.00%	19.201%	961	0.09%
TOTAL DESERT			556,385			4,097	
TOTAL MOUNTAIN/DESERT			606,272		27.784%	3,087	0.21%
SUMMARY:							
TOTAL INCORPORATED	1,884,574		1,884,574		86.367%	(3,088)	0.08%
TOTAL UNINCORPORATED	297,482		297,482		13.633%	(2,521)	-0.08%
TOTAL COUNTY	2,182,056		2,182,056		100.000%	(5,609)	0.00%

(1) - CITY FIGURES FROM DOF JANUARY 1, 2023 ESTIMATES; UNINCORPORATED FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTAL.
(2) - THIS COLUMN CONTAINS ADJUSTMENTS NECESSARY TO MODIFY CITY TOTALS AS SPECIFIED IN MEASURE I.
(3) - THE WRIGHTWOOD COMMUNITY AND AREAS NORTH OF LONE PINE CANYON ROAD WERE EXCLUDED FROM THE MOUNTAIN AREA AND INCLUDED IN THE VICTOR VALLEY AS SPECIFIED IN MEASURE I.
(4) - THE POPULATED PORTIONS OF THE TWENTYNINE PALMS MARINE BASE HAVE BEEN ANNEXED BY THE CITY OF TWENTYNINE PALMS.
(5) - WITH THE CLOSING OF GEORGE AIR FORCE BASE, THERE IS NO LONGER AN ALLOCATION OF POPULATION TO THE CITIES IN THE VICTOR VALLEY.
(6) - UNINCORPORATED URBAN FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND CALTRANS URBAN AREA BOUNDARIES.
(7) - UNINCORPORATED RURAL FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND BASED ON AREAS OUTSIDE THE CALTRANS URBAN AREA BOUNDARIES.

Attachment: Attachment C - 2023 Population Estimates (10716 : Measure I 2024 Population Estimates)

Minute Action

AGENDA ITEM: 25

Date: July 3, 2024

Subject:
Victor Valley Subarea Major Local Highway Projects Program Proposed Project List

Recommendation:
Receive information and provide direction on the proposed Victor Valley Subarea Major Local Highway Projects Program Proposed Project List for the 2024 Update to the 10-Year Delivery Plan. **Per direction provided by the Mountain/Desert Policy Committee, direct staff to prioritize Operational Improvements to State Route 18 West of US 395 as the next regional/interregional priority project to be implemented for the Victor Valley Subarea.**

Background:
The Strategic Plan serves as the policy manual for the delivery of Measure I Programs by the San Bernardino County Transportation Authority (SBCTA) and its member agencies for the 30-year life of the Measure. The Strategic Plan addresses significant policy, fiscal, and institutional issues associated with the administration and implementation of Measure I, including managing the different goals and priorities among the Valley, Victor Valley, and rural Mountain/Desert Subareas of the County. One of the key requirements of the Strategic Plan was the preparation of a 10-Year Delivery Plan (Delivery Plan) for Measure I Programs.

The SBCTA Board of Directors (Board) adopted the first Measure I 2010-2040 Delivery Plan in January 2012. The Delivery Plan provides a list of projects to be developed during a 10-year period and identifies project scopes, schedules, and budgets. Additionally, it provides a basis for the development of the annual budget for capital projects. The Delivery Plan is a living document that is updated every two years in order to capture revisions to the projects and assumptions in the plan, actual Measure I revenue figures, and relevant Board actions. Staff anticipates providing the 2024 Update to the Delivery Plan (2024 Update) for approval by the Board in September.

One component of the update is developing the proposed project lists and funding plan for the Victor Valley Subarea Major Local Highway Projects (MLHP) Program. The list of proposed projects is comprised of the projects that were identified but not yet completed in the 2021 Update to the Delivery Plan (2021 Update) or those that have been defined as priorities since adoption of that plan. Projects that have been completed since the 2021 Update are shown in bold in Table 1 beginning on the following page. SBCTA staff is working closely with City, Town, and County staff from the Victor Valley Subarea to incorporate project changes, additions, or deletions for the 2024 Update project lists. Project costs and schedules are not yet finalized, but because these projects are locally prioritized, staff does not anticipate significant issues in finalizing the project details. However, it may be necessary to delay or partially fund certain projects to accommodate cash flow constraints. Additionally, the proposed projects for the Town of Apple Valley, City of Victorville, and San Bernardino County exceed their projected share of Measure I, State, and Federal funds through 2040; SBCTA staff is coordinating with their staff to better understand their priorities for funding through SBCTA.

Table 1, beginning on the following page, includes the projects that have been requested to date.

Entity: San Bernardino County Transportation Authority

Table 1. Victor Valley Subarea Major Local Highway Projects Program
2024 Update Proposed Projects

ADELANTO	
Committed	El Mirage Road Construction from US 395 to Richardson Road
	Bartlett Avenue Widening Phase 1 from Adelanto Road to Aster Road
	Bellflower Street Widening Phase 1 from Air Expressway to Chamberlaine Way
Requested	Bartlett Avenue Widening Phase 2 from Aster Road to Richardson Road
	Bellflower Street Widening Phase 2 from Cactus Road to Air Expressway
Completed to Date	*US 395 Phase 1 Widening from State Route (SR) 18 to Chamberlaine Way*
APPLE VALLEY	
Committed	Yucca Loma Road Widening Apple Valley Road to 1200' east
	Bear Valley Road Bridge Over Mojave River
	Central Road from SR 18 to Bear Valley Road
Requested	Yucca Loma Road Widening from 1200' east of Apple Valley Road to Navajo Road
	SR 18 Widening from Apple Valley Road to Tao Road*
	Bear Valley Road Intersection Improvements
	Standing Rock Road Realignment and Signal at SR 18*
	Interstate (I)-15/Stoddard Wells Road Interchange*
	Deep Creek Road Widening from Bear Valley Road to Tussing Ranch Road
	I-15/Dale Evans Parkway Interchange*
	Johnson Road Widening from Stoddard Wells Road to Navajo Road*
	Dale Evans Parkway Phase 1 (Waalew Road Realignment)
Completed to Date	*Yucca Loma Bridge from Yucca Loma Road to Yates Road, Yucca Loma Road Widening from Yucca Loma Bridge to Apple Valley Road,* ***Apple Valley Road and SR 18 Realignment, Stoddard Wells Road Widening from I-15 to Johnson Road***
HESPERIA	
Committed	Ranchero Corridor Widening from West City Limits to 7th Avenue
Requested	Main Street Widening Phase 1 from I-15 to Fuente and Aqueduct Bridge
Completed to Date	*I-15/Ranchero Interchange*
VICTORVILLE	
Committed	All projects in the 2021 Update have been completed

VICTORVILLE (continued)	
Requested	Mojave Drive Widening from US 395 to 7th Avenue
	Bear Valley Road Widening from Monte Vista Road to US 395
	National Trails Highway Widening from I-15 to 0.1 mile north of Air Expressway
	I-15/Eucalyptus Street Interchange
	I-15/Bear Valley Road Interchange
Completed to Date	*I-15/La Mesa-Nisqualli Interchange,* ***Yucca Loma Corridor - Green Tree Boulevard Extension, Bear Valley Road Overhead at BNSF***
COUNTY OF SAN BERNARDINO	
Committed	Ranchero Corridor Widening from Mariposa to Hesperia City Limits
	Rock Springs Road Bridge over Mojave River
	Phelan Road Widening from SR 138 to Hesperia City Limits**
Requested	SR 18 Continuous Turn Lane from Custer Avenue to SR 247
	Extend Helendale Road from Shadow Mountain Road to Colusa Road (2 lane roadway)
Completed to Date	*Ranchero Road/Escondido Avenue Traffic Signal, Yates Road Widening,* ***Yucca Loma Corridor - Green Tree Boulevard Extension***
REGIONAL/INTERREGIONAL	
Committed	US 395 Phase 2 Widening from I-15 to Palmdale Road (Regional Priority #1)
Requested	US 395 Phase 3 Widening from Chamberlaine Way to Desert Flower
	SR 18 Operational Improvements West of US 395

*Project would have to be added to the Nexus Study
**Project not fully funded

As mentioned previously, based on the costs and schedules received from jurisdiction staff, there will be a shortfall of funding for certain jurisdictions and prioritization within the jurisdiction will have to occur. Additionally, a complicating factor in making funding decisions is the relationship between funding available for regional/interregional projects and that available for local priorities. Until January 2019, Measure I policy stated that MLHP funds were to be shared equally among the jurisdictions within the Victor Valley. SBCTA and the California Department of Transportation were not identified as sharing in the MLHP funds. However, with a recent policy change, equal share calculations for jurisdictions are now based on the total Public Share funding in the Subarea, which includes the Victor Valley share of State and Federal funding (for which SBCTA policy requires fair-share distribution among Subareas) in addition to MLHP funds. Any funding allocated to the regional/interregional projects comes off the top of funding available to the Subarea and reduces what is available to each of the jurisdictions for local projects.

In June 2021, the Board adopted a prioritized list of regional/interregional projects for the Subarea (Attachment 1), with the first priority being the US 395 Phase 2 Widening Project from

I-15 to Palmdale Road. (Note that it is referred to as Phase 3 in the Agenda Item, but because it is the second project to be implemented on US 395, it is now referred to as Phase 2 and more specifically the US 395 Freight Mobility and Safety Project, Phase 2.) The list is extensive and identifies important improvements to US 395, SR 138, I-15, and SR 18 as a result of the completion of the Feasibility Study; unfortunately, this list is not financially constrained and many of the projects will not be fully funded without other competitive State and Federal transportation funds. If jurisdictions are allowed to get too far ahead of their share of funding, it essentially cuts out the opportunity for these regional/interregional projects to receive funding through SBCTA. As such, any proposed allocations to the US 395 Phase 3 and SR 18 Operational Improvements will be analyzed for the impact to local jurisdiction priorities while allocations to local jurisdictions may have to be limited to avoid undercutting the ability to move forward on the regional/interregional priorities.

Revenue Forecast

The 2021 Update assumed that revenue would be increasing between 3.2% and 3.5% with an overall average of 3.3% through 2040 based on a study completed in June 2021 by Dr. John Husing, Economics & Politics, Inc. Despite the pandemic and the initial concern about potential impacts to program revenue, the 2024 Update starts with a higher base value than projected in the 2024 Update, at an estimated $249 million versus $222 million in the 2021 Update. For the 2024 Update, revenue estimates through Fiscal Year 2029/2030 are consistent with April 2024 estimates provided by HdL Companies, SBCTA's sales tax consultant, and the average growth rate projected by Beacon Economics through 2040, based on a study completed in May 2024. While the 2024 Update begins with a projected year-over-year decrease in Measure I revenue, the projected revenue is still 40% higher than the revenue in Fiscal Year 2019/2020 and expected to continue to grow at historical rates. While the cumulative effects of the applied percentages are not much different from the 2021 Update, the 2024 Update starts with a higher base value as a result of higher current dollar point of sales volumes, and therefore, the cumulative collections are estimated at $7.6 billion total Measure I revenue compared to $6.9 billion projected in the 2021 Update. A comparison of the forecasts in the 2021 Update to preliminary forecasts in the 2024 Update is presented in Table 2 below.

Table 2. Victor Valley Subarea Major Local Highway Projects Program
Revenue Comparison 2021 Update vs 2024 Update (1,000s)

Period	2021 Update	2024 Update	Change
FY2010/2011 – 2023/2024	$60,805	$65,419	+$4,614
FY2024/2025 – 2033/2034	$67,931	$74,483	+$6,552
FY2034/2035 – 2039/2040	$54,969	$61,520	+$6,551
TOTAL	$183,705	$201,422	+$17,717
Uncommitted Balance through 2040	$92,000	TBD	TBD

Bonding Analysis

The bonding analysis for the 2024 Update is being developed with the following criteria:

- Minimum agency-wide debt coverage ratio: 2.0
- Individual programs must have a positive cash flow over the term of the bond
- Bond interest rate: 5%
- Latest bond issuance: still under analysis

As in recent Delivery Plans, the funding will be planned for the Victor Valley Subarea MLHP so that they can be delivered on a pay-as-you-go basis and not require bonding.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was received by the Mountain/Desert Policy Committee on June 14, 2024.

Responsible Staff:
Andrea Zureick, Director of Fund Administration

Minute Action

AGENDA ITEM: 22

Date: June 2, 2021

Subject:
Victor Valley Subarea Regional/Interregional Projects Prioritization

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Approve the Victor Valley Subarea Regional/Interregional Projects List and prioritization of projects in Attachment A, and direct staff to work with jurisdictions to begin to incorporate the highest priorities into the 2021 Update to the 10-Year Delivery Plan.

Background:
The voter-approved Measure I 2010-2040 Expenditure Plan for the Mountain/Desert Subareas identifies many projects on regional/interregional, State, Interstate, and United States (US) highways throughout the Mountain/Desert region as projects to be funded from the Measure I Major Local Highways Program (MLHP) and State and Federal funding sources. At its April 3, 2019 meeting, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) approved Agenda Item 18 – Mountain/Desert Regional/Interregional Projects Set-Aside Funding, which directed SBCTA staff to work with California Department of Transportation (Caltrans) and local jurisdictions on identifying needs and developing funding set-asides for regional/interregional highway improvements in the Mountain/Desert Subareas. All participants have been asked to provide input.

It was determined that a series of meetings for each Subarea would take place for the purpose of coordinating project planning and programming among jurisdictions, identifying regional transportation infrastructure needs, and developing a list of regional/interregional projects, including those on State, Interstate, and US highway routes, along with the funding amount required and availability of funding to be set aside. The prioritized list for the Rural Subareas was approved by the Board in April 2021. This item concerns the prioritization for the Victor Valley Subarea.

A number of meetings have taken place in the past year where staff from each local jurisdiction has been provided an opportunity to nominate regional projects. Caltrans has also shared information about their current and planned projects and the agencies have been able to communicate to Caltrans issues on the State highways within their jurisdictions. Some specific recommendations and projects discussed included:

- Regional/Interregional highway project needs.
- Project prioritization – the need to develop and utilize ranking criteria. Attachment A to this item contains a list of prioritized regional/interregional projects, as identified by the Victor Valley Subarea staff and SBCTA staff.
- Funding flow – Identifying all current available Local, State and Federal funding sources. Attachment B to this item contains a list of these funding sources with a brief description of use and whether they are formula or competitive funds. It also reflects which agencies are eligible recipients for particular funds. It is important to note that in the Victor Valley Subarea, Measure I MLHP funds and State and Federal funds that are not assigned to regional/interregional projects are shared equally between jurisdictions within the Subarea by policy. While some State and Federal funds have been allocated to projects

Attachment: Attachment 1 - June 2021 Project Prioritization (10717 : Victor Valley Major Local Highway Program Proposed Project List)

on the local network to ensure that they are able to be delivered on schedule, it is assumed that State and Federal funds will be largely responsible for funding the regional/interregional projects.

- Future State Route 247 (SR) 247, Interstate 15 (I)-15 Bypass Project – Caltrans staff indicated that an update to the I-15 Corridor Plan (Plan) has recently been initiated with work on the Plan beginning in late 2019. As part of that update, Caltrans will analyze alternative bypass options. Staff of the three subareas through which SR 247 lies – North Desert, Victor Valley, and Morongo Basin – have agreed that Measure I Project Development/Traffic Management Systems (PD/TMS) funds from each subarea would be appropriate to fund an initial feasibility study that would examine possible improvements and costs for a future project. Because this project is undefined, it was not included in the prioritization at this time.
- SR 18/SR 138 Corridor Study – As an interim project for near-term improvement to east-west flows between the Antelope and Victor Valleys until funding for the High Desert Corridor is available, SBCTA has approved funding for a Project Study Report in collaboration with Los Angeles County Metropolitan Transportation Authority and Caltrans. Because this project is undefined, it was not included in the prioritization at this time.
- US 395 Widening – it was agreed that widening additional segments of US 395 remains a priority for the Victor Valley Subarea.
- I-15/Joshua Interchange – it was agreed that improvements along Joshua could be prioritized as a regional project, but only in the context of the development of a Brightline Station near the Joshua interchange.

Attachment A lists the prioritized project lists for the Victor Valley Subarea. Items marked as "N/A" were reviewed but not ranked by members of the Subarea at this time. After all meetings have taken place, the final product will be a cooperatively developed list of regional/interregional projects with programmed funding to be included in SBCTA's 2021 Update to the 10-Year Delivery Plan for the highest priorities.

As stated earlier, in the Victor Valley Subarea, Measure I MLHP funds and State and Federal funds that are not assigned to regional/interregional projects are shared equally between jurisdictions within the Subarea by policy. In other words, funding directed to regional/interregional projects reduce the funds available to split between the local jurisdictions. Staff will work with jurisdictions within the Subarea to develop funding plans that balance initiation of these highest priorities while continuing to address jurisdictional priorities on the local network. This list will be reviewed and revised as needed every two years in conjunction with the update to the 10-Year Delivery Plan.

Financial Impact:
This item has no financial impact on the Fiscal Year 2020/2021 Budget.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the Mountain/Desert Policy Committee on May 21, 2021.

Responsible Staff:
Andrea Zureick, Director of Fund Administration

Attachment: Attachment 1 - June 2021 Project Prioritization (10717 : Victor Valley Major Local Highway Program Proposed Project List)

Attachment: Attachment 1 - June 2021 Project Prioritization (10717 : Victor Valley Major Local Highway Program Proposed Project List)

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	John Valdivia, City of San Bernardino
SECONDER:	Curt Hagman, County of San Bernardino
AYES:	Bishop, Courtney, Herrick, Ulloa, Marquez, Navarro, Warren, McNaboe, Gregg, McCallon, Rigsby, Dutrey, Paget, Wapner, Michael, Barich, Valdivia, Klink, Jones, Avila, Denison, Cook, Rowe, Hagman, Baca Jr.
ABSENT:	Hernandez, Robertson, Garcia, Rutherford

Approved
Board of Directors
Date: June 2, 2021

Witnessed By:

Marleana Roman, Clerk of the Board 06/02/2021

ATTACHMENT A - VICTOR VALLEY SUBAREA REGIONAL/INTERREGIONAL PROJECT PRIORITIZATION

RANK	*REGIONAL/INTERREGIONAL PROJECT*	*COMMENTS*
1	US 395 Phase 3 widen 2 to 4 lanes (I-15 to Palmdale Rd.)	Environmental completed. Possibility for near-term coordination with a CT SHOPP project; good candidate for TCEP.
2	I-15 @ Joshua Street Interchange Widening - Widen roadway and bridge from US 395 to Mariposa from 2 to 4 lanes to accommodate the proposed Brightline West High Speed Rail Station/parking structure in Hesperia.	Would be in conjunction with Brightline's plans to widen bridge for bus lane and likely implemented by Brightline. Therefore, contingent on need for rail station.
3	US 395 Phase 2 widen 2 to 4 lanes (Chamberlaine Way to Desert Flower)	Environmental complete.
4	I-15 Victor Valley Express Lanes Widening - Add 1 HOT lane each direction from US 395 to D Street.	No project work to date. Probably not feasible if Brightline is in the median. If Brightline built only to Apple Valley, consider extending lanes to Stoddard Wells.
5	SR 138 Segment 4 widen 2 to 4 lanes (Lone Pine Canyon Rd to I-15)	Design is complete, just needs funding.
6	Rock Springs Road Bridge over Mojave River - widen 2 to 4 lanes	Bridge replacement is in Highway Bridge Program - funding would be for cost to widen bridge and approaches.
7	US 395 Phase Future widen 2 to 4 lanes (Desert Flower to North Desert Subarea)	CT was working on environmental but was deprioritized at HQ and no longer in progress.
8	SR 138 Segment 1 widen 2 to 4 lanes (SR 18 to Phelan)	Majority of this project is in LA County and not likely to be prioritized by them. Caltrans is planning a safety project to add a median lane in San Bernardino County.
9	SR 247/SR18 Intersection Realignment at SR 18 and Crystal Creek Rd (Lucerne Valley)	Problem first identified for truck traffic NB on Crystal Creek. Four-way stop has been installed at intersection. Additional roadway R/W (local road and highway) will be required to accommodate further improvements such as signalization and/or intersection realignment. A greater amount of R/W will be required to accommodate a single, realigned roadway at the existing intersection location. Less R/W will be required for an offset intersection; however, intersection spacing standards are applicable.
10	SR 138 Realignment from Summit Valley Road to SR 173	No project work to date.
11	SR 138 Widening from I-15 to Summit Valley Road	No project work to date.
N/A	SR 18 from LA County line to US 395 widen 2 to 4 lanes Feasibility Study (rank later)	High Desert Corridor alternative. Feasibility study underway with LA Metro with possible ranking later after scope is better defined.
N/A	SR 247 (Lucerne Valley-Yucca Valley) Feasibility Study (rank later)	Possible passing lanes, left and right turn pockets, intersection improvements through a portion of Victor Valley Subarea. Feasibility study is proposed now with possible ranking later after scope is defined.
N/A	High Desert Corridor - Roadway Victor Valley to Palmdale	Roadway was not included in NEPA environmental action but was included in CEQA NOD. Roadway was taken out of RTP/SCS - no longer a project. Rail portion is continuing with LA Metro as lead.

Note: Items marked as "N/A" were reviewed but not ranked by members of the Subarea at this time.

Attachment: Attachment 1 - June 2021 Project Prioritization (10717 : Victor Valley Major Local Highway Program Proposed Project List)

ATTACHMENT B
MOUNTAIN/DESERT SUBAREAS TRANSPORTATION FUNDING SOURCES
for REGIONAL/INTERREGIONAL HIGHWAY PROJECTS

CITY/COUNTY	SBCTA	CALTRANS
LOCAL FUNDS		
Development Impact Fees (DIF) Contribution *Required for access to SBCTA Public Funds on most projects.*	**Measure I** **Major Local Highway (MLH)** For major streets and highways serving as primary routes of travel within subarea. Combined with State and Federal sources below for *Public Share* contribution.	
Local Funds Can be used for project phases *without Public Share contribution* or to fill gaps in funding.	**Measure I Project Development - Traffic Management Systems (PDTMS)** For corridor studies and project study reports.	
STATE FUNDS		
Local Partnership Program (LPP) *DIF Share* for projects that improve aging infrastructure, road conditions, active transportation, and have health and safety benefits. *Competitive grant.*	**Local Partnership Program (LPP)** *Public Share* for projects that improve aging infrastructure, road conditions, active transportation, and have health and safety benefits. *Formula funds and competitive grant.*	**State Highway Operation & Protection Program (SHOPP)** For repair and preservation of existing infrastructure, emergency repairs, safety improvements, and some highway operational improvements on the State Highway System. *Not for capacity increasing projects.*
	Solutions for Congested Corridors Program (SCCP) *Public Share* for high-occupancy vehicle lanes, managed lanes, auxiliary lanes, truck climbing lanes, and other *non-general purpose lane* highway improvements. *Competitive grant.*	**Solutions for Congested Corridors Program (SCCP)** For high-occupancy vehicle lanes, managed lanes, auxiliary lanes, truck climbing lanes, and other *non-general purpose lane* highway improvements. *Competitive grant.*
Trade Corridor Enhancement Program (TCEP) For improvements on corridors with high volume of freight movement. *Competitive grant (60% target).*	**Trade Corridor Enhancement Program (TCEP)** *Public Share* for improvements on corridors with high volume of freight movement. *Competitive grant (60% target).*	**Trade Corridor Enhancement Program (TCEP)** For improvements on corridors with high volume of freight movement. *Competitive grant (60% target).*
	State Transportation Improvement Program - Regional (STIP-RIP) *Public Share* for capital improvement transportation projects on and off the State Highway System. *Formula funds.*	**State Transportation Improvement Program - Interregional (STIP-IIP)** For improvements to state highways, intercity passenger rail, interregional movement of people,vehicles, and goods *based on statewide priorities.*

Attachment: Attachment 1 - June 2021 Project Prioritization (10717 : Victor Valley Major Local Highway Program Proposed Project List)

ATTACHMENT 1

ATTACHMENT B
MOUNTAIN/DESERT SUBAREAS TRANSPORTATION FUNDING SOURCES
for REGIONAL/INTERREGIONAL HIGHWAY PROJECTS

CITY/COUNTY	SBCTA	CALTRANS
FEDERAL FUNDS		
	Surface Transportation Program (STP) *Public Share* - Most flexible federal funding for highway and bridge projects. *Formula Funds.*	
	Congestion Mitigation and Air Quality (CMAQ) *Public Share* for transportation projects and other efforts that contribute air quality improvements and provide congestion relief. *Formula funds.*	
Highway Bridge Program (HBP) For projects to replace or rehabilitate bridges in the National Bridge Inventory.	**Highway Bridge Program (HBP)** For projects to replace or rehabilitate bridges in the National Bridge Inventory.	
Infrastructure for Rebuilding America (INFRA) For nationally and regionally significant freight and highway projects. *Competitive grant.*	**Infrastructure for Rebuilding America (INFRA)** *Public Share* for nationally and regionally significant freight and highway projects. *Competitive grant.*	**Infrastructure for Rebuilding America (INFRA)** For nationally and regionally significant freight and highway projects. *Competitive grant.*
Better Utilizing Investments to Leverage Development (BUILD) For highway and bridge projects with national significance. (Prior TIGER grant) *Competitive grant.*	**Better Utilizing Investments to Leverage Development (BUILD)** *Public Share* for highway and bridge projects with national significance. (Prior TIGER grant) *Competitive grant.*	**Better Utilizing Investments to Leverage Development (BUILD)** For highway and bridge projects with national significance. (Prior TIGER grant) *Competitive grant.*

Attachment: Attachment 1 - June 2021 Project Prioritization (10717 : Victor Valley Major Local Highway Program Proposed Project List)

Minute Action

AGENDA ITEM: 26

Date: July 3, 2024

Subject:
Rural Mountain/Desert Subareas Major Local Highway Projects Program Proposed Project List

Recommendation:
Receive information and provide direction on the proposed Rural Mountain/Desert Subareas Major Local Highway Projects Program Proposed Project List for the 2024 Update to the 10-Year Delivery Plan.

Background:
The Strategic Plan serves as the policy manual for the delivery of Measure I Programs by the San Bernardino County Transportation Authority (SBCTA) and its member agencies for the 30-year life of the Measure. The Strategic Plan addresses significant policy, fiscal, and institutional issues associated with the administration and implementation of Measure I, including managing the different goals and priorities among the Valley, Victor Valley, and rural Mountain/Desert Subareas of the County. One of the key requirements of the Strategic Plan was the preparation of a 10-Year Delivery Plan (Delivery Plan) for Measure I Programs.

The SBCTA Board of Directors (Board) adopted the first Measure I 2010-2040 Delivery Plan in January 2012. The Delivery Plan provides a list of projects to be developed during a 10-year period and identifies project scopes, schedules and budgets. Additionally, it provides a basis for the development of the annual budget for capital projects. The Delivery Plan is a living document that is updated every two years in order to capture revisions to the projects and assumptions in the plan, actual Measure I revenue figures, and relevant Board actions. Staff anticipates providing the 2024 Update to the Delivery Plan (2024 Update) for approval by the Board in September.

One component of the update is developing the proposed project lists and funding plan for the Rural Mountain/Desert Subareas Major Local Highway Projects (MLHP) Program. The list of proposed projects is comprised of the projects that were identified but not yet completed in the 2021 Update to the Delivery Plan (2021 Update) or those that have been defined as priorities since adoption of that plan. Projects that have been completed since the 2021 Update are shown in bold in Table 1 beginning on the following page. SBCTA staff is working closely with City, Town, and County staff from the rural Mountain/Desert Subareas to incorporate project changes, additions, or deletions for the 2024 Update project lists. Project costs and schedules are not yet finalized, but because these projects are locally prioritized, staff does not anticipate significant issues in finalizing the project details. However, it may be necessary to delay or partially fund certain projects to accommodate cash flow constraints.

Table 1, beginning on the following page, includes the projects that have been requested to date.

Table 1. Rural Mountain/Desert Subareas Major Local Highway Projects Program 2024 Update Proposed Projects

Colorado River Subarea	
Needles	Proposed: River Road Widening from K Street to Jack Smith Park
	Proposed: River Street Widening from River Road to K Street
	Completed to date: Needles Interstate (I)-40 Connector, ***US 95 Colorado River Bridge***
SB County	Committed: Needles Highway-Segment 1C Realignment, Reconstruction, and Drainage Improvements from David Drive to south of Piute Wash (Regional Priority #1)
	Proposed: US 95/Havasu Lake Road Intersection Improvement
Morongo Basin Subarea	
Twentynine Palms	Committed: Split Rock Avenue at Twentynine Palms Flood Control Channel
	Committed: State Route (SR) 62 Phase 2B Widening from Encelia to Larrea (Regional Priority #1)
	Proposed: SR 62 Phase 3 Street Improvements from Larrea Avenue to Star Dune (Regional Priority #3)
	Proposed: SR 62 Street Improvement from Star Dune to Split Rock Avenue (Regional Priority #3)
	Completed to date: SR 62 Phase 1 from Encelia to Larrea, SR 62 Traffic Signals at Encelia and Lear, SR 62 from Canyon to Easy, National Park Road Improvements, ***SR 62-Phase 2A Median Improvements from Encelia to Larrea***
Yucca Valley	Committed: SR 62 Widening from Sage Avenue to Airway Avenue (Regional Priority #2)
	Committed: Yucca Trail Widening from Palomar to La Contenta
	Proposed: Indio Realignment and Extension from Yucca Trail to SR 62
	Proposed: Onaga Trail Extension from Camino Del Cielo Trail to Kickapoo Trail
	Completed to date: SR 62 from Apache to Palm, SR 62 from LaHonda to Dumosa, SR 62/Dumosa Traffic Signal
SB County	None (projects from 2019 Update were funded with other sources/no projects submitted in 2021 or 2024 Update)
	Completed to date: Traffic Signal at Rotary Way, Lear Avenue/Montezuma to Pole Line Study
Mountains Subarea	
Big Bear Lake	Committed: Moonridge Road Realignment & Roundabout (Advanced Expenditure Agreement)
	Proposed: Moonridge Road from Elm to Big Bear Boulevard Improvements
	Proposed: Fox Farm Road from Garstin Drive to County Line Improvements
	Proposed: Garstin Drive from Big Bear Boulevard to End Improvements

	Proposed: Summit Boulevard from Garstin Drive to Snow Summit Improvements
	Completed to date: Village L
SB County	Committed: Stanfield Cutoff Roundabout
North Desert Subarea	
Barstow	Committed: North First Avenue Bridge over BNSF
	Committed: Rimrock Road from Barstow Road to Avenue H
	Committed: North First Avenue Bridge over Mojave River/ Overflow
	Completed to date: Lenwood Road Grade Separation
SB County	Committed: Baker Boulevard Bridge Replacement
	Committed: National Trails Highway Bridges (Regional Priority #1)
	Proposed: Shadow Mountain Road Paving and Bridge
	Completed to date: National Trails Highway Resurfacing

In April 2021, the Board adopted a prioritized list of regional/interregional projects for the rural Mountain/Desert Subareas, to which several have been committed. The adopted list is included for reference as Attachment 1. Any funding allocated to the regional/interregional projects comes off the top of funding available to the Subarea and reduces what is available to each of the jurisdictions for local projects.

Revenue Forecast

The 2021 Update assumed that revenue would be increasing between 3.2% and 3.5% with an overall average of 3.3% through 2040 based on a study completed in June 2021 by Dr. John Husing, Economics & Politics, Inc. Despite the pandemic and the initial concern about potential impacts to program revenue, the 2024 Update starts with a higher base value than projected in the 2024 Update, at an estimated $249 million versus $222 million in the 2021 Update. For the 2024 Update, revenue estimates through Fiscal Year (FY) 2029/2030 are consistent with April 2024 estimates provided by HdL Companies, SBCTA's sales tax consultant, and the average growth rate projected by Beacon Economics through 2040, based on a study completed in May 2024. While the 2024 Update begins with a projected year-over-year decrease in Measure I revenue, the projected revenue is still 40% higher than the revenue in Fiscal Year 2019/2020 and expected to continue to grow at historical rates. While the cumulative effects of the applied percentages are not much different from the 2021 Update, the 2024 Update starts with a higher base value as a result of higher current dollar point of sales volumes, and therefore, the cumulative collections are estimated at $7.6 billion total Measure I revenue compared to $6.9 billion projected in the 2021 Update. A comparison of the forecasts in the 2021 Update to preliminary forecasts in the 2024 Update is presented in Tables 2 through 5 on the following page.

Table 2. Colorado River Subarea Major Local Highway Projects Program
Revenue Comparison 2021 Update vs 2024 Update (1,000s)

Period	2021 Update	2024 Update	Change
FY2010/2011 – 2023/2024	$892	$1,017	+$125
FY2024/2025 – 2033/2034	$989	$1,272	+$283
FY2034/2035 – 2039/2040	$738	$1,101	+$363
TOTAL	$2,619	$3,390	+$771
Uncommitted Balance through 2040	$1,200	TBD	TBD

Table 3. Morongo Basin Subarea Major Local Highway Projects Program
Revenue Comparison 2021 Update vs 2024 Update (1,000s)

Period	2021 Update	2024 Update	Change
FY2010/2011 – 2023/2024	$8,213	$8,647	+$434
FY2024/2025 – 2033/2034	$8,617	$9,075	+$458
FY2034/2035 – 2039/2040	$6,551	$6,876	+$325
TOTAL	$23,380	$24,598	+$1,218
Uncommitted Balance through 2040	$10,400	TBD	TBD

Table 4. Mountains Subarea Major Local Highway Projects Program
Revenue Comparison 2021 Update vs 2024 Update (1,000s)

Period	2021 Update	2024 Update	Change
FY2010/2011 – 2023/2024	$7,041	$7,461	+$420
FY2024/2025 – 2033/2034	$7,409	$7,261	($148)
FY2034/2035 – 2039/2040	$5,723	$5,219	($504)
TOTAL	$20,173	$19,941	($232)
Uncommitted Balance through 2040	$11,300	TBD	TBD

Table 5. North Desert Subarea Major Local Highway Projects Program
Revenue Comparison 2021 Update vs 2024 Update (1,000s)

Period	2021 Update	2024 Update	Change
FY2010/2011 – 2023/2024	$17,323	$18,011	+$688
FY2024/2025 – 2033/2034	$13,817	$14,289	+$472
FY2034/2035 – 2039/2040	$11,028	$10,985	($43)9
TOTAL	$42,168	$43,284	+$1,116
Uncommitted Balance through 2040	$22,800	TBD	TBD

Bonding Analysis
The bonding analysis for the 2024 Update is being developed with the following criteria:

- Minimum agency-wide debt coverage ratio: 2.0
- Individual programs must have a positive cash flow over the term of the bond
- Bond interest rate: 5%
- Latest bond issuance: still under analysis

As in previous Delivery Plans, the funding has been planned for the rural Mountain/Desert Subarea Projects so that they can be delivered on a pay-as-you-go basis and not require bonding.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was received by the Mountain/Desert Policy Committee on June 14, 2024.

Responsible Staff:
Andrea Zureick, Director of Fund Administration

ATTACHMENT 1 - RURAL MOUNTAIN/DESERT SUBAREAS REGIONAL/INTERREGIONAL PROJECT PRIORITIZATION

COLORADO RIVER SUBAREA

Project	*Project Limits*	*Project Type of Work*	*Rank*
Needles Highway Improvements, Segment 1 (south segment)	David Drive to south of Piute Wash (2.15 miles)	Final improvements with horizontal and/or vertical re-alignment, culverts, and full depth reconstruction.	1
Needles Highway Improvements, Segment 2 (north segment)	1.6 miles south of Aha Macay Parkway to Nevada State line (4 miles)	Final improvements with horizontal and/or vertical re-alignment, culverts, and full depth reconstruction.	2
Needles Highway Improvements, Segment 3 (middle segment)	North of Piute Wash to 1.6 miles south of Aha Macay Parkway (5.4 miles)	Pavement surface improvement	3

MORONGO BASIN SUBAREA

Project	*Project Limits*	*Project Type of Work*	*Rank*
SR 62 Street Improvements from Encelia Avenue to Split Rock Avenue, Phase 2 Widening	Encelia Avenue to Larrea Street	The project will construct curbs, gutters, sidewalks, and raised medians on SR 62 from Encelia Ave. to Larrea Ave. Project includes minor widening on the north side of SR 62 and widening of the box culvert over the San Bernardino County Flood Control District Twentynine Palms wash.	1
SR 62 Widening, Sage Avenue to Airway Avenue	SR 62 from Sage Avenue to Airway Avenue	Widen the highway from Sage Ave. to Airway Ave. and install new traffic signals/relocate SCE poles	2
SR 62 Street Improvements from Encelia Avenue to Split Rock Avenue, Phase 3	Larrea Ave to Split Rock	The project will construct curbs, gutters, sidewalks, and raised medians on SR 62 from Larrea Ave. to Split Rock Ave.	3
SR 62 Widening, Yucca Valley Town Limits to Sage Avenue	0.19 miles SW of Shafter Avenue (Yucca Valley Town Limits) to Sage Avenue	Widen SR 62 one lane in each direction, signal/intersection modifications	4
SR 62 Widening, Hess NE to Yucca Valley Town Limits	Hess Boulevard NE to 0.19 miles SW of Shafter Avenue (Yucca Valley Town Limits)	Widen SR 62 one lane in each direction, signalize intersection at Hess Blvd	5
SR 247 Widening, SR 62 to Northerly Town Limits	SR 62 to Northerly Town Limits	Widen one lane in each direction	NR*
SR 247 Widening, Yucca Valley Town Limit to N Subarea boundary	0.125 miles SE of Pipes Canyon Road (N Yucca Valley Town Limit) N&W to Camp Rock Road (N Morongo Basin Subarea Boundary)	Widen one lane in each direction	NR*
SR 247 Improvements (I-15 Bypass)	Camp Rock Rd (N Morongo Basin Subarea boundary) S to SR 62 S to Riverside County Line	Passing lanes, left and right turn pockets, intersection improvements	NR*
Lear Avenue Marine Corps Base Access Road Construction	Twentynine Palms Marine Corps Base to SR 62	New road construction Base to Pole Line Rd, reconstruction Pole Line Rd to SR 62	NR*

* NR = Not Ranked. These projects have been deprioritized by the Subarea but are listed for reference as having been considered.

MOUNTAINS SUBAREA

Project	*Project Limits*	*Project Type of Work*	*Rank*
SR 138 at Crest Forest Drive Realignment	SR 138 from Crest Forest Drive to Lake Drive	Reconfigure Intersection	1
SR 18 at Snow Valley	SR 18 at Snow Valley Parking Lot Intersection	Re-stripe Snow Valley parking lot intersection with SR 18 to provide one westbound through lane plus an acceleration lane for left-turning traffic going west on SR 18	1
SR 18 (Big Bear Boulevard), Division Drive to Paradise Way	SR 18 (Big Bear Boulevard), Division Drive to Paradise Way	Develop a center turn lane and adequate drainage	3
SR 18 at Hilltop Boulevard	SR 18 at SR 330, Soutar Dr and Hunsaker Way	Study installation of westbound SR 330 receiving lane for traffic turning left from SR 18, install left turn pockets on SR 18 at Soutar Drive and Hunsaker Way	4

NORTH DESERT SUBAREA

Project	*Project Limits*	*Project Type of Work*	*Rank*
SR 247 (I-15 Bypass)	I-15 south to Victor Valley Subarea boundary	Feasability Study - possible passing lanes, left and right turn pockets, intersection improvements	1
National Trails Highway Bridges <20' Replacement	National Trails Hwy, 4.43 miles west of Amboy Road to 17 miles east of Amboy Road (21.43 miles)	Replace bridges less than 20 feet	1
Fort Irwin Road		Reconstruction	3
I-15 widening	Main Street to Yermo	Widening from 2 to 3 lanes	4
US-395 Widening, Phase 4	Shadow Mountain Road to SR 58	Widening from 2 to 4 lanes	5
I-15 @ Delores Interchange	I-15 @ Delores	Construct Interchange	6

Attachment: Attachment 1 - Rural M/D Regional/Interegional Prioritization (10718 : Rural Mountain/Desert

Minute Action

AGENDA ITEM: 27

Date: July 3, 2024

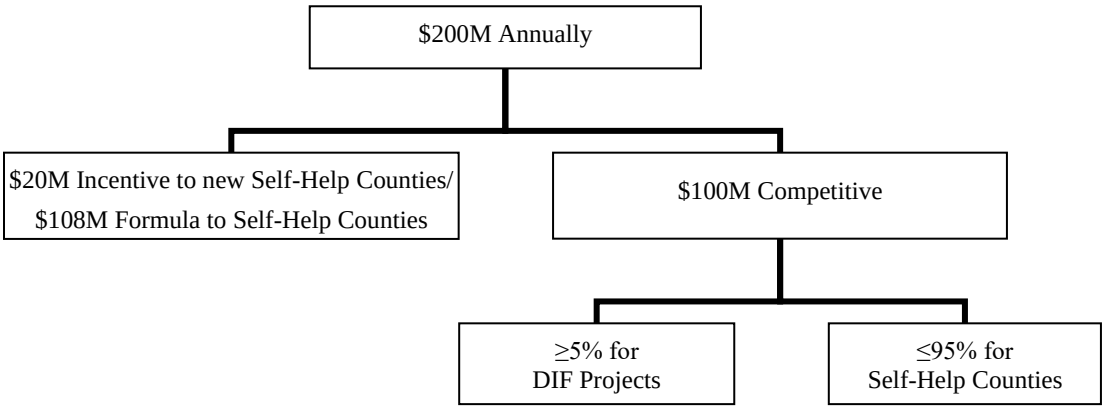
Subject:
National Trails Highway Bridge Replacements Project Funding Allocation and Agreement

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve the allocation of $5.775 million of Senate Bill 1 Local Partnership Program (LPP) Formula funds to San Bernardino County for the National Trails Highway Bridge Replacements Project.

B. Approve Agreement No. 24-1003172 with San Bernardino County for the National Trails Highway Bridge Replacements Project in the amount of $61,004,382 to be funded with LPP, Surface Transportation Block Grant Program, and State Transportation Improvement Program funds.

Background:
The Senate Bill 1 Local Partnership Program (LPP) is intended to award and incentivize agencies to develop local funding sources dedicated to transportation. The program is administered by the California Transportation Commission (CTC) as follows:



The San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) approved Policy No. 35100, Allocation of Senate Bill 1 Local Partnership Program Funds, at the September 2018 Board meeting. Pursuant to Policy No. 35100, LPP Formulaic Program funds are included in the State and Federal funds to be allocated equitably between the various Subareas of the county over time in accordance with Policy No. 40023, Determination of Proportional Shares of State and Federal Funds between Subareas. As such, allocations of these funds to projects will draw down on the applicable Subarea's total share of State and Federal funds. SBCTA receives about $6 million annually and must submit project applications for programming through the CTC. To date LPP Formula funds have been allocated to the Ranchero Road Corridor currently under construction, the Redlands Passenger Rail Project, and the Interstate 10 and Interstate 15 Express Lanes.

The National Trails Highway Bridge Replacements Project (Project) will replace 33 bridges less than 20 feet in length on National Trails Highway and was identified as the #1 regional priority in the North Desert Subarea by the North Desert Subarea representatives. San Bernardino County (County) is the lead agency on the Project. The 2021 Update to the 10-Year Delivery Plan included $86 million for six phases of construction through 2032. To date, the Board has approved programming of $14,929,382 of Federal Surface Transportation Block Grant Program funds and $40.3 million of State Transportation Improvement Program (STIP) funds for construction of 28 bridges through 2032.

The 10-Year Delivery Plan included $26.158 million of LPP Formula funds for the construction phase, but the allocation of STIP funds to the project has reduced the need for LPP Formula funds in that phase. Therefore, staff recommends allocation of $5.775 million of LPP Formula funds for the environmental and final design phases of the Project. LPP Formula funds require a 1:1 match, which will be provided by the County.

Agreement No. 24-1003172 identifies full funding for project development for all 33 bridges and full funding for construction of 14 bridges. SBCTA staff will continue to work with County staff to identify a full funding plan for construction of the remaining 19 bridges identified in the agreement and necessary to complete the entire project, subject to availability of funds in the North Desert Subarea.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025. All of the funds identified in the agreement are State and Federal funds that the County will access directly and will not flow through the SBCTA Budget.

Reviewed By:
This item was reviewed and recommended for approval by the Mountain/Desert Policy Committee on June 14, 2024. SBCTA General Counsel has reviewed this item and the draft agreement.

Responsible Staff:
Andrea Zureick, Director of Fund Administration

Contract Summary Sheet

General Contract Information

Contract No: 24-1003172 Amendment No.:

Contract Class: Payable Department: Fund Administration

Vendor No.: 01907 Vendor Name: San Bernardino County

Description: National Trails Highway Bridge Replacements Project

List Any Related Contract Nos.:

Dollar Amount					
Original Contract	$	-	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**-**	**Total Contingency Value**	**$**	**-**
	Total Dollar Authority (Contract Value and Contingency)			**$**	**-**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10719

Contract Management (Internal Purposes Only)

MSI Allocation Sole Source? N/A No Budget Adjustment

Federal/State Funding Allocation N/A

Accounts Payable

Estimated Start Date: 07/03/2024 Expiration Date: 06/30/2032 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ -	Total Contingency: $ -
GL:									-	-
GL:									-	-
GL:									-	-
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Marc Lucius
Project Manager (Print Name)

Andrea Zureick
Task Manager (Print Name)

Additional Notes: Agreement includes $5.775M LPP, $40.3M STIP, and $14,929,382 STP that will not flow through the SBCTA Budget.

Attachment: 24-1003172 CSS (10719 : National Trails Highway Bridge Replacements Project Funding Allocation and Agreement)

PROJECT FUNDING AGREEMENT NO. 24-1003172

FOR

NATIONAL TRAILS HIGHWAY BRIDGE REPLACEMENTS PROJECT

(SAN BERNARDINO COUNTY)

THIS Project Funding Agreement ("Agreement") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA") and San Bernardino County ("COUNTY"). SBCTA and COUNTY are each a "Party" or collectively "Parties."

RECITALS

A. The Measure I 2010-2040 Expenditure Plan and the North Desert Subarea transportation planning partners have identified projects eligible for funding from Measure I 2010-2040 North Desert Subarea Major Local Highway Projects Program ("MLHP") and State and Federal funds; and

B. The National Trails Highway Bridge Replacements Project ("PROJECT") is one of the projects identified as eligible for such funding and is described more fully in Attachment A; and

C. COUNTY has requested an allocation of $61,004,382 in the North Desert Subarea's share of State and Federal funds for all phases of the PROJECT; and

D. This Agreement is intended to delineate the duties and funding responsibilities of the Parties for the PROJECT; and

E. This Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan as adopted by SBCTA; and

NOW, THEREFORE, SBCTA and COUNTY agree to the following:

SECTION I

SBCTA AGREES:

1. To allocate to COUNTY up to a maximum of $61,004,382 for those eligible PROJECT expenses that are incurred by COUNTY for the PROJECT as set forth in Attachment B to this Agreement. SBCTA shall have no further responsibilities to provide any funding for the PROJECT exceeding this amount unless a written amendment to this Agreement is signed by both Parties.

2. In the case that Measure I funds are allocated to the PROJECT, to reimburse COUNTY within 30 days after COUNTY submits an electronic copy of signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by COUNTY, consistent with the invoicing requirements of the Measure I 2010-2040

DRAFT

Attachment: PROJECT FUNDING AGREEMENT NO. 24-1003172 (10719 : National Trails Highway Bridge Replacements Project Funding

Strategic Plan, including providing backup information. Invoices may be submitted to SBCTA as frequently as monthly.

3. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of COUNTY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to SBCTA when planning and conducting additional audits.

4. To assign a project liaison for the purpose of attending Project Development Team (PDT) meetings.

SECTION II

COUNTY AGREES:

1. To be the lead agency for this PROJECT and to diligently undertake and complete in a timely manner the Scope of Work for the PROJECT as shown in Attachment A.

2. To be responsible for expending that portion of allocated funds on eligible PROJECT expenses in an amount not to exceed $61,004,382, unless this Agreement is amended and approved increasing PROJECT costs. Reimbursement by SBCTA shall be in accordance with Section I, Paragraph 2. Additionally, expenses relative to time spent on the PROJECT by COUNTY staff are considered eligible PROJECT expenses and may be charged to the PROJECT, subject to SBCTA, State, and Federal guidelines.

3. In the case that State and Federal funds are allocated to the PROJECT, to secure all necessary State and Federal authorizations that are required before incurring eligible PROJECT expenditures.

4. To abide by all applicable SBCTA, COUNTY, State, and Federal laws, regulations, policies, and procedures pertaining to the PROJECT.

5. In the case that Measure I funds are allocated to the PROJECT, to prepare and submit to SBCTA an electronic copy of signed invoices for reimbursement of eligible PROJECT expenses. Invoices may be submitted to SBCTA as frequently as monthly.

6. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SBCTA or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SBCTA during normal business hours at COUNTY. Copies will be made and furnished by COUNTY upon written request by SBCTA.

DRAFT

Attachment: PROJECT FUNDING AGREEMENT NO. 24-1003172 (10719 : National Trails Highway Bridge Replacements Project Funding

7. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support COUNTY's requests for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by COUNTY.

8. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Final Report of Expenditures and final invoice no later than one hundred twenty (120) days following the completion of those expenditures. An original and two copies of the Final Report of Expenditures shall be submitted to SBCTA and must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.

9. To cooperate in having a PROJECT-specific audit completed by SBCTA, at SBCTA's option and expense, upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.

10. To repay to SBCTA any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within one hundred twenty (120) days of COUNTY's receipt of notice of audit findings, which time shall include an opportunity for COUNTY to respond to and/or resolve the findings. Should the findings not be otherwise resolved and COUNTY fail to reimburse moneys due SBCTA within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both Parties, SBCTA reserves the right to withhold future payments due COUNTY from any source under SBCTA's control.

11. To include SBCTA in Project Development Team (PDT) meetings if and when such meetings are held and in related communications on PROJECT progress, to provide at least quarterly schedule updates to SBCTA, and to consult with SBCTA on critical issues relative to the PROJECT.

12. In the case that Measure I funds are allocated to the PROJECT, as an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of SBCTA and COUNTY.

13. To include in all contracts between COUNTY and contractors for the PROJECT the requirement that SBCTA be named as an additional insured under general liability insurance policies maintained by the contractor for the PROJECT.

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SECTION III

IT IS MUTUALLY AGREED:

1. To abide by all applicable Federal, State, and Local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this Agreement.

2. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional eligible costs resulting from unforeseen conditions over the estimated total of the PROJECT cost shall be borne by COUNTY unless prior authorization has been approved by the SBCTA Board of Directors pursuant to Section III, Paragraph 3 of this Agreement.

3. In the event COUNTY determines PROJECT work may exceed the not to exceed amount identified in Section I, Paragraph 1, COUNTY shall inform SBCTA of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to the PROJECT amounts identified in this Agreement. In no event, however, shall SBCTA be responsible for PROJECT costs in excess of the PROJECT amounts identified herein absent a written amendment to this Agreement that is approved by the Parties.

4. Eligible PROJECT reimbursements shall include only those costs incurred by COUNTY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.

5. Neither SBCTA nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless SBCTA, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. COUNTY's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

6. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA shall fully defend, indemnify and save harmless COUNTY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by

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Attachment: PROJECT FUNDING AGREEMENT NO. 24-1003172 (10719 : National Trails Highway Bridge Replacements Project Funding

Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement. SBCTA's indemnification obligation applies to COUNTY's "active" as well as "passive" negligence but does not apply to COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

7. In the event COUNTY and/or SBCTA is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, COUNTY and/or SBCTA shall indemnify the other to the extent of its comparative fault.

8. This Agreement will be considered terminated upon reimbursement of all eligible costs by SBCTA or June 30, 2032, whichever is sooner, provided that the provisions of Paragraphs 6, 7, 8, 9, and 10 of Section II, and Paragraphs 5, 6 and 7 of Section III, shall survive the termination of this Agreement. The Agreement may also be terminated by SBCTA, in its sole discretion, in the event the PROJECT work described in Attachment A has not been initiated within twelve (12) months of the Effective Date of this Agreement.

9. SBCTA may terminate this Agreement if COUNTY fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

10. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.

11. Attachment A, Description of Project and Milestones, and Attachment B, Summary of Estimated Costs, are attached to and incorporated into this Agreement.

12. The Agreement may be signed in counterparts, each of which shall constitute an original.

13. This Agreement is effective and shall be dated on the date executed by SBCTA.

----SIGNATURES ON FOLLOWING PAGE----

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized signatories below.

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
Ray Marquez, President
Board of Directors

Date: _____

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist
SBCTA General Counsel

Date: _____

SAN BERNARDINO COUNTY

By: _____
Dawn M. Rowe, Chair
Board of Supervisors

Date: _____

APPROVED AS TO FORM:

By: _____
Aaron Gest
County Counsel

Date: _____

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Attachment: PROJECT FUNDING AGREEMENT NO. 24-1003172 (10719 : National Trails Highway Bridge Replacements Project Funding

ATTACHMENT A

NATIONAL TRAILS HIGHWAY BRIDGE REPLACEMENTS PROJECT
Description of Project and Milestones

Project Title
National Trails Highway Bridge Replacements Project
Location, Project Limits, Description, Scope of Work
The National Trails Highway Bridge Replacements Project addresses existing gaps in service in a vital rural transportation corridor which a full closure would result in national impacts on interstate commerce, national security and the preservation of one of America's historical treasures. The National Trails Highway Bridges Replacement Project is located on a section of National Trails Highway, from the town of Daggett to Amboy Road through an essential section of the historic U.S. Route 66 (also known as "National Trails Highway" or "Route 66"). Phase 1 includes replacing three bridges along the National Trails Highway between 0.96 miles east of Amboy Road and 0.55 miles east of Kelbaker Road. Phase 2 includes replacing three bridges between 3.25 miles east of Goffs Road and 9.72 miles east of Goffs Road. Phase 3 includes replacing five bridges along the National Trails Highway between 17.74 miles east of Crucero Road and 19.92 miles east of Crucero Road. Phase 4 includes replacing nine bridges along the National Trails Highway between 0.6 miles east of Dagget-Yermo Road and 0.35 miles west of Hidden Springs Road. Phase 5 includes replacing eight bridges along the National Trails Highway between 0.92 miles west of Fort Cady Road and 8.74 miles east of Hector Road. Phase 6 includes replacing five bridges along the National Trails Highway between 2.15 miles east of Crucero Road and 6.75 miles east of Crucero Road.

Project Milestone	**Proposed**
Begin Environmental (PA&ED) Phase (Phase 1)	**August 2024**
Begin Environmental (PA&ED) Phase (Phases 2-6)	August 2024
End Environmental Phase (PA&ED Milestone) (Phase 1)	**February 2025**
End Environmental Phase (PA&ED Milestone) (Phases 2-6)	January 2026
Begin Design (PS&E) Phase (Phase 1)	**February 2025**
Begin Design (PS&E) Phase (Phases 2-6)	January 2026
End Design Phase (Ready to List for Advertisement Milestone) (Phase 1)	**April 2025**
End Design Phase (Ready to List for Advertisement Milestone) (Phases 2-6)	March 2030
Begin Right of Way Phase (Phase 1)	**February 2025**
Begin Right of Way Phase (Phases 2-6)	January 2026
End Right of Way Phase (Right of Way Certification Milestone) (Phase 1)	**April 2025**
End Right of Way Phase (Right of Way Certification Milestone) (Phases 2-6)	February 2030
Begin Construction Phase (Contract Award Milestone) (Phase 1)	**June 2025**
Begin Construction Phase (Contract Award Milestone) (Phases 2-6)	June 2026
End Construction Phase (Construction Contract Acceptance Milestone) (Phase 1)	**March 2026**
End Construction Phase (Construction Contract Acceptance Milestone) (Phases 2-6)	March 2031
Begin Closeout Phase (Phase 1)	**March 2026**
Begin Closeout Phase (Phases 2-6)	March 2027
End Closeout Phase (Closeout Report) (Phase 1)	**May 2027**
End Closeout Phase (Closeout Report) (Phases 2-6)	June 2032

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Attachment: PROJECT FUNDING AGREEMENT NO. 24-1003172 (10719 : National Trails Highway Bridge Replacements Project Funding

ATTACHMENT B

NATIONAL TRAILS HIGHWAY BRIDGE REPLACEMENTS PROJECT

Summary of Estimated Costs

Phase	Total Cost	SBCTA Share[(1)]	COUNTY Share	FUTURE
PA&ED (Phase 1)	$525,000	LPP $262,500	$262,500	
PA&ED (Phases 2-6)	$5,250,000	LPP $2,625,000	$2,625,000	
PS&E (Phase 1)	$525,000	LPP $262,500	$262,500	
PS&E (Phases 2-6)	$5,250,000	LPP $2,625,000	$2,625,000	
ROW				
CON Ph1	$7,554,382	STP $7,554,382		
CON Ph 2	$7,375,000	STP $7,375,000		
CON Ph 3	$17,700,000	STIP $5,700,000		$12,000,000
CON Ph 4	$18,800,000	STIP $12,800,000		$6,000,000
CON Ph 5	$21,800,000	STIP $21,800,000		
CON Ph 6	$13,500,000			$13,500,000
TOTAL	**$98,279,382**	**$61,004,382**	**$5,775,000**	**$31,500,000**

(1) SBCTA's Share can be from sources under control of SBCTA including but not limited to Measure I Major Local Highways program, Local Partnership Program (LPP), State Transportation Improvement Program (STIP), Surface Transportation Block Grant Program (STP), or other funds without necessitating an amendment of this agreement. SBCTA share of funding can be moved between the phases, subject to State and Federal funding guidelines and limitations.

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Attachment: PROJECT FUNDING AGREEMENT NO. 24-1003172 (10719 : National Trails Highway Bridge Replacements Project Funding

Minute Action

AGENDA ITEM: 28

Date: July 3, 2024

Subject:
Capital Project Needs Analysis Submittals and Funding Allocations for the Measure I Valley Major Street Program/Arterial Sub-program for Fiscal Year 2024/2025

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Approve the Project List for the Measure I Valley Major Street Program/Arterial Sub-program allocations for Fiscal Year 2024/2025.

Background:
In the Measure I 2010-2040 Strategic Plan, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) approved creation of the San Bernardino Valley Arterial Sub-program under the Major Street Projects Program. Strategic Plan Policy No. 40006 requires each Valley Subarea jurisdiction to execute a Jurisdiction Master Agreement (JMA) to be eligible for reimbursement of Measure I San Bernardino Valley Arterial Sub-program funds. The agreement serves as a multi-year contract for the entirety of Measure I 2010-2040. The City of Chino Hills is the only jurisdiction that has not yet executed a JMA as they had the majority of their funds allocated to them through the Project Advancement Agreement process.

Additionally, as required by policy, Valley jurisdictions must prepare, adopt, and annually submit to SBCTA by September 30th, their Capital Project Needs Analysis (CPNA), a list of projects for which they plan to request reimbursement of the public share in the next five years, as shown in Attachment A. Projects listed in the first two years or shown as having any unreimbursed expenditures from prior years are eligible for reimbursement in Fiscal Year (FY) 2024/2025. Besides identifying the need for Measure I funds by project phase, the complete submittal also lists other anticipated funding sources, including the required development mitigation fair share funds.

Reimbursement is subject to each jurisdiction's equitable share and arterial fund allocation limits; therefore, approval of the list does not guarantee availability of funds for reimbursement. However, there is an allowance for a jurisdiction to advance up to five years of allocations if there is a sufficient fund balance in the cumulative arterial fund and the advance is approved by the Board. To date, advances have been approved for the cities of Chino, Montclair, Ontario, San Bernardino, Upland, and Yucaipa. The arterial project list also contains projects where arterial funds have been pledged as collateral for development share term loans. These projects are prioritized for use of arterial funds.

The Arterial Sub-program current year funding allocations were approved by the Board on April 3, 2024, as part of the FY 2024/2025 Budget planning process. Attachment B shows the Board-approved total allocations to date, project reimbursements to date, and arterial funds identified as collateral for development share term loans. Since FY 2021/2022, adjustments have been made to each city's share over a 15-year period to achieve fair share equity between actual program revenue and approved allocations among jurisdictions. Also listed as additional information is the total of each agency's five-year CPNA need for funds and whether they have a

Board-approved five-year advance. Based on the submittals, additional cities may be in need of five-year advances in order to complete their projects, but these would be presented to the Board at a future date as needed.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on June 13, 2024.

Responsible Staff:
Marc Lucius, Management Analyst II

ATTACHMENT A

CAPITAL PROJECT NEEDS ANALYSIS

VALLEY ARTERIAL SUB-PROGRAM - FY2024/2025 to FY2028/2029

Jurisdiction	Project	DEV LOAN?	5-YR Advance	Nexus Project Cost	Current Cost Estimate	MI Prior	MI FY 24/25	MI FY 25/26	MI FY 26/27	MI FY 27/28	MI FY 28/29	MI Future	MI Total
Chino	Widen Edison Ave from Central Ave to Euclid Ave from 4 to 6 lanes			12,407,000	12,407,140	0	0	2,000,000	0	0	0	0	**2,000,000**
	Widen Pine Ave from El Prado Rd to SR-71 from 2 to 4 lanes		Yes	39,292,000	45,000,000	30,440	12,814,656	12,028,291	378,382	0	0	0	**25,251,769**
	Widen Pine Avenue from Hellman Avnue to Euclid Avenue from 2 to 6 lanes			42,249,000	45,300,000	0	3,530,077	0	0	0	0	0	**3,530,077**
						30,440	**16,344,733**	**14,028,291**	**378,382**	**0**	**0**	**0**	**30,781,846**
Chino Hills	Widen Pine Ave from SR-71 to Chino Creek (north side only)			4,201,000	4,201,000	0	0	2,789,884	0	0	0	0	**2,789,884**
	Soquel Canyon Pkwy/Peyton Dr Connection - construct 2 lanes from Soqual Cyn Pkwy to Peyton Dr at Woodview Rd			16,000,000	16,000,000	0	0	0	253,834	0	0	0	**253,834**
						0	**0**	**2,789,884**	**253,834**	**0**	**0**	**0**	**3,043,718**
Colton	Improvement of La Cadena Dr from Rancho Ave to Litton Ave including bridge replacement at Santa Ana River			4,866,000	26,173,958	234,497	616,719	616,719	616,719	0	0	0	**2,084,654**
	Widen and realign Reche Cnyn Rd from Washington St (Hunts Ln) to City Limits from 2 to 4 lanes			5,652,000	5,669,970	50,754	44,467	180,954	180,954	180,954	0	0	**638,082**
	Widen Mount Vernon Ave grade separation on the Alhambra Line			4,000,000	17,662,602	315,199	533,699	533,699	533,699	0	0	0	**1,916,296**
						600,450	**1,194,885**	**1,331,372**	**1,331,372**	**180,954**	**0**	**0**	**4,639,032**
Fontana	Widen Sierra Ave from Summit Av to I-15 Widen from 2 to 6 lanes			10,759,000		95,139	0	0	0	0	0	0	**95,139**
	Widen Foothill Blvd from Hemlock to Almeria from 4 to 6 lanes			13,826,000		1,251,814	0	0	0	0	0	0	**1,251,814**
	Widen Sierra Ave from Foothill Blvd to Baseline Ave from 4 to 6 lanes			12,031,000	21,343,063	11,795,903	0	0	0	0	0	0	**11,795,903**
	Widen Slover Ave from Etiwanda Ave to 800' e/o Etiwanda from 2 to 4 lanes			8,069,000	13,147,629	5,563,638	0	0	0	0	0	0	**5,563,638**
	Widen Citrus Ave from Highland Ave to SR-210 from 4 to 6 lanes			1,000,000	620,000	420,980	0	0	0	0	0	0	**420,980**
	Widen Cherry Ave from Baseline Ave. to Highland Ave. from 4 to 6 lanes			4,707,000	3,900,000	1,302,865	0	0	0	0	0	0	**1,302,865**
	Widen Walnut Ave from I-15 to San Servaine from 2 to 4 lanes			4,859,000	3,900,000	1,345,235	0	0	0	0	0	0	**1,345,235**
	Install traffic signal at Santa Ana Ave and Juniper Ave			10,759,000	870,000	590,730	0	0	0	0	0	0	**590,730**
	Widen Foothill Blvd from Citrus Ave to Maple Ave from 4 to 6 lanes.			9,708,000	16,495,336	230,860	0	0	0	0	0	0	**230,860**
						22,597,164	**0**	**0**	**0**	**0**	**0**	**0**	**22,597,164**
Fontana Sphere	Widen Cherry Ave Bridge from Merrill Ave to Whittram from 4 to 6 lanes			10,200,000	10,957,067	584,205	0	0	0	0	0	5,803,765	**6,387,970**
	Ph1: Widen San Bernardino Ave from Cherry Ave to Fontana City Limits from 2 to 4 lanes			16,000,000	15,599,600	74,468	1,576,513	391,018	6,820,517	0	0	0	**8,862,516**
						658,673	**1,576,513**	**391,018**	**6,820,517**	**0**	**0**	**5,803,765**	**15,250,486**
Grand Terrace	Extend Commerce Wy from 900' n/o DeBerry Rd to Main St from 0 to 4 lanes			5,500,000		236,552	624,000	907,077	205,500	0	0	0	**1,973,129**
						236,552	**624,000**	**907,077**	**205,500**	**0**	**0**	**0**	**1,973,129**
Highland	SR-210 / Baseline Interchange - term loan; cash flow estimated by SBCTA	Yes		13,260,000	31,730,814	0	2,668,431	0	0	0	0	0	**2,668,431**
	Victoria Avenue Improvements Project	Yes		4,975,000	11,265,000	0	268,000	268,000	0	0	0	0	**536,000**
						0	**2,936,431**	**268,000**	**0**	**0**	**0**	**0**	**3,204,431**
Loma Linda	Intersection Improvements at Mound St and Anderson St			1,000,000	1,520,000	0	318,240	612,000	0	0	0	0	**930,240**
	Widen California St from Barton Rd to Redlands Blvd from 2 to 6 lanes			4,100,000	3,990,631	0	1,282,581	0	1,522,078	0	0	0	**2,804,659**
	Install traffic signal at Barton Rd & Benton St			235,632	235,632	0	0	146,432	0	0	0	0	**146,432**
						0	**1,600,821**	**758,432**	**1,522,078**	**0**	**0**	**0**	**3,881,331**

Attachment: Attachment A - CPNA FY25-FY29 (10720 : CPNA Project List and Funding Allocation for Valley Major Streets/Arterial Sub-program FY2024/2025)

ATTACHMENT A

CAPITAL PROJECT NEEDS ANALYSIS

VALLEY ARTERIAL SUB-PROGRAM - FY2024/2025 to FY2028/2029

Jurisdiction	Project	DEV LOAN?	5-YR Advance	Nexus Project Cost	Current Cost Estimate	MI Prior	MI FY 24/25	MI FY 25/26	MI FY 26/27	MI FY 27/28	MI FY 28/29	MI Future	MI Total
Montclair													
	I-10 / Monte Vista Ave interchange - term loan; cash flow estimated by SBCTA	Yes	Yes	5,850,000	32,256,960	0	1,990,241	0	0	0	0	0	**1,990,241**
						0	**1,990,241**	**0**	**0**	**0**	**0**	**0**	**1,990,241**
Ontario													
	Spot Widen Airport Dr from Kettering to Etiwanda Ave from 2 to 4 lanes, including intersection at Etiwanda/Slover			5,270,000		1,634,972	225,625	0	0	0	0	0	**1,860,596**
	Widen Holt Blvd from Benson Ave to Vineyard Ave from 4 to 6 lanes			48,817,215	5,378,354	2,990,365	0	0	0	0	0	0	**2,990,365**
	Replace 4th St structure between I-10 westbound ramps and I-10 eastbound ramps and widen to 5 lanes - cashflow estimated by SBCTA	Yes	Yes	21,567,000	22,336,447	692,644	1,601,599	0	0	0	0	0	**2,294,243**
	Replace 4th St structure between I-10 westbound ramps and I-10 eastbound ramps and widen to 5 lanes - term loan fully drawn	Yes	Yes			0	0	0	0	0	0	0	**0**
	Widen Grove Ave from I-10 to Holt Blvd from 4 to 6 lanes, Including W. Cuc. Creek Bridge			32,200,000	6,822,937	2,251,817	1,513,791	0	0	0	0	0	**3,765,608**
	Widen Holt Blvd from Benson Ave to Vineyard Ave from 4 to 6 lanes			48,817,215	6,762,625	2,246,228	1,513,791	0	0	0	0	0	**3,760,019**
	Widen Mountain Ave from Sixth Street to s/o Holt Blvd			7,467,000	5,378,354	2,990,365	0	0	0	0	0	0	**2,990,365**
						12,806,390	**4,854,806**	**0**	**0**	**0**	**0**	**0**	**17,661,197**
Rancho Cucamonga	Widen Wilson Ave from East Ave to Wardman Bullock from 0 to 4 lanes			7,572,000	7,434,218	3,199,098	0	0	0	0	0	0	**3,199,098**
	Construct a Traffic Signal at the Intersection of Milliken and 5th			442,000	738,737	526,720	0	0	0	0	0	0	**526,720**
	Construct a Traffic Signal at the Intersection of Rochester and Jersey			442,000	738,737	526,720	0	0	0	0	0	0	**526,720**
	Widen Victoria Ave from EHS to I-15			369,000	412,341	293,999	0	0	0	0	0	0	**293,999**
	Construct a Traffic Signal at the Intersection of East and Miller			442,000	738,737	526,720	0	0	0	0	0	0	**526,720**
	Construct a Traffic Signal at the Intersection of 6th and Rochester			442,000	738,737	526,720	0	0	0	0	0	0	**526,720**
	Construct a Traffic Signal at the Intersection of Carnelian and Banyan			442,000	600,297	428,012	0	0	0	0	0	0	**428,012**
	Construct a Traffic Signal at the Intersection of 6th and Hellman			442,000	1,081,710	771,973	0	0	0	0	0	0	**771,973**
	Construct a Traffic Signal at the Intersection of 6th and Utica			442,000	595,946	424,910	0	0	0	0	0	0	**424,910**
						7,224,872	**0**	**0**	**0**	**0**	**0**	**0**	**7,224,872**
Redlands	Construct a Traffic Signal at the Intersection of Wabash Ave and Citrus Ave			464,000	870,000	0	0	0	92,280	576,750	0	0	**669,030**
	Construct a Traffic Signal at the Intersection of Wabash Ave and 5th Ave			464,000	885,000	0	0	0	0	0	96,125	584,440	**680,565**
	Construct a Traffic Signal at the Intersection of Dearborn St and Citrus Ave			464,000	800,000	0	0	76,900	538,300	0	0	0	**615,200**
	Widen Citrus Ave from Dearborn St to Wabash Ave from 2 to 4 lanes			1,663,000	1,500,000	0	1,153,500	0	0	0	0	0	**1,153,500**
						0	**1,153,500**	**76,900**	**630,580**	**576,750**	**96,125**	**584,440**	**3,118,295**
Rialto	Construct Pepper Ave from N. Terminus to Highland Ave to 4 lanes			14,882,000	15,022,010	8,878,008	0	0	0	0	0	0	**8,878,008**
	Widen Riverside Ave from Gateway Plaza to San Bernardino Ave from 4 to 6 lanes			1,233,000	4,780,875	2,825,497	0	0	0	0	0	0	**2,825,497**
	Construct a Traffic Signal at the Intersection of Riverside and Linden with intersection improvements			649,000	888,254	524,958	0	0	0	0	0	0	**524,958**

Attachment: Attachment A - CPNA FY25-FY29 (10720 : CPNA Project List and Funding Allocation for Valley Major Streets/Arterial Sub-program FY2024/2025)

ATTACHMENT A

CAPITAL PROJECT NEEDS ANALYSIS

VALLEY ARTERIAL SUB-PROGRAM - FY2024/2025 to FY2028/2029

Jurisdiction	Project	DEV LOAN?	5-YR Advance	Nexus Project Cost	Current Cost Estimate	MI Prior	MI FY 24/25	MI FY 25/26	MI FY 26/27	MI FY 27/28	MI FY 28/29	MI Future	MI Total
	Widen Alder Ave from Baseline Rd to Renaissance Pkwy from 2 to 4 lanes			4,600,000	8,272,659	4,889,141	0	0	0	0	0	0	**4,889,141**
	Widen Ayala Dr from Baseline Rd to Renaissance Pkwy from 2 to 4 lanes			3,200,000	6,928,766	4,087,120	0	0	0	0	0	0	**4,087,120**
	Widen Cactus Ave from Valley Blvd to Foothill Blvd from 3 to 4 lanes			1,775,733	481,229	284,406	0	0	0	0	0	0	**284,406**
	Widen Randall Ave from Cactus Ave to Riverside Ave from 2 to 4 lanes			4,413,000	4,284,491	2,532,134	0	0	0	0	0	0	**2,532,134**
						24,021,264	**0**	**0**	**0**	**0**	**0**	**0**	**24,021,264**
San Bernardino, City of	Reconstruct Mt Vernon Bridge to 4 lanes (local match)		Yes	17,664,000		1,342,866	2,320,195	6,615,969	1,292,395	0	0	0	**11,571,425**
	Widen "H" St from Kendall Dr to 40th St from 2 to 4 lanes		Yes	2,145,000	7,500,000	1,273,500	0	0	0	800,000	2,704,000	0	**4,777,500**
	Widen State Street from 16th St to Baseline St from 0 to 4 lanes		Yes			5,986,000	0	0	0	0	0	0	**5,986,000**
	Widen 40th St from Acre Ln to Electric Ave from 2 to 4 lanes		Yes	5,421,000	8,500,000	2,514,500	0	0	0	866,560	3,380,000	0	**6,761,060**
						11,116,866	**2,320,195**	**6,615,969**	**1,292,395**	**1,666,560**	**6,084,000**	**0**	**29,095,985**
San Bernardino Sphere	Widen State Street from Adams St to Nolan St from 2 to 4 lanes			6,750,000	4,000,000	80,899	284,530	1,071,448	1,639,123	0	0	0	**3,076,000**
						80,899	**284,530**	**1,071,448**	**1,639,123**	**0**	**0**	**0**	**3,076,000**
Upland	Widen Arrow Hwy from County Line to Central Ave from 2 to 4 lanes			2,874,000	1,870,000	0	0	0	0	0	0	913,220	**913,220**
	Widen Foothill Blvd from County Line to Central Ave from 2 to 6 lanes			5,900,000	5,900,000	432,543	0	0	0	0	0	0	**432,543**
	I-10 & Monte Vista Ave - term loan fully drawn	Yes		2,107,992	33,144,900	0	0	0	0	0	0	0	**0**
	I-10 & Euclid Ave - term loan fully drawn	Yes		8,974,000	936,885	0	0	0	0	0	0	0	**0**
						432,543	**0**	**0**	**0**	**0**	**0**	**913,220**	**1,345,763**
Yucaipa	Widen 5th St from Yucaipa Bl to County Line Rd from 2 to 4 lanes		Yes	7,032,000	2,410,000	1,182,000	600,000	0	0	0	0	0	**1,782,000**
	Widen Ave E from 14th St to Bryant St from 2 lanes to 4 lanes		Yes	23,532,000	9,053,000	6,208,000	0	0	0	0	0	0	**6,208,000**
	Widen Calimesa Bl from Oak Glen Rd to County Line Rd from 2 to 4 lanes.		Yes	4,192,000	7,477,000	1,740,000	750,000	750,000	1,500,000	750,000	0	0	**5,490,000**
	Widen County Line Rd from I-10 to Calimesa Blvd from 2 to 4 lanes		Yes	610,000	8,641,000	5,970,000	0	0	0	0	0	0	**5,970,000**
	Widen Yucaipa Bl from I-10 to 15th St from 4 to 6 lanes		Yes	17,668,000	17,572,000	9,427,000	1,100,000	700,000	700,000	700,000	0	0	**12,627,000**
						24,527,000	**2,450,000**	**1,450,000**	**2,200,000**	**1,450,000**	**0**	**0**	**32,077,000**
Total						**$ 104,333,114**	**$ 37,330,655**	**$ 29,688,391**	**$ 16,273,781**	**$ 3,874,264**	**$ 6,180,125**	**$ 7,301,425**	**$ 204,981,754**

Attachment: Attachment A - CPNA FY25-FY29 (10720 : CPNA Project List and Funding Allocation for Valley Major Streets/Arterial Sub-program FY2024/2025)

ATTACHMENT B

Measure I Valley Major Street/Arterial Sub-Program
Summary of Allocations, Balances & Future Need

	SHARES	ALLOCATIONS	BALANCES		SPECIAL ARRANGEMENTS		CPNA			
Jurisdiction	Current Equitable Share*	FY10/11 thru FY24/25	Reimbursements FY10/11 thru 4/25/24	Allocation Balance	Approved Advances @ 4/25/24	Term Loan Collateral @ 4/25/24	Balance PLUS Anticipated Revenue FY25/26 thru FY28/29	*Balance of Equitable Share Due in FY28/29*	Total "Needs" from CPNA FY24/25 thru FY28/29 (incl loan collateral)	Total "Needs" thru FY28/29 when limited by 5-yr rule thru FY33/34
Chino	7.591%	**$21,558,595**	**$298,946**	**$21,259,649**	**$12,985,417**		$30,945,972	*$852,149*	$30,781,846	$30,781,846
Chino Hills	2.194%	**$3,043,718**	**$0**	**$3,043,718**			$3,043,718	*-$1,757,670*	$3,043,718	$3,043,718
Colton	2.534%	**$7,641,422**	**$418,015**	**$7,223,406**			$10,604,785	*$496,149*	$4,639,032	$4,639,032
Fontana	19.400%	**$45,055,179**	**$7,634,761**	**$37,420,418**			$55,188,419	*-$9,563,938*	$22,597,164	$22,597,164
Grand Terrace	1.389%	**$4,188,609**	**$151,462**	**$4,037,147**			$5,890,634	*$271,962*	$1,973,129	$1,973,129
Highland	6.777%	**$20,369,684**	**$6,108,258**	**$14,261,426**		**$2,574,105**	$23,282,481	*$1,295,151*	$3,204,431	$3,204,431
Loma Linda	4.074%	**$12,285,380**	**$5,243,316**	**$7,042,063**			$12,478,423	*$797,677*	$3,881,331	$3,881,331
Montclair	0.597%	**$1,800,287**	**$1,913,734**	**-$113,447**	**$1,105,972**	**$1,990,241**	$683,192	*$116,891*	$1,990,241	$992,524
Ontario	12.272%	**$37,006,918**	**$17,397,975**	**$19,608,942**	**$6,383,764**		$35,984,743	*$2,402,820*	$17,661,197	$17,661,197
Rancho Cucamonga	5.044%	**$12,352,298**	**$5,429,607**	**$6,922,691**			$12,150,323	*-$1,422,709*	$7,224,872	$7,224,872
Redlands	4.854%	**$14,637,514**	**$2,112,512**	**$12,525,002**			$19,002,197	*$950,398*	$3,118,295	$3,118,295
Rialto	3.831%	**$11,055,088**	**$8,146,197**	**$2,908,891**			$7,855,540	*$513,329*	$24,021,264	$14,938,572
San Bernardino	7.857%	**$23,693,232**	**$11,039,066**	**$12,654,167**	**$14,555,475**		$23,138,575	*$1,538,377*	$29,095,985	$29,095,985
Upland	2.743%	**$8,271,673**	**$3,158,457**	**$5,113,216**	**$2,029,872**		$8,773,485	*$537,071*	$1,345,763	$1,345,763
Yucaipa	5.965%	**$16,481,075**	**$15,052,759**	**$1,428,316**	**$9,832,320**		$8,886,960	*$450,869*	$32,077,000	$19,567,085
County	12.878%	**$38,834,345**	**$6,126,338**	**$32,708,007**			$49,892,456	*$2,521,473*	$18,326,486	$18,326,486
Arterial Allocation	100.000%	**$278,275,017**	**$90,231,403**	**$188,043,613**	**$46,892,820**	**$4,564,346**	**$307,801,904**	***$0***	**$204,981,754**	**$182,391,431**

Attachment: Attachment B - Arterial Program Summary (10720 : CPNA Project List and Funding Allocation for Valley Major Streets/Arterial Sub-program

Minute Action

AGENDA ITEM: 29

Date: July 3, 2024

Subject:
State Legislative Update

Recommendation:
Receive and file the June 2024 State Legislative Update **and report of action taken by the Legislative Policy Committee on June 12, 2024.**

Background:
Legislative Update

In accordance with San Bernardino County Transportation Authority (SBCTA) Policy No. 10000, III.D., the Legislative Policy Committee, at its June 12, 2024 meeting, directed staff to proceed with taking a support position on Senate Bill 1420 by Senator Anna Cabellero on behalf of the San Bernardino County Transportation Authority Board of Directors.

Text of Senate Bill 1420 can be found in Attachment C.

San Bernardino County Transportation Authority (SBCTA) Legislative Affairs staff, along with a representative from state advocates, California Advisors, LLC, updated the Legislative Policy Committee on June 12, 2024, on legislative actions and negotiations regarding the 2024-2025 state budget.

Legislative Session

The month of May marked the halfway point of the legislative session. May 24, 2024, marked the House of Origin's deadline where legislation needed to be out of the house in which it was introduced. The week before the deadline saw several lengthy floor sessions in both houses in order to pass the hundreds of bills before each chamber. Once they have passed this first deadline the bills will swap houses and begin their policy hearings starting in late May.

May 16, 2024, was the Appropriations Suspense hearing in both the Senate and the Assembly. Most bills with a cost to the state are referred to the "suspense list" in each house. Given the realities of the State budget deficit, the pressure for the Appropriations Committees to hold additional bills will be carefully considered throughout this session. This year, there were over 1,000 bills between both houses that qualified for the suspense hearing. The committees ended up holding roughly 30% or 300 bills. This was a slight increase from the typical rate and there is some expectation that the suspense hearing in August 2024 will need to include even more bills.

San Bernardino County Transportation Authority's (SBCTA) sponsored legislation, Assembly Bill (AB) 2590 by Assemblywoman Eloise Reyes, passed off of the Assembly Floor by a vote of ~~68~~ **72** Ayes, 0 Noes and 8 Abstentions. It was referred to the Senate Committee on Transportation for a hearing in late June 2024.

AB 2645 by Assemblyman Tom Lackey, which SBCTA supported, passed off of the Assembly Floor by a vote of 68 Ayes, 0 Noes and ~~8~~ **12** Abstentions. It was referred to the Senate Rules Committee for committee assignment.

Finally, AB 2535 by Assemblywoman Mia Bonta, which SBCTA opposed, was held in the Assembly Appropriation Committee and is now dead for the remainder of the session.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

Budget – Governor's May Revise

On May 10, 2024, Governor Gavin Newsom (Governor) released his May Revision for budget year 2024-25. The Governor now projects budget year General Fund expenditures of $201 billion, available resources of $215 billion (prior year balance, revenues, and transfers), and $3.4 billion in the Special Fund for Economic Uncertainties, the state's general budget reserve.

The May Revision reflects $22.8 billion in budgetary reserves. These reserves include $19.4 billion in the Proposition 2 Budget Stabilization Account (Rainy Day Fund) for fiscal emergencies and $3.4 billion in the state's operating reserve. The May Revision maintains the withdrawal of $12.2 billion from the Rainy Day Fund as proposed in the Governor's January Budget, however, it proposes to spread the withdrawal over two fiscal years, utilizing $3.3 billion in 2024-25 and $8.9 billion in 2025-26 (the Early Action Package reflected the use of the $12.2 billion in 2024-25). The May Revision continues to reflect a complete withdrawal of the $900 million in Safety Net Reserve as in the Governor's January Budget and also reflects a complete withdrawal of the Public School System Stabilization Account ($3.8 billion remained in the Governor's January Budget).

Overall, the proposed budget includes a total of $46.1 billion in budget solutions. The May Revision total solutions are $1.2 billion above the increased shortfall identified since the Governor's January Budget ($7 billion) due to erosion in proposed solutions and other technical changes.

The May Revision reduces $300 million in 2025-26 and $99 million in 2026-27 for the Active Transportation Program. This is in addition to the $200 million reduction in the Governor's January Budget.

The May Revision shifts $555.1 million from the General Fund to the Greenhouse Gas Reduction Fund above what was proposed in the Governor's January Budget, for a total of $1.3 billion. In addition, the May Revision reduces $148 million not used for awarded projects from the Competitive Transit and Intercity Rail Capital Program and maintains $3.5 billion of the originally planned $3.65 billion.

LAO's 2024-25 Budget Reports on the Governor's May Revise

On May 17, 2024, the Legislative Analyst's Office (LAO) released the 2024-25 Budget: Initial Comments on the Governor's May Revision. The report provided a summary of and comments on the Governor's revised budget, focusing on the overall condition and structure of the state General Fund—the budget's main operating account.

Based on the administration's revenue estimates and proposals, the LAO estimated the Governor addressed a larger deficit than $27 billion, perhaps closer to $55 billion. The LAO stated that the May Revision primarily solves the budget problem by adjusting spending. Spending-related solutions represent nearly 90 percent of the total solutions. Of this total, $22 billion is related to school and community college funding changes and $16 billion are spending reductions, while the remaining solutions comprise other types, like fund shifts.

The Governor also reduces the state's reliance on reserves — using only $4 billion in reserve withdrawals to cover the deficit, significantly less than the $13 billion proposed in January 2024. According to the LAO, the overall structure of the Governor's May Revision improves the fiscal health of the state in a number of ways. First, by proposing the state use less in reserves, the Governor preserves an important tool to address budget problems, which are likely to continue to emerge. Second, by further reducing one-time and temporary spending, the Governor leverages a "use it or lose it" tool that improves budget resilience. Finally, the Governor proposes new statutory language that would temporarily set aside anticipated surplus revenues for at least a

year. While executing this proposal would be technically complex, we think the underlying idea is meritorious.

On May 24, 2024, the LAO published the 2024-25 Budget Multiyear Budget Outlook. The report presented the LAO's forecast of the condition of the state General Fund budget through 2027-28 under their revenue estimates and assumes the Governor's May Revision policies are adopted. Similar to the administration, the LAO projected the state faces modest operating deficits (budget problems) over the multiyear period — ranging from a very small deficit in 2025-26 to larger ones in the out-years. The LAO stated that the May Revision puts the state on better fiscal footing and makes substantial progress toward structural balance. By pulling back substantially on one-time and temporary spending, as well as making some ongoing reductions, the Governor's May Revision shrinks the state's projected deficits from around $30 billion (the December 2023, estimate) to an average of less than $10 billion. Given this progress, they recommended the Legislature maintain a similar overall structure to the Governor's approach in the final budget package.

Legislature's Budget Plan

On May 29, 2024, the Senate and Assembly Budget Committees released a preliminary joint budget plan in response to the Governor's May Revise. The Legislature's Budget Plan (LBP) addresses the administration's 2024-2025 budget year projected shortfall of about $45 billion and the 2025-2026 shortfall of more than $30 billion. The LBP is balanced in 2024-2025, with a $3.6 billion Regular Reserve and $23 billion in total reserves, similar to the Governor's May Revise proposal. For 2025-2026, the LBP is balanced with a $1.3 billion Regular Reserve and more than $13 billion in total reserves, approximately $2 billion more than the Governor's May Revise.

The LBP contains a total of $46.9 billion in budget balancing actions for 2024-25 and $29.3 billion in 2025-26. The plan provides a balanced approach, with the balancing actions primarily coming from Program Reductions of $16.6 billion and $11.6 billion in 2024-25 and 2025-26, respectively, and Revenues of $10.6 billion in 2024-2025 and $7.8 billion in 2025-2026.

Of particular note to SBCTA and San Bernardino Council of Governments (SBCOG), the LBP:

- Rejects the proposed cuts to the Active Transportation Program and shifts $600 million to the State Highway Account.
- Rejects the $148 million cut to the Competitive Transit and Intercity Rail Capital Program.
- Reduces the cut to Regional Early Action Planning Grants 2.0 from $300 million to $50 million.

Attachment A contains a list of legislative bills that the San Bernardino County Transportation Authority SBCTA/SBCOG have taken a position on. Attachment B reflects bills of interest to SBCTA and SBCOG.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2023/2024.

Reviewed By:
This item was reviewed and unanimously recommended for approval by the Legislative Policy Committee on June 12, 2024.

Responsible Staff:
Otis Greer, Director of Legislative and Public Affairs

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

ATTACHMENT A

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY (SBCTA) / COUNCIL OF GOVERNMENTS (SBCOG)
LEGISLATIVE BILL POSITIONS - June 2024

Legislation / Author	Description	Bill Status	Position	Date Position Adopted
AB 6 (Friedman)	Would require the California Air Resources Board to establish additional greenhouse gas emissions targets for 2035 and 2045, as well as imposing new requirements on Metropolitan Planning Organizations, such as the Southern California Association of Governments, regarding technical methodology in developing their Regional Transportation Plan and Sustainable Community Strategy.	Failed Policy Committee deadline, two-year bill. (7/14/23)	Oppose	6/14/2023
AB 7 (Friedman)	Would require the project selection process for transportation infrastructure projects funded by certain state transportation accounts to incorporate federal principles that promote accessibility, climate change, the environment, resilience, safety, timeliness, among other principles.	Failed to be voted upon on Senate Floor, two-year bill. (9/14/23)	Oppose	6/14/2023
AB 2590 (Reyes)	Would amend the California Public Utilities Code to increase the monetary thresholds of certain procurement processes for supplies, equipment and materials that are utilized for SBCTA projects.	Passed out of Assembly, referred to Senate Committee on Transportation. (5/29/24)	Sponsor Support	2/14/2024
AB 2645 (Lackey)	Would require agencies that operate tolling facilities to cooperate with law enforcement in the event an emergency alert is issued.	Passed out of Assembly, referred to Senate Rules Committee for committee assignment. (5/23/24)	Support	4/10/2024

Attachment: Bill position matrix 6-24 (10688 : State Legislative Update)

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY (SBCTA) / COUNCIL OF GOVERNMENTS (SBCOG)
LEGISLATIVE BILL POSITIONS - June 2024

Legislation / Author	Description	Bill Status	Position	Date Position Adopted
AB 2535 (Bonta)	Would alter the Trade Corridor Enhancement Program to support zero emission freight infrastructure and restrict projects that expand certain higway projects.	Held in Assembly Appropriations Committee. Failed committee deadline, dead for year. (5/16/24)	Oppose	4/10/2024

Attachment: Bill position matrix 6-24 (10688 : State Legislative Update)

ATTACHMENT B

Status Report

Thursday, May 30, 2024

AB 6 **Friedman D (Dist. 44) Transportation planning: regional transportation plans: Solutions for Congested Corridors Program: reduction of greenhouse gas emissions.**

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires that each regional transportation plan also include a sustainable communities strategy prepared by each metropolitan planning organization in order to, among other things, achieve certain targets established by the State Air Resources Board for the reduction of greenhouse gas emissions from automobiles and light trucks in the region for 2020 and 2035, respectively. This bill would require the state board, after January 1, 2024, and not later than September 30, 2026, to establish additional targets for 2035 and 2045, respectively, as specified.

Position: Oppose

AB 7 **Friedman D (Dist. 44) Transportation: planning: project selection processes.**

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Transportation Agency is under the supervision of the Secretary of Transportation, who has the power of general supervision over each department within the agency. The secretary, among other duties, is charged with developing and reporting to the Governor on legislative, budgetary, and administrative programs to accomplish coordinated planning and policy formulation in matters of public interest, including transportation projects. On and after January 1, 2025, and to the extent applicable, feasible, and cost effective, this bill would require the agency, the Department of Transportation, and the California Transportation Commission to incorporate specified goals into program funding guidelines and processes.

Position: Oppose

AB 295 **Lowenthal D (Dist. 69) Residential real property: foreclosure.**

Location: SENATE JUD.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust and prescribes a procedure for the exercise of that power. This bill would prohibit a person from contacting, soliciting, or initiating communication with an owner to claim the surplus funds from a foreclosure sale of the owner's residence before 90 days after the trustee's deed has been required.

AB 382 **Cervantes D (Dist. 58) High-occupancy vehicle lanes: County of Riverside.**

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes a regional transportation agency, in cooperation with the Department of Transportation, to apply to the California Transportation Commission to develop and operate high-occupancy toll (HOT) lanes, including administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit. Current law authorizes a value pricing and transit program involving HOT lanes to be developed and operated on State Highway Route 15 in the County of Riverside by the Riverside County Transportation Commission. Current law requires the Department of Transportation to report to the transportation policy committees of the Legislature, on or before January 1, 2020, on the feasibility and appropriateness of limiting the

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

use of high-occupancy vehicle lanes to high-occupancy vehicles and eligible vehicles, as defined, only durin hours of heavy commuter traffic on both State Route 91 between Interstate 15 and Interstate 215 in the County of Riverside, and State Route 60 in the County of Riverside. Separate from that report, this bill would require the Transportation Agency, on or before January 1, 2025, to report to the transportation policy committees of the Legislature on that same topic and on the feasibility and appropriateness of removing from high-occupancy vehicle lanes in the County of Riverside, except for certain high-occupancy toll lanes, any double parallel solid lines to restrict the entrance into or exit from those lanes, including the use of the appropriate markings and signage.

Position: Watch

AB 591 **Gabriel D (Dist. 46) Electric vehicle service equipment: connectors and public accessibility.**

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would require that any electric vehicle service equipment that is capable of charging a light-duty electric vehicle and is installed or substantially retrofitted, as defined, except for private use at a single-family residence or multifamily residence, include a universal connector, as defined, and be publicly accessible. The bill would require an owner or operator of CHAdeMO electric vehicle service equipment, as defined, that is in operation on January 1, 2024, except where it is located at a single-family residence or multifamily residence and is only for private use, to maintai the CHAdeMO electric vehicle service equipment in good working condition until at least January 1, 2029.

AB 627 **Jackson D (Dist. 60) Drayage trucks: voucher incentive project.**

Location: SENATE E.Q.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes the State Air Resources Board as the state agency responsible for monitoring and regulating sources emitting greenhouse gases. The state board, in this capacity, administers the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project under which the agency issues a limited number of vouchers to incentivize the purchase and use of zero-emission commercial vehicles. The Budget Act of 2023 appropriated funds from the Greenhouse Gas Reduction Fund to the state board for zero-emission drayage trucks to be administered through the project and, in expending those funds, requires the state board, before January 1, 2025, to limit the number and award amount levels under the project based on fleet size. This bill would require the state board to ensure that a voucher provided under the project for the purchase of a new, or the retrofit of a used, drayage truck is provided to an operator in an amount determined pursuant to a sliding scale established by the state board, based on the number of drayage trucks the operator owns. In administering the project, the bill would require the state board to prioritize the award of those vouchers to operators meeting certain criteria.

Position: Watch

AB 761 **Friedman D (Dist. 44) Local finance: enhanced infrastructure financing districts.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes the legislative body of a city or a county to designate a proposed enhanced infrastructure financing district by adopting a resolution of intention to establish the proposed district which, among other things, is required to state that an enhanced infrastructure financing district is proposed and describe the boundaries of the proposed district. Current law requires the public financing authority to direct the preparation of and adopt an infrastructure financing plan consistent with the general plan and any relevant specific plan, and consisting of, among other things, a financing section. Current law requires that the financing section include a plan for financing the public facilities, a limit on the total number of dollars of taxes that may be allocated to the district pursuant to the plan, and a date, either not more than 45 years from the date on which the issuance of the bonds is approved for the plan on

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

which the district will cease to exist, by which time all tax allocation to the district will end, or, where the dis divided into project areas, a date on which the infrastructure financing plan will cease to be in effect and all tax allocations to the district will end and a date on which the district's authority to repay indebtedness with incremental tax revenues will end, as specified. This bill, for plans proposed on or after January 1, 2025, would specify that for the purpose of development and construction of passenger rail projects in the County of Los Angeles where at leas 75% of the revenue from the district is used for debt service on a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, the date on which the district will cease to exist shall not be more than 75 years from the date of the approval of a TIFIA loan, as specified.

Position: Watch

AB 817 **Pacheco D (Dist. 64) Open meetings: teleconferencing: subsidiary body.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Ralph M. Brown Act, requires, with specified exceptions, each legislative body of a local agency to provide notice of the time and place for its regular meetings and an agenda containing a brief general description of each iter of business to be transacted. Current law authorizes the legislative body of a local agency to use alternate teleconferencing provisions during a proclaimed state of emergency (emergency provisions) and, until January 1, 2026, in certain circumstances related to the particular member if at least a quorum of its members participate from a singular physical location that is open to the public and situated within the agency's jurisdiction and other requirements are met (nonemergency provisions). Current law imposes different requirements for notice, agenda, and public participation, as prescribed, when a legislative body is using alternate teleconferencing provisions. The nonemergency provisions impose restrictions on remote participation by a member of the legislative body and require the legislative body to provide specific means by which the public may remotely hear and visually observe the meeting. This bill, until January 1, 2026, would authorize a subsidiary body, as defined, to use similar alternative teleconferencing provisions and would impose requirements for notice, agenda, and public participation, as prescribed. The bill would require at least one staff member of the local agency to be present at a designated primary physical meeting location during the meeting. The bill would require the local agency to post the agenda at the primary physical meeting location. The bill would require the members of the subsidiary body to visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform, a specified. The bill would also require the subsidiary body to list a member of the subsidiary body who participates i a teleconference meeting from a remote location in the minutes of the meeting. In order to use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make specified findings by majority vote, before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.

AB 849 **Garcia D (Dist. 36) Community emissions reduction programs.**

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the State Air Resources Board to prepare, and to update at least once every 5 years, a statewide strategy to reduce emissions of toxic air contaminants and criteria air pollutants in communities affected b a high cumulative exposure burden. Current law requires the state board to include in the statewide strategy, among other components, an assessment and identification of communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants, prioritizing disadvantaged communities and sensitive receptor locations based on specified factors. Current law requires the state board, based on the assessment and identification of communities with high cumulative exposure burdens, to select locations around the state for preparation of community emissions reduction programs. Current law requires an air district encompassing any location selected b the state board to adopt, in consultation with the state board, within one year of the state board's selection, a

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

community emissions reduction program to achieve emissions reductions for the location selected using cos effective measures, as specified. Current law also requires an air district to submit the community emissions reduction program to the state board for review and approval as prescribed. Current law requires the air district an the state board to implement and enforce the measures in the community emissions reduction program consistent with their respective authority. This bill would additionally require the air district, in adopting a community emissions reduction program, to consult with other relevant state agencies. By imposing additional duties on air districts, this bill would impose a state-mandated local program.

AB 930 **Friedman D (Dist. 44) Local government: Reinvestment in Infrastructure for a Sustainable and Equitable California (RISE) districts.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would authorize the legislative bodies of 2 or more cities or counties to jointly form a Reinvestment in Infrastructure for a Sustainable and Equitable California district (RISE district) in accordance with specified procedures. The bill would authorize a special district to join a RISE district, by resolution, as specified. The bill would require the Offic of Planning and Research (OPR) to develop guidelines for the formation of RISE districts no later than November 30, 2026. The bill would provide for the establishment of a governing board of a RISE district with representatives of each participating local government.

AB 1008 **Bauer-Kahan D (Dist. 16) The Western Joshua Tree Conservation Act.**

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The California Endangered Species Act requires the Fish and Game Commission (commission) to establish a list of endangered species and a list of threatened species and to add or remove species from either list if it finds, upon th receipt of sufficient scientific information, as specified, that the action is warranted. The act prohibits the taking of an endangered or threatened species, except in certain situations. Under the act, the Department of Fish and Wildlife may authorize the taking of listed species pursuant to an incidental take permit if the taking is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the issuance of the permit would not jeopardize the continued existence of the species. A violation of the provisions of the Fish and Game Code is a crime. This bill, the Western Joshua Tree Conservation Act, would prohibit any person or public agency from importing into the state, exporting out of the state, or taking, possessing, purchasing, or selling within the state, a western Joshua tree or any part or product of the tree, except as provided pursuant to existing law or by paying a specified fee.

Position: Watch

AB 1333 **Ward D (Dist. 78) Residential real property: bundled sales.**

Location: SENATE JUD.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law, until January 1, 2031, for purposes of the exercise of a power of sale, prohibits a trustee from bundlin properties for the purpose of sale, instead requiring each property to be bid on separately, unless the deed of trust or mortgage provides otherwise. Current law also prohibits specified institutions that, during their immediately preceding annual reporting period, as established with their primary regulator, foreclosed on 175 or more residentia real properties, containing no more than 4 dwelling units, from conducting a sale of 2 or more parcels of real property containing one to 4 residential dwelling units, inclusive, at least 2 of which have been acquired through foreclosure under a mortgage or deed of trust. This bill would prohibit a developer of residential one to 4 dwelling units, inclusive, from conducting a sale of 2 or more parcels of real property containing one to 4 residential dwelling

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

units, inclusive, in a single transaction to an institutional investor, as defined, if the occupancy permit was iss after January 1, 2025.

AB 1335 Zbur D (Dist. 51) Local government: transportation planning and land use: sustainable communities strategy.

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires specified designated transportation planning agencies to prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, as described. Current law requires the plan to include specified information, including a sustainable communities strategy prepare by each metropolitan planning organization, and requires each transportation planning agency to adopt and submit, every 4 years, an updated plan to the California Transportation Commission and the Department of Transportation. Current law requires the sustainable communities strategy to include specified information, including an identificatior of areas within the region sufficient to house all the population of the region over the course of the planning period o the regional transportation plan, as specified, and an identification of areas within the region sufficient to house an 8 year projection of the regional housing need for the region, as specified. This bill would additionally require each metropolitan planning organization to include in the sustainable communities strategy the total number of new housin units necessary to house all the population of the region over the course of the planning period of the regional transportation plan, as specified, and the total number of new housing units necessary to house the above-describe 8-year projection, as specified.

AB 1348 Grayson D (Dist. 15) State government: Controller: claims audits.

Location: SENATE 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Existing law, the Government Claims Act, generally requires the presentation of all claims for money or damages against local public entities and the state. Existing law provides for the presentation of a claim for which appropriations have been made, or for which state funds are available, under that act to the Controller, in the form and manner prescribed by the general rules and regulations adopted by the Department of General Services. Existing law, with specified exceptions, prohibits the Controller from drawing a warrant for any claim until it has been audited in conformity with law and the general rules and regulations adopted by the Department of General Services governing the presentation and audit of claims. This bill would authorize the Controller to conduct, unless prohibited by the provisions of a state ballot proposition passed by the electorate, financial and compliance audits a the Controller's office deems as necessary for purposes of ensuring that any expenditures, regardless of the source or fund from which the warrants for claims are drawn, are expended in a manner consistent with the law and the voters' intent. The bill would also authorize the Controller to conduct any audits necessary to carry out their constitutional and statutory duties and responsibilities under the law. The bill would require, if an audit is conducted as specified, the Controller to provide a report with specified information from these audits to the Legislature by June 30 following the completion of the audit and would require the Controller to allow all auditees in the report a reasonable period of time to review and comment on the section of the report relating to the auditee, as described. The bill would make related legislative findings and declarations.

AB 1777 Ting D (Dist. 19) Autonomous vehicles.

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes the operation of an autonomous vehicle on public roads for testing purposes by a driver wh possesses the proper class of license for the type of vehicle operated if specified requirements are satisfied. Curren

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

law prohibits the operation of an autonomous vehicle on public roads until the manufacturer submits an app to the Department of Motor Vehicles, as specified, and that application is approved. Current law requires the department to adopt regulations setting forth requirements for the submission and approval of an application, including, among other things, any testing, equipment, and performance standards the department concludes are necessary to ensure the safe operation of autonomous vehicles on public roads, as specified. This bill would require if an autonomous vehicle does not have a person in the driver's seat and commits a violation of the Vehicle Code, o has a person in the driver's seat but commits the violation while the autonomous technology is engaged, the manufacturer to be cited for the violation. If an autonomous vehicle has a person in the driver's seat and commits a violation of the Vehicle Code while the autonomous technology is not engaged, the bill would require the driver to b cited for the violation. The bill would require manufacturers of fully autonomous vehicles, by July 1, 2026, to compl with certain requirements, including, among other things, to maintain a dedicated emergency response telephone line that is available for emergency response officials, as defined, and to equip each autonomous vehicle with a 2-way voice communication device that enables emergency response officials that are near the vehicle to communicate effectively with a remote human operator, as specified.

AB 1837 **Papan D (Dist. 21) San Francisco Bay area: public transit: Regional Network Management Council.**

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law creates the Metropolitan Transportation Commission as a local area planning agency for the 9-county San Francisco Bay area with comprehensive regional transportation planning and other related responsibilities. Current law creates various transit districts located in the San Francisco Bay area, with specified powers and duties relating to providing public transit services. Current law requires the commission to adopt rules and regulations to promote the coordination of fares and schedules for all public transit systems within its jurisdiction, as specified. This bill would create the Regional Network Management Council as an 11-member council to represent the interests of its stakeholders, to provide leadership and critical input on regional transit policies, and to provide executive guidance on regional transit policies and actionable implementation plans in pursuit of transformative improvements in the customer experience San Francisco Bay area transit. The bill would require the commission to facilitate the creation of the council.

AB 1889 **Friedman D (Dist. 44) conservation element: wildlife and habitat connectivity.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Planning and Zoning Law requires the legislative body of a city or county to adopt a comprehensive general plan that includes various elements, including land use, housing, and conservation elements, as specified. Current law requires the conservation element to consider the effect of development within the jurisdiction on natural resources located on public lands. This bill would additionally require the conservation element to consider the effect of development within the jurisdiction on the movement of wildlife and habitat connectivity. The bill would require the conservation element, upon the next update of one or more elements on or after January 1, 2026, to, among other things, identify and analyze connectivity areas, permeability, and natural landscape areas within the jurisdiction, identify and analyze existing or planned wildlife passage features, and consider the impacts of development and the barriers caused by development to wildlife and habitat connectivity. The bill would authorize a city, county, or city and county to incorporate by reference into their general plan an existing plan that meets these requirements. The bi would require authorize a city, county, or city and county preparing to update its conservation element to consider incorporating appropriate standards, policies, and zoning, implementation programs, consult with specified entities, and consider relevant best available science.

AB 1893 **Wicks D (Dist. 14) Housing Accountability Act: housing disapprovals: required local findings.**

Location: SENATE HOUSING

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	C
	1st House				2nd House							

Current law, commonly referred to as the Housing Element Law, prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development to review and determine whether the housing element substantially complies with the Housing Elemen Law, as specified. Current law, the Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes written findings as to one of certain sets of conditions, as specified. Current law defines "housing for very low, low-, or moderate-income households" for purposes of the Housing Accountability Act to mean at least 20% of the total units shall be sold or rented to lower income households or 100% of the units are sold or rented to persons and families of moderate income. This bill would revise that definition to mean at least 10% of the units are dedicated to very low income households, 100% of the units are dedicated to lower income households at an affordable rent consistent with rent limits established by the California Tax Credit Allocation Committee, 100% of the units are sold or rented to persons and families of moderate income, or the housing development consists of 10 units or fewer that is on a project site that is smaller than one acre with a minimum density of 10 units per acre.

AB 1904 **Ward D (Dist. 78) Transit buses: yield right-of-way sign.**

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes a transit bus in the Santa Cruz Metropolitan Transit District and the Santa Clara Valley Transportation Authority to be equipped with a yield right-of-way sign on the left rear of the bus if the applicable entity approves a resolution requesting that this section be made applicable to it. Current law requires the sign to be designed to warn a person operating a motor vehicle approaching the rear of the bus that the bus is entering traffic and be illuminated by a red flashing light when the bus is signaling in preparation for entering a traffic lane after having stopped to receive or discharge passengers. This bill would expand the authorization to equip transit buses, as described above, to apply to any transit agency if the transit agency approves a resolution that this authorization be made applicable to it.

AB 1957 **Wilson D (Dist. 11) Public contracts: best value construction contracting for counties.**

Location: SENATE APPR.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes a pilot program to allow the Counties of Alameda, Los Angeles, Monterey, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Solano, and Yuba to select a bidder on the basis of best value, as defined, for construction projects in excess of $1,000,000. Current law also authorizes these counties to use a best value construction contracting method to award individual annual contracts, not to exceed $3,000,000, for repair, remodeling, or other repetitive work to be done according to unit prices, as specified. Current law establishes procedures and criteria for the selection of a best value contractor and requires that bidders verify specified information under oath. Current law requires the board of supervisors of a participating county to submit a report that contains specified information about the projects awarded using the best value procedures described above to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee before March 1, 2024. Current law repeals the pilot program provisions on January 1, 2025.This bill would instead authorize any county of the state to utilize this program and would extend the operation of those provisions until January 1, 2030. The bill would instead require the board of supervisors of a participating county to submit the report described above to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee before March 1, 2029.

AB 2006 **Mathis R (Dist. 33) Sales and Use Tax Law: exemption: over-the-counter medication.**

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Location: ASSEMBLY REV. & TAX SUSPENSE FILE

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Sales and Use Tax Law provides various exemptions from those taxes. This bill would, until January 1, 2030, exempt from those taxes the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, over-the-counter medication, as defined.

AB 2023 **Quirk-Silva D (Dist. 67) Housing element: inventory of land: rebuttable presumptions.**

Location: SENATE HOUSING

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Housing Element Law prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development to review and determine whether the housing element substantially complies with the Housing Element Law, as specified. Current law requires the housing element to include an inventory of land suitable and available for residential development. If tha inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, as provided, current law requires that the local government rezone sites within 3 years after the date the housing element is adopted or within one year if the local government fails to adopt a housing element that the department finds to be in substantial compliance with the Housing Element Law within 120 days of the statutory deadline to adopt the housing element. This bill, for the 7th and each subsequent revision of the housing element, would require a local government to complete the rezoning of sites within one year of the statutory deadline for the adoption of the housing element or the earlier of 3 years after the date the housing element is adopted or 90 days after receipt of comments from the department, as specified, if the local government satisfies certain requirements, including submitting a draft element or draft amendment to the department for review within specified timeframes and adopting a draft element or draft amendment that the department finds to be insubstantial compliance with the Housing Element Law, as specified.

AB 2086 **Schiavo D (Dist. 40) Transportation funding: California Transportation Plan: public dashboard.**

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the Department of Transportation to prepare the California Transportation Plan for submission to the Governor and the Legislature as a long-range planning document that incorporates various elements and is consistent with specified expressions of legislative intent. Current law requires the department to complete the 3rd update to the plan by December 31, 2025, and to update the plan every 5 years thereafter. This bill would require the California Transportation Plan to also include a financial element that summarizes the full cost of plan implementation, a summary of available revenues through the planning period, and an analysis of what is feasible within the plan if constrained by a realistic projection of available revenues, as specified.

AB 2290 **Friedman D (Dist. 44) Transportation: Class III bikeways: bicycle facilities: Bikeway Quick-Build Project Pilot Program.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes 4 classifications of bikeways and defines a "Class III bikeway" as a bikeway that provides right-of-way on-street or off-street, designated by signs or permanent markings and shared with pedestrians and motorists. This bill would prohibit the allocation of Active Transportation Program funds for a project that creates a Class III bikeway unless the project is on a street with a design speed limit of 20 miles per hour or less or the

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

project will reduce the design speed limit to 20 miles per hour or less.

AB 2302 Addis D (Dist. 30) Open meetings: local agencies: teleconferences.

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Ralph M. Brown Act generally requires for teleconferencing that the legislative body of a local agency that elects to use teleconferencing post agendas at all teleconference locations, identify each teleconference location in the notice and agenda of the meeting or proceeding, and have each teleconference location be accessible to the public. Current law also requires that, during the teleconference, at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. Current law, until January 1, 2026, authorizes the legislative body of a local agency to use alternative teleconferencing in specified circumstances if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda that is open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction, and the legislative body complies with prescribed requirements. Current law imposes prescribed restrictions on remote participation by a member under these alternative teleconferencing provisions, including establishing limits on the number of meetings a member may participate in solely by teleconference from a remote location, prohibiting such participation for a period of more than 3 consecutive months or 20% of the regular meetings for the local agency within a calendar year, or more than 2 meetings if the legislative body regularly meets fewer than 10 times per calendar year. This bill would revise those limits, instead prohibiting such participation for more than a specified number of meetings per year, based on how frequently the legislative body regularly meets.

AB 2400 Rivas, Luz D (Dist. 43) California Alternative Energy and Advanced Transportation Financing Authority Act.

Location: ASSEMBLY APPR. SUSPENSE FILE

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Existing sales and use tax laws impose taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority. The act authorizes, until January 1, 2026, the authority t provide financial assistance to a participating party in the form of specified sales and use tax exclusions for projects including those that promote California-based manufacturing, California-based jobs, advanced manufacturing, reduction of greenhouse gases, or reduction in air and water pollution or energy consumption. The act prohibits the sales and use tax exclusions from exceeding $100,000,000 for each calendar year, except as provided. The Sales and Use Tax Law, for the purposes of the taxes imposed pursuant to that law, until January 1, 2026, excludes the lease or transfer of title of tangible personal property constituting a project to any contractor for use in the performance of a construction contract for a participating party that will use that property as an integral part of the approved project.This bill would extend the authorization to provide financial assistance in the form of a sales and use tax exclusion for qualifying projects to January 1, 2031, and would extend the sales and use tax exclusion to January 1, 2031. The bill would make other conforming changes.

AB 2421 Low D (Dist. 26) Employer-employee relations: confidential communications.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Current law that governs the labor relations of public employees and employers, including the Meyers-Mili Act, the Ralph C. Dills Act, provisions relating to public schools, provisions relating to higher education, and provisions relating to the the San Francisco Bay Area Rapid Transit District, prohibits employers from taking certai actions relating to employee organization, including imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of their guaranteed rights. This bill would also prohibit a local public agency employer, a state employer, a public school employer, a higher education employer, or the district from questioning any employee or employee representative regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.

AB 2427 McCarty D (Dist. 6) Electric vehicle charging stations: permitting: curbside charging.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law references GO-Biz's Electric Vehicle Charging Station Permitting Guidebook, which recommends best practices for electric vehicle supply equipment permitting. This bill would require the office to develop a model permitting checklist, model zoning ordinances, and best practices for permit costs and permit review timelines to help local governments permit curbside charging stations as part of the office's development of the Electric Vehicle Charging Station Permitting Guidebook or any subsequent updates. The bill would also require the office to consult with local governments, electric vehicle service providers, and utilities while developing the above-described materials.

AB 2430 Alvarez D (Dist. 80) Planning and zoning: density bonuses: monitoring fees.

Location: SENATE HOUSING

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Density Bonus Law requires a city, county, or city and county to provide a developer that proposes a housing development within the city or county with a density bonus, waivers or reductions of development standards and parking ratios, and other incentives or concessions, as specified, if the developer agrees to construct certain types o housing, including a housing development in which 100% of the units are for lower income households, except that up to 20% of the units in the development may be for moderate-income households, as specified. This bill would prohibit a city, county, or city and county from charging a monitoring fee, as defined, on those types of housing developments if certain conditions are met, except as specified. The bill would provide that, beginning on January 1 2025, any housing development that is currently placed in service, is subject to monitoring fees, and meets those conditions shall no longer be subject to those fees.

AB 2443 Carrillo, Juan D (Dist. 39) Western Joshua Tree Conservation Act: industrial projects and commercial projects.

Location: SENATE N.R. & W.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Under current law, the Department of Fish and Wildlife may authorize, by permit, the taking of a western Joshua tree if certain conditions are met, including, among other conditions, that the permittee mitigates all impacts to, and the taking of, the western Joshua tree. Current law authorizes the department to enter into an agreement with any county or city to delegate to the county or city the ability to authorize the taking of a western Joshua tree associated with developing single-family residences, multifamily residences, accessory structures, and public works projects concurrent with its approval of the project if certain conditions are met. Current law authorizes any person or public agency receiving a take authorization for a project to pay specified fees in lieu of satisfying the mitigation obligation

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

on several bases, including if the project receives a permit issued by a county or city. This bill would additio authorize the department to enter into an agreement with any city to delegate to the city the ability to authorize the taking of western Joshua trees associated with developing commercial and industrial projects. The bill would, relative to other project types subject to delegated local mitigation authority, limit the bases for commercial or industrial projects to pay specified fees in lieu of satisfying the mitigation obligation, as provided.

AB 2448 Jackson D (Dist. 60) Electric Vehicle Economic Opportunity Zone: County of Riverside.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would, upon appropriation by the Legislature, establish an Electric Vehicle Economic Opportunity Zone (EVEOZ) for the County of Riverside, administered by the Labor and Workforce Development Agency, for the purpose of creating programs to make electric vehicle manufacturing jobs and education more accessible to lower income communities. The bill would require County of Riverside to assist in determining the geographical boundaries of the EVEOZ. By imposing additional duties on local officials, the bill would impose a state-mandated local program. Th bill would authorize the agency to partner with educational institutions, electric vehicle manufacturing businesses, an local and national financial intuitions to develop EVEOZ education, training, and investment programs, as specified.

AB 2453 Villapudua D (Dist. 13) Weights and measures: electric vehicle supply equipment.

Location: SENATE B., P. & E.D.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law provides that the Department of Food and Agriculture has general supervision of the weights and measures and weighing and measuring devices sold or used in the state, including devices used to measure electricit sold as a motor vehicle fuel. Existing law regulates the use and repair of weighing or measuring devices. Current law authorizes a device to be placed in service only by a sealer or a service agency. This bill would prohibit, until January 1, 2028, requiring electric vehicle supply equipment (EVSE) to be retested or placed in service by a servic agent or sealer if the EVSE has previously been placed in service by a service agent or sealer before the EVSE is used after receiving routine repairs, as defined.

AB 2460 Ta R (Dist. 70) Common interest developments: association governance: member election.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, including member elections. Current law prescribes that a quorum is required only if stated in the governing documents or by law. In the absence of a quorum, current law authorizes an association to adjourn the proceeding to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting is 20% of the voting members present in person, by proxy, or by secret written ballot receive Current law requires an association to provide general notice of the membership meeting, as specified, no less than 15 days prior to the election of directors. In the absence of a quorum, this bill would instead authorize an associatio to adjourn the meeting to a date at least 20 days after the adjourned meeting, at which time the quorum required fo purposes of a reconvened meeting would be 20% of the members, voting in person, by proxy, or by secret ballot.

AB 2474 Lackey R (Dist. 34) Retirement: County Employees Retirement Law of 1937: benefit payments and overpayments.

Location: SENATE L., P.E. & R.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts to establish retirement

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

systems in order to provide pension benefits to their employees and their beneficiaries and prescribes the ri benefits, and duties of members in this regard. The Public Employees' Pension Reform Act of 2013 (PEPRA) prescribed various limitations on public employees, employers, and retirement systems concerning, among other things, the types of remuneration that may be included in compensation that is applied to pensions. Under CERL, the board of retirement is required to comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member, as described, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer for the retirement allowance or benefit to any specified bank, savings and loan institution, or credit union to be credited to the account of the retirec member or survivor of a deceased retired member. This bill would also define "account of the retired member or survivor of a deceased retired member" to include an account held in a living trust or an income-only trust, as specified.

AB 2479 Haney D (Dist. 17) Housing First: core components.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires agencies and departments administering state programs related to homelessness to adopt guidelines and regulations to incorporate core components of Housing First, as defined. Under current law, Housing First includes time-limited rental or services assistance, so long as the housing and service provider assists the recipient, among other things, in accessing permanent housing. Current law defines "state programs" for this purpos as any program a California state agency or department funds, implements, or administers for the purpose of providing housing or housing-based services to people experiencing homelessness or at risk of homelessness, except as provided. Under existing law, the core components of Housing First include, among others, services that are informed by a harm-reduction philosophy that recognizes drug and alcohol use and addiction as a part of tenants' lives, where tenants are engaged in nonjudgmental communication regarding drug and alcohol use, and where tenants are offered education regarding how to avoid risky behaviors and engage in safer practices, as well a connected to evidence-based treatment if the tenant so chooses. This bill would clarify, pursuant to that core component, that state departments or agencies may allow programs to fund recovery housing, as defined, that use substance use-specific services, peer support, and physical design features supporting individuals and families on a path to recovery from addiction that emphasizes abstinence, so long as the state program meets specified requirements.

AB 2482 Papan D (Dist. 21) County treasurer: settlement of accounts.

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the county treasurer to settle the county treasurer's accounts relating to the collection, care, and disbursement of public revenue with the auditor no less frequently than monthly. Current law additionally requires the county treasurer, upon the request of the auditor, to provide a settlement of cash receipts and disbursements of the prior calendar month to the auditor on or before 10 business days after the treasurer receives the auditor's request. This bill would instead require the treasurer, upon the request of the auditor, to provide a settlement of cash receipts and disbursements of the prior calendar month to the auditor on or before 12 business days after the treasurer receives the auditor's request.

AB 2485 Carrillo, Juan D (Dist. 39) Regional housing need: determination.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

the physical development of the county or city, which includes, among other mandatory elements, a housing
That law requires, for the 4th and subsequent revisions of the housing element, the Department of Housing and Community Development (department) to determine the existing and projected need for housing for each region, as specified. That law requires the department, in consultation with the council of governments, to determine the existing and projected need of housing for each region in a specified manner. That law requires the department's determination to be based upon population projections produced by the Department of Finance, as specified. That law also requires the department to meet and consult with the council of governments regarding the assumptions and methodologies to be used to determine each region's housing need and requires the council of governments to provide data assumptions from the council of governments' projections, as specified. That law authorizes the department to accept or reject the information provided by the council of governments and, after consultation with each council of governments, to make determinations on the council of governments' data assumptions and the methodology the department will use to determine each region's housing need. That law requires the department to provide its determinations to each council of governments, as specified. This bill would require the department to publish on its internet website the data sources, analyses, and methodology, as specified, prior to finalization of the regional determination.

AB 2488 Ting **D (Dist. 19) Downtown revitalization and economic recovery financing districts: City and County of San Francisco.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would authorize the City and County of San Francisco to designate a downtown revitalization and economic recovery financing district for the purpose of financing office-to-residential conversion projects with incremental tax revenues generated by office-to-residential conversion projects within the district. The bill would require the boundaries of the district to be contiguous with the boundaries of the City and County of San Francisco.

AB 2503 Lee **D (Dist. 24) California Environmental Quality Act: exemption: passenger rail projects.**

Location: SENATE E.Q.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Existing law, the California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effec on the environment. This bill would expand that exemption from CEQA to include a public project for the institution or increase of other passenger rail service, which will be exclusively used by zero-emission electrified trains, on existing rail rights-of-way or existing highway rights-of-way. Because the bill would increase the duties of the county clerk, this bill would impose a state-mandated local program.

AB 2522 Carrillo, Wendy **D (Dist. 52) South Coast Air Quality Management District: district board: compensation.**

Location: SENATE E.Q.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law provides for the creation of the South Coast Air Quality Management District in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as specified. Current law provides that the south coast district is governed by a district board consisting of 1 members. This bill would provide that each member of the board shall receive compensation of $200 for each day,

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

or portion thereof, but not to exceed $2,000 per month, while attending meetings of the board or any comm thereof or, upon authorization of the board, while on official business of the district, and the actual and necessary expenses incurred in performing the member's official duties. The bill would provide that the compensation of each member of the board may be increased beyond this amount by the board, as specified.

AB 2525 Zbur D (Dist. 51) State highways: property leases.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law vests the Department of Transportation with full possession and control of the state highway system, including associated property. Current law authorizes the department to offer leases to the City of Los Angeles on a right of first refusal basis for any airspace under a freeway or certain real property acquired for highway purposes located in the city for purposes of an emergency shelter or feeding program for a lease amount, for up to 10 parcels of $1 per month, and a payment of an administrative fee not to exceed $500 per year, as specified. This bill would expand the purposes for which these leases may be issued to include an emergency shelter or feeding program, a secure vehicle lot program, or any combination of those purposes.

AB 2536 Hoover R (Dist. 7) Vehicles: local registration fees.

Location: SENATE CONSENT CALENDAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes a county, upon the adoption of a resolution by its board of supervisors, to impose a specified fee, in addition to other fees imposed for the registration of a vehicle, to be expended in part to fund programs to deter, investigate, and prosecute vehicle theft crimes. This bill would, for purposes of this requirement, define vehicl theft crimes to include the theft of vehicle parts or components.

AB 2553 Friedman D (Dist. 44) Housing development: major transit stops: vehicular traffic impact fees.

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The California Environmental Quality Act (CEQA) exempts from its requirements residential projects on infill sites and transit priority projects that meet certain requirements, including a requirement that the projects are located within 1/2 mile of a major transit stop. CEQA defines "major transit stop" to include, among other locations, the intersection of 2 or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. This bill would revise the definition of "major transit stop" to increase the frequency of service interval to 20 minutes.

AB 2555 Quirk-Silva D (Dist. 67) Sales and use tax: exemption: medicinal cannabis: donations.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidate the licensure and regulation of commercial medicinal and adult-use cannabis activities. Current sales and use tax laws impose use taxes on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, presumes tangible personal property purchased outside the state that is stored, used, or consumed in this state is purchased for use in this state, and provides various exemptions from those taxes. Current law exempts from the use tax the storage, use, or other consumption in this state of medicinal cannabis or medicinal cannabis products that are donated, for no consideration, under specified circumstances. Current law requires the exemption to apply only if the cannabis

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

retailer certifies in writing, as specified, that the medicinal cannabis or medicinal cannabis product will be us specified. Current law makes a licensee that uses the donated medicinal cannabis or medicinal cannabis product in some other manner, or for some other purpose, liable for the payment of use tax and subject to having their license suspended. Current law repeals these provisions 5 years after the specified operative date. This bill would extend these provisions until January 1, 2030.

AB 2559 **Petrie-Norris D (Dist. 73) Local planning: electric vehicle service equipment: permitting delays.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Existing law creates the Governor's Office of Business and Economic Development (GO-Biz) and requires GO-Biz to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. Existing law requires every city, county, an city and county to administratively approve an application to install electric vehicle charging stations through the issuance of a building permit or similar nondiscretionary permit and requires the review of an application to install ar electric vehicle charging station to be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. Existing law requires an electric vehicle charging station to comply witl among other things, all applicable rules of the Public Utilities Commission regarding safety and reliability, as specified. This bill would require GO-Biz to create and maintain a publicly accessible internet website that contains landing page with functionality to collect information and report delays and denials regarding all applicable forms of permitting for zero-emission vehicle infrastructure, as specified. The bill would prohibit GO-Biz from publicly displaying any submissions received under these provisions. The bill would require GO-Biz in a new or existing working group, as specified, to evaluate the data it receives from the internet website and direct the working group to determine recommended solutions to address permitting delays. The bill would require, on or before January 1, 2026, GO-Biz to submit to the Legislature and publish on its internet website a comprehensive report regarding the challenges identified throughout the data collection process, as specified. The bill would also require GO-Biz to establish a permit streamlining specialist to assist authorities having jurisdiction with permit delays and denials relate to these provisions.

AB 2560 **Alvarez D (Dist. 80) Density Bonus Law: California Coastal Act of 1976.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Density Bonus Law provides that its provisions do not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976, and requires that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under the Density Bonus Law be permitted in a manner consistent with the act. This bill would provide that any density bonus concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant i entitled under the Density Bonus Law be permitted notwithstanding the act if the development is not located on any of specified sites.

AB 2583 **Berman D (Dist. 23) School zones and walk zones.**

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Existing law, the Planning and Zoning Law, requires the legislative body of a city or county to adopt a comprehensive general plan that includes various elements, including a circulation element to plan for transportation routes.This bill would require, upon any substantive revision of the circulation element on or after January 1, 2025, the legislative body of a city or county, to identify and establish school walk zones for all schools located within the

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

scope of the general plan. The bill would define a "school walk zone" to mean all roadways and sidewalks 1,000 feet in all directions of the boundary line of a school grounds. By placing new duties on county and city officials with respect to their land use planning, the bill would impose a state-mandated local program.

AB 2584 Lee D (Dist. 24) Single-family residential real property: corporate entity: ownership.

Location: SENATE JUD.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would prohibit a business entity, as defined, that has an interest in more than 1,000 single-family residential properties from purchasing, acquiring, or otherwise obtaining an interest in another single-family residential property and subsequently leasing the property. The bill would authorize the Attorney General to bring a civil action for a violation of these provisions, and would require a court in a civil action in which the Attorney General prevails to order specified relief, including that the business entity pay a civil penalty of $100,000 for each violation and that th business entity sell the property to an independent third party within one year of the date that the court enters judgment.

AB 2590 Reyes D (Dist. 50) San Bernardino County Transportation Authority: contracting.

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law creates the San Bernardino County Transportation Authority with various powers and duties relative tc transportation planning and funding in the County of San Bernardino. Current law requires the authority's contracts for the purchase of supplies, equipment, and materials, and the construction of all facilities and works, to be let to the lowest responsible bidder when the expenditure required exceeds $25,000. Current law also requires the authority to obtain a minimum of 3 quotations, either written or oral, that permit prices and terms to be compared whenever the expected expenditure required exceeds $1,000 but not $25,000. This bill would authorize a contract for the purchase of supplies, equipment, or materials with a required expenditure that exceeds $100,000 to be let t the lowest responsible bidder, or, in the authority's discretion, to the responsible bidder who submitted a proposal that provides the best value to the authority on the basis of the factors identified in the solicitation.

Position: Sponsor

AB 2634 McCarty D (Dist. 6) Sacramento Regional Transit District.

Location: SENATE CONSENT CALENDAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes the formation of the Sacramento Regional Transit District with various powers and duties with respect to transportation planning, programming, construction, and operations. Current law requires each transit operator, including the district, that offers reduced fares to senior citizens to also offer reduced fares to disabled persons, as defined, and disabled veterans, as defined, at the same rate established for senior citizens, as specified. This bill would exempt the district from that requirement until January 1, 2027.

AB 2638 Ward D (Dist. 78) Housing programs: financing.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes the Department of Housing and Community Development and requires it to administer various programs intended to promote the development of housing and to provide housing assistance and home loans. Current law sets forth various general powers of the department in implementing these programs, including authorizing the department to enter into long-term contracts or agreements of up to 30 years for the purpose of

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

servicing loans or grants or enforcing regulatory agreements or other security documents. Unless an extensi department loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity would result in a rent increase for tenants of a development, authorizes the Department of Housing and Community Development to approve an extension, reinstatement, subordination, payoff, extraction, or investment pursuant to specified rental housing finance programs, as specified, or if the department determines that a project has, or will have after rehabilitation or repairs, a potential remaining useful life equal to or greater than the term of the restructured loan. Current law authorizes the department to charg a monitoring fee to cover the aggregate monitoring costs in years the loan is extended and a transaction fee to cove its costs for processing restructuring transactions, and requires developer fee limitations to be consistent with specified laws and regulations, including regulations by the California Tax Credit Allocation Committee. This bill would revise and recast these provisions, including additionally authorizing the department to approve the payoff of a department loan in whole or part before the end of its term and the extraction of equity from a development for purposes approved by the department.

AB 2645 Lackey R (Dist. 34) Electronic toll collection systems: information sharing: law enforcement.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law prohibits a transportation agency, as defined, from selling or otherwise providing to any other person o entity, with certain exceptions, personally identifiable information of a person who subscribes to an electronic toll collection system or who uses a toll bridge, toll lane, or toll highway that employs an electronic toll collection systen Under current law, a transportation agency is authorized to make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant, except under certain circumstances. Current law defines "personally identifiable information" for these purposes and provides that it includes, among other things, a license plate number. Current law authorizes a law enforcement agency to request the Department of the California Highway Patrol (CHP) to activate the Emergency Alert System within the appropriate area if that agency determines that a child 17 years of age or younger, or an individual with a proven mental or physical disability, has been abducted and is in imminent danger of serious bodily injury or death, and there is information available that, if disseminated to the general public, could assist in the safe recovery of that person. Current law also authorizes the CHP, upon the request of a law enforcement agency, to activate various other alerts for missing individuals meeting certain criteria and alerts following an attack upon a law enforcement officer or a hit-and-run fatality. This bill, if the CHP activates one of the above-mentioned alerts and that alert contains a license plate number of a vehicle involved in the incident, would require a transportation agency that employs an electronic toll collection system to notify the CHP and the law enforcement agency that requested the alert upon identifying that vehicle with that license plate number using a camera-based vehicle identification system or other electronic medium employed in connection with the electronic toll collection system.

Position: Support

AB 2656 Patterson, Jim R (Dist. 8) Tribal gaming: compact ratification.

Location: ASSEMBLY THIRD READING

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The federal Indian Gaming Regulatory Act of 1988 provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude tribal-state gaming compacts, subject to ratification by the Legislature. Current law expressly ratifies a number of tribal-state gaming compacts between the State of California and specified Indian tribes. This bill would ratify the tribal-state gaming compact entered into between th State of California and the Table Mountain Rancheria, executed on November 1, 2023. The bill would provide tha in deference to tribal sovereignty, certain actions related to this compact are not projects for purposes of the

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

California Environmental Quality Act (CEQA).

AB 2663 Grayson D (Dist. 15) Inclusionary housing: fees: reports.

Location: SENATE HOUSING

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Mitigation Fee Act, among other things, imposes various requirements with respect to the establishment, increase, or imposition of a fee by a local agency as a condition of approval of a development project, including requiring the local agency to identify the use to which the fee is to be put, as specified. The act requires a local agency, upon receipt of a fee subject to these provisions, to deposit, invest, account for, and expend the fees as specified. For the 5th fiscal year following the first deposit into the account of fund, and every 5 years thereafter, th act requires the local agency to make prescribed findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted, including demonstrating a reasonable relationship between the fee and the purpose for which it is charged. The Planning and Zoning Law, among other things, authorizes the legislative body of a county or city to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, anc occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, as specified. Existing law establishes a process for the Departmen of Housing and Community Development to review certain types of these ordinances, subject to specified standard and procedures. This bill, commencing on January 1, 2026, would require a local agency that collects inclusionary housing in-lieu fees to annually post on its internet website the amount of those fees collected in the previous year and whether those fees are intended to be used for a project, if any.

AB 2667 Santiago D (Dist. 54) Affirmatively furthering fair housing: housing element: reporting.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law defines "affirmatively furthering fair housing" as taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. Current law requires a housing element to include a program that sets forth a schedule of actions during the planning period, each with a timeline for implementation such that there will be beneficial impacts of the programs within the planning period, tha the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through, among other things, the administration of land use and development controls and the provision of regulatory concessions and incentives. Current law requires this program to affirmatively further fair housing and consist of specified components, including a summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity. This bill would require the Department of Housing and Community Development to develop a standardized reporting format for programs and actions taken with regards to the local agency affirmatively further fair housing that enables the reporting of the assessment components described-above, as specified. The bill would require loca governments to utilize the standardized reporting format for the 7th and each subsequent revision of the housing element.

AB 2669 Ting D (Dist. 19) Toll bridges: tolls.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law provides for the construction and operation of various toll bridges by the state, the Golden Gate Bridg

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Highway and Transportation District, and private entities that have entered into a franchise agreement with This bill would prohibit a toll from being imposed on the passage of a pedestrian, bicycle, or personal micromobility device over these various toll bridges, unless the bridge was under construction on or after January 1, 2025, and th tolls are used to fund the cost of constructing the bridge.

AB 2678 Wallis R (Dist. 47) Vehicles: high-occupancy vehicle lanes.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current state law authorizes the Department of Transportation to designate certain lanes for the exclusive use of high-occupancy vehicles (HOVs). Current federal law authorizes, until September 30, 2025, a state to allow specified alternate fuel and plug-in electric or hybrid vehicles to use lanes designated for HOVs. Current state law authorizes the Department of Motor Vehicles to issue decals or other identifiers to qualified vehicles, as specified. Current state law allows a vehicle displaying a valid decal or identifier issued pursuant to these provisions to be operated in a lane designated for the exclusive use of HOVs regardless of the occupancy of the vehicle. These existing state laws, by operation of their provisions, become inoperative on the date the federal authorization expires. Current state law also repeals these provisions on September 30, 2025. This bill would extend the repeal date of these provisions until January 1, 2027.

AB 2697 Irwin D (Dist. 42) Transportation electrification: electric vehicle charging infrastructure.

Location: SENATE E. U., & C.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law prohibits persons desiring to use an electric vehicle charging station that requires payment of a fee from being required to pay a subscription fee to use the station and from being required to obtain membership in any clul association, or organization as a condition of using the station. This bill would require the State Energy Resources Conservation and Development Commission (Energy Commission) to develop network roaming requirements for electric vehicle chargers and charging station networks by January 1, 2026, that would apply to the charging network of charging network providers that received an incentive from a state agency or through a charge on ratepayers, as specified. The bill would repeal this requirement on January 1, 2035.

AB 2698 Ta R (Dist. 70) Route 405: Little Saigon Freeway.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would specify that Route 405 from Bolsa Chica Road to Magnolia Street in the County of Orange shall be known and designated as the Little Saigon Freeway, and would require the Department of Transportation to determine the cost of appropriate signs showing that special designation and, upon receiving donations from nonstate sources sufficient to cover the cost, to erect those signs, as specified.

AB 2712 Friedman D (Dist. 44) Preferential parking privileges: transit-oriented development.

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law prohibits a public agency from imposing any minimum automobile parking requirement on any residential, commercial, or other development project that is located within 1/2 mile of public transit, as defined, unless the public agency makes written findings that not imposing or enforcing minimum automobile parking requirements on the development would have a substantially negative impact on, among other things, the city's, county's, or city and county's ability to meet its share of the regional housing need for low- and very low income

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

households. This bill would, for purposes of its provisions, define "development project" to mean a residen commercial, or other development project exempt from minimum automobile parking requirements, or subject to parking minimum reductions based on any other applicable law, located within the boundaries of the City of Los Angeles. This bill, for a development project that is located within a preferential parking area, would require the development project to be excluded from the boundaries of the preferential parking area and would prohibit the local authority, as defined, from issuing any permit to the residents, vendors, or visitors of the development project that grants preferential parking privileges. However, the bill would also authorize a local authority to issue permits tc residents of the development project that is within the boundaries of a preferential parking area if the issuing the permit does not cause overcrowding in the preferential parking area for existing residents. The bill would also provide that none of the above-described provisions prohibit local authorities from issuing permits to residents of developments projects that occupy deed-restricted units intended for specified households.

AB 2715 Boerner D (Dist. 77) Ralph M. Brown Act: closed sessions.

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate. Current law authorizes a legislative body to hold a closed session with specified individuals on, among other things, matters posing a threat to the security of essential public services, as specified. This bill would additionally authorize a legislative body to hold a closed session with other lav enforcement or security personnel and to hold a closed session on a threat to critical infrastructure controls or critical infrastructure information, as defined, relating to cybersecurity.

AB 2728 Gabriel D (Dist. 46) Planning and zoning: housing development: independent institutions of higher education and religious institutions.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Affordable Housing on Faith and Higher Education Lands Act of 2023 (the act) requires a housing development project on certain lands owned by an independent institution of higher education or a religious institution to be a use by right if the development project satisfies specified criteria, including that a specified percentage of the development project's total units are for lower income households. This bill would require a local government to include in the annual report specified information relating to housing development projects under the act, including the number of applications submitted and the total number of building permits issued under the act. The bill would require the Department of Housing and Community Development, by July 1, 2025, to develop and publish a list of existing state grants and financial incentives in connection with the planning, construction, and operation of very low, low-, and moderate-income housing on land owned by religious institutions and independent institutions of higher education, and a set of model partnership agreements that can be used by those institutions when they partner with an affordable housing builder.

AB 2735 Rubio, Blanca D (Dist. 48) Joint powers agreements: water corporations.

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Joint Exercise of Powers Act authorizes 2 or more public agencies, if authorized by their governing bodies, by agreement to jointly exercise any power common to the contracting parties. Current law authorizes 2 or more local public entities, or a mutual water company, as defined, and a public agency, to provide insurance, as specified, by a joint powers agreement. Current law authorizes local public entities or a mutual water company and a public agency to enter into a joint powers agreement for the purposes of risk-pooling, as specified. This bill would authorize a

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

water corporation, as defined, and one or more public agencies to provide insurance, as specified, by a joi powers agreement.

AB 2743 Pacheco D (Dist. 64) Insurance: personal vehicle sharing.

Location: SENATE INS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law generally regulates classes of insurance, including automobile liability insurance. Current law prohibits classifying a private passenger motor vehicle as a commercial vehicle, for-hire vehicle, permissive use vehicle, or livery solely because its owner allows it to be shared, if specified criteria are met, including if the annual revenue received by the vehicle's owner generated by the personal vehicle sharing of the vehicle does not exceed the annual expenses of owning and operating the vehicle. Current law requires a personal vehicle sharing program, for each vehicle that it facilitates the use of, among other things, to provide insurance coverages for the vehicle and operator of the vehicle that are equal to or greater than the insurance coverages maintained by the vehicle owner, but no less than 3 times the minimum coverage amounts for private passenger vehicles. Current law requires an owner or operator of a motor vehicle, or an owner of a vehicle used to transport passengers for hire not regulated by the Public Utilities Commission, to maintain liability insurance coverage for the named insured and any other person using the vehicle with permission in the amount of $15,000 for the bodily injury or death of any one person, $30,000 for the bodily injury or death of all persons, and $5,000 for damage to the property of others resulting from any one accident. Current law increases these minimum amounts to $30,000, $60,000, and $15,000, respectively, on January 1, 2025. This bill would require a personal vehicle sharing program to provide, instead, insurance coverages for the vehicle and operator at a minimum of $45,000 for bodily injury or death for one perso $90,000 for bodily injury or death for all persons, and $15,000 for property damage, and, on and after January 1, 2035, to provide liability coverage at least 3 times the minimum insurance requirements for private passenger vehicles. The bill would require a personal vehicle sharing program to disclose to a vehicle owner and any person that operates the vehicle specified information, including the minimum mandatory coverage and limits that the personal vehicle sharing program is required to provide and the coverages and limits provided.

AB 2750 Gallagher R (Dist. 3) Electricity: procurement: generation from biomass.

Location: SENATE E. U., & C.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law vests the Public Utilities Commission with regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities are under the direction of their governing boards. Current law requires electrical corporations, in addition to other requirements to procure generating capacity from bioenergy projects, to collectively procure, by December 1, 2023, their proportionate share of 125 megawatts of cumulative rated generating capacity from bioenergy projects that commenced operations before June 1, 2013, and that use certain feedstocks. This bill would extend that procurement deadline to July 1, 2025.

AB 2802 Maienschein D (Dist. 76) Transitional housing placement providers.

Location: SENATE HUM. S.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The California Community Care Facilities Act requires the State Department of Social Services to license and regulate transitional housing placement providers pursuant to the act. Under current law, a transitional housing placement provider is an organization licensed by the department to provide transitional housing to foster children a least 16 years of age and not more than 18 years of age and to nonminor dependents to promote their transition to adulthood. Current law requires a transitional housing unit to include, among other things, a host family certified by a transitional housing placement provider or other designated entity, as prescribed. Current law requires the

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

department to adopt regulations governing transitional housing placement living arrangements requirements minors and nonminor dependents, as prescribed. This bill would require those regulations to include allowing a minor or nonminor dependent participant to share a bedroom or unit in a transitional housing placement with a nonparticipant roommate, sibling, or coparent, as specified. The bill would also require the regulations to allow a minor or nonminor dependent with children to share their living arrangement with a coparent or participant sibling. The bill would require the regulations to require counties and program contracts to allow individual program participants and individuals sharing their living arrangements to share bedrooms, bathrooms, and units together, regardless of gender identity and would require county program contracts to allow providers and participants to make best matches to allow for gender flexibility.

AB 2803 Valencia D (Dist. 68) Campaign expenditures: criminal convictions: fees and costs.

Location: SENATE E. & C.A.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Political Reform Act of 1974 deems all campaign contributions to be held in trust for expenses associated with seeking or holding office, and generally authorizes expenditures associated therewith if they are reasonably related t a political, legislative, or governmental purpose. Current law prohibits the use of campaign funds to pay or reimburs fines, penalties, judgments, or settlements, except as specified. Current law provides that the expenditure of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not related to a political, legislative, or governmental purpose unless the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, as specified. This bill would prohibit campaign funds from being used to reimburse expenditures for attorney's fees and other costs in connection with criminal litigation if the litigation results in a conviction of the candidate or elected officer for a felony involving certain types of offenses as specified.

AB 2815 Petrie-Norris D (Dist. 73) Clean Transportation Program: electric vehicle chargers.

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes the Clean Transportation Program, administered by the State Energy Resources Conservation and Development Commission, to provide funding to certain entities to develop and deploy innovativ technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. Current law limits funding under the program to specified categories of programs and projects. Existing law creates the Alternative and Renewable Fuel and Vehicle Technology Fund, to be administered by the commission, and requires the moneys in the fund, upon appropriation by the Legislature, to be expended by the commission to implement the program. This bill would add to the categories of programs and projects eligible for funding under th Clean Transportation Program a program to repair or replace nonoperational electric vehicle chargers that are at least 5 years old and that are located in a publicly available parking space, as provided.

AB 2849 Rubio, Blanca D (Dist. 48) Beer manufacturers: sale of draught beer.

Location: SENATE APPR.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Existing law requires any on-sale retail licensee that gives, sells, or otherwise dispenses draught beer to include specified information about the beer upon the faucet, spigot, or outlet from which the beer is drawn or in the place of service and consumption, as provided. This bill would exempt from these labeling requirements premises operated under a beer manufacturer license.

AB 2854 Irwin D (Dist. 42) Bradley-Burns Uniform Local Sales and Use Tax Law.

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would require a local agency, as defined, to annually provide specified information relating to each agreement resulting in the direct or indirect payment, transfer, diversion, or rebate of Bradley-Burns local tax revenues to the California Department of Tax and Fee Administration. The bill would additionally require the local agency to publisl that information on its internet website. The bill would impose monetary penalties on any local agency that fails to provide information to the department or fails to publish information to its internet website. website, as prescribed. By expanding the duties of local agencies, this bill would impose a state-mandated local program.

AB 2861 Wallis R (Dist. 47) Personal income tax: credit: gun safe.

Location: ASSEMBLY REV. & TAX SUSPENSE FILE

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Personal Income Tax Law allows various credits against the taxes imposed by that law. This bill would allow a credit against those taxes for each taxable year beginning on or after January 1, 2025, and before January 1, 2030, in an amount equal to the amount paid or incurred, not to exceed $300, during the taxable year for the purchase of one gun safe, as defined, for use in a residential unit located in the state.

AB 2867 Gabriel D (Dist. 46) Recovery of artwork and personal property lost due to persecution.

Location: SENATE JUD.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires a civil action against a museum, gallery, auctioneer, or dealer for the recovery of works of fine art that were unlawfully taken or stolen, including a taking or theft by means of fraud or duress, to be commenced within 6 years of the actual discovery by the claimant or their agent of the identity and whereabouts of the work of fine art and information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest i the work of fine art. Current federal law, the Holocaust Expropriated Art Recovery Act of 2016, establishes a statute of limitation for claims to recover artwork and other property, as defined, stolen or misappropriated by the Nazis between 1933 and 1945. This bill would provide that California substantive law shall apply in actions to recover fine art or an item of historical, interpretive, scientific, or artistic significance, including those covered by the Holocaust Expropriated Art Recovery Act of 2016, brought by a California resident or their heirs, as specified.

AB 2886 Aguiar-Curry D (Dist. 4) Gambling Control Act: injunctive relief.

Location: SENATE G.O.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the Department of Justice to investigate any violations of, and to enforce, the Gambling Contrc Act. Current law prohibits a court from issuing a temporary injunction or other provisional order to restrain, stay, o otherwise interfere with any action by the department or the California Gambling Control Commission, except upor a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced. Current law prohibits an order from being effective for more than 15 days and a preliminary order from being effective for more than 45 days, except by stipulation of the department or commission. This bill would extend the period an order may be effective to 21 days and extend the period a preliminary order may be effective to 60 days

AB 2889 Zbur D (Dist. 51) Local public employee relations: the City of Los Angeles Employee Relations Board and the Los Angeles County Employee Relations Commission.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Current law establishes the Public Employment Relations Board (PERB). Under current law, PERB has the power and duty to investigate an unfair practice charge and to determine whether the charge is justified and the appropriat remedy for the unfair practice. The Meyers-Milias-Brown Act regulates the labor relations of employees and employers of local public agencies. The act requires that a complaint alleging any violation of the act or of any rules and regulations adopted by a public agency pursuant to specified law be processed as an unfair practice charge by PERB. The act provides that the initial determination as to whether the charge of unfair practice is justified and, if s the appropriate remedy necessary to effectuate the purposes of the act is a matter within the exclusive jurisdiction o PERB, except that in an action to recover damages due to an unlawful strike, PERB does not have authority to award strike-preparation expenses as damages and does not have authority to award damages for costs, expenses or revenue losses incurred during, or as a consequence of, an unlawful strike. Current law, notwithstanding PERB's authority, grants the employee relations commissions for the City of Los Angeles and the County of Los Angeles th power and responsibility to take actions on all unfair practices, as specified. This bill would prohibit, in an action to recover damages due to an unlawful strike, the City of Los Angeles Employee Relations Board and the Los Angele County Employee Relations Commission from awarding strike-preparation expenses as damages and awarding damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

AB 2898 Carrillo, Wendy D (Dist. 52) Unbundled parking: exemptions: Housing Choice Vouchers.

Location: SENATE JUD.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the owner of qualifying residential property, as defined, that provides parking with the qualifying residential property to unbundle parking from the price of rent, as specified. Current law defines "unbundled parking" as the practice of selling or leasing parking spaces separate from the lease of the residential use. Current federal law provides housing assistance to low-income individuals and households in the form of vouchers, commonly known as Housing Choice Vouchers. This bill would exempt any residential unit that is leased to a tenant who receives a federal Housing Choice Voucher, including a federal Veterans Affairs Supportive Housin voucher, from the above-described requirement to unbundle parking.

AB 2899 Gabriel D (Dist. 46) General acute care hospitals: licensed nurse-to-patient ratios.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Under current law, the State Department of Public Health adopted regulations that establish minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit within a general acute care hospital, among other health facilities. Current regulations require licensed nurse-to-patient ratios to represent the maximum number of patients assigned to one licensed nurse at any one time, and define "assigned" to mean the licensed nurse has responsibility for the provision of care to a particular patient within their scope of practice. This bill would require the department, when transmitting to a general acute care hospital the action to be taken on a substantiated violation of the regulation establishing licensed nurse-to-patient ratios, to simultaneously transmit the same information to the person who filed the claim of the violation and their collective bargaining agent or representative, if any. The bill would further require the department, if the action to be taken does not include a fine to simultaneously transmit a statement of the reasoning for not imposing a fine to the person who filed the claim of the violation and their collective bargaining agent or representative, if any.

AB 2903 Hoover R (Dist. 7) Homelessness.

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Current law requires a state agency or department that administers one or more state homelessness progra request of the California Interagency Council on Homelessness, to participate in council activities, as specified, and to provide to the council any relevant information regarding those state homelessness programs. This bill would require, commencing June 1, 2025, a state agency or department that administers one or more state homelessness programs to report annually to the council cost and outcome data for each program the agency or department administers, and would require the council to develop uniform data collection and reporting procedures for this purpose. The bill would require the council to compile the data reported by agencies and departments and, commencing September 1, 2025, annually make that data available to the public.

AB 2904 **Quirk-Silva D (Dist. 67) Zoning ordinances: notice.**

Location: SENATE APPR.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

This bill would instead require notice of the planning commission's hearing on a proposed zoning ordinance or amendment to a zoning ordinance, if the proposed ordinance or amendment to a zoning ordinance affects the permitted uses of real property, to be published, posted, mailed, and delivered, or advertised, as applicable, at leas 20 days before the hearing. This bill contains other related provisions and other existing laws.

AB 2909 **Santiago D (Dist. 54) Historical property contracts: qualified historical property: adaptive reuse.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes an owner of any qualified historical property to contract with the legislative body of a city, county, or city and county to restrict the use of the property, as specified, in exchange for lowered assessment values. Current law defines "qualified historical property" as privately owned property that is not exempt from property taxation and is either listed in the National Register of Historic Places or located in a registered historic district, as defined, or listed in any state, city, county, or city and county official register of historical or architecturall significant sites, places, or landmarks. Current law establishes the Infill Infrastructure Grant Program of 2019, whicl requires the Department of Housing and Community Development to establish and administer a grant program to fund capital improvement projects pursuant to specified requirements. Current law provides that capital improvement projects that may be funded under the grant program include, among other things, those related to adapted reuse, which means, when referring to building structures, retrofitting and repurposing of existing buildings that create new residential rental units, as specified. This bill, starting January 1, 2026, and until January 1, 2036, would additionally define as "qualified historical property" a privately owned property that is not exempt from property taxation that was constructed at least 30 years prior to the year a legislative body and property owner enter into a contract to restrict the use of the property, as specified, and that is located within the City of Los Angeles on a site that satisfies certain criteria, including, among others, being in a zone where office, retail, or parking are a principally permitted use.

AB 2910 **Santiago D (Dist. 54) State Housing Law: local regulations: conversion of commercial or industrial buildings.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The California Building Standards Law establishes the California Building Standards Commission within the Department of General Services. Current law requires the commission to approve and adopt building standards an to codify those standards in the California Building Standards Code, which is required to be published once every 3 years. The State Housing Law establishes statewide construction and occupancy standards for buildings used for human habitation. That law requires the building department of every city or county to enforce within its jurisdiction

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

the provisions of the California Building Standards Code, the provisions of the State Housing Law, and spe other rules and regulations promulgated pursuant to that law. That law authorizes a city or county to adopt alternative building regulations for the conversion of commercial or industrial buildings to joint living and work quarters, as specified. This bill would additionally authorize a city to adopt alternative building regulations for the conversion of commercial buildings to residential uses, as specified.

AB 2911 **McKinnor D (Dist. 61) Campaign contributions: agency officers.**

Location: SENATE E. & C.A.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Political Reform Act of 1974 prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than $250 from any party, participant, or a party or participant's agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 12 months following the date a final decision is rendered in the proceeding, if the officer knows or has reason to know that the participant has a financial interest, as defined. Current law permits an officer who violates this prohibition to cure the violation by returning the contribution, or portion of the contribution in excess of $250, within 14 days of accepting, soliciting or directing the contribution, as specified. Current law also prohibits a party or party's agent from making a contribution of more than $250 to any officer of an agency while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 12 months following the date a final decision is rendered by the agency in that proceeding. This bill would raise the threshold for contributions regulated by these provisions to $1,500, as specified.

AB 2926 **Kalra D (Dist. 25) Planning and zoning: assisted housing developments: notice of expiration of affordability restrictions.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Planning and Zoning Law requires an owner of an assisted housing development proposing the termination of a subsidy contract or prepayment of governmental assistance or of an assisted housing development in which there will be the expiration of rental restrictions to provide a notice of the proposed change to each affected tenant household residing in the assisted housing development, as specified. The Planning and Zoning Law defines "assiste housing development" for these purposes to mean a multifamily rental housing development of 5 or more units that receives governmental assistance under any of specified programs, including assistance provided by counties or cities under specified law in exchange for restrictions on the maximum rents, as specified, and on the maximum tenant income, as specified. The Planning and Zoning law defines a "termination" for these purposes to mean an owner's decision to extend or renew its participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an assisted housing development, as specified. The Planning and Zoning Law defines the "expiration of rental restrictions" for these purposes to mean the expiration of rental restrictions for an assisted housing development, as specified, unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50% of the units. This bill would instead impose the above-described notice requirement on an owner prior to the anticipated date of termination of a subsidy contract or expiration of rental restrictions or prepayment on an assisted housing development, as specified The bill would expand the definition of "assisted housing development" to include a development that receives assistance from counties or cities in exchange for affordability restrictions, as described above, pursuant to the Middle Class Housing Act of 2022; strealimining assistance pursuant to the Affordable Housing and High Road Jobs Act of 2022; specified law providing a streamlined, ministerial approval process for certain housing developments; or the Affordable Housing on Faith and Higher Education Lands Act of 2023.

AB 2928 **Flora R (Dist. 9) Budget Act of 2022.**

Location: ASSEMBLY PRINT

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	C
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The Budget Act of 2022 made appropriations for the support of state government for the 2022–23 fiscal years. This bill would amend the Budget Act of 2022 by amending an item of appropriation relating to the Lockeford Community Services District.

AB 2951 **Cervantes D (Dist. 58) Elections: request for recount: notice.**

Location: SENATE E. & C.A.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes any voter, after the completion of the official canvass for a statewide election, to file with the Secretary of State a written request for a vote recount, as specified. Current law requires the Secretary of State to send a copy of the written request by registered mail to each affected county elections official, as specified. This bill would instead require the Secretary of State to send a copy of the written request to the elections official by electronic delivery. The bill would require the elections official to provide written confirmation of delivery to the Secretary of State.

AB 3123 **Jones-Sawyer D (Dist. 57) Los Angeles County Metropolitan Transportation Authority: board code of conduct: lobbying rules.**

Location: SENATE TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law creates the Los Angeles County Metropolitan Transportation Authority (MTA), governed by a 14-member board, with specified powers and duties relative to transportation planning, programming, and operations i the County of Los Angeles. Current law prescribes a code of conduct for the board of MTA, which includes, among other things, rules pertaining to gifts and financial conflicts of interest. As part of the provisions establishing this code of conduct, current law requires the board of MTA to appoint an ethics officer who reports to the board. Current law also requires MTA to appoint an inspector general and requires the code of conduct to be enforced by the inspector general. This bill would revise and recast the code of conduct by, among other things, specifying that board members are subject to all ethics laws applicable to other public officials and by eliminating specific rules fro the code of conduct including, among others, certain rules pertaining to gifts and financial conflicts of interest. The bill would also provide that the code of conduct is in addition to any rules or codes adopted by the board. The bill would require the ethics officer, in addition to reporting to the board, to operate in an independent manner, and would prohibit the ethics officer from being removed from office except under certain circumstances.

AB 3177 **Carrillo, Wendy D (Dist. 52) Mitigation Fee Act: land dedications: mitigating vehicular traffic impacts.**

Location: SENATE L. GOV.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Mitigation Fee Act imposes various requirements with respect to the establishment, increase, or imposition of a fee by a local agency as a condition of approval of a development project. Current law requires a local agency that imposes a fee on a housing development for the purpose of mitigating vehicular traffic impacts to set the rate for the fee to reflect a lower rate of automobile trip generation if the housing development satisfies specified characteristics including that the housing development is located within1/2 mile of a transit station. Current law defines transit statio for these purposes to mean a rail or light-rail station, ferry terminal, bus hub, or bus transfer station. This bill would instead require the housing development to be located within 1/2 mile of a transit priority area for purposes of a local agency setting the rate for a mitigating vehicular traffic impacts fee to reflect a lower rate of automobile trip generation.

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

ABX1 2 **Fong, Vince R (Dist. 0) Motor Vehicle Fuel Tax Law: suspension of tax.**

Location: ASSEMBLY PRINT

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would suspend the imposition of the tax on motor vehicle fuels for one year. The bill would require that all savings realized based on the suspension of the motor vehicle fuels tax by a person other than an end consumer, as defined, be passed on to the end consumer, and would make the violation of this requirement an unfair business practice, in violation of unfair competition laws, as provided. The bill would require a seller of motor vehicle fuels to provide a receipt to a purchaser that indicates the amount of tax that would have otherwise applied to the transaction.

SB 7 **Blakespear D (Dist. 38) Planning and zoning: annual report: housing for extremely low income households.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires the planning agency of a city or county to provide by April 1 of each year an annual report to, among other entities, the Department of Housing and Community Development. The law requires that the annual report include, among other specified information, the number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, building permit, or certificate of occupancy, and the income category, by area median income, that each unit of housing satisfies, as specified. This bill would revise and recast these provisions to specify that the income category includes extremely low income households, as defined.

SB 312 **Wiener D (Dist. 11) California Environmental Quality Act: university housing development projects: exemption.**

Location: ASSEMBLY NAT. RES.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. Current law, until January 1, 2030, exempts from CEQA a university housing development project carried out by a public university on real property owned by the public university if the project meets certain requirements, including that each building within the project is certified as Leadership in Energy and Environmental Design (LEED) Platinum or better by the United States Green Building Council. Existing law requires the lead agency, if the university housing development project is exempt from CEQA under the above provision, to file the LEED certificate for buildings within the project and a notice determining that the construction impacts of the project have been fully mitigated with the Office of Planning and Research and the county clerk of the county in which the project is located. Current law requires a university housing development project carried out by the University of California, in order to be exempt from CEQA under this law, to be consistent with the most recent long-range development plan EIR certified on or after January 1, 2018, as provided. This bill would extend the application of the university housing development project exemption until January 1, 2032. The bill would instead require a university housing development project carried out by the University of California, in order to be exempt from CEQA under this law, to be consistent with the land use designation in the most recent long-range development plan that has an EIR prepared for that plan, or an EIR prepared for any subsequent amendment to that plan relating to housing, that was certified not more than 25 years before the approval of the project.

SB 517 **Gonzalez D (Dist. 33) Economic development: movement of freight.**

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Location: ASSEMBLY 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes GO-Biz to undertake various activities relating to economic development, including the provision of prescribed information. Current law requires the Transportation Agency to prepare a state freight plan that provides a comprehensive plan to govern the immediate and long-range planning activities and capital investments of the state with respect to the movement of freight. This bill would authorize GO-Biz to serve as the coordinating entity to steer the growth, competitiveness, and sustainability for freight and the supply chain across the state and to promote and assess the continued economic vitality, economic competitiveness, and sustainability of the freight sector. The bill would also authorize GO-Biz to provide freight and supply chain economic competitiveness information.

SB 537 Becker D (Dist. 13) Open meetings: multijurisdictional, cross-county agencies: teleconferences.

Location: ASSEMBLY INACTIVE FILE

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law, until January 1, 2024, authorizes the legislative body of a local agency to use alternate teleconferencing provisions during a proclaimed state of emergency or in other situations related to public health that exempt a legislative body from the general requirements (emergency provisions) and impose different requirements for notice, agenda, and public participation, as prescribed. The emergency provisions specify that they do not require a legislative body to provide a physical location from which the public may attend or comment. Current law, until January 1, 2026, authorizes the legislative body of a local agency to use alternative teleconferencing in certain circumstances related to the particular member if at least a quorum of its members participate from a singular physical location that is open to the public and situated within the agency's jurisdiction and other requirements are met, including restrictions on remote participation by a member of the legislative body. These circumstances include if a member shows "just cause," including for a childcare or caregiving need of a relative that requires the member to participate remotely. This bill would expand the circumstances of "just cause" to apply to the situation in which an immunocompromised child, parent, grandparent, or other specified relative requires the member to participate remotely. The bill would authorize the legislative body of a multijurisdictional, cross-county agency, as specified, to use alternate teleconferencing provisions if the eligible legislative body has adopted an authorizing resolution, as specified. The bill would also require the legislative body to provide a record of attendance of the members of the legislative body, the number of community members in attendance in the teleconference meeting, and the number of public comments on its internet website within 10 days after a teleconference meeting, as specified. The bill would require at least a quorum of members of the legislative body to participate from one or more physical locations that are open to the public and within the boundaries of the territory over which the local agency exercises jurisdiction.

SB 638 Eggman D (Dist. 5) Climate Resiliency and Flood Protection Bond Act of 2024.

Location: ASSEMBLY W.,P. & W.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would enact the Climate Resiliency and Flood Protection Bond Act of 2024 which, if approved by the voters, would authorize the issuance of bonds in the amount of $6,000,000,000 pursuant to the State General Obligation Bond Law, for flood protection and climate resiliency projects.

SB 672 McGuire D (Dist. 2) Residential property insurance.

Location: ASSEMBLY 2 YEAR

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law generally regulates classes of insurance, including residential property insurance. Current law prohibits

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

residential property insurance policy from being issued or renewed in this state unless it complies with certa requirements. This bill would prohibit an admitted insurer that offers residential property insurance from refusing to offer or sell residential property insurance to an applicant whose property meets specified best practices for wildfir building hardening and property-level mitigation.

SB 768 **Caballero D (Dist. 14) California Environmental Quality Act: Transportation Agency: vehicle miles traveled: study.**

Location: ASSEMBLY NAT. RES.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the Office of Planning and Research to prepare, develop, and transmit to the Secretary of the Natural Resources Agency for certification and adoption proposed revisions to guidelines establishing criteria for determining the significance of transportation impacts of projects within transit priority areas to promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. Current law establishes the Transportation Agency in state government with various duties and responsibilities. The agency is under the supervision of the Secretary of Transportation, who has the power of general supervision over specified departments and offices, including the Department of Transportation. This bill would require the Transportation Agency, in consultation with local governments and other interested parties, as specified, by January 1, 2028, and subject to an appropriation by the Legislature for this purpose, to conduct and post on its internet website a study on how vehicle miles traveled is used as a metric for measuring transportation impacts pursuant to the California Environmental Quality Act (CEQA). The bill would require the study to include, among other things, an analysis of the differences in the availability and feasibility of mitigation measures for vehicle miles traveled in rural, suburban, and urban areas. The bill would repeal those provisions on January 1, 2029.

SB 908 **Cortese D (Dist. 15) Fentanyl: child deaths.**

Location: ASSEMBLY HEALTH

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes the State Department of Public Health to implement and administer various programs relating to public health. The department administers the California Overdose Surveillance Dashboard that provides data on state- and local-level drug-related overdose outcomes for California, including, among other data, the number of deaths related to fentanyl overdoses. Current law requires the department to update the dashboard to reflect additional information, as specified. This bill would require the department to use best efforts to utilize all of its relevant data regarding overdoses in the state to monitor and identify current trends of fentanyl-related deaths of children 0 to 5 years of age, inclusive.

SB 915 **Cortese D (Dist. 15) Local government: autonomous vehicle service.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes an autonomous vehicle, as defined, to be operated on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle being operated if certain requirements are met, including that the vehicle is being operated solely by employees, contractors, or other persons designated by the manufacturer. Current law prohibits an autonomous vehicle from being operated on public roads until the manufacturer submits an application to the Department of Motor Vehicles containing certain certifications regarding safety and other technological requirements and the department approves that application pursuant to adopted regulations. Current law, commencing January 1, 2030, and to the extent authorized by federal law, prohibits the operation of certain new autonomous vehicles that are not zero-emission vehicles, as defined. This bill would authorize a city with a population of 250,000 or greater that an autonomous vehicle service, as defined, has receive

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

authorization by the Department of Motor Vehicles, the Public Utilities Commission, or any other applicabl agency to operate, to protect the public health, safety, and welfare by enacting an ordinance in regard to autonomous vehicle services within that jurisdiction. The bill would require each city that enacts an ordinance to include certain provisions within that ordinance. These would include a policy for entry into the business of providin autonomous vehicle services including a permitting program that includes, among other things, the establishment of reasonable vehicle caps and hours of service restrictions. The bill would authorize a city with a population of less than 250,000 that shares a border or is contiguous to a city that has enacted an autonomous vehicle services ordinance to enact an ordinance substantially consistent with that autonomous vehicle services ordinance.

SB 925 **Wiener D (Dist. 11) Legislative review of state agency action.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires a state agency, as specified, to notify the Joint Legislative Budget Committee not less than 60 days prior to the effective date on which the state agency will establish or change a federal aid allocation formula to a local agency. If the chairperson of the committee informs committee members of the chairperson's intention to waive the 60-day notification period, current law permits the chairperson to grant a waiver of that notification perio after receipt of the notification if an objection is not received within 10 days. Current law requires, upon the request of the chairperson or any member of the committee, the committee to schedule a hearing on the proposed allocatio formula to be established or changed. This bill would reduce the objection period before granting a waiver to 9 days.

SB 926 **Wahab D (Dist. 10) Crimes: distribution of intimate images.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would make it a crime for a person to intentionally create and distribute or cause to be distributed any photo realistic image, digital image, electronic image, computer image, computer-generated image, or other pictorial representation of an intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation b the person depicted or in which the person depicted participates that was created in a manner that would cause a reasonable person to believe the image is an authentic image of the person depicted, under circumstances in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. By expanding the scope of a crime, this bill would impose a state-mandated local program.

SB 936 **Seyarto R (Dist. 32) Office of Planning and Research: study: road safety projects.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Would require Office of Planning and Research (OPR), in coordination with the Department of Transportation, to conduct a study to identify certain locations in the state highway system with regard to vehicle collisions and crash exposure, projects that could improve road safety at each of those locations, and common factors, if any, contributing to the delay in the delivery of those projects. The bill would require OPR to post the study on its internet website on or before January 1, 2026.

SB 960 **Wiener D (Dist. 11) Transportation: planning: complete streets facilities: transit priority projects.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

Current law requires the Department of Transportation to improve and maintain the state's highways, and establishes various programs to fund the development, construction, and repair of local roads, bridges, and other critical transportation infrastructure in the state. This bill would require all transportation projects funded or overseen by the department to provide complete streets facilities, except as specified.

SB 1031 Wiener D (Dist. 11) San Francisco Bay area: local revenue measure: transportation improvements.

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law creates the Metropolitan Transportation Commission as a local area planning agency for the 9-county San Francisco Bay area with comprehensive regional transportation planning and other related responsibilities. Current law creates various transit districts located in the San Francisco Bay area, with specified powers and duties relating to providing public transit services. This bill would authorize the commission to raise and allocate new revenue and incur and issue bonds and other indebtedness, as specified. In this regard, the bill would authorize the commission, until January 1, 2041, to impose a retail transactions and use tax, a regional payroll tax, a parcel tax, and a regional vehicle registration surcharge in all or a subset of the 9 counties of the San Francisco Bay area, except as specified, in accordance with applicable constitutional requirements. The bill would prohibit a tax or surcharge described above from being imposed for a period of time of more than 30 years. The bill would require the parcel tax to be collected by counties and the other 3 taxes to be collected by specified state agencies, and would require the net revenues from those taxes to be remitted to the commission, as prescribed.

SB 1068 Eggman D (Dist. 5) Tri-Valley-San Joaquin Valley Regional Rail Authority: contracting: Construction Manager/General Contractor project delivery method.

Location: ASSEMBLY TRANS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law establishes the Tri-Valley-San Joaquin Valley Regional Rail Authority for purposes of planning, developing, delivering, and operating cost-effective and responsive transit connectivity, between the Bay Area Rapid Transit District's rapid transit system and the Altamont Corridor Express commuter rail service. Current law gives the authority all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and constructing facilities to achieve transit connectivity, including, among other powers, the power to contract with public and private entities for the planning, design, and construction of the connection. Current law authorizes these contracts to be assigned separately or combined to include any or all tasks necessary to achieve transit connectivity. This bill would authorize the Tri-Valley-San Joaquin Valley Regional Rail Authority to use the Construction Manager/General Contractor project delivery method when contracting for the planning, design, and construction of the connection. The bill would additionally authorize the contracts of the authority to extend to work on the state highway system for the construction of passenger rail service through the Altamont Pass Corridor.

SB 1086 Seyarto R (Dist. 32) Sales and Use Tax Law: motor vehicle fuel tax: sales price: gross receipts.

Location: SENATE REV. & TAX

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The Motor Vehicle Fuel Tax Law, administered by the California Department of Tax and Fee Administration, imposes a tax upon each gallon of motor vehicle fuel removed from a refinery or terminal rack in this state, entered into this state, or sold in this state, at a specified rate per gallon. Current sales and use tax laws provide a partial exemption from the taxes imposed by those laws for motor vehicle fuel that is subject to the taxes imposed by the Motor Vehicle Fuel Tax Law. This bill, beginning January 1, 2025, would exclude from the terms "gross receipts"

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

and "sales price" under the Sales and Use Tax Law the amount of any motor vehicle fuel tax imposed purs
the Motor Vehicle Fuel Tax Law.

SB 1098 Blakespear D (Dist. 38) Passenger and freight rail: LOSSAN Rail Corridor.

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law authorizes the Department of Transportation, subject to approval of the Secretary of Transportation, tc enter into an interagency transfer agreement under which a joint powers board assumes responsibility for administering the state-funded intercity rail service in certain rail corridors, including the LOSSAN Rail Corridor. Current law defines the LOSSAN Rail Corridor as the intercity passenger rail corridor between San Diego, Los Angeles, and San Luis Obispo. Pursuant to this authority, the department entered into an interagency transfer agreement with the LOSSAN Rail Corridor Agency to administer intercity passenger rail service in the LOSSAN Rail Corridor. This bill would require the Secretary of Transportation to provide guidance and recommendations to and coordination between, stakeholders as necessary to ensure the performance of the LOSSAN Rail Corridor, as specified.

SB 1325 Durazo D (Dist. 26) Public contracts: best value procurement: goods.

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law imposes requirements on, and authorizes procedures for, public contracting for equipment and services among other things, by local and state agencies. Current law authorizes certain procurements to be facilitated through a lowest responsible bidder requirement. This bill would authorize a public entity, as defined, to award contracts through a best value procurement method, as described, for the purchase of goods with a base value of $250,000 or more. The bill would require the public entity to adopt and publish procedures and guidelines for evaluating the qualifications of the bidders to ensure the best value selections are conducted in a fair and impartial manner, as described. The bill would authorize the procedures and guidelines to include the adoption of a high road jobs plan policy that evaluates bidders' high road jobs plan commitments as part of the overall score for the public contract, as specified. This bill would require the solicitation document to include certain information and would direct the public entity to use a scoring method based on price and the factors described in the solicitation document, as specified.

SB 1402 Min D (Dist. 37) 30x30 goal: state agencies: adoption, revision, or establishment of plans, policies and regulations.

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the Secretary of the Natural Resources Agency to prepare and submit, on or before March 31, 2024, and annually thereafter, a report to the Legislature on the progress made in the prior calendar year towar achieving the goal to conserve 30% of California's lands and coastal waters by 2030. Current law provides that it i the goal of the state to conserve at least 30% of California's lands and coastal waters by 2030, known as the 30x3 goal. This bill would require all state agencies, departments, boards, offices, commissions, and conservancies to consider the 30x30 goal when adopting, revising, or establishing plans, policies, and regulations that directly affect land use, management of natural resources, water use and quality, or biodiversity conservation.

SB 1418 Archuleta D (Dist. 30) Hydrogen-fueling stations: expedited review.

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

The Planning and Zoning Law requires every city, county, and city and county to administratively approve a application to install electric vehicle charging stations and hydrogen-fueling stations through the issuance of a building permit or similar nondiscretionary permit. Current law, the Planning and Zoning Law, requires each city, county, and city and county to adopt an ordinance that creates an expedited, streamlined permitting process for electric vehicle charging stations. Current law authorizes a city, county, or city and county developing an ordinance to refer to the recommendations contained in the most current version of the "Plug-In Electric Vehicle Infrastructure Permitting Checklist," as specified. Current law requires a city, county, and city and county, in developing the expedited permitting process, to adopt a checklist of all requirements with which electric vehicle charging stations must comply to be eligible for expedited review. For these purposes, current law defines "hydrogen-fueling station" to mean the equipment used to store and dispense hydrogen fuel to vehicles according to industry codes and standards that is open to the public. Current law requires a hydrogen-fueling station to meet certain requirements, including any rules established by the State Air Resources Board, Energy Commission, or Department of Food and Agriculture regarding safety, reliability, weights, and measures. This bill would modify the definition of "hydrogen-fueling station" to mean the equipment and structural design components necessary to ensure the safety of the fueling station, including hydrogen-refueling canopies, that are used to store and dispense hydrogen fuel to vehicles according to industry codes and standards that are open to the public.

SB 1420 **Caballero D (Dist. 14) Hydrogen.**

Location: ASSEMBLY DESK

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires the State Air Resources Board to adopt hydrogen fuel regulations that ensure state funding for the production and use of hydrogen fuel contributes to the reduction of the emissions of greenhouse gases, criteria air pollutants, and toxic air contaminants, and ensure the production and direct use of hydrogen fuel in motor vehicles also contributes to a reduced dependence on petroleum, as provided. This bill would require the state board to adopt regulations requiring that no less than 33.3% of the retail hydrogen produced for, or dispensed by, fueling stations that receive state funds is made by a qualified clean hydrogen project.

SB 1510 **Stern D (Dist. 27) Permitting: electric vehicle charging.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

Current law requires every city, county, and city and county to administratively approve an application to install electric vehicle charging stations through the issuance of a building permit or similar nondiscretionary permit and requires the review of an application to install an electric vehicle charging station to be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. Current law requires an electric vehicle charging station to comply with, among other things, all applicable rules of the Public Utilities Commission regarding safety and reliability, as specified. This bill would express the intent of the Legislature to enact subsequent legislation that would reduce state and local permitting barriers for electric vehicle charging.

SBX1 1 **Jones R (Dist. 40) Motor vehicle fuel tax: greenhouse gas reduction programs: suspension.**

Location: SENATE RLS.

2Year Dead	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
	1st House				2nd House							

The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt rules and regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions reductions to ensure that the statewide greenhouse gas emissions are reduced to at least 40% below the statewide greenhouse gas emissions limit, as defined, no later than December 31, 2030. Pursuant to the act, the state board has adopted the Low Carbon Fuel Standard regulations. The act authorizes the state board to include in its regulation of those

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

emissions the use of market-based compliance mechanisms. Current law requires all moneys, except for fi penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund. This bill would suspend the Low Carbon Fuel Standard regulations for one year. The bill would also exempt suppliers of transportation fuels from regulations for the use of market-based compliance mechanisms for one year.

Total Measures: 110

Total Tracking Forms: 110

Attachment: Bill Report 5-30-24 (10688 : State Legislative Update)

ATTACHMENT C

AMENDED IN SENATE MAY 16, 2024

AMENDED IN SENATE APRIL 30, 2024

AMENDED IN SENATE APRIL 8, 2024

AMENDED IN SENATE MARCH 20, 2024

SENATE BILL **No. 1420**

Introduced by Senators Caballero, Archuleta, Dodd, and Newman

February 16, 2024

An act to add Section 43869.5 to the Health and Safety Code, and to amend Sections 21189.81 and 25545 of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1420, as amended, Caballero. Hydrogen.

(1) Existing law requires the State Air Resources Board to adopt hydrogen fuel regulations that ensure state funding for the production and use of hydrogen fuel contributes to the reduction of the emissions of greenhouse gases, criteria air pollutants, and toxic air contaminants, and ensure the production and direct use of hydrogen fuel in motor vehicles also contributes to a reduced dependence on petroleum, as provided.

This bill would require the state board to adopt regulations requiring that no less than 33.3% of the retail hydrogen produced for, or dispensed by, fueling stations that receive state funds is made by a qualified clean hydrogen ~~project, as defined.~~ *project.* The bill would also require that no less than 60% of the retail hydrogen produced or dispensed in California for use in transportation is ~~made by a~~ qualified clean hydrogen ~~project~~ by December 31, 2045.

Attachment: Senate Bill 1420 (Caballero) (10688 : State Legislative Update)

Under existing law, a person who knowingly violates regulations adopted by the state board pertaining to motor vehicle fuels is guilty of a misdemeanor.

Because a knowing violation of the hydrogen fuel regulations adopted pursuant to this bill would be a crime, the bill would impose a state-mandated local program.

(2) The California Environmental Quality Act (CEQA) requires preparation of specified documentation before a public agency approves or carries out certain projects. Existing law authorizes the Governor to certify energy infrastructure projects meeting specified requirements for streamlining benefits related to CEQA. Existing law defines "energy infrastructure project" for these purposes to include eligible renewable energy resources under the California Renewables Portfolio Standard Program, excluding resources that use biomass fuels. Existing law expressly excludes from that definition of "energy infrastructure project" any project using hydrogen as a fuel.

This bill would instead ~~include eligible renewable energy resources that use biomass fuels and~~ *exclude from the definition of "energy infrastructure project" for purposes of the CEQA streamlining benefits eligible renewable energy resources under the California Renewables Portfolio Standard Program that combust, rather than use, biomass fuels. The bill would include* qualified clean hydrogen projects, as defined, within the definition of "energy infrastructure ~~project" for purposes of the streamlining benefits related to CEQA.~~ *project.*" Because the bill would authorize the Governor to certify additional projects, thereby increasing the duties on lead agencies in conducting the environmental review of energy infrastructure projects certified by the Governor, this bill would impose a state-mandated local program.

(3) Existing law authorizes persons proposing specified electrical generation, electrical transmission, and energy storage projects to apply, on or before June 30, 2029, to the State Energy Resources Conservation and Development Commission (Energy Commission) to certify sites and related facilities as environmental leadership development projects, as specified. Existing law makes a site and related facility certified by the Energy Commission subject to the streamlining benefits related to CEQA with no further action by the applicant or the Governor. Under existing law, the Energy Commission's certification is in lieu of any permit, certificate, or similar document required by any governmental agency and supersedes any applicable statute, ordinance, or regulation, except as specified.

Attachment: Senate Bill 1420 (Caballero) (10688 : State Legislative Update)

This bill would expand the types of facilities eligible to be certified as environmental leadership development projects by the Energy Commission to include qualified clean hydrogen projects, as defined.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 43869.5 is added to the Health and Safety Code, to read:

43869.5. (a) It is the policy of the state that hydrogen produced for use in a fuel cell electric vehicle shall have a well-to-gate carbon intensity equal to or less than the carbon intensity of electricity from the California electrical grid when used to power an electric vehicle. To further this policy, the state board shall develop and adopt regulations that, at a minimum, require both of the following:

(1) On a statewide basis, no less than 33.3 percent of the retail hydrogen produced for, or dispensed by, fueling stations that receive state funds is made by a qualified clean hydrogen project.

(2) On a statewide basis, by December 31, 2045, no less than 60 percent of the retail hydrogen produced or dispensed in California for use in transportation is ~~made by a~~ qualified clean ~~hydrogen project.~~ *hydrogen.*

(b) The state board may adopt interim targets through 2045 for purposes of achieving the requirement described in paragraph (2) of subdivision (a).

(c) For purposes of this section, "qualified clean ~~hydrogen project" has the same meaning as that term is defined in Section 25545 of the Public Resources Code.~~ *hydrogen" means hydrogen that is not derived from fossil fuel feedstocks and is produced through a process that results in a well-to-gate life cycle greenhouse gas emissions rate of not greater than four kilograms of carbon dioxide equivalent per kilogram of hydrogen and that has a carbon intensity that is less than or equal to the annual*

Attachment: Senate Bill 1420 (Caballero) (10688 : State Legislative Update)

average carbon intensity of the electricity from the California electrical grid, as determined by the state board.

SEC. 2. Section 21189.81 of the Public Resources Code is amended to read:

21189.81. For purposes of this chapter, the following definitions apply:

(a) "Applicant" means a public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.

(b) "Disadvantaged community" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.

(c) "Electrical transmission facility project" means a project for the construction and operation of an electrical transmission facility the meets either of the following:

(1) An electrical transmission facility project identified by the Independent System Operator in its annual transmission planning process that meets either of the following criteria:

(A) The project will facilitate delivery of electricity from renewable energy resources or zero-carbon resources.

(B) The project will facilitate delivery of electricity from energy storage projects.

(2) An electrical transmission facility project identified by a local publicly owned electric utility that would satisfy a transmission expansion need approved by the governing body of the local publicly owned electric utility and that meets either of the following criteria:

(A) The project will facilitate delivery of electricity from renewable energy resources or zero-carbon resources.

(B) The project will facilitate delivery of electricity from energy storage projects.

(d) (1) "Energy infrastructure project" means any of the following:

(A) An eligible renewable energy resource, as defined in Section 399.12 of the Public Utilities ~~Code.~~ *Code, excluding resources that combust biomass fuels.*

(B) New energy storage systems of 20 megawatts or more, that are capable of discharging for at least two hours, provided that a

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pumped hydro facility may qualify only if it is less than or equal to 500 megawatts and has been directly appropriated funding by the state before January 1, 2023.

(C) A project for which the applicant has certified that a capital investment of at least two hundred fifty million dollars ($250,000,000) made over a period of five years and the project is for either of the following:

(i) The manufacture, production, or assembly of an energy storage system or component manufacturing, wind system or component manufacturing, and solar photovoltaic energy system or component manufacturing.

(ii) The manufacture, production, or assembly of specialized products, components, or systems that are integral to renewable energy or energy storage technologies.

(D) An electrical transmission facility project, provided that nothing in this chapter affects the jurisdiction of the California Coastal Commission pursuant to Division 20 (commencing with Section 30000) to regulate such projects if located in the coastal zone.

(E) A qualified clean hydrogen project, as defined in Section 25545.

(2) Any project to develop a facility within the meaning of subdivision (b) of Section 25545 shall meet the requirements of Sections 25545.3.3 and 25545.3.5, except that those requirements shall also apply to solar photovoltaic and terrestrial wind electrical generating power plants with a generating capacity of between 20 and 50 megawatts and energy storage projects capable of storing between 80 and 200 megawatt hours of electrical energy.

(e) “Infrastructure project” means a project that is certified pursuant to Sections 21189.82 and 21189.83 as any of the following:

(1) An energy infrastructure project.

(2) A semiconductor or microelectronic project.

(3) A transportation-related project.

(4) A water-related project.

(f) “Semiconductor or microelectronic project” means a project that meets the requirements related to investment in new or expanded facilities and is awarded funds under the federal Creating Helpful Incentives to Produce Semiconductors Act of 2022 (Public

Attachment: Senate Bill 1420 (Caballero) (10688 : State Legislative Update)

Law 117-167), commonly known as the CHIPS Act of 2022, and the requirements of Section 21183.5.

(g) (1) "Transportation-related project" means a transportation infrastructure project that advances one or more of, and does not conflict with, the following goals related to the Climate Action Plan for Transportation Infrastructure adopted by the Transportation Agency:

(A) Build toward an integrated, statewide rail and transit network.

(B) Invest in networks of safe and accessible bicycle and pedestrian infrastructure.

(C) Include investments in light-, medium-, and heavy-duty zero-emission vehicle infrastructure.

(D) Develop a zero-emission freight transportation system.

(E) Reduce public health and economic harms and maximize community benefits.

(F) Make safety improvements to reduce fatalities and severe injuries of all users towards zero.

(G) Assess and integrate assessments of physical climate risk.

(H) Promote projects that do not significantly increase passenger vehicle travel.

(I) Promote compact infill development while protecting residents and businesses from displacement.

(J) Protect natural and working lands.

(2) Transportation-related projects are public works for the purposes of Section 1720 of the Labor Code and shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(h) (1) "Water-related project" means any of the following:

(A) A project that is approved to implement a groundwater sustainability plan that the Department of Water Resources has determined is in compliance with Sections 10727.2 and 10727.4 of the Water Code or to implement an interim groundwater sustainability plan adopted pursuant to Section 10735.6 of the Water Code.

(B) (i) A water storage project funded by the California Water Commission pursuant to Chapter 8 (commencing with Section 79750) of Division 26.7 of the Water Code.

(ii) In addition to clause (i), the applicant shall demonstrate that the project will minimize the intake or diversion of water except

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during times of surplus water and prioritizes the discharge of water for ecological benefits or to mitigate an emergency, including, but not limited to, dam repair, levee repair, wetland restoration, marshland restoration, or habitat preservation, or other public benefits described in Section 79753 of the Water Code.

(C) Projects for the development of recycled water, as defined in Section 13050 of the Water Code.

(D) Contaminant and salt removal projects, including groundwater desalination and associated treatment, storage, conveyance, and distribution facilities. This shall not include seawater desalination.

(E) Projects exclusively for canal or other conveyance maintenance and repair.

(2) Water-related projects are public works for the purposes of Section 1720 of the Labor Code and shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(3) "Water-related project" does not include the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta.

SEC. 3. Section 25545 of the Public Resources Code is amended to read:

25545. For purposes of this chapter, the following definitions apply:

(a) "California Native American tribe" has the same meaning as set forth in Section 21073.

(b) "Facility" means any of the following:

(1) A solar photovoltaic or terrestrial wind electrical generating powerplant with a generating capacity of 50 megawatts or more and any facilities appurtenant thereto.

(2) An energy storage system as defined in Section 2835 of the Public Utilities Code that is capable of storing 200 megawatthours or more of energy.

(3) A stationary electrical generating powerplant using any source of thermal energy, with a generating capacity of 50 megawatts or more, excluding any powerplant that burns, uses, or relies on fossil or nuclear fuels.

(4) A discretionary project as described in Section 21080 for which the applicant has certified that a capital investment of at least two hundred fifty million dollars ($250,000,000) will be made

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over a period of five years and the discretionary project is for (A) the manufacture, production, or assembly of an energy storage system or component manufacturing, wind system or component manufacturing, and solar photovoltaic energy system or component manufacturing, or (B) the manufacture, production, or assembly of specialized products, components, or systems that are integral to renewable energy or energy storage technologies.

(5) An electrical transmission line carrying electricity from a facility described in paragraph (1), (2), or (3) that is located in the state to a point of junction with any interconnected electrical transmission system.

(6) (A) A qualified clean hydrogen project.

(B) For purposes of this section, a "qualified clean hydrogen project" means a hydrogen production facility and associated onsite storage and processing facilities that create hydrogen meeting either of the following criteria:

(i) Hydrogen that is not derived from fossil fuel feedstocks and is produced through a process that results in a well-to-gate lifecycle greenhouse gas emissions rate of not greater than four kilograms of carbon dioxide equivalent per kilogram of hydrogen and that has a carbon intensity that is less than or equal to the annual average carbon intensity of the electricity from the California electrical grid, as determined by the State Air Resources Board.

~~(ii) Hydrogen derived from water using eligible renewable energy resources, as defined in Section 399.12 of the Public Utilities Code.~~

(ii) An electrolysis project using renewable energy resources derived from biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, in a manner that does not result in resource shuffling in the electricity sector, as determined by the State Air Resources Board.

(c) "Site" means any location on which an eligible facility is constructed or is proposed to be constructed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be

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incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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Attachment: Senate Bill 1420 (Caballero) (10688 : State Legislative Update)

Minute Action

AGENDA ITEM: 30

Date: July 3, 2024

Subject:
Federal Legislative Update

Recommendation:
Receive and file the June 2024 Federal Legislative Update.

Background:
San Bernardino County Transportation Authority Legislative Affairs staff, along with a representative from federal advocates, Potomac Partners D.C., LLC, updated the Legislative Policy Committee on June 12, 2024, regarding the appropriations process for Fiscal Year 2025 (FY25).

FY25 Appropriations Process

On May 24, 2024, after months of delays, the House Appropriations Committee approved the interim 302(b) subcommittee allocations. The 302(b)s set the spending caps for each of the 12 individual discretionary appropriations bills. They are as follows:

- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies: $25,873,000,000
- Commerce, Justice, Science, and Related Agencies: $78,288,000,000
- Defense: $833,053,000,000
- Energy and Water Development and Related Agencies: $59,190,000,000
- Financial Services and General Government: $23,608,000,000
- Homeland Security: $64,805,000,000
- Interior, Environment, and Related Agencies: $37,739,000,000
- Labor, Health and Human Services, Education, and Related Agencies: $186,586,000,000
- Legislative Branch: $7,125,000,000
- Military Construction, Veterans Affairs, and Related Agencies: $147,520,000,000
- State Department, Foreign Operations, and Related Programs: $51,713,000,000
- Transportation, Housing and Urban Development, and Related Agencies (THUD): $90,400,000,000

FY25 Total: $1,605,900,000,000; Fiscal Year 2024 (FY24) Total: $1,590,000,000,000, an increase of $15.9B

- Defense will receive an increase of nearly $9 billion.
- Homeland Security will be funded above the FY24 enacted level and the President's Budget Request.
- Veterans Affairs – including veterans' medical care and benefits – will be fully funded.
- Non-defense programs will be cut effectively by 6%, and those cuts are not evenly distributed.
- Some subcommittees, such as Labor-Health and Human Services-Education, Financial Services-General Government, and State-Foreign Operations, will receive significant cuts of 10-11%.

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

- Other subcommittees will have smaller non-defense cuts, reflecting Republican priorities across the bills.

The House Appropriations Committee also released the markup schedule for the FY25 Appropriations process. THUD Appropriations subcommittee will meet on June 27, 2024, for their committee markup and the full Appropriations Committee markup of THUD is scheduled for July 10, 2024.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2023/2024.

Reviewed By:
This item was received by the Legislative Policy Committee on June 12, 2024.

Responsible Staff:
Otis Greer, Director of Legislative and Public Affairs

Minute Action

AGENDA ITEM: 31

Date: July 3, 2024

Subject:
Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

A. Approve Contract No. 24-1003086 with Crowe LLP for Auditing Services for Transportation Development Act Funds and Measure I Local Pass-Throughs in an amount not-to-exceed $2,563,700, for a three-year term with two one-year options to extend for a total not-to-exceed amount of $4,223,500, to be funded with Local Transportation Fund and Measure I.

B. Approve Contract No. 24-1003173 with Vasquez and Company LLP for Auditing Services for Transportation Development Act Funds and Measure I Local Pass-Throughs in an amount not-to-exceed $590,184, for a three-year term with two one-year options to extend for a total not-to-exceed amount of $1,018,882, to be funded with Local Transportation Fund and Measure I.

Background:

On April 10, 2024, San Bernardino County Transportation Authority (SBCTA) released Request for Proposals (RFP) No. 24-1003086, for audit services for Measure I Local Pass-Throughs and Transportation Development Act (TDA) Funds, which was sent electronically to approximately 449 consultants registered on PlanetBids. Additionally, the RFP was posted on the SBCTA website and published in the Daily Journal. Fourteen firms downloaded the solicitation. Due to the number of jurisdictions and reports required in the Scope of Work, this procurement was split into eight bid groups. These bid groups would allow bidders to bid on smaller portions of the services requested. Each bidder could bid on all, some, or one bid group included in the RFP.

On May 8, 2024, three proposals were received and found to be responsive by the Procurement Analyst. The Evaluation Committee was comprised of three staff from SBCTA.

Evaluators concluded their individual review of the proposals and convened to review and discuss the proposals. The committee members individually scored the proposals based on the following evaluation criteria: Qualifications, Related Experience, and References--30 points; Proposed Staffing and Project Organization--20 points; Work Plan--20 points; and Price--30 points. Technical Proposals not meeting at least the minimum technical score of 70% of the maximum number of points were eliminated from further consideration. All three firms met the 70% requirement and were invited to participate in the interviews. One firm did not respond to the interview request.

On June 3, 2024, the Evaluation Committee interviewed the two short-listed firms. After the interviews, the Evaluation Committee separately scored the interviews. The assigned weights for the technical proposal were 60% and 40% for the interview scores, for a total of 100%.

The Evaluation Committee considered all firms qualified to perform the work specified in the RFP. Based on the combined scoring of the technical proposal and interview, the highest-ranked firm for each bid group is listed on the following page.

Bid Group 1	Crowe LLP
Bid Group 2	Crowe LLP
Bid Group 3	Crowe LLP
Bid Group 4	Crowe LLP
Bid Group 5	Vasquez and Company LLP
Bid Group 6	Vasquez and Company LLP
Bid Group 7	Vasquez and Company LLP
Bid Group 8	Vasquez and Company LLP

These firms were selected because they clearly demonstrated a thorough understanding of the scope of work, proposed a qualified and experienced team, and had a clear, concise, and innovative approach to completing the audit on schedule and within budget.

Financial Impact:
The Project is included in the proposed Budget for Fiscal Year 2024/2025 and funded with Transportation Development Act Funds and Measure I Local Pass-Throughs Funds, in Program 01, General.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Enterprise Risk Manager, and Procurement Manager have reviewed this item and the draft agreements. Due to the timing of the procurement and associated interviews, staff did not have time to present to the committee. These services are needed to start as soon as possible so the audit reports can be issued timely.

Responsible Staff:
Lisa Lazzar, Chief of Fiscal Resources

Contract Summary Sheet

General Contract Information

Contract No: 24-1003086 Amendment No.:

Contract Class: Payable Department: Finance

Vendor No.: 03291 Vendor Name: Crowe LLP

Description: Audit Services for Measure I and Transportation Development Act Funds

List Any Related Contract Nos.:

Dollar Amount					
Original Contract	$	2,563,700.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**2,563,700.00**	**Total Contingency Value**	**$**	**-**
	Total Dollar Authority (Contract Value and Contingency)			**$**	**2,563,700.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10675

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? N/A N/A

Local Professional Services (Non-A&E) N/A

Accounts Payable

Estimated Start Date: 07/03/2024 Expiration Date: 06/30/2027 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 2,563,700.00	Total Contingency: $ -
GL:	1020	01	0400	0000	52100	41100000		Sales Tax MSI	1,521,230.00	-
GL:	1030	01	0400	0000	52100	41200000		Sales Tax LTF	1,042,470.00	-
GL:									-	-
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Lisa Lazzar
Project Manager (Print Name)

Hilda Flores
Task Manager (Print Name)

Additional Notes:

Attachment: 24-1003086 CSS (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

CONTRACT NO. 24-1003086

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CROWE LLP

FOR

AUDITING SERVICES FOR MEASURE I (MSI) PASS-THROUGHS AND TRANSPORTATION DEVELOPMENT ACT (TDA) FUNDS (BID GROUP #1,2,3,4)

This contract ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and Crowe LLP ("CONSULTANT"), whose address is 650 Town Center Drive, Suite 740, Costa Mesa, CA 92626-7192. SBCTA and CONSULTANT are each a "Party" and are collectively the "Parties."

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract; and

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work") in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein, and in the sequence, time, and manner defined herein. The word "Work" includes, without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Work performed hereunder shall be completed to the satisfaction of

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.

1.2 The Project Manager for this Contract is Lisa Lazzar, or such other designee as shall be designated in written notice to CONSULTANT from time to time by the Department Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including, without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst, and shall continue in full force and effect through **June 30, 2027,** until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

SBCTA at its sole discretion may extend the original term of the Contract for two (2) one year option terms. The maximum term of this Contract, including the Option Term(s), if exercised, will not exceed June 30, 2029.

ARTICLE 3. COMPENSATION

3.1 Total compensation to CONSULTANT for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a Time & Materials basis for all obligations incurred in, or application to, CONSULTANT's performance of Work, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.

3.2 The total Contract Not-To-Exceed Amount, excluding any option years, is Two Million, Five Hundred Sixty-Three Thousand, Seven Hundred Dollars ($2,563,700). The total Contract Not-To-Exceed amount including two option years is Four Million, Two Hundred Twenty-Three Thousand. Five Hundred Dollars ($4,223,500). All Work provided under this Contract is to be performed as set forth in Exhibit A "Scope of Work," and shall be reimbursed pursuant to Exhibit B "Price Proposal for Time and Expense." The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amounts identified in Exhibit B. Any travel expenses must be pre-approved by SBCTA and shall be reimbursed for per diem expenses at a rate not to exceed the currently authorized rates for state employees under the State Department of Personnel Administration rules. SBCTA will not reimburse CONSULTANT for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.

3.3 Intentionally Omitted.

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3.4 Intentionally Omitted.

3.5 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.

3.6 All subcontracts in excess of $25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA prepared in accordance with the instructions below. Payment shall not be construed to be an acceptance of Work.

4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, which shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice except for the month of June, which will require the invoice to be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com

For large files over 30 megabytes, invoices can be submitted using this link:
https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission

4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

4.4 Intentionally Omitted.

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein shall be inclusive of, all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT; and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONSULTANT, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

8.1 CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, or other authorized representatives of SBCTA access to Consultants' records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA and its representatives or agents to reproduce any materials as reasonably necessary.

8.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA. After CONSULTANT receives any audit recommendations, the cost or price proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract, except to the extent CONSULTANT's refusal to incorporate such recommendation is based upon CONSULTANT's reasonable judgement that such recommendation would impair CONSULTANT's independence required by professional standards. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report.

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8.3 Subcontracts in excess of $25,000 shall contain this provision.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.

9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONSULTANT shall immediately document such matters and notify SBCTA in writing. CONSULTANT shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, or potential failure, or any situation that exceeds assumptions and could precipitate a failure of any part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SBCTA to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager, identified in Section 1.2, upon issuance of the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:

11.1.1 Directions to CONSULTANT which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the Scope of Work.

11.1.2 Provision of written information to CONSULTANT which assists in the interpretation of reports or technical portions of the Scope of Work described herein.

11.1.3 Review and, where required by the Contract, approval of technical reports and technical information to be delivered by CONSULTANT to SBCTA under the Contract.

11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications are

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

limited to: substitutions of personnel identified in the Contract, including Key Personnel and subconsultants; modifications to classifications, hourly rates and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All such modifications will be documented in writing between the Parties.

11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

11.2.1 Increases or decreases the Scope of Work;

11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;

11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

11.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;

11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract, unless identified herein;

11.2.6 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract unless identified herein; or

11.2.7 Approves any demand or claims for additional payment.

11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of the "DISPUTES" Article herein.

11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, SBCTA shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.

11.5.2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

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ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.

12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

12.3 Notwithstanding anything herein this Agreement to the contrary, if, at any time during the Term, after being notified of a change to the Work. CONSULTANT determines in CONSULTANT's sole discretion implementation of such a change would impair CONSULTANT's independence in accordance with professional standards, and CONSULTANT declines to so comply with the change in Work, CONSULTANT shall provide SBCTA with timely written notice of such election. SBCTA may then timely choose to waive in writing the requirement for compliance with the change to CONSULTANT, or to terminate the applicable Work Order, or this Agreement, for convenience, without liability or penalty to either party.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military or veteran status. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 The CONSULTANT and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONSULTANT and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Project. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102.

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of Key Personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of Key Personnel shall not be made without prior written consent of SBCTA's Project Manager. CONSULTANT shall not substitute any Key Personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of Key Personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
Jennifer Richards	Partner/Lead Partner
Bradley Schelle	Partner/Concurring Review
Kathy Lai	Partner/Concurring Review
Joseph Widjaja	Senior Manager/Project Manager

ARTICLE 16. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

17.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original (copies of audit opinion and working papers) of all such Products, which shall become the sole property of SBCTA.

17.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SBCTA.

17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by

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CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA, or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine and shall be confidential.

17.4 CONSULTANT shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA. CONSULTANT shall not release any reports, information or promotional material related to this Contract for any purpose without prior written approval of SBCTA.

17.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.

17.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 18. TERMINATION

18.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.

18.1.1 CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.

18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.

18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT, or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finished Work by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

18.4 CONSULTANT's termination for cause. If CONSULTANT determines that auditors' professional standards would be violated by CONSULTANT's continuing Work for SBCTA due to action or inaction by SBCTA, CONSULTANT shall provide SBCTA written notice of such determination including the specific facts or circumstances and standards underlying and supporting such determination. Immediately, SBCTA shall commence curing such action or inaction to enable CONSULTANT to avoid violating such professional standards, and shall diligently prosecute such cure to completion within a reasonable time under the circumstances. If SBCTA fails to commence or prosecute such cure in accordance with this section, CONSULTANT may give SBCTA written notice of termination of this Contract specifying the date of Contract termination.

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with section "Termination" above.

ARTICLE 20. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, subject to the provisions of Article 21.2 "General Provisions", and at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT and all sub-consultants of every tier performing any Work under this contract shall, at CONSULTANT's and sub-consultant's sole expense, procure and maintain broad form insurance coverage at least as broad as the following minimum requirements specified below:

21.1.1 Professional Liability. The policies must include the following:

- A limit of liability not less than $5,000,000 per claim
- An annual aggregate limit of not less than $5,000,000
- Coverage shall be appropriate for the CONSULTANT's profession and provided services to include coverage for errors and omissions arising out of the CONSULTANT's professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.
- If Coverage is on a claims made basis:
  - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
  - CONSULTANT shall secure and maintain "tail" coverage for a minimum of three (3) years after Contract completion.

21.1.2 Worker's Compensation/Employer's Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - $1,000,000 per accident
- Bodily Injury by disease - $1,000,000 policy limit/$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONSULTANT or any

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

21.1.3. Commercial General Liability. The policy must include the following:

- Consultant shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **$2,000,000 each occurrence**.
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
    - $2,000,000 per occurrence limit for property damage or bodily injury
    - $1,000,000 per occurrence limit for personal injury and advertising injury
- If a general aggregate applies, it shall apply separately to this project/location. The contract no. and brief explanation of the project/work must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: $1,000,000
- General aggregate limit: $2,000,000
- Personal injury and advertising limit $1,000,000
- Products-completed operations aggregate limit $2,000,000

All subconsultants' and sub-subconsultants' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

21.1.4 Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

- The umbrella or excess policy shall follow form over the CONSULTANT's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
- The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
- The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
- The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

21.1.5 Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **$1,000,000** each accident. This total limits of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with 21.1.4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONSULTANT services.
- Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

21.1.6 Pollution Liability. Intentionally Omitted.

21.1.7 Cyber Liability Insurance. Shall be appropriate to the Consultant's profession and work hereunder, with limits not less than $2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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21.1.8 Railroad Protective Liability. Intentionally Omitted.

21.2. General Provisions

21.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non- admitted but authorized to conduct business

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by SBCTA's Risk Manager.

21.2.2 Additional Insured Coverage. All policies, except those for Technology Professional Liability, Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 43, or if not available, then the ISO Form that provides substantially similar coverage, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, and agents, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.

21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate.

21.2.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self- insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-consultants to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than $10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The CONSULTANT's

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any CONSULTANT's deductible or SIR.

21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant, with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants' pollution, automobile, general liability will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article (excluding Technology/Cyber) to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.

21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at insurance@gosbcta.com, to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

21.2.8 Non-Limitation of Insurance Requirements. The insurance coverage provided and limits required under this Contract are minimum requirements and are not intended to limit the CONSULTANT's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status. To the extent required by Law in connection with Work to be performed, the CONSULTANT shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law and any other agreements with which the CONSULTANT is required to comply, including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the CONSULTANT arranges project-specific

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to SBCTA approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONSULTANT acknowledges and will at all times comply with the provisions of Labor Code Section 3700 which require every employer in the State to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code.

21.2.9 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT, or any subconsultant of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.

21.2.10 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

21.2.11 Project Specific Insurance. Intentionally Omitted

21.2.12 No Representations or Warranties. SBCTA makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this contract are adequate to protect the CONSULTANT against its undertakings under this Contract or its liability to any third party, nor will they preclude SBCTA from taking any actions as are available to it under this Contract or otherwise at law.

21.2.13 Review of Coverage. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONSULTANT to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. SBCTA may change the insurance coverages and limits required under this contract by notice to the CONSULTANT, whereupon the CONSULTANT will, within sixty (60) days of such notice date, procure the additional and/or modified insurance coverages. Upon such change any additional cost (at actual cost) from such change

DRAFT

Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

will be paid by SBCTA and any reduction in cost will reduce the Contract Price pursuant to a Contract amendment.

21.2.14 Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants to cover their services performed under this Contract. CONSULTANT may reduce types and the amounts of insurance limits provided by subconsultant(s) to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by the subconsultant. CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.

21.2.15 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

21.2.16 Special Risks or Circumstances. Intentionally Omitted

ARTICLE 22. INDEMNITY

22.1 INTENTIONALLY OMITTED.

22.2 CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA, SANBAG, SANBAG's Entities, and their authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of the CONSULTANT's negligent, grossly negligent, reckless, or willful acts or omissions under this Contract resulting in personal injury, death, or property damage, including for any costs or expenses incurred by any Indemnitee(s) on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to Indemnitees' "active" as well as "passive" negligence, but does not apply to the "sole negligence" or "willful misconduct" of any Indemnitee.

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including, but not limited to, any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract, subject to section 17.1, shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

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ARTICLE 25. SUBCONTRACTS

25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in CONSULTANT's proposal, without first notifying SBCTA in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.

25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.

25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have sole responsibility for managing all of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. RECORD INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives, or agents, shall at all times have access during normal business hours to CONSULTANT's financial, time, and expense date related to this project wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 27. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCTA shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 28. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply

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to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 31. PRECEDENCE

31.1 The Contract consists of the following: Contract Articles, Exhibit A "Scope of Work," and Exhibit B "Price Proposal," SBCTA's Request for Proposal and CONSULTANT's proposal, all of which are incorporated into this Contract by this reference.

31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request for Proposal; and last, CONSULTANT's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.

31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 32. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONSULTANT shall notify SBCTA of any contact information changes within ten (10) business days of the change.

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To CONSULTANT	To SBCTA
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	**Attn: Lisa Lazzar**
Email:	**Email:llazzar@gosbcta.com**
Phone:	**Phone: (909) 884-8276**
2nd Contact:	**Copy: Procurement Manager**
Email:	**Email: procurement@gosbcta.com**

ARTICLE 33. DISPUTES

33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after notice thereof in writing, which notice shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute may be reviewed by a court of competent jurisdiction.

33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence. however, CONSULTANT may suspend performance at any time, without liability or penalty, if doing so is, in CONSULTANT's reasonable judgment, required by professional standards or continued performance would result in an independence violation thereunder.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review or to discover defective work shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCTA upon completion of all Work.

ARTICLE 36. CONFIDENTIALITY

See Article 17.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Scope of Work and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with all safety instructions issued by SBCTA or their representatives.

ARTICLE 39. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq, the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 41. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 42. PREVAILING WAGES

42.1 The State of California's General Prevailing Wage Rates are not applicable to this Contract.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. ENTIRE DOCUMENT

46.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.

46.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

46.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 47. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 48. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

----------SIGNATURES ARE ON THE FOLLOWING PAGE----------

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

CONSULTANT

By: _____

Name
Title

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Ray Marquez
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Name
Title

Date: _____

By: _____

Julianna K. Tillquist
General Counsel

Date: _____

CONCURRENCE

By: _____

Jeffery Hill
Interim Procurement Manager

Date: _____

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Attachment: 24-1003086-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

Attachment: 24-1003086 - Exhibit A SOW coverpage (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI

EXHIBIT "A"
"SCOPE OF WORK"

SCOPE OF WORK (BID GROUPS 1, 2, 3, 4)

GENERAL

San Bernardino County Transportation Authority (SBCTA) requested proposals from qualified certified public accounting firms to audit its Jurisdictions on Measure I pass-through (consisting of local streets and Senior & Disabled funds) for the Fiscal Years ending June 30, 2024, 2025, and 2026, with the option for two (2) additional one-year terms and agreed upon procedures on parking fees. SBCTA acting as the regional transportation agency is responsible for ensuring that all claimants to whom it directs allocation of funds pursuant to Public Utilities Code, Chapter 4, of the Transportation Development Act (TDA) submit an annual certified compliance and fiscal audit of funds received. SBCTA is also required to certify compliance of Measure I Pass-Through recipients with the requirements of the San Bernardino County Transportation Authority Ordinance 04-01, and accompanying Measure I Policies. The list of jurisdictions is provided on page 5 with the audits/agreed upon procedures needed for each jurisdiction.

AUDITING STANDARDS TO BE FOLLOWED

The audits are to be performed by the consultant in accordance with generally accepted auditing standards, including use of the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO) *Government Auditing Standards*
- San Bernardino County Transportation Authority ordinance 04-01, *San Bernardino Valley Subarea Expenditure Plan* (Section F and H), *Mountain Desert Expenditure Plan* (Section C and E)
- Transportation Development Act regulations in Title 21 of the California Code of Regulations Section 6664 discusses the fiscal and compliance audits of all claimants. Section 6666 provides the compliance audit tasks for non-transit claimants, and Section 6667 provides the compliance audit tasks for transit claimants.

Transportation Development Act

- Funds are typically allocated upon project completion, however some projects are allow progress payment(s). Complete examination of financial activities, including internal systems of checks and balances, on or before December 30th of each audit year.
- Financial examination must encompass both expenditure and projects for which funds were allocated but expended. A listing of all major projects comparing actual revenues/expenses to budgeted revenues/expenses must be included in the audit report, as well as an accounting of interest earned on the funds. The report shall include the audited amounts for the fiscal year prior to the year audited.
- Compliance examination of the claimants' transportation activities under the Transportation Development Act; including, to the extent applicable, the task contained in the SBCTA Compliance Audit Guide
- A compliance examination of the operator's implementation of the Uniform System of Accounts for Public Transit Operators, under PUC 66343 and where

Attachment: 24-1003086 - Exhibit A - SOW 2024 - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

applicable the updated National Transit Database (NTD) Reporting Manuals as required by 49 USC. 5335(a), formerly Section 15.

- **Article 3 Bicycle & Pedestrian**
- **Article 8a Local Streets and Roads**

Measure I 2010-2040 Local Street & Senior and Disabled (Ordinance 04-01)

- SBCTA receives a one-half of one percent retail transaction and use tax, which is dedicated for transportation planning, design, construction, operation and maintenance only in the San Bernardino County. Within this ordinance SBCTA provides a Pass- through of Local Streets and Senior and Disabled Transit Service funds to the local jurisdictions. Preparation of an audit report for the Measure I 2010-2040 Local Pass- through receipts for periods ending June 30th of each audit year.
- Financial examination of activities, including internal systems of checks and balances, during the specified period. The examination must encompass both project expenditures and projects for which funds were received but not expended. A listing of all projects comparing actual revenues/expenses to the Measure I Five Year Capital Improvement Program adopted by the local governing board for the specified period must be included in the audit report, as well as an accounting of interest earned on the funds. The project listing shall illustrate the street or project names, project limits, and type of improvement. The report shall also contain an examination of expenditures, statement of revenue and expenses and balance sheet for each component of the special Measure I fund.
- Compliance Examination with provision of Ordinance 04-01 and the Expenditure Plan, adopted by the Authority relating to the expenditure of Measure I revenue.

- **San Bernardino Valley Subarea Expenditure Plan**
  - Section F Local Streets
  - Section H Senior and Disabled Transit Services
- **Mountain Desert Expenditure Plan**
  - Section C Local Streets
  - Section E Senior and Disabled Transit Services

Additional Considerations

- **Working Papers:** All working papers shall be retained by the auditor for a minimum of five (5) years after the conclusion of the engagement unless authorized to do otherwise in writing by SBCTA. The audits may be subject to review by state and federal agencies. Accordingly, the working papers shall be made available upon request.
- **Audit Schedule:** The work to be performed shall be arranged with the individual recipients after the conclusion of a planning meeting with the

Attachment: 24-1003086 - Exhibit A - SOW 2024 - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Commission and the Commission's issuance of audit notification letters to each jurisdiction recipients.

- **Audit Timelines:** Effective for the first year of the contract, the contractor's timelines are extended for 30 days. Thereafter, the specified timelines can be extended for up to an additional 30 days, with approval of SBCTA, depending upon the condition of each jurisdiction supporting data/documentation and the cooperation of each jurisdictions management throughout the audit process.
- **Audit Plan:** Planning, Risk Assessment; Preparation of the overall audit plan, conducting the interim audit, conducting the final audit, reporting. Details as laid-out in the proposal.

"TRANSIT PROVIDERS SCOPE OF SERVICES" AUDITING STANDARDS TO BE FOLLOWED

The audit shall be performed to satisfy the audit requirements in accordance with the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO)
  Government Auditing Standards;
- The federal Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards, 2 CFR Part 200, as applicable;
- San Bernardino County Transportation Authority Ordinance 04-01, *San Bernardino Valley Subarea Expenditure Plan* (Section F and H), *Mountain Desert Expenditure Plan* (Section C and E);
- Transportation Development Act Regulations. CA Code Section 6664 discusses the fiscal and compliance audits of all claimants. Section 6666 provides the compliance audit tasks for non-transit claimants, and Section 6667 provides the compliance audit tasks for transit claimants;
- Proposition 1B Compliance Requirements. Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA) funds received through Caltrans and;
- California Transit Security Grant Program - California Transit Assistance Funds (CTSGP-CTAF) funds received through CalEMA or any other State agency.

REQUIRED REPORTS TO SBCTA

Following the completion of the audit of the fiscal year's financial statement, the Auditor shall issue the following reports and letters:

1. Independent Auditor's Report on Annual Comprehensive Financial Report (ACFR) or Basic Financial statements;
2. Independent Auditor's Single Audit Report (if applicable);
3. Management Letter (if required);
4. Preparation of the State Controllers Report (Due prior to January 31st);
5. Proposition 1B Schedule of Unspent Funds and Cash Disbursement Supplemental.

Attachment: 24-1003086 - Exhibit A - SOW 2024 - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Information Report (if required) and;

6. Federal Transit Administration (FTA) Federal Funding Allocation Statistics Agreed-Upon Procedures Report for the National Transit Database (NTD) Report (if required)

Provide electronic copy of the "Draft" Audit Report to SBCTA and each claimant on or before November 30 of each audit year. Final Audit Report: Provide electronic copies on or before December 30th of each audit year to SBCTA and claimant.

Additional Considerations

- **Working Papers:** All working papers shall be retained by the auditor for a minimum of five (5) years after the conclusion of the engagement unless authorized to do otherwise in writing by SBCTA. The audits may be subject to review by state and federal agencies. Accordingly, the working papers shall be made available upon request.
- **Audit Schedule:** The work to be performed shall be arranged with each jurisdiction after planning meeting is concluded and SBCTA issuance of audit notification letter.
- **Audit Timelines:** The goal is for each audit to be completed by December 30th of each year. Extensions may be granted according to policy for Measure I. TDA guidelines govern the timeline for TDA audits.
- **Audit Plan:** Audit plan involves planning, Risk Assessment, Preparation of the overall audit plan, conducting the interim audit, conducting the final audit, reporting.

"PARKING FEES SCOPE OF SERVICES"
AGREED UPON PROCEDURES TO BE FOLLOWED

The procedures enumerated below, which are agreed to by the San Bernardino County Transportation Authority (SBCTA) solely to assist in assessing parking fee revenues and associated expenditures related with Cooperative Agreement with the City (Could include the Cities of Montclair, Rancho Cucamonga, Rialto, and Upland) for Fiscal year 2024, 2025, and 2026 (Fiscal Year 2027 and 2028, upon extension). These procedures are prepared in accordance with Section 5.05 of the Cooperative Agreement (with each city), where the City, at the consent of SBCTA, may charge for parking fees at the associated Metrolink Station, to defray cost for the maintenance and security of the station. The sufficiency of the procedures is solely the responsibility of those parties specified in the report. Consequently, the auditor should make no representation regarding the sufficiency of the procedures described below either for the purpose for which the report was requested or for any other purpose.

The procedures performed and associated findings will be as follows:

1. Document process and procedures relating to internal controls to collect and record parking fees and related expenditures. Document items of significance.
2. Summarize revenues and expenditures recorded from inception to fiscal year 2024, 2025, and 2026 (Fiscal Year 2027 and 2028, upon extension).

Attachment: 24-1003086 - Exhibit A - SOW 2024 - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

3. Inspect expenditures incurred in fiscal year 2024, 2025, and 2026 (Fiscal Year 2027 and 2028, upon extension), to comply with Section 5.05 of the Cooperative Agreement, for purpose to:

    - Defray costs of obtaining necessary permits and approvals.
    - Maintain the commuter rail station and parking lot.
    - Provide security for commuter rail patrons during operating hours.

    We also inspected at least 50% of the expenditures, but no more than 100 transactions. We inspected the below tested transactions.

This agreed-upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

Attachment: 24-1003086 - Exhibit A - SOW 2024 - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

AUDIT COST ESTIMATE PER JURISDICTION AND TRANSIT OPERATOR

Jurisdictions	TDA Annual Audit Fee	MSI Annual Audit Fee	Transit Operator Audit	Parking Fees Annual AUP Fee	Total
Bid Group 1					
City of Adelanto [1]	20,000.00	10,000.00	-	-	
Town of Apple Valley	24,500.00	11,500.00	-	-	
City of Barstow	20,000.00	10,000.00	-	-	
City of Big Bear Lake	14,700.00	14,700.00	-	-	
City of Hesperia	12,600.00	14,700.00	-	-	
City of Victorville	24,500.00	11,500.00	-	-	
Bid Group 1 Total	116,300.00	72,400.00	-	-	188,700.00
Bid Group 2					
City of Montclair [2]	14,700.00	21,000.00	-	4,000.00	
City of Ontario	12,600.00	14,700.00	-	-	
City of Rancho Cucamonga [2]	12,600.00	14,700.00	-	4,000.00	
City of Rialto [2]	24,500.00	11,500.00	-	4,000.00	
City of Upland [2] [3]	-	21,000.00	-	4,000.00	
Bid Group 2 Total	64,400.00	82,900.00	-	16,000.00	163,300.00
Bid Group 3					
City of Chino	21,000.00	14,700.00	-	-	
City of Chino Hills	14,700.00	21,000.00	-	-	
City of Colton [3]	-	10,000.00	-	-	
City of Fontana	21,000.00	21,000.00	-	-	
City of Grand Terrace [3]	-	10,000.00	-	-	
City of Highland	20,000.00	10,000.00	-	-	
City of Loma Linda	20,000.00	10,000.00	-	-	
Bid Group 3 Total	96,700.00	96,700.00	-	-	193,400.00
Bid Group 4					
City of Needles [4]	12,600.00	14,700.00	15,000.00	-	
City of Redlands	20,000.00	10,000.00	-	-	
City of San Bernardino [3]	-	14,500.00	-	-	
County of San Bernardino	12,600.00	14,700.00	-	-	
City of Twentynine Palms	12,600.00	14,700.00	-	-	
City of Yucaipa	20,000.00	10,000.00	-	-	
Town of Yucca Valley	12,600.00	14,700.00	-	-	
Bid Group 4 Total	90,400.00	93,300.00	15,000.00	-	198,700.00
Transit Operators					
Bid Group 5					
Victor Valley Transit Authority [5]	-	-	59,000.00	-	59,000.00
Bid Group 6					
Mountain Area Regional Transit [5]	-	-	40,805.00	-	40,805.00
Bid Group 7					
Basin Transit [5]	-	-	44,600.00	-	44,600.00
Bid Group 8					
Omnitrans [5]	-	-	95,000.00	-	95,000.00
Grand Total					983,505.00

Special Consideration Notes for Bid Items

[1] The audit for this jurisdition will be for Fiscal Years starting with 2022

[2] These jurisditions may have parking fee audits if they charge parking fees

[3] these jurisdicitons may have TDA audit if they have expenditures in fiscal year, currently no audit is needed.

[4] This jurisdition will include the audit of the Transit Fund and possibly a separate Single Audit

[5] These operators may include a Single Audit

Attachment: 24-1003086 - Exhibit A - SOW 2024 - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Attachment: 24-1003086 - Exhibit B SOW coverpage (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI

EXHIBIT "B"
"PRICE PROPOSAL"

Attachment B Price Proposal for Time and Materials – Bid Group # 1 **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Jennifer Richards	Partner	Lead Partner	$ 375	80	$ 30,000
Brad Schelle	Partner	Concurring Partner	$ 375	10	$ 3,750
Kathy Lai	Partner	Concurring Partner	$ 375	10	$ 3,750
Joseph Widjaja	Senior Manager	Project Manager	$ 350	89	$ 31,150
Danny Kim	Manager	Project Manager	$ 325	110	$ 35,750
Allan Lawrence	Senior in Charge	Senior in Charge	$ 250	220	$ 55,000
Hadi Amjad	Senior	Senior	$ 250	245	$ 61,250
Experienced Staff	Staff	Staff	$ 200	274	$ 54,800
				TOTAL	$ 275,450

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$ 0
	$	$
	$	$
	$	$
		TOTAL $0

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 275,450
FY25/26	$ 201,450
FY26/27	$ 201,450
FY27/28	$ 201,450
FY28/29	$ 201,450
	$
TOTAL	$ 1,081,250

GRAND TOTAL	$ 1,081,250

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003086 - Exhibit B - Price Form - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Attachment B Price Proposal for Time and Materials – Bid Group # 2 **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Jennifer Richards	Partner	Lead Partner	$ 375	30	$ 11,250
Brad Schelle	Partner	Concurring Partner	$ 375	5	$ 1,875
Kathy Lai	Partner	Concurring Partner	$ 375	5	$ 1,875
Joseph Widjaja	Senior Manager	Project Manager	$ 350	60	$ 21,000
Danny Kim	Manager	Project Manager	$ 325	65	$ 21,125
Kathleen San Andres	Senior in Charge	Senior in Charge	$ 250	120	$ 30,000
Hadi Amjad	Senior	Senior	$ 250	144	$ 36,000
Experienced Staff	Staff	Staff	$ 200	186	$ 37,200
				TOTAL	$ 160,325

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$ 0
	$	$
	$	$
	$	$
		TOTAL $0

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 160,325
FY25/26	$ 160,325
FY26/27	$ 160,325
FY27/28	$ 160,325
FY28/29	$ 160,325
	$
TOTAL	$ 801,625

GRAND TOTAL	$ 801,625

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003086 - Exhibit B - Price Form - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Attachment B Price Proposal for Time and Materials – Bid Group # 3 **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Jennifer Richards	Partner	Lead Partner	$ 375	60	$ 22,500
Brad Schelle	Partner	Concurring Partner	$ 375	8	$ 3,000
Kathy Lai	Partner	Concurring Partner	$ 375	8	$ 3,000
Joseph Widjaja	Senior Manager	Project Manager	$ 350	60	$ 21,000
Danny Kim	Manager	Project Manager	$ 325	81	$ 26,325
Martin Bernestine	Senior in Charge	Senior in Charge	$ 250	190	$ 47,500
Hadi Amjad	Senior	Senior	$ 250	200	$ 50,000
Experienced Staff	Staff	Staff	$ 200	210	$ 42,000
				TOTAL	$ 215,325

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$ 0
	$	$
	$	$
	$	$
		TOTAL $0

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 215,325
FY25/26	$ 215,325
FY26/27	$ 215,325
FY27/28	$ 215,325
FY28/29	$ 215,325
	$
TOTAL	$ 1,076,625

GRAND TOTAL	$ 1,076,625

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003086 - Exhibit B - Price Form - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Attachment B Price Proposal for Time and Materials – Bid Group # 4 **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Jennifer Richards	Partner	Lead Partner	$ 375	60	$ 22,500
Brad Schelle	Partner	Concurring Partner	$ 375	20	$ 7,500
Kathy Lai	Partner	Concurring Partner	$ 375	10	$ 3,750
Joseph Widjaja	Senior Manager	Project Manager	$ 350	120	$ 42,000
Erika Alvarez	Senior Manager	Project Manager	$ 350	93	$ 32,550
Allan Lawrence	Senior in Charge	Senior in Charge	$ 250	185	$ 46,250
Hadi Amjad	Senior	Senior	$ 250	185	$ 46,250
Experienced Staff	Staff	Staff	$ 200	260	$ 52,000
				TOTAL	$ 252,800

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$ 0
	$	$
	$	$
	$	$
		TOTAL $0

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 252,800
FY25/26	$ 252,800
FY26/27	$ 252,800
FY27/28	$ 252,800
FY28/29	$ 252,800
	$
TOTAL	$ 1,264,000

GRAND TOTAL	$ 1,264,000

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003086 - Exhibit B - Price Form - 24-1003086 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Jurisdictions	TDA Annual Audit Fee	MSI Annual Audit Fee	Transit OperatorAudit	Parking Fees Annual AUP Fee	Total
Bid Group 1					
City of Adelanto	18,000.00	19,000.00	-	-	
City of Adelanto (2022)	18,000.00	19,000.00	-	-	
City of Adelanto (2023)	18,000.00	19,000.00	-	-	
Town of Apple Valley	18,000.00	19,000.00	-	-	
City of Barstow	16,000.00	18,865.00	-	-	
City of Big Bear Lake	10,000.00	18,855.00	-	-	
City of Hesperia	10,000.00	18,865.00	-	-	
City of Victorville	16,000.00	18,865.00	-	-	
Bid Group 1 Total	**124,000.00**	**151,450.00**	**-**	**-**	**275,450.00**
Bid Group 2					
City of Montclair	10,000.00	18,865.00	-	4,000.00	
City of Ontario	10,000.00	18,865.00	-	-	
City of Rancho Cucamonga	10,000.00	18,865.00	-	4,000.00	
City of Rialto	10,000.00	18,865.00	-	4,000.00	
City of Upland	10,000.00	18,865.00	-	4,000.00	
Bid Group 2 Total	**50,000.00**	**94,325.00**	**-**	**16,000.00**	**160,325.00**
Bid Group 3					
City of Chino	10,000.00	19,000.00	-	-	
City of Chino Hills	10,000.00	18,865.00	-	-	
City of Colton	12,500.00	18,865.00	-	-	
City of Fontana	10,000.00	22,000.00	-	-	
City of Grand Terrace	12,500.00	18,865.00	-	-	
City of Highland	12,500.00	18,865.00	-	-	
City of Loma Linda	12,500.00	18,865.00	-	-	
Bid Group 3 Total	**80,000.00**	**135,325.00**	**-**	**-**	**215,325.00**
Bid Group 4					
City of Needles	12,500.00	18,865.00	30,000.00	-	
City of Redlands	12,500.00	18,865.00	-	-	
City of San Bernardino	12,500.00	18,865.00	-	-	
County of San Bernardino	12,500.00	22,110.00	-	-	
City of Twentynine Palms	12,500.00	18,865.00	-	-	
City of Yucaipa	12,500.00	18,865.00	-	-	
Town of Yucca Valley	12,500.00	18,865.00	-	-	
Bid Group 4 Total	**87,500.00**	**135,300.00**	**30,000.00**	**-**	**252,800.00**

Attachment: 24-1003086 - Exhibit B - Price Form - 24-1003086 (10675 : Contract No. 24-1003086 and 24-

Contract Summary Sheet

General Contract Information

Contract No: 24-1003173 Amendment No.:

Contract Class: Payable Department: Finance

Vendor No.: 04015 Vendor Name: Vasquez and Company LLP

Description: Audit Services for Measure I and Transportation Development Act Funds

List Any Related Contract Nos.:

Dollar Amount					
Original Contract	$	590,184.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**590,184.00**	**Total Contingency Value**	**$**	**-**
	Total Dollar Authority (Contract Value and Contingency)			**$**	**590,184.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10675

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? N/A N/A

Local Professional Services (Non-A&E) N/A

Accounts Payable

Estimated Start Date: 07/03/2024 Expiration Date: 06/30/2027 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 590,184.00	Total Contingency: $ -
GL:										-
GL:	1030	01	0400	0000	52100	41200000		Sales Tax LTF	472,184.00	-
GL:	1020	01	0400	0000	52100	41100000		MSI Admin	118,000.00	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-

Lisa Lazzar
Project Manager (Print Name)

Hilda Flores
Task Manager (Print Name)

Additional Notes:

Attachment: 24-1003173 CSS [Revision 1] (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local

CONTRACT NO. 24-1003173

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

VASQUEZ AND COMPANY LLP

FOR

AUDITING SERVICES FOR MEASURE I (MSI) PASS-THROUGHS AND TRANSPORTATION DEVELOPMENT ACT (TDA) FUNDS (BID GROUP #5,6,7,8)

This contract ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and Vasquez and Company LLP ("CONSULTANT"), whose address is 655 N. Central Ave., Suite 1550, Glendale, California 91203. SBCTA and CONSULTANT are each a "Party" and are collectively the "Parties."

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract; and

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work") in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein, and in the sequence, time, and manner defined herein. The word "Work" includes, without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

1.2 The Project Manager for this Contract is Lisa Lazzar, or such other designee as shall be designated in written notice to CONSULTANT from time to time by the Department Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including, without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst, and shall continue in full force and effect through **June 30, 2027,** until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

SBCTA at its sole discretion may extend the original term of the Contract for two (2) one year option terms. The maximum term of this Contract, including the Option Term(s), if exercised, will not exceed June 30, 2029.

ARTICLE 3. COMPENSATION

3.1 Total compensation to CONSULTANT for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a Time & Materials basis for all obligations incurred in, or application to, CONSULTANT's performance of Work, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.

3.2 The total Contract Not-To-Exceed Amount, excluding any option years, is Five Hundred Ninety Thousand, One Hundred Eighty-Four Dollars ($590,184). The total Contract Not-To-Exceed amount including two option years is One Million, Eighteen Thousand, Eight Hundred Seventy-Two Dollars ($1,018,872). All Work provided under this Contract is to be performed as set forth in Exhibit A "Scope of Work," and shall be reimbursed pursuant to Exhibit B "Price Proposal for Time and Expense." The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amounts identified in Exhibit B. Any travel expenses must be pre-approved by SBCTA and shall be reimbursed for per diem expenses at a rate not to exceed the currently authorized rates for state employees under the State Department of Personnel Administration rules. SBCTA will not reimburse CONSULTANT for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.

3.3 Intentionally Omitted.

3.4 Intentionally Omitted.

3.5 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.

3.6 All subcontracts in excess of $25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA prepared in accordance with the instructions below. Payment shall not be construed to be an acceptance of Work.

4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, which shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice except for the month of June, which will require the invoice to be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com

For large files over 30 megabytes, invoices can be submitted using this link:
https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission

4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

4.4 Intentionally Omitted.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein shall be inclusive of, all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT;

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONSULTANT, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

8.1 CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, or other authorized representatives of SBCTA access to Consultants' records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA and its representatives or agents to reproduce any materials as reasonably necessary.

8.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA. After CONSULTANT receives any audit recommendations, the cost or price proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report.

8.3 Subcontracts in excess of $25,000 shall contain this provision.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

other Work furnished by CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.

9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONSULTANT shall immediately document such matters and notify SBCTA in writing. CONSULTANT shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, or potential failure, or any situation that exceeds assumptions and could precipitate a failure of any part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SBCTA to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager, identified in Section 1.2, upon issuance of the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:

11.1.1 Directions to CONSULTANT which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the Scope of Work.

11.1.2 Provision of written information to CONSULTANT which assists in the interpretation of reports or technical portions of the Scope of Work described herein.

11.1.3 Review and, where required by the Contract, approval of technical reports and technical information to be delivered by CONSULTANT to SBCTA under the Contract.

11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications are limited to: substitutions of personnel identified in the Contract, including Key Personnel and subconsultants; modifications to classifications, hourly rates and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All such modifications will be documented in writing between the Parties.

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

11.2.1 Increases or decreases the Scope of Work;

11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;

11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

11.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;

11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract, unless identified herein;

11.2.6 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract unless identified herein; or

11.2.7 Approves any demand or claims for additional payment.

11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of the "DISPUTES" Article herein.

11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, SBCTA shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.

11.5.2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military or veteran status. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 The CONSULTANT and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONSULTANT and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Project. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of Key Personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of Key Personnel shall not be made without prior written consent of SBCTA's Project Manager. CONSULTANT shall not substitute any Key Personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of Key Personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function

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ARTICLE 16. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

17.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original (copies of audit opinion and working papers) of all such Products, which shall become the sole property of SBCTA.

17.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SBCTA.

17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA, or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine and shall be confidential.

17.4 CONSULTANT shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA. CONSULTANT shall not release any reports, information or promotional material related to this Contract for any purpose without prior written approval of SBCTA.

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17.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.

17.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 18. TERMINATION

18.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.

18.1.1 CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.

18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.

18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT, or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finished Work by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONSULTANT shall not be considered to

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be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with section "Termination" above.

ARTICLE 20. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, subject to the provisions of Article 21.2 "General Provisions", and at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT and all sub-consultants of every tier performing any Work under this contract shall, at CONSULTANT's and sub-consultant's sole expense, procure and maintain broad form insurance coverage at least as broad as the following minimum requirements specified below:

21.1.1 Professional Liability. The policies must include the following:

- A limit of liability not less than $5,000,000 per claim
- An annual aggregate limit of not less than $5,000,000
- Coverage shall be appropriate for the CONSULTANT's profession and provided services to include coverage for errors and omissions arising out of the CONSULTANT's professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.
- If Coverage is on a claims made basis:
  - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
  - CONSULTANT shall secure and maintain "tail" coverage for a minimum of three (3) years after Contract completion.

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21.1.2 Worker's Compensation/Employer's Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - $1,000,000 per accident
- Bodily Injury by disease - $1,000,000 policy limit/$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONSULTANT or any subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

21.1.3. Commercial General Liability. The policy must include the following:

- Consultant shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **$2,000,000 each occurrence**.
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
    - $2,000,000 per occurrence limit for property damage or bodily injury
    - $1,000,000 per occurrence limit for personal injury and advertising injury
- If a general aggregate applies, it shall apply separately to this project/location. The contract no. and brief explanation of the project/work must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: $1,000,000
- General aggregate limit: $2,000,000
- Personal injury and advertising limit $1,000,000
- Products-completed operations aggregate limit $2,000,000

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All subconsultants' and sub-subconsultants' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

21.1.4 Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
  - The umbrella or excess policy shall follow form over the CONSULTANT's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
  - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
  - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
  - The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

21.1.5 Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **$1,000,000** each accident. This total limits of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with 21.1.4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONSULTANT services.
- Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

21.1.6 Pollution Liability. Intentionally Omitted.

21.1.7 Cyber Liability Insurance. Shall be appropriate to the Consultant's profession and work hereunder, with limits not less than $2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

21.1.8 Railroad Protective Liability. Intentionally Omitted.

21.2. General Provisions

21.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non- admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by SBCTA's Risk Manager.

21.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 43, or if not available, then the ISO Form that provides substantially similar coverage, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, and agents, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.

21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONSULTANT shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

21.2.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self- insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-consultants to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than $10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The CONSULTANT's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any CONSULTANT's deductible or SIR.

21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant, with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.

21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at insurance@gosbcta.com, to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

21.2.8 Non-Limitation of Insurance Requirements. The insurance coverage provided and limits required under this Contract are minimum requirements and are not intended to limit the CONSULTANT's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage

DRAFT

Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

afforded by their insured status. To the extent required by Law in connection with Work to be performed, the CONSULTANT shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law and any other agreements with which the CONSULTANT is required to comply, including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the CONSULTANT arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to SBCTA approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONSULTANT acknowledges and will at all times comply with the provisions of Labor Code Section 3700 which require every employer in the State to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code.

21.2.9 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT, or any subconsultant of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.

21.2.10 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

21.2.11 Project Specific Insurance. Intentionally Omitted

21.2.12 No Representations or Warranties. SBCTA makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this contract are adequate to protect the CONSULTANT against its undertakings under this Contract or its liability to any third party, nor will they

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

preclude SBCTA from taking any actions as are available to it under this Contract or otherwise at law.

21.2.13 Review of Coverage. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONSULTANT to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. SBCTA may change the insurance coverages and limits required under this contract by notice to the CONSULTANT, whereupon the CONSULTANT will, within sixty (60) days of such notice date, procure the additional and/or modified insurance coverages. Upon such change any additional cost (at actual cost) from such change will be paid by SBCTA and any reduction in cost will reduce the Contract Price pursuant to a Contract amendment.

21.2.14 Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants to cover their services performed under this Contract. CONSULTANT may reduce types and the amounts of insurance limits provided by subconsultant(s) to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by the subconsultant. CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.

21.2.15 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

21.2.16 Special Risks or Circumstances. Intentionally Omitted

ARTICLE 22. INDEMNITY

22.1 INTENTIONALLY OMITTED.

22.2 CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA, SANBAG, SANBAG's Entities, and their authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of the CONSULTANT's negligent, grossly negligent, reckless, or willful acts or omissions under this Contract resulting in personal injury, death, or property damage, including for any costs or expenses incurred by any Indemnitee(s) on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to Indemnitees' "active" as well as "passive" negligence, but does not apply to the "sole negligence" or "willful misconduct" of any Indemnitee.

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including, but not limited to, any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract, subject to section 17.1, shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 25. SUBCONTRACTS

25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in CONSULTANT's proposal, without first notifying SBCTA in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.

25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.

25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have sole responsibility for managing all of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. RECORD INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives, or agents, shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

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ARTICLE 27. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCTA shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 28. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 31. PRECEDENCE

31.1 The Contract consists of the following: Contract Articles, Exhibit A "Scope of Work," and Exhibit B "Price Proposal," SBCTA's Request for Proposal and CONSULTANT's proposal, all of which are incorporated into this Contract by this reference.

31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request for Proposal; and last, CONSULTANT's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.

31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

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ARTICLE 32. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONSULTANT shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To CONSULTANT	**To SBCTA**
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	**Attn: Lisa Lazzar**
Email:	**Email: llazzar@gosbcta.com**
Phone:	**Phone: (909) 884-8276**
2nd Contact:	**Copy: Procurement Manager**
Email:	**Email: procurement@gosbcta.com**

ARTICLE 33. DISPUTES

33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after notice thereof in writing, which notice shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute may be reviewed by a court of competent jurisdiction.

33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence. however, CONSULTANT may suspend performance at any time, without liability or penalty, if doing so is, in CONSULTANT's reasonable judgment, required by professional standards or continued performance would result in an independence violation thereunder.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

CONSULTANT will issue written reports upon completion of their audits in scope of this agreement. Circumstances may arise in which the CONSULTANT's reports may differ from its expected form and content based on the results of their audits. Depending on the nature of these circumstances, it

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may be necessary for CONSULTANT to modify their opinion(s) or add an emphasis-of-matter paragraph or other-matter paragraph to their auditor's reports.

If circumstances arise relating to the condition of the auditees' records, the availability of appropriate audit evidence or indications of a significant risk of material misstatement of the financial statements or compliance because of error, fraudulent financial reporting, or misappropriation of assets which, in the CONSULTANT's professional judgment, prevents them from completing the audit or forming an opinion, the CONSULTANT retains the unilateral right to take any course of action permitted by professional standards, including, but not limited to, declining to express an opinion or issue a report, or withdrawing from the engagement.

ARTICLE 36. CONFIDENTIALITY

See Article 17.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Scope of Work and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with all safety instructions issued by SBCTA or their representatives.

ARTICLE 39. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq, the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financia Assistance)," 49 CFR Part 32; and U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

ARTICLE 41. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 42. PREVAILING WAGES

42.1 The State of California's General Prevailing Wage Rates are not applicable to this Contract.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. ENTIRE DOCUMENT

46.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.

46.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms

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of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

46.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 47. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 48. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

----------SIGNATURES ARE ON THE FOLLOWING PAGE----------

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

CONSULTANT

By: _____

Name
Title

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Ray Marquez
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Name
Title

Date: _____

By: _____

Julianna K. Tillquist
General Counsel

Date: _____

CONCURRENCE

By: _____

Jeffey Hill
Interim Procurement Manager

Date: _____

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Attachment: 24-1003173-PDF (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI Local Pass-Throughs)

Attachment: 24-1003173-Exhibit A SOW coverpage (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI

EXHIBIT "A"
"SCOPE OF WORK"

SCOPE OF WORK (BID GROUP #5, 6, 7, 8)

GENERAL

San Bernardino County Transportation Authority (SBCTA) requested proposals from qualified certified public accounting firms to audit its Jurisdictions on Measure I pass-through (consisting of local streets and Senior & Disabled funds) for the Fiscal Years ending June 30, 2024, 2025, and 2026, with the option for two (2) additional one-year terms and agreed upon procedures on parking fees. SBCTA acting as the regional transportation agency is responsible for ensuring that all claimants to whom it directs allocation of funds pursuant to Public Utilities Code, Chapter 4, of the Transportation Development Act (TDA) submit an annual certified compliance and fiscal audit of funds received. SBCTA is also required to certify compliance of Measure I Pass-Through recipients with the requirements of the San Bernardino County Transportation Authority Ordinance 04-01, and accompanying Measure I Policies. The list of jurisdictions is provided on page 5 with the audits/agreed upon procedures needed for each jurisdiction.

AUDITING STANDARDS TO BE FOLLOWED

The audits are to be performed by the consultant in accordance with generally accepted auditing standards, including use of the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO) *Government Auditing Standards*.
- San Bernardino County Transportation Authority ordinance 04-01, *San Bernardino Valley Subarea Expenditure Plan* (Section F and H), *Mountain Desert Expenditure Plan* (Section C and E).
- Transportation Development Act regulations in Title 21 of the California Code of Regulations Section 6664 discusses the fiscal and compliance audits of all claimants. Section 6666 provides the compliance audit tasks for non-transit claimants, and Section 6667 provides the compliance audit tasks for transit claimants.

Transportation Development Act

- Funds are typically allocated upon project completion, however some projects are allowing progress payment(s). Complete examination of financial activities, including internal systems of checks and balances, on or before December 30th of each audit year.
- Financial examination must encompass both expenditure and projects for which funds were allocated but expended. A listing of all major projects comparing actual revenues/expenses to budgeted revenues/expenses must be included in the audit report, as well as an accounting of interest earned on the funds. The report shall include the audited amounts for the fiscal year prior to the year audited.
- Compliance examination of the claimants' transportation activities under the Transportation Development Act; including, to the extent applicable, the task contained in the SBCTA Compliance Audit Guide.

Attachment: 24-1003173 - Exhibit A - SOW 2024 - 24-1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

- applicable to the examination of the operator's implementation of the Uniform System of Accounts for Public Transit Operators, under PUC 66343 and where applicable the updated National Transit Database (NTD) Reporting Manuals as required by 49 USC. 5335(a), formerly Section 15.

    - **Article 3 Bicycle & Pedestrian**
    - **Article 8a Local Streets and Roads**

Measure I 2010-2040 Local Street & Senior and Disabled (Ordinance 04-01)

- SBCTA receives a one-half of one percent retail transaction and use tax, which is dedicated for transportation planning, design, construction, operation, and maintenance only in the San Bernardino County. Within this ordinance SBCTA provides a Pass- through of Local Streets and Senior and Disabled Transit Service funds to the local jurisdictions. Preparation of an audit report for the Measure I 2010-2040 Local Pass- through receipts for periods ending June 30th of each audit year.
- Financial examination of activities, including internal systems of checks and balances, during the specified period. The examination must encompass both project expenditures and projects for which funds were received but not expended. A listing of all projects comparing actual revenues/expenses to the Measure I Five Year Capital Improvement Program adopted by the local governing board for the specified period must be included in the audit report, as well as an accounting of interest earned on the funds. The project listing shall illustrate the street or project names, project limits, and type of improvement. The report shall also contain an examination of expenditures, statement of revenue and expenses and balance sheet for each component of the special Measure I fund.
- Compliance Examination with provision of Ordinance 04-01 and the Expenditure Plan, adopted by the Authority relating to the expenditure of Measure I revenue.

    - **San Bernardino Valley Subarea Expenditure Plan**
        - Section F Local Streets
        - Section H Senior and Disabled Transit Services
    - **Mountain Desert Expenditure Plan**
        - Section C Local Streets
        - Section E Senior and Disabled Transit Services

Additional Considerations

- **Working Papers:** All working papers shall be retained by the auditor for a minimum of five (5) years after the conclusion of the engagement unless authorized to do otherwise in writing by SBCTA. The audits may be subject to review by state and federal agencies. Accordingly, the working papers shall be made available upon request.

Attachment: 24-1003173 - Exhibit A - SOW 2024 - 24-1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

- **Audit Schedule:** The work to be performed shall be arranged with the individual recipients after the conclusion of a planning meeting with the Commission and the Commission's issuance of audit notification letters to each jurisdiction recipients.
- **Audit Timelines:** Effective for the first year of the contract, the contractor's timelines are extended for 30 days. Thereafter, the specified timelines can be extended for up to an additional 30 days, with approval of SBCTA, depending upon the condition of each jurisdiction supporting data/documentation and the cooperation of each jurisdictions management throughout the audit process.
- **Audit Plan:** Planning, Risk Assessment; Preparation of the overall audit plan, conducting the interim audit, conducting the final audit, reporting. Details as laid-out in the proposal.

"TRANSIT PROVIDERS SCOPE OF SERVICES" AUDITING STANDARDS TO BE FOLLOWED

The audit shall be performed to satisfy the audit requirements in accordance with the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO)
  Government Auditing Standards;
- The federal Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards, 2 CFR Part 200, as applicable;
- San Bernardino County Transportation Authority Ordinance 04-01, *San Bernardino Valley Subarea Expenditure Plan* (Section F and H), *Mountain Desert Expenditure Plan* (Section C and E);
- Transportation Development Act Regulations. CA Code Section 6664 discusses the fiscal and compliance audits of all claimants. Section 6666 provides the compliance audit tasks for non-transit claimants, and Section 6667 provides the compliance audit tasks for transit claimants;
- Proposition 1B Compliance Requirements. Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA) funds received through Caltrans and;
- California Transit Security Grant Program - California Transit Assistance Funds (CTSGP-CTAF) funds received through CalEMA or any other State agency.

REQUIRED REPORTS TO SBCTA

Following the completion of the audit of the fiscal year's financial statement, the Auditor shall issue the following reports and letters:

1. Independent Auditor's Report on Annual Comprehensive Financial Report (ACFR) or Basic Financial statements;
2. Independent Auditor's Single Audit Report (if applicable)
3. Management Letter (if required);
4. Preparation of the State Controllers Report (Due prior to January 31st)

Attachment: 24-1003173 - Exhibit A - SOW 2024 - 24-1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

5. Proposition 1B Schedule of Unspent Funds and Cash Disbursement Supplemental Information Report (if required) and;
6. Federal Transit Administration (FTA) Federal Funding Allocation Statistics Agreed-Upon Procedures Report for the National Transit Database (NTD) Report (if required).

Provide electronic copy of the "Draft" Audit Report to SBCTA and each claimant on or before November 30 of each audit year. Final Audit Report: Provide electronic copies on or before December 30th of each audit year to SBCTA and claimant.

Additional Considerations

- **Working Papers:** All working papers shall be retained by the auditor for a minimum of five (5) years after the conclusion of the engagement unless authorized to do otherwise in writing by SBCTA. The audits may be subject to review by state and federal agencies. Accordingly, the working papers shall be made available upon request.
- **Audit Schedule:** The work to be performed shall be arranged with each jurisdiction after planning meeting is concluded and SBCTA issuance of audit notification letter.
- **Audit Timelines:** The goal is for each audit to be completed by December 30th of each year. Extensions may be granted according to policy for Measure I. TDA guidelines govern the timeline for TDA audits.
- **Audit Plan:** Audit plan involves planning, Risk Assessment, Preparation of the overall audit plan, conducting the interim audit, conducting the final audit, reporting.

"PARKING FEES SCOPE OF SERVICES"
AGREED UPON PROCEDURES TO BE FOLLOWED

The procedures enumerated below, which are agreed to by the San Bernardino County Transportation Authority (SBCTA) solely to assist in assessing parking fee revenues and associated expenditures related with Cooperative Agreement with the City (Could include the Cities of Montclair, Rancho Cucamonga, Rialto, and Upland) for Fiscal year 2024, 2025, and 2026 (Fiscal Year 2027 and 2028, upon extension). These procedures are prepared in accordance with Section 5.05 of the Cooperative Agreement (with each city), where the City, at the consent of SBCTA, may charge for parking fees at the associated Metrolink Station, to defray cost for the maintenance and security of the station. The sufficiency of the procedures is solely the responsibility of those parties specified in the report. Consequently, the auditor should make no representation regarding the sufficiency of the procedures described below either for the purpose for which the report was requested or for any other purpose.

The procedures performed and associated findings will be as follows:

1. Document process and procedures relating to internal controls to collect and record parking fees and related expenditures. Document items of significance.
2. Summarize revenues and expenditures recorded from inception to fiscal year 2024, 2025, and 2026 (Fiscal Year 2027 and 2028, upon extension).
3. Inspect expenditures incurred in fiscal year 2024, 2025, and 2026 (Fiscal Year 2027 and

Attachment: 24-1003173 - Exhibit A - SOW 2024 - 24-1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

2028, upon extension), to comply with Section 5.05 of the Cooperative Agreement, for purpose to:

- Defray costs of obtaining necessary permits and approvals.
- Maintain the commuter rail station and parking lot.
- Provide security for commuter rail patrons during operating hours.

We also inspected at least 50% of the expenditures, but no more than 100 transactions. We inspected the below tested transactions.

This agreed-upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

Attachment: 24-1003173 - Exhibit A - SOW 2024 - 24-1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

AUDIT COST ESTIMATE PER JURISDICTION AND TRANSIT OPERATOR

Jurisdictions	TDA Annual Audit Fee	MSI Annual Audit Fee	Transit Operator Audit	Parking Fees Annual AUP Fee	Total
Bid Group 1					
City of Adelanto [1]	20,000.00	10,000.00	-	-	
Town of Apple Valley	24,500.00	11,500.00	-	-	
City of Barstow	20,000.00	10,000.00	-	-	
City of Big Bear Lake	14,700.00	14,700.00	-	-	
City of Hesperia	12,600.00	14,700.00	-	-	
City of Victorville	24,500.00	11,500.00	-	-	
Bid Group 1 Total	116,300.00	72,400.00	-	-	188,700.00
Bid Group 2					
City of Montclair [2]	14,700.00	21,000.00	-	4,000.00	
City of Ontario	12,600.00	14,700.00	-	-	
City of Rancho Cucamonga [2]	12,600.00	14,700.00	-	4,000.00	
City of Rialto [2]	24,500.00	11,500.00	-	4,000.00	
City of Upland [2] [3]	-	21,000.00	-	4,000.00	
Bid Group 2 Total	64,400.00	82,900.00	-	16,000.00	163,300.00
Bid Group 3					
City of Chino	21,000.00	14,700.00	-	-	
City of Chino Hills	14,700.00	21,000.00	-	-	
City of Colton [3]	-	10,000.00	-	-	
City of Fontana	21,000.00	21,000.00	-	-	
City of Grand Terrace [3]	-	10,000.00	-	-	
City of Highland	20,000.00	10,000.00	-	-	
City of Loma Linda	20,000.00	10,000.00	-	-	
Bid Group 3 Total	96,700.00	96,700.00	-	-	193,400.00
Bid Group 4					
City of Needles [4]	12,600.00	14,700.00	15,000.00	-	
City of Redlands	20,000.00	10,000.00	-	-	
City of San Bernardino [3]	-	14,500.00	-	-	
County of San Bernardino	12,600.00	14,700.00	-	-	
City of Twentynine Palms	12,600.00	14,700.00	-	-	
City of Yucaipa	20,000.00	10,000.00	-	-	
Town of Yucca Valley	12,600.00	14,700.00	-	-	
Bid Group 4 Total	90,400.00	93,300.00	15,000.00	-	198,700.00
Transit Operators					
Bid Group 5					
Victor Valley Transit Authority [5]	-	-	59,000.00	-	59,000.00
Bid Group 6					
Mountain Area Regional Transit [5]	-	-	40,805.00	-	40,805.00
Bid Group 7					
Basin Transit [5]	-	-	44,600.00	-	44,600.00
Bid Group 8					
Omnitrans [5]	-	-	95,000.00	-	95,000.00
Grand Total					983,505.00

Special Consideration Notes for Bid Items

[1] The audit for this jurisdition will be for Fiscal Years starting with 2022

[2] These jurisditions may have parking fee audits if they charge parking fees

[3] these jurisdicitons may have TDA audit if they have expenditures in fiscal year, currently no audit is needed.

[4] This jurisdition will include the audit of the Transit Fund and possibly a separate Single Audit

[5] These operators may include a Single Audit

Attachment: 24-1003173 - Exhibit A - SOW 2024 - 24-1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA

Attachment: 24-1003173-Exhibit B SOW coverpage (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds & MSI

EXHIBIT "B"
"PRICE PROPOSAL"

Attachment B Price Proposal for Time and Materials – Bid Group #5 ____ **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Roger A. Martinez	Partner	Lead Partner	$ 325	6	$ 1,950
Cristy A. Canieda	Partner	Quality Control Partner	$ 325	2	$ 650
Marialyn Labastilla	Director	Audit Director	$ 250	30	$ 7,500
Erica Ong	Manager	Audit Manager	$ 200	68	$ 13,600
Francisco Roque	Supervisor	Audit Supervisor	$ 180	130	$ 23,400
Jemimah Maclang	Audit Senior	Audit Senior	$ 150	180	$ 27,000
			$	Subtotal	$ 74,100
			$	Discount	$ (14,100)
				TOTAL	$ 60,000

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$
	$	$
	$	$
	$	$
	TOTAL	$

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY23/24	$ 60,000
FY24/25	$ 62,100
FY25/26	$ 64,274
FY26/27	$ 66,524
FY27/28	$ 68,852
	$
TOTAL	$ 321,750
GRAND TOTAL	$ 321,750

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003173 - Exhibit B - Price Form - 1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds &

Attachment B Price Proposal for Time and Materials – Bid Group #6 ____ **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Roger A. Martinez	Partner	Lead Partner	$ 325	4	$ 1,300
Cristy A. Canieda	Partner	Quality Control Partner	$ 325	2	$ 650
Marialyn Labastilla	Director	Audit Director	$ 250	20	$ 5,000
Erica Ong	Manager	Audit Manager	$ 200	50	$ 10,000
Francisco Roque	Supervisor	Audit Supervisor	$ 180	90	$ 16,200
Jemimah Maclang	Audit Senior	Audit Senior	$ 150	100	$ 15,000
			$	Subtotal	$ 48,150
			$	Discount	$ (23,150)
				TOTAL	$ 25,000

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$
	$	$
	$	$
	$	$
	TOTAL	$

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY23/24	$ 25,000
FY24/25	$ 25,875
FY25/26	$ 26,781
FY26/27	$ 27,718
FY27/28	$ 28,688
	$
TOTAL	$ 134,062
GRAND TOTAL	$ **134,062**

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003173 - Exhibit B - Price Form - 1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds &

Attachment B Price Proposal for Time and Materials – Bid Group # 7 **RFP No. 24-1003086**

ey Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Roger A. Martinez	Partner	Lead Partner	$ 325	6	$ 1,950
risty A. Canieda	Partner	Quality Control Partner	$ 325	2	$ 650
arialyn Labastilla	Director	Audit Director	$ 250	30	$ 7,500
rica Ong	Manager	Audit Manager	$ 200	62	$ 12,400
rancisco Roque	Supervisor Type text here		$ 180	110	$ 19,800
emimah Maclang	Audit Senior	Audit Senior	$ 150	160	$ 24,000
			$	Discount	$ (21,300)
			$		$
				TOTAL	$ 45,000

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$
	$	$
	$	$
	$	$
	TOTAL	$

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 45,000
FY25/26	$ 46,575
FY26/27	$ 48,205
FY27/28	$ 49,892
FY28/29	$ 51,639
	$
TOTAL	$ 241,433

GRAND TOTAL	$ 321,843

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003173 - Exhibit B - Price Form - 1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds &

Attachment B Price Proposal for Time and Materials – Bid Group # 8 **RFP No. 24-1003086**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	Hours	Total
Roger A. Martinez	Partner	Lead Partner	$ 325	10	$ 3,250
Cristy A. Canieda	Partner	Quality Control Partner	$ 325	2	$ 650
Marialyn Labastilla	Director	Audit Director	$ 250	60	$ 15,000
Erica Ong	Manager	Audit Manager	$ 200	100	$ 20,000
Francisco Roque	Supervisor	Type text here	$ 180	120	$ 21,600
Jemimah Maclang	Audit Senior	Audit Senior	$ 150	340	$ 51,000
			$	Subtotal	$ 111,550
			$	Discount	$ (51,500)
				TOTAL	$ 60,000

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
	$	$
	$	$
	$	$
	$	$
	TOTAL	$

Annual Cost for First 5 Years (Separate page with breakdown should be attached)

Year	Amount
FY24/25	$ 60,000
FY25/26	$ 62,100
FY26/27	$ 64,274
FY27/28	$ 66,523
FY28/29	$ 68,851
	$
TOTAL	$ 321,843

GRAND TOTAL	$ 321,843

(One price proposal form should be completed for each Bid Group the firm is interested in submitting for, all Bid Groups are listed on Attachment A – Scope of Work)

Attachment: 24-1003173 - Exhibit B - Price Form - 1003173 (10675 : Contract No. 24-1003086 and 24-1003173 for Audit Services for TDA Funds &

Minute Action

AGENDA ITEM: 32

Date: July 3, 2024

Subject:
Contract No. 24-1003175 with CalHFA Homeowner Relief Corp for PACE Borrowers

Recommendation:
That the Board, acting as the San Bernardino Council of Governments:

A. Approve Contract No. 24-1003175 with California Housing Finance Agency Homeowner Relief Corporation for Property Assessed Clean Energy (PACE) Assistance Program beginning July 3, 2024, and extending through June 30, 2025, in an amount not-to-exceed $100,000.

B. Approve budget amendment of $100,000 in PACE Fund 2911 for Fiscal Year 2024/2025 to record the activity with the assistance program's trustee.

Background:
California Housing Finance Agency (CalHFA) Homeowner Relief Corporation is a not-for-profit Property Assessed Clean Energy (PACE) assistance program that provides grant relief of up to $80,000 per eligible homeowner who has an existing PACE assessment and has experienced a COVID-related financial hardship. CalHFA has identified four eligible San Bernardino Associated Governments (SANBAG) PACE applications, for which CalHFA has earmarked funds. CalHFA closed the portal to new applications across all assistance programs on May 1, 2024; as such, assistance to eligible SANBAG assesses will be limited to those four already identified. Although SANBAG is now legally San Bernardino Council of Governments (SBCOG), all PACE assessments were created through SANBAG; as such, the PACE program and its assessment liens continue to be referred to as SANBAG.

The PACE assistance program requires a trustee to receive the grant funds to pay down or pay off the PACE assessment lien. The trustee will then transfer the funds to David Taussig and Associates (DTA), San Bernardino Council of Governments' tax consultant, for the administration of the PACE assessments, to provide current assessment balance and apply the pay down or pay off the PACE lien. The DTA fees are paid from the grant funds, so the only cost for SBCOG are trustee fees which are normally paid by PACE funds.

Recommendation B is to approve a budget amendment of $100,000 to record the activity with the trustee for the PACE assistance program.

Financial Impact:
The PACE Assistance Program was not included in the Adopted budget for Fiscal Year 2024/2025. A budget amendment is required as described in Recommendation B and described in the Background section of this item. This will be funded with the State PACE Assistance Funds, in Program 25, Council of Governments.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Enterprise Risk Manager, and Interim Procurement Manager have reviewed this item. This item is being presented directly to the Board of Directors since the funds for assisting PACE lienholders is exhausted.

Entity: San Bernardino Council of Governments

Responsible Staff:
Hilda Flores, Chief Financial Officer

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Contract Summary Sheet

General Contract Information

Contract No: 24-1003175 Amendment No.:

Contract Class: Payable Department: Finance

Vendor No.: 04013 Vendor Name: Cal HFA Homeowner Relief Corporation

Description: Homeowner Assistance Fund grants for PACE borrowers

List Any Related Contract Nos.:

Dollar Amount					
Original Contract	$	-	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**-**	**Total Contingency Value**	**$**	**-**
	Total Dollar Authority (Contract Value and Contingency)			**$**	**-**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 10685

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? N/A N/A

Local Services N/A

Accounts Payable

Estimated Start Date: 07/03/2024 Expiration Date: 07/03/2025 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ -	Total Contingency: $ -
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-

Hilda Flores
Project Manager (Print Name)

Hilda Flores
Task Manager (Print Name)

Additional Notes: SBCOG will receive the grant funds and send them to DTA to process. The only expense will be trustee fees as is regularly incurred by the PACE program.

Attachment: CSS - Revised - 08-25-2022 10.11am [Revision 1] (10685 : Contract No. 24-1003175 with CalHFA Homeowner Relief Corp for PACE

HOMEOWNER ASSISTANCE FUND COLLABORATION AGREEMENT

THIS IS A COLLABORATION AGREEMENT made this [insert date] ("Agreement Date") between San Bernardino Council of Governments, formerly known as San Bernardino Associated Governments, (“SBCOG”) and the CalHFA Homeowner Relief Corporation, a California nonprofit public benefit corporation (“CalHRC”) on behalf of the California Housing Finance Agency, a public instrumentality and a political subdivision of the State of California (“CalHFA”).

BACKGROUND

1. Pursuant to Section 3206 of the American Rescue Plan Act of 2021, Congress established in the Department of the Treasury and funded a Homeowner Assistance Fund ("HAF") to mitigate financial hardships associated with the coronavirus pandemic by providing appropriated funds to eligible entities for, among other purposes preventing homeowner mortgage delinquencies, defaults, and foreclosures through "qualified expenses" related to mortgages and housing, which include payment assistance or principal reduction for Property Assessed Clean Energy (“PACE”) loans, where such expenditures would promote housing stability and prevent foreclosures or homeowner displacement.

2. CalHFA through CalHRC is a participating agency for the distribution of certain of the HAF funds and has adopted a PACE assistance program, among others, to guide such distribution of funds.

3. The SBCOG services PACE Assessments of homeowners who may be eligible for the receipt of HAF funds from CalHRC.

4. CalHRC and SBCOG desire to collaborate to facilitate the timely distribution of HAF funds to SBCOG for the account of eligible homeowners to provide payment assistance or principal reduction for PACE Assessments, in accordance with the allowable uses outlined in this Section 9 of this Agreement.

UNDERSTANDINGS

CalHRC and SBCOG acknowledge and agree that:

1. As between SBCOG and CalHRC, CalHRC has the sole discretion to determine whether a homeowner is eligible for HAF funds and, if so, the right to direct grant fund distribution via instructions to SBCOG for how much and for what purpose(s). SBCOG will be entitled to rely on such information provided by CalHRC, without the need to verify or otherwise confirm the accuracy of such information.

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Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

2. As between SBCOG and CalHRC, SBCOG has the sole responsibility to administer and service the PACE Assessment as to which a homeowner may be eligible for HAF funds (in accordance with and as limited by the Other Requirements), including to determine the amounts of any outstanding PACE assessment balance(s) that the homeowner may owe in order to provide payment assistance or principal reduction for PACE loans, where such expenditures would promote housing stability and prevent foreclosures or homeowner displacement as further described in Section 9 below. Upon receipt of tentative approval from CalHRC, SBCOG will collaborate with CalHRC to bring the assessment current or pay it off prior to foreclosure completion.

3. SBCOG administers and services any such PACE Assessment in accordance with applicable law, a third-party servicing agreement, applicable insurance policies, any bond indenture and potentially other contractual requirements. Nothing in this Agreement is intended to require, or will require, SBCOG to violate or breach these requirements, and to the extent that this Agreement conflicts with any Other Requirements, the Other Requirements shall control.

4. CalHRC or its third-party partners assisting in the intake function must secure written authorization from each homeowner to share information with SBCOG. CalHRC may contact SBCOG, or SBCOG, with proper authorization from the homeowner, may contact CalHRC, about the potential availability of HAF funds to provide payment assistance or principal reduction for PACE Assessments.

5. SBCOG will, subject to all applicable state or federal rules, laws or regulations, share such information with CalHRC through a mutually agreed upon form of common data file, or other mutually-agreed upon format. CalHRC in turn will evaluate such information, determine if the borrower is eligible for HAF funds and, if so, for how much and for what purposes(s) and share such determinations with the homeowner and SBCOG.

6. Both SBCOG and CalHRC agree that time is of the essence in CalHRC's determination of a homeowner's eligibility for HAF and the subsequent distribution and application of HAF funds to payoff or pay down a homeowner's PACE assessment. SBCOG will apply HAF funds and other supplementary funds to the account of the homeowner within three business days of receipt of funds.

7. All communication that includes homeowner's "Nonpublic Personal Information", as the term is defined below, between CalHRC and SBCOG will be through industry standard encrypted email, secure loan port or other similar secure electronic delivery system. In accordance with applicable privacy, telemarketing, and information security laws, regulations, and guidelines, SBCOG will maintain or implement appropriate measures designed to (a) ensure the security and confidentiality of any Nonpublic Personal Information it receives from CalHRC, including, without limitation, appointing a manager or group to coordinate compliance with the confidentiality obligations herein, (b) protect against any anticipated threats or hazards to the security or integrity of such information, including, without limitation, implementing appropriate screening

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Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

and background checks for individuals that may access or use the Nonpublic Personal Information as permitted by this Agreement, (c) protect against unanticipated or unauthorized access to or use of such information that could result in substantial harm to the subject of such information, (d) ensure the proper disposal of all Nonpublic Personal Information received from the other party upon the termination of this Agreement for any reason, unless the information is required to be retained for legal or regulatory record retention purposes, (e) treat the Nonpublic Personal Information with at least the same degree of care that it uses to protect its own confidential and proprietary information of a similar nature but with no less than a reasonable degree of care, and (d) implement or utilize appropriate technological safeguards that are at least in compliance with the Gramm-Leach Bliley Act as well as any generally recognized industry standards. For the purposes of this Agreement, the term "Nonpublic Personal Information" is any information received from or provided by one party to the other party which pertains to or identifies an individual, such as a name, postal address, e-mail or IP address, facsimile or phone number, mother's maiden name, social security or identification number, transactional, employment, or financial data, medical or health records, personal, gender, political, profile, account, and password information.

8. Execution of this Agreement is voluntary and either party may terminate this Agreement without cause with 30 days written notice.

9. Allowable uses of HAF program funds are listed within PACE Term Sheet in **Exhibit A**. CalHRC will direct SBCOG on how to apply funds to the allowable uses for each PACE Assessment/Homeowner.

10. CalHRC will rely on the SBCOG's system of record for the amount of any outstanding PACE assessment balance(s) to prepare a grant fund allocation and distribution for each eligible homeowner. Each grant fund distribution will be identified by, but not limited to, the following factors: APN; homeowner name(s); property address; and/or other items to be identified by CalHRC. CalHRC has sole discretion to make a determination on eligibility. CalHRC will effectuate grant fund payments to SBCOG, which payments may contain multiple PACE Assessment grant payments for different homeowners. SBCOG is responsible to ensure that the grant payments received align and are applied to the properties identified by CalHRC.

11. SBCOG and CalHRC may agree for the provision of reports and other information in mutually agreeable form and content relating to the subject of this Agreement.

12. CalHRC is responsible for continuing eligibility of the homeowner for its HAF program and any related fraud detection. SBCOG will not be required to repay amounts applied to a homeowner's PACE Assessment if that homeowner is later determined to be ineligible.

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Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

13. Should SBCOG receive more funds than needed, duplicate payments, or overlapping payments, from CalHRC, County or the account of any particular homeowner, SBCOG will remit the surplus funds back to CalHRC within thirty (30) calendar days of receiving the funds. SBCOG agrees to remit funds back to CalHRC when funds are erroneously applied to a homeowner's account which does not reconcile with the grant payment instruction sheet / transmittal letter or other trace document provided by CalHRC.

14. As part of the CalHRC's fraud prevention practices, CalHRC may verify and validate bank account information provided by SBCOG through a bank attestation and/or a third-party account validation service.

15. SBCOG and CalHRC each will establish a specific point of contact for HAF cases and HAF program matters ("SBCOG Point of Contact" and "CalHRC Point of Contact", respectively), whom they may change from time to time at their discretion and upon written notice to the other party.

16. Initially, the SBCOG Point of Contact is:

    Name: Hilda Flores

    Phone: 909-884-8276

    Email: hflores@gosbcta.com

    Initially, the CalHRC Point of Contact is:

    Name: Bryan Courtney

    Phone: 317-362-9644

    Email: Bryan.Courtney@camortgagerelief.org

CalHFA Homeowner Relief Corporation

By:_____
Rebecca Franklin, Chief Executive Officer

Date: _____

By:_____
Sierra Grandbois, Secretary

Date:_____

San Bernardino Council of Governments

By: _____
Ray Marquez, Board President

Date: _____

By: _____
Julianna K. Tillquist, General Counsel

Date:_____

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Exhibit A

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CalHFA℠
California Housing Finance Agency

CALIFORNIA MORTGAGE RELIEF PROGRAM TERM SHEET

Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

The U.S. Treasury first issued guidance for the use of the Homeowner Assistance Fund "HAF" funds on April 14, 2021. As an eligible entity approved to participate in HAF, the California Housing Finance Agency "CalHFA" entered into a Financial Assistance Agreement with U.S. Treasury and received 10% of California's total allocation amount on June 22, 2021. In August 2021, CalHFA launched a pilot phase of the Program using funds from that initial allocation of California's HAF funds. Upon Treasury approval on December 17, 2021, CalHFA allocating $750 million to a program for full reinstatement of mortgage and reverse mortgage payments owed. Through its continued evaluation of the needs of Californians, CalHFA reallocated $75 million from property tax assistance for this additional program to assist Eligible Homeowners with sustaining homeownership by providing payment assistance or principal reduction for Property Assessed Clean Energy (PACE) loans (assessments*) to assist homeowners. The program began accepting applications on October 6, 2023.

PACE Program Goal	• To address current housing instability, including foreclosure risk, and alleviate long-term economic impacts due to COVID-19 by providing Eligible Homeowners with payment assistance or principal reduction for PACE loans.
Size of PACE Allocation	• CalHFA has allocated $75 million to use for payment assistance or principal reduction of PACE loans. Amendments to this program may be made, based on the constant monitoring and reporting of results against goals.
Targeting and Outreach	• CalHFA is affirmatively targeting socially disadvantaged and vulnerable homeowners using a data-driven approach that uses a combination of Qualified Census Tract data (HUD) and Owner Vulnerability Index (UCLA). This includes data-driven targeted marketing and community engagement along with engaging housing counselors, as well as using levers in the program design to ensure that outcomes effectively prioritize socially disadvantaged individuals.
Eligible Homeowners	• Homeowner must currently own and occupy one of the Eligible Property Types in California as their primary residence. • Homeowner must meet the Homeowner Income Eligibility Requirements. • Homeowner must not own and occupy more than one property (up to 4 units). • Homeowner's PACE loan(s) must be recorded against the property prior to May 11, 2023. • Homeowner must attest that they experienced a financial hardship after January 21, 2020. The attestation must describe the nature of the financial hardship. • Homeowner must have sought assistance with their PACE loan(s) through legal aid, housing counselor, consumer advocacy group, government agency, contractor, county assessor, county tax collector and/or PACE Administrator regarding a financial hardship that has affected their ability to afford housing payments. Documentation required. • Co-owners are not permitted to separately apply for Program assistance. • Households are eligible if they have received any other form of governmental assistance, including other forms of COVID-19 assistance from the CARES Act, Consolidated Appropriations Act of 2021 or the American Rescue Plan Act,

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	including Emergency Rental Assistance.
Eligible Legal Ownership Structures	• Those where the home is owned by a "natural person" (i.e., LLP, LP or LLC do not qualify) • Those where the homeowner has transferred their ownership interest into a Living Trust, provided the homeowner remains a beneficiary of such trust and occupies the home as their primary/principal residence.
Qualified Financial Hardship	• A "Qualified Financial Hardship" is a material reduction in income or material increase in living expenses associated with the coronavirus pandemic that has created or increased a risk of mortgage delinquency, mortgage default, property tax default, foreclosure, or displacement for a homeowner. » **Reduction of Income** – Temporary or permanent loss of household earned income after January 21, 2020. » **Increase in Living Expenses** – Increase in out-of-pocket household expenses such as, medical expenses, inadequate medical insurance, increase in household size, or costs to reconnect utility services directly related to the coronavirus pandemic after January 21, 2020. • Homeowner must complete and sign the Affidavit which includes an attestation of Qualified Financial Hardship.
Homeowner Income Eligibility Requirements	• To be eligible for assistance, all household members (over 18 years of age) must have a combined total income equal to or less than 150% of the Area Median Income adjusted by household size (AMI) based on HUD Homeowner Assistance Fund income limits. • Homeowners cannot have cash on hand, or assets that can be rapidly converted to cash, that is equal to or greater than the relief funds needed + $20,000. (This program defines cash/assets as cash or assets that can be converted into cash in a short amount of time, including things like money market instruments and marketable securities. This excludes savings in a tax-advantaged retirement account).
Homeowner Prioritization	• 60% of California's total allocated funds will be reserved for those making at or below 100% of their AMI. • CalHFA will prioritize funding to socially disadvantaged homeowners, defined as Californians that live in Qualified Census Tracts (QCT) or areas with "high" and "highest" vulnerability values on the Owner Vulnerability Index (OVI), developed by the UCLA Center for Neighborhood Knowledge. » 40% of the California's total allocated funds will be reserved for the previously defined socially disadvantaged homeowners.

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Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

Eligible Property Types	• "Eligible Property Types" are: » Single-family (attached or detached) properties. » Condominium units » 1-4 unit owner-occupied » Mobile Homes permanently affixed to real property and taxed as real estate. • "Ineligible Property Types" are: » Vacant or abandoned. » Second homes » Investment property
Eligible Uses of PACE Program Proceeds	• Payment assistance or principal reduction of existing PACE loan(s) attached to the property and recorded into official county records, plus any PACE program related costs that the homeowner would incur to pay off or pay down PACE loan(s).
Maximum Per Household	• The maximum amount due for program eligibility is $80,000 at the time of application submission. • Households needing more than $80,000 for complete reinstatement at the time of application are not eligible. • Homeowners may apply for assistance with current mortgage arrearage (term sheet), Property Tax assistance (term sheet), Partial Claim or Deferral payoff, and/or PACE loan(s) as long as the combined amount of assistance needed does not exceed $80,000 at the time of application. » If the combined assistance needed by any applicant is above $80,000, assistance needed for complete reimbursement of current eligible mortgage arrearage will be provided first, and the amount remaining to reach the $80,000 limit will be applied toward property tax (if needed), then PACE loan(s), and lastly the Partial Claim Lien or Deferral, in that order.
Assistance Type	• Assistance will be structured as a non-recourse grant.
Payout of PACE Assistance	• CalHFA will disburse assistance directly to the local authority.
Program Launch	• CalHFA launched the program on October 6, 2023.
Program Duration	• The period of performance for the HAF program ends on September 30, 2026, however CalHFA plans to allocate all funds by September 30, 2025.
Program Application Process	• Applications will be accepted online through the Outreach Navigator and Intake Review (ONAIR) Portal. All applications will be entered into the online portal and reviewed on the reviewer portal.

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Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

Required Application Documents

In response to feedback about the need for a streamlined application process, efforts will be made to avoid barriers to equitable access and allow for flexibility, particularly with regard to documentation requirements.

Required application documents and attestations include, but may not be limited to, the following:

- California Mortgage Relief Program application, including attestations of:
  - » Qualified Financial Hardship.
  - » Applicant acknowledgment that loss mitigation options may be a better option to address their specific circumstance.
  - » Applicant acknowledgment that housing counselors will see applicants for free to explain these options, to complete their application.
  - » Other related attestations.
- Third Party Authorization (TPA) and Disclosure
- Property Tax Bill
- Assessment Contract
- Notice of Assessment
- PACE Assistance Documentation
- Valid California Identification and Social Security Number

All household members 18 and over must provide income documents such as:

- Most recent income documentation: W2's, paystubs, previous years' tax returns or alternative income documents as applicable such as proof of an Income Proxy such as Unemployment, Medi-Cal, WIC, SNAP, FDPIR, TANF, SNP, Section 8 and any other income-based county, municipality, state and/or federal assistance program.
- Individual's bank statements for all accounts for the two months prior to the date of the application submission.
- Profit and Loss Statements for all self-employed individuals including most recent two months' business bank statements.

Additional Documentation Requirements in Certain Cases

In certain cases, CalHFA will require additional documentation to ensure that assistance is focused on Californians most in need and is delivered efficiently.

- Homeowners in active bankruptcy will need to provide written substantiation from both their loan servicer and/or local authority and the Bankruptcy Trustee that the homeowner(s) may receive assistance funds and said funds shall be applied to any first lien loan arrearage and/or PACE loan(s) on their primary residence.
  - This additional documentation requirement allows CalHFA a more efficient path to review those homeowners by ensuring that the mortgage servicer and/or administrator and bankruptcy trustee will accept the assistance funds.
- Homeowner claiming an upcoming sale date through a Notice of Sale document must provide a copy of that document.
- Documentation that satisfies an ownership interest in the property according to servicer requirements (e.g. inter-spousal transfer deed, a quit claim deed, or grant deed when homeowners divorce or dissolve their marriage).

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Program Partners Requirements	• Local authorities will be required to execute a HAF Collaboration Agreement and agree to communicate using the PACE Partner Portal in the Review (OnAir) Portal • If and as required, partners will be asked to sign a W9.

* For the purposes of this program, CalHFA is following U.S. Treasury Homeowner Assistance Fund Guidance which lists Property Assessed Clean E y (PACE) loans as a qualified expense. CalHFA acknowledges that California Financial Code Section 22015 establishes PACE "assessments."

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Attachment: 24-1003175 HAF Collaboration Agreement_PACE Local Authority_Clean-PDF (10685 : Contract No. 24-1003175 with CalHFA

Minute Action

AGENDA ITEM: 33

Date: July 3, 2024

Subject:
Rescind Award Contract No. 24-1003046 - U.S. Bank Global Corporate Trust

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Rescind authorization of Executive Director, or his designee, to finalize and execute Contract No. 24-1003046 with U.S. Bank Global Corporate Trust for Trustee Services.

Background:
On May 1, 2024, staff requested the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) approve authorizing the Executive Director, or his designee, to execute a contract with U.S. Bank Global Corporate Trust and approval of self-insurance for all of the insurance required. After further review, staff determined that a new agreement is unnecessary since the various indentures govern the relationship between SBCTA and the Trustee. The Board approves indentures when issuing or refunding sales tax revenue bonds. The indentures stipulate that SBCTA, to the extent permitted by law, shall indemnify, defend, and hold harmless the Trustee against any loss, damages, liability or expense incurred without negligence or bad faith from the Trustee.

Staff entered an incorrect contract expiration date into its financial management application, which led to a misunderstanding that there was a need to procure for trustee services. Also, staff should have been cognizant that the services were covered in the indentures. Now staff is requesting to rescind the action taken May 1, 2024, specifically, the authorization of the Executive Director, or his designee, to finalize and execute Contract No. 24-1003046 with U.S. Bank Global Corporate Trust for Trustee Services for a not-to-exceed amount of $45,000, to be funded with Debt Service Funds and Toll Funds, for a five-year term through June 30, 2029, subject to approval as to form by SBCTA General Counsel. Staff is reviewing all Finance contracts to ensure all dates entered in the financial system are accurate.

Financial Impact:
Trustee services are included in the adopted Budget for Fiscal Year 2024/2025 and funded with Debt Service and Toll funds in Programs 60 and 70.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel and Procurement Manager have reviewed this item. This item is going directly to the board to explain the agreement is unnecessary since the relationship with the bank is governed by SBCTA's indentures.

Responsible Staff:
Hilda Flores, Chief Financial Officer

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Entity: San Bernardino County Transportation Authority

Minute Action

AGENDA ITEM: 34

Date: July 3, 2024

Subject:
Award Contract No. 24-1003027 for the State Route 210 Waterman Avenue Interchange Project

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to award and execute Contract No. 24-1003027 to the lowest responsive responsible bidder for construction of the State Route 210 Waterman Avenue Interchange Project subject to meeting the requirements of Invitation for Bids No. 24-1003027, and approval as to form by SBCTA General Counsel, or her designee.

B. Authorize the Executive Director, or his designee, to approve a contingency amount, supplemental items, and agency furnished allowance, subject to award of Contract No. 24-1003027.

Background:
In January 2024, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) authorized the Executive Director, or his designee, to release Invitation for Bids (IFB) No. 24-1003027, for construction of the State Route 210 Waterman Avenue Interchange Project. Release of IFB No. 24-1003027 was subject to the final approval of the Plans, Specifications, and Estimates package and approval as to form by SBCTA General Counsel, or her designee. On May 10, 2024, the Notice to Bidders and Special Provisions were approved, and on May 16, 2024, the plans were approved.

On May 31, 2024, IFB No. 24-1003027 was released and sent electronically to prospective contractors, subcontractors, and suppliers registered on PlanetBids. The solicitation was issued in accordance with current SBCTA policies and procedures for construction projects.

Bids were initially due on July 1, 2024, on PlanetBids, however, staff extended the bid due date to July 9, 2024 in consideration of Independence Day holiday on July 4, 2024. After receipt of bids, information submitted will be reviewed by staff for discrepancies and compliance with the IFB. A separate bid analysis will be performed to confirm that all tabulations were accurate and correct, confirming the bid rankings. The IFB required the apparent lowest bidder to produce all required forms outlined in the IFB by the required due date and time in order to remain the lowest responsive responsible bidder eligible. As part of the contract bidding process, staff will have to review the apparent lowest bidder's submitted information to assure that it is responsive to the requirements of the IFB. This includes appropriate completion of the forms and the bid and meeting insurance information specified in the contract.

Staff is recommending that the Board authorize the Executive Director, or his designee, to award and execute the contract to the lowest responsive responsible bidder, subject to the bidder meeting the requirements of the IFB. Because the August Board meeting is anticipated to be dark, delegation of the award of contract to the Executive Director, or his designee, will allow the project construction to begin timely and address existing and forecasted traffic congestion. In conjunction with the award of the contract, staff is also recommending that the Board allow the Executive Director, or his designee, to authorize a 10% contingency and supplemental and department furnished costs as shown in Attachment A.

Entity: San Bernardino County Transportation Authority

Financial Impact:
This Project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with Valley Interchange Measure I funds and City of San Bernardino Local Funds in Program 40, Project Delivery under Task 0830 Interchange Projects, Sub Task 0814 SR-210 Waterman Avenue Interchange.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. This item is being presented directly to the Board at its July 3, 2024 meeting pursuant to Contracting and Procurement Policy No. 11000, Section V.B.2.d, as this is a construction contract award to the lowest responsive responsible bidder. SBCTA Procurement Manager and Enterprise Risk Manager have reviewed this item.

Responsible Staff:
Paul Melocoton, Project Manager

24-1003027
ATTACHMENT A

SUPPLEMENTAL WORK		
1	MAINTAIN TRAFFIC	$10,000
2	WATER POLLUTION CONTROL MAINTENANCE SHARING	$5,000
3	ADDITIONAL WATER POLLUTION CONTROL	$5,000
4	STORM WATER SAMPLING AND ANALYSIS	$5,000
5	REPAIR EXISTING IRRIGATION SYSTEM	$5,000
6	PARTNERING	$12,000
7	PAYMENT ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS	$5,000
8	MAINTAIN EXISTING ELECTRICAL SYSTEM	$5,000
9	DISPUTE RESOLUTION ADVISOR	$2,000
10	GRAFFITI REMOVAL	$5,000
	SUBTOTAL OF SUPPLEMENTAL WORK	**$59,000**
AGENCY FURNISHED MATERIALS AND SERVICES		
1	COZEEP CONTRACT	$25,000
2	TRAFFIC MANAGEMENT PLAN - PUBLIC INFORMATION	$25,000
3	MODULE TRAFFIC CONTROL SYSTEM, MODEL 2070E	$2,500
4	CABINET TRAFFIC CONTROL MODEL 332LS CABINET	$7,400
5	BATTERY BACK UP SYSTEM MODEL GT-BBS GREEN TECHNOLOGY	$1,200
6	ANNUAL CONSTRUCTION GENERAL PERMIT FEE	$1,000
	SUBTOTAL OF AGENCY FURNISHED MATERIALS AND SERVICES	**$38,100**
SUMMARY		
	SUPPLEMENTAL WORK	**$ 61,000**
	CONTINGENCY	**Total to be determined**
	SUPPLEMENTAL AND CONTINGENCY	**Total to be determined**
	AGENCY FURNISHED MATERIALS AND SERVICES	$38,1000
	ALLOWANCE AND CONTINGENCIES	**Total to be determined**

Attachment: 24-1003027 Attachment A (10672 : SR 210 Waterman Interchange Project Award Contract No. 24-1003027)

Minute Action

AGENDA ITEM: 35

Date: July 3, 2024

Subject:
Award Contract No. 23-1002955 for the Interstate 215 University Parkway Interchange Project and Amendment No. 3 to Cooperative Agreement No. 19-1002205

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to execute Amendment No. 3 to Cooperative Agreement No. 19-1002205 with the City of San Bernardino (City), subject to approval as to form by SBCTA General Counsel, or her designee, and final approval at the July City Council meeting, for the Interstate 215 University Parkway Interchange Project (Project), to increase the total Project costs by $2,555,333 consisting of an additional receivable amount from the City in the amount of $403,743 and additional Measure I Valley Freeway Interchange Program funds of $2,151,590.

B. Authorize the Executive Director, or his designee, to award and execute Contract No. 23-1002955 to the lowest responsive responsible bidder for construction of the Project, subject to meeting the requirements of Invitation for Bids No. 23-1002955, and approval as to form by SBCTA General Counsel, or her designee.

C. Authorize the Executive Director, or his designee, to approve a contingency amount, supplemental items, and agency furnished allowance, subject to award of Contract No. 23-1002955.

Background:
In July 2023, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) authorized the Executive Director, or his designee, to release Invitation for Bids (IFB) No. 23-1002955, for construction of the Interstate 215 University Parkway Interchange Project. Release of IFB No. 23-1002955 was subject to certification of Right-of-Way (ROW), the final approval of the Plans, Specifications, and Estimates by California Department of Transportation (Caltrans), federal authorization of funds (E-76), and approval as to form by SBCTA General Counsel, or her designee. The project received the E-76 on May 9, 2024.

On May 15, 2024, IFB No. 23-1002955, was released and sent electronically to contractors, subcontractors, and suppliers registered on PlanetBids. The solicitation was issued in accordance with current SBCTA policies and procedures for construction projects.

Bids were due on June 12, 2024, and all bids are being reviewed by staff for discrepancies and compliance with the IFB. A separate bid analysis is being performed to confirm that all tabulations were accurate and correct, confirming the bid rankings. The IFB required the apparent lowest bidder to produce all required forms outlined in the IFB by the required due date and time to remain the lowest bidder eligible. Since the project is federalized, a Disadvantaged Business Enterprise (DBE) goal of 23% was specified in the IFB. As part of the contract bidding process, staff will have to review the apparent lowest bidder's submitted information to assure that it is responsive to the requirements of the IFB. This includes appropriate completion of the forms and bid and meeting the DBE requirements such as good faith efforts, for example.

Three bids were received ranging from $16.8 million to $17.9 million. The apparent lowest bid came in approximately 18% greater than the engineer's estimate that was used for the funding table in the latest iteration of Cooperative Agreement No. 19-1002205 between the City of San Bernardino (City) and SBCTA. Additionally, completion of final design resulted in increases in the Project Approval and Environmental Document and Plans, Specifications, and Estimates phases while settlements with property owners resulted in savings to the ROW phase. With these cost adjustments and the unanticipated higher construction bids, the total Project cost has increased over the currently authorized amount in the Cooperative Agreement necessitating an amendment. SBCTA and City staff are working together to process Amendment No. 3 to the Cooperative Agreement to allow planned award of the construction contract and start construction in the fall of this year as scheduled. Staff is recommending that the Board authorize the Executive Director, or his designee, to execute Amendment No. 3 to Cooperative Agreement No. 19-1002205 with the City to increase the total cost of the Project by $2,555,333, the receivable amount from the City by $403,743, and Measure I amount by $2,151,590.

Staff is also recommending that the Board authorize the Executive Director, or his designee, to award and execute the contract to the lowest responsive responsible bidder, subject to the bidder meeting the requirements of the IFB. Because the August Board meeting is anticipated to be dark, delegation to the Executive Director, or his designee, for the award of the contract will allow the Project construction to begin timely and address existing and forecasted traffic congestion. In conjunction with the award of the contract, staff is also recommending that the Board allow the Executive Director, or his designee, to authorize a standard contingency, supplemental costs, and department furnished costs as shown in Attachment A.

Financial Impact:
This Project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with Valley Interchange Measure I funds, City of San Bernardino Local Funds, and Federal Surface Transportation Program (STP)/Highway Improvement Program (HIP) funds in Program 40, Project Delivery under Task 0830 Interchange Projects, Sub Task 0853 I-215 University Parkway Interchange.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. This item is being presented directly to the Board at its July 3, 2024 meeting pursuant to Contracting and Procurement Policy No. 11000, Section V.B.2.d, as this is a construction contract award to the lowest responsive responsible bidder. SBCTA Procurement Manager and Enterprise Risk Manager have reviewed this item.

Responsible Staff:
Paul Melocoton, Project Manager

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

23-1002869
ATTACHMENT A

SUPPLEMENTAL WORK			
1	FEDERAL TRAINEE PROGRAM	$	4,800
2	JUST-IN-TIME TRAINING	$	8,000
3	ADDITIONAL TRAFFIC CONTROL	$	20,000
4	MAINTAIN TRAFFIC	$	78,000
5	REPAIR EXISTING IRRIGATION SYSTEM	$	3,000
6	WATER POLLUTION CONTROL MAINTENANCE SHARING	$	19,870
7	ADDITIONAL WATER POLLUTION CONTROL	$	6,000
8	DISPOSAL OF YELLOW PAINTED TRAFFIC STRIPE	$	10,000
9	PARTNERING	$	20,000
10	PAYMENT ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS	$	36,500
11	MAINTAIN EXISTING ELECTRICAL SYSTEM	$	20,000
12	DISPUTE RESOLUTION BOARD	$	15,000
13	DISPUTE RESOLUTION ADVISOR	$	15,000
14	GRAFFITI REMOVAL	$	30,000
	SUBTOTAL OF SUPPLEMENTAL WORK		**$286,170**
AGENCY FURNISHED MATERIALS AND SERVICES			
1	COZEEP CONTRACT	$	67,500.00
2	TRAFFIC MANAGEMENT PLAN - PUBLIC INFORMATION	$	50,000.00
3	TOW TRUCK SERVICE PATROL	$	5,465.00
4	TRAFFIC SIGNAL CONTROLLER ASSEMBLY	$	29,600.00
5	ANNUAL CONSTRUCTION GENERAL PERMIT FEE	$	905.00
	SUBTOTAL OF AGENCY FURNISHED MATERIALS AND SERVICES		**$153,470**
SUMMARY			
	SUPPLEMENTAL WORK	**$**	**286,170**
	CONTINGENCY	**Total to be determined**	
	SUPPLEMENTAL AND CONTINGENCY	**Total to be determined**	
	AGENCY FURNISHED MATERIALS AND SERVICES	$	153,470
	ALLOWANCE AND CONTINGENCIES	**Total to be determined**	

Attachment: Attachment A - Summary of Allowances (10651 : I-215 University Contract No. 23-1002955 Award and Amendment to City Coop)

Minute Action

AGENDA ITEM: 36

Date: July 3, 2024

Subject:
Agreements with DesertXpress Enterprises, LLC (d/b/a Brightline West): Local Rail Service Agreement No. 24-1003091; Amendment No. 4 to the Disposition and Development Agreement No. 23-1002894; and Conditions, Covenants, Restrictions and Easements related to No. 23-1002894

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Receive and file a status update from DesertXpress Enterprises, LLC (d/b/a Brightline West).

B. Approve the Local Rail Service Agreement No. 24-1003091 with Brightline West, for the provision of local rail service between Hesperia and Rancho Cucamonga as part of the consideration received by SBCTA for Lease No. 22-1002723.

C. Approve Amendment No. 4 to Disposition and Development Agreement No. 23-1002894 (DDA) which replaces, and updates exhibits containing descriptions of the property interests being sold to Brightline West and property interests retained and reserved by the City of Rancho Cucamonga and SBCTA and the Inspector of Record process.

D. Approve Covenants, Conditions, Restrictions, and Easements further describing the rights and obligations Brightline West, the City of Rancho Cucamonga, and SBCTA will have with respect to the property after the transaction is complete, and additional easement rights which are to be recorded as an encumbrance upon the properties with the close of escrow of the DDA.

Background:
The Brightline West (Brightline) High Desert Stations project has received $25 million in RAISE Grant funding in response to a successful application submitted by Brightline, in partnership with the San Bernardino County Transportation Authority (SBCTA), for grant funding to apply towards the development and construction of two stations located in the high desert. Brightline, with the Nevada Department of Transportation, applied for and received a $3 billion Federal Grant for the construction of the Brightline System. On June 5, 2024, the City of Rancho Cucamonga (City)'s Mayor and City Council approved Amendment No. 4 to the Disposition and Development Agreement (DDA) and the Conditions, Covenants, Restrictions, and Easements (CC&Rs) for the property subject to the DDA.

Recommendation B:

The Local Rail Service Agreement (LRSA) No. 24-1003091 is a companion agreement to SBCTA Lease 22-1002723, for the lease of a portion of the San Gabriel Subdivision to provide Brightline with the right-of-way necessary to get from the I-15 Caltrans right-of-way to the Rancho Cucamonga Station and is key consideration for SBCTA's grant of the lease interest to Brightline. A default under the LRSA constitutes a cross default under the lease agreement. The purpose of the LRSA is to provide a transportation alternative for High Desert commuters between the High Desert and Rancho Cucamonga in the form of a local rail service, which will provide 150 seats in the morning, distributed across three departure times, from Hesperia to Rancho Cucamonga, and 150 return seats, distributed across three departure times in the afternoon, from Rancho Cucamonga to Hesperia. In the event of an unplanned disruption to the

local rail service, Brightline will provide ticket holding local rail service patrons impacted by the disruption a seat on the next train, bus service to their destination station, or a refund.

Recommendation C:

Amendment No. 4 to the DDA updates various legal descriptions as well as making appurtenant updates to the conveyance documents.

- The legal descriptions for the Station property being conveyed to DesertXpress Enterprises, LLC (d/b/a Brightline West) (Brightline) are updated to reflect design modifications to the surface level parking, which the City and SBCTA will retain (Surface Property), as well as refinements to the station access taken from Milliken Avenue. The City/SBCTA-retained Surface Property has been reconfigured to be longer in the north-south direction and now provides for 225 parking spaces. The longer north-south distance that Metrolink patrons would otherwise have had to travel before getting to the Metrolink platforms is mitigated by access easements addressed in the CC&Rs.

- The site plan included in DDA Exhibit C is updated to reflect the modifications to the Surface Property parking and the reconfiguration of station access and circulation.

- The Grant Deed is updated to include descriptions for driveway and utility easements retained by the City/SBCTA for the benefit of the Surface Property, add a reservation of an access easement to the north Metrolink Platforms via the tunnel under the San Gabriel Subdivision right-of-way, and to include the finalized terms and conditions for the tunnel easement reserved by SBCTA for the ONT Connector project. The legal descriptions of the station property attached to the Grant Deed have been conformed to match the updates to the legal descriptions provided in the DDA.

- The Aerial Easement is updated to include a description of the areas/improvements supporting Brightline's viaduct platforms, which occupy the ground space, such as support columns, utilities, access stairs, and crash attenuation barriers to protect the Brightline facilities.

- Updates to the 8th Street Easement granted by the City to reflect changes requested by the title company, however, there is no change to the boundary shape of the 8th Street Easement.

- Updates to the Inspector of Record process to address the Americans with Disabilities Act (ADA) inspections of improvements constructed or reconstructed on the Cucamonga Station site as part of Brightline's modification of the site to ensure connectivity between the Brightline and Metrolink stations.

Recommendation D:

The CC&Rs were deferred to a later date when the DDA was originally negotiated. The CC&Rs provide:

- That Brightline and the City/SBCTA are each responsible for providing security for their respective properties. The CC&Rs allow each party to provide security in the same way they already provide security for the existing station in the case of the City/SBCTA, or the highest level of security provided at any other train station that Brightline owns or operates in the State of California;

- That Brightline and the City/SBCTA are each responsible for maintenance of their respective properties, except to the extent that a party causes damage which they are responsible for repairing. The City/SBCTA's maintenance responsibilities are primarily superficial and limited to keeping the surfaces clean, including graffiti removal. Brightline is responsible for the structure in addition to keeping the property free of trash debris and standing water;

- Access easements through Brightline's Station Property in favor of the City/SBCTA to/from the northwest corner of the Surface Property and to/from an existing communication building located at the northwest corner of the existing Cucamonga Station site;

- Easements in favor of Brightline through the City/SBCTA Surface Property for the purposes of access for maintenance, public safety, and for the structural support columns that must pass through the Surface Property;

- Easement in favor of Brightline for access to and from a Brightline baggage elevator and the Transit Station;

- Temporary construction easements on the Transit Center during the initial construction of the Brightline Station Property to allow Brightline to construct/reconstruct stairs and ramps on the existing Cucamonga Station site to ensure connectivity between the Metrolink Station and Brightline's Station, and continued access to the Metrolink platform on the north side of the tracks as well as for the construction of Brightline's station;

- Compensation to the City/SBCTA for the size and duration of temporary construction easements Brightline require, which Brightline will communicate in advance to coordinate communication to Metrolink patrons;

- Each party will carry insurance: the City/SBCTA will ensure the Surface Property in the same manner and level as is typical for City/SBCTA real property, and Brightline is required to carry insurance commensurate with the construction and operation of a railroad facility;

- Brightline will have a right of first negotiation for the Surface Property (City/SBCTA's ground floor parking lot) if the City/SBCTA wish to sell it; and

- Brightline will construct a traffic signal for the Azusa Court/Milliken Avenue intersection.

The terms and conditions within the agreements presented in this item represent the culmination of months of negotiations between Brightline, the City, and SBCTA to ensure that SBCTA's best interests are served in conjunction with the interests of Brightline and the City. Staff recommends that the Board approve the various agreements as presented, allowing Brightline to secure the necessary property rights from SBCTA and the City to operate the Brightline High Speed Rail system on property presently within the possession and/or control of SBCTA and/or the City. Approval of these agreements is necessary for a successful close of escrow which is a critical step in allowing Brightline to move forward with their improvements at the Cucamonga Station.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. This item is presented directly to the Board without prior committee review to ensure timely approval by all parties which allows Brightline to move forward with overall project development. SBCTA General Counsel, Procurement Manager and Enterprise Risk Manager have reviewed this item and the draft agreements.

Responsible Staff:
Ryan Aschenbrenner, Right of Way Manager

Contract Summary Sheet

General Contract Information

Contract No: 24-1003091 Amendment No.:

Contract Class: Payable Department: Transit

Vendor No.: 03635 Vendor Name: DESERTXPRESS ENTERPRISES, LLC

Description: Local Rail Service Agreement

List Any Related Contract Nos.: 22-1002723 (cross default provisions with SGS Lease Agreement)

Dollar Amount

Original Contract	$	-	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**-**	**Total Contingency Value**	**$**	**-**
			Total Dollar Authority (Contract Value and Contingency)	**$**	**-**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 9316

Contract Management (Internal Purposes Only)

Zero Dollar Contracts Sole Source? N/A No Budget Adjustment

Zero Dollar MOU/COOP/JPA (zero dollar contract) N/A

Accounts Payable

Estimated Start Date: 06/05/2024 Expiration Date: 12/31/2039 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ -	Total Contingency: $ -
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-

Ryan Aschenbrenner
Project Manager (Print Name)

Victor Lopez
Task Manager (Print Name)

Additional Notes: Zero Dollar Contract. Local Rail Serivce Agreement is the primary consideration upon which SBCTA entered into 22-1002723, a default under 24-1003091 constitutes a cross default under 22-1002723.

Attachment: CSS - 24-1003091 [Revision 1] (9316 : Additional Brightline Contract Actions)

Local Rail Service Agreement

This Local Rail Service Agreement (this "Agreement") is made this 3rd day of July, 2024 (the "Effective Date") by and between DesertXpress Enterprises, LLC, a Nevada limited liability company, and the San Bernardino County Transportation Authority, a county transportation authority.

RECITALS

A. The San Bernardino County Transportation Authority ("SBCTA") is a county transportation authority pursuant to California Public Utilities Code §§ 130800 et. seq. and is responsible for cooperative regional planning and for furthering an efficient multi-modal transportation system throughout San Bernardino County, California. SBCTA supports freeway construction projects, regional and local road improvements, train and bus transportation, railroad crossings, call boxes, ridesharing, congestion management efforts, and long-term planning studies. SBCTA's goal is to encourage responsible growth, a sustainable environment, and a high quality of life for everyone who lives, works, and travels in and through San Bernardino County.

B. SBCTA also provides financial support to the Southern California Regional Rail Authority (“SCRRA” or “Metrolink”), which provides commuter rail services in its five member agencies’ counties. Metrolink currently serves nine stations in San Bernardino County: Downtown Redlands, Downtown San Bernardino, San Bernardino Depot, Rialto, Fontana, Rancho Cucamonga, Upland, Montclair, and Ontario-East. Metrolink also operates the 9-mile Arrow hybrid rail line in San Bernardino County, under contract with SBCTA.

C. DesertXpress Enterprises, LLC, which does business as Brightline West ("BLW"), is a privately owned rail carrier that proposes to design, construct, operate, and maintain a private interstate high-speed passenger railroad between Southern California and Las Vegas, Nevada. This dedicated passenger-only electric high-speed rail line will be designed and constructed for operation and maintenance within an approximately 218-mile corridor that will generally follow the Interstate 15 freeway and right-of-way ("I-15") and is proposed to be built primarily in the median of I-15 in California and Nevada (the "BLW System"). BLW proposes to construct the BLW System through two projects – one to be constructed between Las Vegas, Nevada and Apple Valley, California (the "LV/AV Line”) and the other to be constructed between Apple Valley and Rancho Cucamonga, California (the “AV/RC Line”). A map that generally depicts the BLW System is attached hereto as Exhibit A. As shown on Exhibit A, the AV/RC Line will travel approximately 1.4 miles within a portion of SBCTA's San Gabriel Subdivision right of way to a new station proposed to be constructed adjacent to the existing Metrolink station in Rancho Cucamonga. (For clarity, the Metrolink station is referred to herein as the “Metrolink

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station" and the separate high-speed rail station to be constructed by BLW is referred to herein as the "BLW Rancho Cucamonga Station".)

D. The parties believe that the BLW System will deliver significant public benefits. Studies conducted by BLW predict that the BLW System will support approximately 40,000 construction jobs and approximately 1,000 permanent jobs; improve safety; eliminate more than 400,000 tons of CO2 from the air per year; and support $8 billion in economic output while improving quality of life and providing a convenient additional transportation option for the region. Locating a BLW station adjacent to the Metrolink Rancho Cucamonga Station will provide rail connectivity to points throughout Southern California and complement other regional transportation planning, including transportation alternatives for residents of the High Desert region.

E. BLW, the California State Transportation Agency, the California Department of Transportation ("Caltrans"), and the California High-Speed Rail Authority entered a "Memorandum of Understanding Related to the DesertXpress Enterprises High-Speed Rail Cajon Pass Project" dated April 16, 2021 (the "State MOU"). The parties to the State MOU expressed their shared belief that "construction of the [AV/RC Line] will serve the important purposes of increasing passenger rail transportation within Southern California, including interconnectivity between systems, and promoting the region's mobility, safety, and air quality objectives." BLW and Caltrans subsequently entered a "Right of Way Use Agreement Related to the DesertXpress High-Speed Rail System – Apple Valley to Rancho Cucamonga Project" dated December 15, 2023 for use of a portion of the width of the I-15 right of way for construction, operation, and maintenance of the AV/RC Line.

F. In 2011, the Surface Transportation Board ("STB") approved construction and operation of the LV/AV Line. (DesertXpress Enterprises, LLC and DesertXpress HSR Corp. – Construction and Operation Exemption – In Victorville, Cal. and Las Vegas, Nev., STB Docket No. 35544 (STB served Oct. 25, 2011).) The STB had previously held that the project was within its jurisdiction and that the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501, preempts state permitting for the project. (DesertXpress Enterprises, LLC Petition for Declaratory Order, STB Docket No. 34914 (June 25, 2007).) On April 13, 2021, BLW filed a similar Petition for Exemption with the STB for construction of the AV/RC Line. The STB issued its determination granting the petition on November 15, 2023 (DesertXpress Enterprises, LLC – Authority to Construct and Operate – Petition for Exemption from 49 U.S.C. 10901 – Passenger Rail Line Between the Victor Valley, Cal. and Rancho Cucamonga, Cal., STB Docket No. FD 36488 (STB served Nov. 16, 2023).)

G. The Federal Railroad Administration ("FRA") is the lead agency for environmental review of the BLW System. The FRA has completed its NEPA and related environmental review of the AV/RC Line in the form of a Finding of No Significant Impact in compliance

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

with NEPA, the Counsel of Environmental Quality's implementing regulations, FRA's Environmental Impact and Related Procedures, and other applicable laws, including Section 106 of the National Historic Preservation Act and Section 4(f) of the U.S Department of Transportation Act of 1966.

H. SBCTA and BLW entered into a memorandum of understanding dated July 31, 2020, related to advancing the AV/RC Line. SBCTA and BLW subsequently entered a "San Gabriel Subdivision Lease Agreement Related to the Brightline West High-Speed Rail Project" dated March 2, 2022, as amended, (the "ROW Agreement") that authorizes BLW's use of a portion of the width of SBCTA's San Gabriel Subdivision right of way. The ROW Agreement is one of several definitive agreements that BLW is entering to secure the right of way and other property rights that it requires to construct and operate the AV/RC Line.

I. I-15 is a primary vehicle transportation corridor for travel within San Bernardino County and for connecting the county with other parts of the state and the nation. Annual average daily traffic is expected to increase significantly during the coming decades as the population and economic standing of the High Desert region continue to grow. To help address these challenges, SBCTA is developing the "I-15 Corridor Project" to improve mobility and freeway capacity. When completed, the I-15 Corridor Project will add one to two vehicular express lanes in each direction of travel on the I-15 freeway from approximately the San Bernardino/Riverside County line north and eventually into the Victor Valley. Construction of the I-15 Corridor Contract 1 Project is scheduled to begin in Spring 2024 and will address the most congested portion of the I-15 corridor by adding two express lanes in each direction, spanning approximately six miles from the San Bernardino/Riverside County line north to Foothill Boulevard. Portions of the I-15 Corridor Project and the AV/RC Line will overlap.

J. To meet the goals both of the I-15 Corridor Project and the BLW System, and as key consideration, in part, for the ROW Agreement, BLW has agreed to provide local passenger rail service ("Local Rail Service") during certain hours of the day between the BLW Rancho Cucamonga Station and a BLW in-line passenger station to be constructed in or near Hesperia, California (the "Hesperia Station") to provide a transportation alternative for residents of the High Desert to travel conveniently by train to and from the Los Angeles Basin.

K. The ROW Agreement preliminarily described certain business terms related to the Local Rail Service. As contemplated in the ROW Agreement, the parties now wish to enter into this Agreement to memorialize the final terms pursuant to which BLW will provide the Local Rail Service.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

AGREEMENT

Now, therefore, the parties agree as follows:

SECTION 1. RECITALS

The recitals set forth above are hereby incorporated into the terms of this Agreement.

SECTION 2. DEFINITIONS

These defined terms have the meanings indicated, as follows:

2.1. "AV/RC Line" has the meaning set forth in Recital C.

2.2. "BLW" is DesertXpress Enterprises, LLC d/b/a Brightline West, as set forth in Recital C.

2.3. "BLW High-Speed Passenger Rail Service" means the private high-speed passenger service provided (or to be provided) by BLW on the BLW System.

2.4. "BLW Rancho Cucamonga Station" has the meaning set forth in Recital C.

2.5. "BLW System" has the meaning set forth in Recital C.

2.6. "Business Day" means weekdays, but not weekends and not holidays (that is, Monday through Friday of each week, inclusive, but excluding Saturdays, Sundays, and holidays that are observed by SBCTA).

2.7. "Caltrans" is the California Department of Transportation, as set forth in Recital E.

2.8. "Claims" has the meaning set forth in Section 5.

2.9. "Effective Date" has the meaning set forth in the preamble.

2.10. "FRA" refers to the Federal Railroad Administration.

2.11. "Hesperia Station" has the meaning set forth in Recital J.

2.12. "High Desert" refers to the economic region of San Bernardino County located in the Victor Valley, which includes, but is not limited to, the cities/towns of Adelanto, Apple Valley, Barstow, Hesperia, and Victorville.

2.13. "I-15" has the meaning set forth in Recital C.

2.14. "I-15 Corridor Project" has the meaning set forth in Recital I.

2.15. "LV/AV Line" has the meaning set forth in Recital C.

2.16. "Local Rail Service" has the meaning set forth in Recital J.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

2.17. “Metrolink Rancho Cucamonga Station” has the meaning set forth in Recital C.

2.18. “Operating Hours” has the meaning set forth in Section 3.1.4.

2.19. “ROW Agreement” has the meaning set forth in Recital H.

2.20. “SBCTA” is the San Bernardino County Transportation Authority, as set forth in Recital A.

2.21. “SCRRA” is the Southern California Regional Rail Authority, a Joint Powers Authority (JPA) comprised of five member agencies (SBCTA, the Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, Riverside County Transportation Commission, and Ventura County Transportation Commission) that was created pursuant to California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to plan, design, construct, maintain, administer, and operate the "Metrolink" regional train system on railroad rights-of-way owned by the member agencies and owned by others, in Los Angeles, Orange, Riverside, Ventura, and San Bernardino counties, and available through other shared use and joint operation agreements.

2.22. “State MOU” has the meaning set forth in Recital E.

2.23. “STB” means the federal Surface Transportation Board.

SECTION 3. LOCAL RAIL SERVICE

BLW will provide Local Rail Service between the BLW Rancho Cucamonga Station and the Hesperia Station on the following terms:

3.1. Stations.

3.1.1. Local Rail Service will operate between the BLW Rancho Cucamonga Station and the Hesperia Station.

3.1.2. Except as expressly set forth in that certain Conditions, Covenants, Restrictions, and Easements recorded with respect to the BLW Rancho Cucamonga Station, BLW will design, construct, operate, and maintain the BLW Rancho Cucamonga Station and Hesperia Station in good working order, including payment of all utilities, at no cost to SBCTA. SBCTA assumes no responsibility for, and makes no representations or warranties, express or implied, regarding the design, condition, workmanship, or adequacy of the BLW Rancho Cucamonga Station and Hesperia Station and associated rail infrastructure.

3.1.3. BLW will provide on-site security at the BLW Rancho Cucamonga Station and Hesperia Station during Operating Hours.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

3.1.4. BLW will have the BLW Rancho Cucamonga Station and Hesperia Station open to the public from at least 30 minutes before the first morning Local Rail Service train arrival or departure until 30 minutes after the last morning Local Rail Service train arrival or departure, and from at least 30 minutes before the first afternoon Local Rail Service train arrival or departure until 30 minutes after the last afternoon Local Rail Service train arrival or departure, respectively, at each station, each weekday (the "Operating Hours").

3.2. Operations.

3.2.1. BLW will provide Local Rail Service using BLW's trains and railroad infrastructure at no cost to SBCTA.

3.2.2. BLW will provide a total of one hundred fifty (150) seats each way in the prevailing direction of the typical commute on trains departing daily from the Hesperia Station and BLW Rancho Cucamonga Station on non-holiday weekdays (Monday through Friday) from 5:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 7:00 p.m. These seats will be allocated among three (3) BLW trains in each direction with further details to be approved by the parties when BLW's operating plan is further developed, but in no case later than six (6) months prior to the start of Local Rail Service.

3.2.3. After commencement of operations for the BLW System, BLW will provide SBCTA with at least thirty (30) days prior notice of any planned changes to the schedule of trains that operate in Local Rail Service (with the understanding that any schedule changes will be consistent with Section 3.2.2 above.) BLW will provide reasonable notice under the circumstances to SBCTA and on BLW's ticketing platforms of any BLW planned service outages that will affect the Local Rail Service schedule.

3.2.4. In the event that a train scheduled as part of the Local Rail Service experiences an unplanned disruption, any Local Rail Service passengers whose tickets have been processed for admission at either the BLW Rancho Cucamonga Station or Hesperia Station will be provided with one of the following, at each passenger's election: (i) a seat on the next train with seats available (even if outside the normal Local Rail Service scheduled times); (ii) bus service to their destination station; or (iii) a refund. Any patrons who have purchased a ticket in advance for a return trip between these stations for a return train that has experienced an unplanned disruption will be given the same three options, regardless of whether the ticket has been processed at the station for beginning the return trip.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

3.2.5. BLW will coordinate the Local Rail Service at the Hesperia Station and the BLW Rancho Cucamonga Station with bus transit services to the extent provided by third parties. BLW will also coordinate the Local Rail Service at the BLW Rancho Cucamonga Station with Metrolink service at the Metrolink Rancho Cucamonga Station to facilitate transfers between the two services.

3.2.6. BLW will meet with SBCTA quarterly and provide Local Rail Service ridership quarterly reports to SBCTA.

3.2.7. BLW will set fare rates for passengers using the Local Rail Service based upon and comparable to commuter rail service fare policies in use in the United States. BLW will have the option to set one-way, round trip, or multi-ticket purchasing options for Local Rail Service that are consistent with the commuter rail service fares as set forth in this paragraph; *provided*, however, that one of the options available for ticketing will always be single one-way fare tickets based on the fare structure described in the first sentence of this Section.

3.2.8. BLW will be responsible for ticketing for the Local Rail Service. BLW will sell tickets for the Local Rail Service at both the Hesperia Station and the BLW Rancho Cucamonga Station and on any electronic platforms on which tickets for BLW's other high-speed rail services on the BLW System are sold. SBCTA acknowledges that no bag check services will be available at the Hesperia Station.

3.2.9. Passengers using the Local Rail Service will have access to parking, ticketing, and platform areas in both stations. Depending on safety and security considerations, Local Rail Service guests may also have access to other common areas. Passengers using the Local Rail Service will not have access to BLW Rancho Cucamonga Station areas provided for the exclusive use of passengers with premium service tickets.

3.2.10. SBCTA acknowledges that passengers using the Local Rail Service will be required to comply with the same BLW security processes and BLW passenger policies as required of other BLW passengers, both of which may change from time to time.

3.2.11. BLW will provide information about the Local Rail Service on its website and at the BLW Rancho Cucamonga Station and Hesperia Station. Any advertising specifically for Local Rail Service separate from general advertising for the BLW System will be done at no cost to BLW.

3.2.12. At no cost to SBCTA, BLW will provide substantially similar directional signage for the Local Rail Service at the Hesperia Station as it does for BLW's Victor Valley station in Apple Valley.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

SECTION 4. ADDITIONAL UNDERSTANDINGS

4.1. SBCTA acknowledges that BLW will provide Local Rail Service as a part of its privately owned and operated high-speed rail service that is independent of any transportation services provided by SBCTA or SCRRA. Nothing in this agreement gives SBCTA or SCRRA any ownership interest in, access to, or control over operation of any BLW trains, facilities, or services, inclusive of any facilities or operations related to the Local Rail Service; *provided*, however, that nothing in this Section limits SBCTA's legal or equitable remedies related to the enforceability of any provision of this Agreement.

4.2. All fares collected for the Local Rail Service and associated parking owned and operated by BLW will be for the benefit of BLW.

4.3. BLW has separately entered an agreement with Caltrans for use of a portion of the I-15 corridor for construction, operation, and maintenance of the AV/RC Line. SBCTA acknowledges that the portion of the Caltrans right of way that BLW will use for the AV/RC Line may include width that otherwise would have been used for express lanes planned as part of the I-15 Corridor Project. BLW acknowledges that SBCTA (i) intends to begin construction of two express lanes between Foothill Boulevard and the southerly limits of the AV/RC Line in 2024 and (ii) reserves the right to extend one express lane between Foothill Boulevard and US-395 within the I-15 corridor. BLW will coordinate with SBCTA and Caltrans regarding the extension of these express lanes.

4.4. The parties will work together in good faith, including outreach to third parties, to facilitate the location and construction of the Hesperia Station with the goal of starting Local Rail Service concurrently with the start of BLW's revenue high-speed service on the AV/RC Line. As a precondition to starting Local Rail Service concurrently with the start of BLW's revenue high-speed service on the AV/RC Line, the Hesperia Station must be complete. To achieve this, BLW will start construction on the Hesperia Station concurrent with the start of the construction segment of the BLW System in which the Hesperia Station will be located. The parties acknowledge that for BLW to start construction on the Hesperia Station (i) BLW must have full access to Outpost Road, and (ii) the agreement for the RAISE grant related to development of the Hesperia Station must be executed. To the extent that either of these conditions is not met in time for construction of the Hesperia Station to begin concurrently with the related construction described above, BLW will have a day-for-day extension of time to start Local Rail Service after the start of BLW's revenue high-speed service on the AV/RC Line. Regardless of when the two conditions above are met, BLW will maintain its good-faith efforts to begin Local Rail Service concurrent with the start of BLW's revenue high-speed service on the AV/RC Line.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

4.5. The parties enter this Agreement with the mutual understanding that the Local Rail Service is for the specific purpose of providing a transportation alternative for residents of the High Desert to travel conveniently by train to and from the Los Angeles Basin. Any unforeseen impact to BLW's high-speed rail service between Rancho Cucamonga and Las Vegas that is not specifically measurable except by the opportunity cost of the seats used between the Hesperia Station and the BLW Rancho Cucamonga station will be identified and discussed in good faith to achieve the intended outcome of this Local Rail Service by both parties.

4.6. SBCTA acknowledges that BLW's operations are under the jurisdiction of the federal Surface Transportation Board ("STB"). Should a conflict arise between jurisdiction exercised by the STB and BLW's provision of Local Rail Service as described herein, the parties will work together in good faith to reconcile the conflict.

SECTION 5. INDEMNIFICATION

Each party is responsible for its own acts and omissions and shall indemnify, defend, and hold harmless the other party and its boards, officers, agents, employees, assigns, and successors in interest from and against all fines, claims, lawsuits, judgments, awards, liabilities, losses, damages, and expenses (including reasonable attorney fees and costs) (collectively "Claims") to the extent such Claims arise from the indemnifying party's performance of its obligations under this Agreement.

SECTION 6.

Upon the commencement of Local Rail Service, BLW will procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars ($323,000,000), or such other limit of liability as Congress may establish from time to time applicable to BLW's passenger rail operations. Such policy or policies must provide coverage to SBCTA and its board, officers, agents, employees, assigns, and successors in interest as additional insureds. All excess or umbrella policies must "follow form" and afford no less coverage than the primary policy and must include one reinstatement limit for the period of the policy term.

SECTION 7. LENDERS RIGHTS

Because the Local Rail Service provided under this Agreement is a requirement of the ROW Agreement, Leasehold Lenders (as defined in the ROW Agreement) will have the same rights in relation to this Agreement as are provided for them in the ROW Agreement, including those rights in Section 21 (Restrictions on Transfers and Prohibition of Encumbrances) of the ROW Agreement.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

SECTION 8. FORCE MAJEURE

Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane, lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond a party's control prevent performance of this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing party, performance of this Agreement by such party will be suspended or excused to the extent and for a period commensurate with such occurrence.

SECTION 9. DISPUTE RESOLUTION

9.1. Good Faith. The parties agree to work in good faith to resolve any dispute that may arise under this Agreement through the dispute resolution process described in Section 9.2 below.

9.2. Dispute Resolution Process.

9.2.1. If the parties are unable to resolve a dispute within ten (10) Business Days of written notice of a dispute, the parties will, at the written request of any of the parties, require that the matter be reviewed by a senior level executive of each party (in the case of BLW by a Senior Vice President or higher and in the case of SBCTA by the Transit & Rail Director or higher.)

9.2.2. If the senior executives are unable to resolve the matter within ten (10) Business Days following the time provided in Section 9.2.1, then the parties will, at the written request of either party, attempt to mediate the dispute for a period of thirty (30) days, using a third-party mediator who is neutral and independent of the parties, such mediator to be jointly selected by the parties within seven (7) Business Days after the conclusion of the ten (10) Business Day period of discussions between senior level executives described in this in Section 9.2.2. If the parties cannot agree on the mediator within such time period, then within five (5) days thereafter, each party will select an independent neutral, and those two neutrals will, within five (5) Business Days, select the mediator. Mediation will be conducted in San Bernardino County, California at a time and location selected by the mediator.

9.2.3. No information exchanged in mediation will be discoverable or admissible in any litigation involving the parties, consistent with California Evidence Code sections 1119 et seq. and 1121. Neither party will be bound by the result of the mediation process described in this Section, but participation in such mediation process will be a condition for either of the parties to file a lawsuit or to initiate a formal administrative proceeding related to this Agreement. All statutes of limitation related to claims or defenses that can

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be asserted by either party in relation to the dispute will be tolled during the formal dispute-resolution process described in this Section 9.

9.3. Each party will bear its own costs, including attorneys' fees, incurred in relation to the dispute-resolution process described in this Section 9. In the event the parties use a mediator, they will share equally in the costs of the mediator's services.

SECTION 10. TERM

This Agreement is co-terminus with the ROW Agreement. In the event the ROW Agreement expires or is terminated, this Agreement will automatically terminate without further notice by either party.

SECTION 11. TERMINATION

11.1. Termination for Convenience by SBCTA. Notwithstanding any provision herein to the contrary, SBCTA may terminate this Agreement without cause by providing at least thirty (30) days written notice to the other parties. Any unilateral termination by SBCTA under this paragraph (i) will have no effect on BLW's rights under any other agreement, including the ROW Agreement, (ii) will give SBCTA no claim or other rights related to the I-15 right of way where BLW has constructed rail facilities or entered an agreement in anticipation of doing so, and (iii) will extinguish any obligations that BLW has under the ROW Agreement to provide Local Rail Service.

11.2. Termination for Cause by SBCTA. The occurrence of any of the following constitutes a material breach and default of this Agreement by BLW for which SBCTA may elect to terminate the Agreement for cause upon ninety (90) days written notice and reasonable opportunity to cure:

11.2.1. The failure by BLW to start construction of the portion of the AV/RC Line to be built under the terms of the ROW Agreement, as set forth in Section 11.1 of the ROW Agreement (as amended.)

11.2.2. The failure by BLW to complete construction of the portion of the AV/RC Line to be built under the terms of the ROW Agreement and begin providing BLW High-Speed Passenger Rail Service between Rancho Cucamonga, California and Apple Valley, California within the time set forth in Section 17.1.8 of the ROW Agreement (as amended) (subject to a force majeure event or any extension by written agreement of the parties to be or not to be entered into in each party's sole discretion.)

11.2.3. The failure to operate Local Rail Service following commencement of BLW High-Speed Passenger Rail Service for a period longer than three (3) consecutive months, unless the period of non-operation is (i) due to construction or maintenance work that BLW is performing with reasonable diligence, (ii) the result of a force majeure event, or (iii) subject to an extension by written agreement of the parties to be or not to be

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

entered into in each party's sole discretion. This three (3) month period may be extended, as reasonably determined by SBCTA, for up to a total of eighteen (18) consecutive months, if BLW High-Speed Passenger Rail Service is concurrently not being operated. Where the circumstances in subclauses (i) or (ii) above apply, the three (3) and eighteen (18) month periods will be extended on a day-to-day basis as long as the applicable conditions exist.

11.3. Termination by Mutual Consent. Notwithstanding any provision herein to the contrary, this Agreement may be terminated by mutual written consent of the parties.

11.4. Effect of Termination. Regardless of the basis of any termination of this Agreement, upon termination of the Local Rail Service the parties will have no further obligation or commitment under this Agreement except as follows:

11.4.1. Any Claims that accrued prior to termination will survive.

11.4.2. Any obligations or commitments that are expressly stated herein to survive termination will survive.

11.4.3. Any rights held by Leasehold Lenders, as expressed in Section 7, will survive.

SECTION 12. GENERAL CONDITIONS

12.1. Governing Agreement. In the event of a conflict between the terms of this Agreement and Exhibit C to the ROW Agreement, the terms of this Agreement will govern.

12.2. Governing Law. Except on subjects preempted by federal law, this Agreement is governed by and will be construed in accordance with the laws of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to BLW because of its status as a common carrier regulated by the federal government.

12.3. Entire Agreement. This Agreement (including exhibits, attachments, and other documents, manuals, etc. incorporated herein), together with the ROW Agreement, is the full and complete agreement between the parties with respect to the transaction and matters set forth or contemplated herein and hereby.

12.4. Limitation of Remedies. Notwithstanding anything to the contrary in this Agreement, in no event will the parties be liable to each other for any indirect, punitive, special, or consequential damages (including, but not limited to, loss of profits, interest, earnings, or use) whether arising in contract, tort, or otherwise.

12.5. Exhibits. Exhibit A and Exhibit B, attached to this Agreement, are made a part of this Agreement by this reference.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

12.6. Reasonableness. Unless this Agreement specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals contemplated by this Agreement which may be given by a party under or pursuant to this Agreement will not be unreasonably withheld or conditioned by such party and will be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party will, with notice of such disapproval, submit to the requesting party a written statement setting forth with reasonable specificity its reasons for such disapproval.

12.7. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable, it will not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. Upon such a determination that any term or provision is invalid, void, illegal, or otherwise unenforceable, the parties will negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the terms contemplated hereby are achieved as originally contemplated to the greatest extent possible.

12.8. Interpretation. The section headings in this Agreement are for convenience only and will not be used for any purpose in the interpretation of this Agreement. When the context requires, the plural includes the singular and the singular includes the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation." Notwithstanding specific references to "good faith," the duty of good faith and fair dealing applies generally with respect to this Agreement. For the purposes of this Agreement, words of any gender are deemed to include correlative words of the other (whether masculine, feminine, or neuter) genders.

12.9. Amendments. This Agreement may only be modified or changed by written amendment signed by authorized representatives of each of the parties.

12.10. Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein has the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither of the parties has any right or power to obligate or bind the other party in any manner whatsoever.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

12.11. Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Agreement must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by a party of any breach will be deemed to be a waiver of any other or subsequent breach.

12.12. Notices. Any communication, notice, or demand of any kind whatsoever that a party may be required or may desire to give to or serve upon the other party must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

BLW:

DesertXpress Enterprises, LLC
Attn: Sarah Watterson, President
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

With a copy to:

David Pickett
Associate General Counsel
DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

SBCTA:

San Bernardino County Transportation Authority
Attn: Transit and Rail Programs
1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410

With a copy to:

Julianna Tillquist
General Counsel
San Bernardino County Transportation Authority
1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410

Without requiring an amendment to this Agreement, either party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed, return receipt requested; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

12.13. No Third-Party Beneficiaries. This Agreement is for the exclusive benefit of the parties to it and not for the benefit of any third party, except to the extent expressly contemplated in this Agreement, including in favor of any Leasehold Lender (as defined in the ROW Agreement.)

12.14. Authority and Binding Effect. Each individual executing this Agreement affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this Agreement and, through his or her execution, bind the party on whose behalf he or she is executing the Agreement. The parties will affix to this Agreement as Exhibit B, evidence of authority for the execution of this Agreement for their respective parts.

12.15. Counterparts. The parties may sign this Agreement in counterparts, each of which is deemed an original but all of which together constitute one and the same instrument.

The parties have executed this Agreement as of the Effective Date.

DESERTXPRESS ENTERPRISES, LLC	**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**
By: _____	By: _____
Sarah Watterson President DesertXpress Enterprises, LLC	Ray Marquez Board President San Bernardino County Transportation Authority
Approved as to Form:	Approved as to Form:
By: _____	By: _____
David Pickett Associate General Counsel DesertXpress Enterprises, LLC	Julianna K. Tillquist General Counsel San Bernardino County Transportation Authority

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

EXHIBIT A

MAP OF BLW SYSTEM

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

EXHIBIT B

SIGNATURE AUTHORITY

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Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

Contract Summary Sheet

General Contract Information

Contract No: 23-1002894 Amendment No.: 4

Contract Class: Payable Department: Transit

Vendor No.: 03635 Vendor Name: DESERTXPRESS ENTERPRIES, LLC

Description: Disposition and Development Agreement for Brightline West Highspeed Rail - Amendment 4

List Any Related Contract Nos.: 23-1002895 (receivable contract)

Dollar Amount

Original Contract	$	50,000.00	Original Contingency	$	-
Prior Amendments	$	-	Prior Amendments	$	-
Prior Contingency Released	$	-	Prior Contingency Released (-)	$	-
Current Amendment	$	-	Current Amendment	$	-
Total/Revised Contract Value	**$**	**50,000.00**	**Total Contingency Value**	**$**	**-**
			Total Dollar Authority (Contract Value and Contingency)	**$**	**50,000.00**

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 9316

Contract Management (Internal Purposes Only)

Other Contracts Sole Source? N/A No Budget Adjustment

Local Escrow Agreement One-Time Payments

Accounts Payable

Estimated Start Date: 10/05/2022 Expiration Date: 06/30/2031 Revised Expiration Date:

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

	Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding: $ 50,000.00	Total Contingency: $ -
GL:	1080	30	0313	0360	53750	43022000		Rail Asset General Revenue	50,000.00	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
GL:									-	-
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Ryan Aschenbrenner
Project Manager (Print Name)

Victor Lopez
Task Manager (Print Name)

Additional Notes: Amendment 4 makes no fiscal changes. Closing costs/fees associated with escrow for disposition of SBCTA/City real proeprty Within ten (10) business days after the date the DDA is executed by the Seller and delivered to Developer, the Developer shall deposit the sum of $50,000 with Escrow Holder as a deposit.

Attachment: CSS - 23-1002894 [Revision 1] (9316 : Additional Brightline Contract Actions)

FOURTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Amendment**") is entered into as of _____, 2024 by and among CITY OF RANCHO CUCAMONGA, a California municipal corporation ("**City**"), SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity ("**SBCTA**"; City and SBCTA, collectively, "**Seller**"), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West ("**Developer**").

RECITALS

A. Developer and Seller are parties to that certain Disposition and Development Agreement dated as of October 5, 2022 (the "**Original Agreement**"), as amended by that certain First Amendment to Disposition and Development Agreement dated as of February 2, 2023 (the "**First Amendment**"), that certain Second Amendment to Disposition and Development Agreement dated as of March 6, 2023 (the "**Second Amendment**"), and that certain Third Amendment to Disposition and Development Agreement dated as of March 30, 2023 (the "**Third Amendment**", and together with the Original Agreement, First Amendment, Second Amendment, Third Amendment and this Amendment, collectively the "**DDA**"), pursuant to which Developer agreed to develop a train station and related infrastructure located in Rancho Cucamonga, California (the "**Property**"), as more particularly described in the DDA.

B. All capitalized terms used but not defined herein shall have the meanings ascribed such terms in the DDA.

C. The parties desire to amend the DDA upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Developer agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. City/SBCTA Property Description. Exhibit "A-3" through Exhibit "A-7", inclusive, attached to the DDA are hereby deleted and replaced in their entirety with the new Exhibit "A-3" through Exhibit "A-7", inclusive, attached hereto, which revised Exhibits are hereby incorporated into the DDA.

3. Site Plan. The Site Plan attached as Exhibit "C" to the DDA is hereby deleted and replaced in its entirety with the new Site Plan attached hereto as Exhibit "C", which revised Site Plan is hereby incorporated into the DDA.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

4. Grant Deed. The Grant Deed attached as Exhibit "D" to the DDA is hereby deleted and replaced in its entirety with the new Grant Deed attached hereto as Exhibit "D", which revised Grant Deed is hereby incorporated into the DDA.

5. 8th Street Easement. The Easement for High-Speed Rail Overpass (8th Street) attached as Exhibit "E" to the DDA is hereby deleted and replaced in its entirety with the new Easement for High-Speed Rail Overpass (8th Street) attached hereto as Exhibit "E", which revised Easement for High-Speed Rail Overpass (8th Street) is hereby incorporated into the DDA.

6. Easement for Aerial Platform. The Easement for Aerial Platform attached as Exhibit "F" to the DDA is hereby deleted and replaced in its entirety with the new Aerial Platform Easement attached hereto as Exhibit "F", which revised Aerial Platform Easement is hereby incorporated into the DDA.

7. Milliken Triangle Easement. The Milliken Triangle Easement attached as Exhibit "G" to the DDA is hereby deleted and replaced in its entirety with the new Milliken Triangle Easement attached hereto Exhibit "G", which revised Milliken Triangle Easement is hereby incorporated into the DDA.

8. Inspector of Record Process. Sections 2.3, 2.4 and 2.5 are hereby added to the Inspector of Record Process in **Exhibit H** as follows:

2.3 Public Owned Improvements. With respect only to the modification, alteration, construction, or reconstruction of facilities under the current or future ownership or the exclusive operation of City and/or SBCTA ("**Public Improvements**"), including tunnels, ramps, public streets, curbs, gutters, sidewalks, traffic signals, storm drains, parking lots, street lights, and landscaping, the City or SBCTA, as applicable ("**Approving Agency**"), shall have approval rights with respect to the design and/or construction drawings relating thereto (each a "**Submittal**"). The Approving Agency shall complete its review and take action on any Submittal that is (i) consistent with the codes described in Section 1 above; (ii) consistent with other standards, specifications, and requirements applicable to the subject Public Improvement and adopted by the Approving Agency and effective at the time the Submittal is received by the Approving Agency; and (iii) generally consistent with the Site Plan within twenty (20) days of its receipt of such Submittal. The foregoing shall not prohibit the imposition of state or federal required standards, such as applicable updated accessibility standards. The City agrees to have a scoping meeting within sixty (60) days of the date of this Amendment and additional meetings with Developer during the design process to discuss applicable standards and to ensure Developer has a copy of the current and future pending standards, specifications, and requirements. Developer agrees to commence construction within one (1) year of the issuance of the associated building permit, unless extended by the City. Approving Agency staff shall transmit its comments in the form of a comment matrix and annotated plans (as appropriate) to Developer. If the Approving Agency has not completed its review within such time, Developer may provide the Approving Agency notice to cure. The Approving Agency shall have ten (10) days to cure by completing its review after receipt of the Developer notice. If the Approving Agency has not completed its review and taken action by the ninth (9th) day, Developer and Approving Agency shall meet on the tenth (10th) day to discuss any open issues with the result of such meeting being an approval or a conditional approval upon incorporation of comments. If,

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

in the sole discretion of the Approving Agency, Developer or its contractor has submitted a Submittal or series of Submittals that cannot reasonably be completed within twenty (20) days due to the Submittal's volume, complexity or other condition beyond the reasonable control of the Approving Agency, the Approving Agency shall provide notice within seven (7) days of receipt of a Submittal to Developer of its inability to complete its review to Developer. The Approving Agency and Developer shall thereafter mutually agree on a new deadline for the Approving Agency to complete its review of any or all pending Submittals, provided that in no event shall the review period exceed sixty (60) calendar days. The Approving Agency shall inspect any Public Improvements within three (3) business days of Developer's request. If the Approving Agency fails to timely inspect, Developer may provide a second notice to the Approving Agency. If the Approving Agency fails to inspect any Public Improvements within two (2) business days following such second notice, then the Inspector of Record shall inspect such Public Improvements and provide the Approving Agency with the results and documentation from such inspection. The Approving Agency shall accept or reject such Public Improvements following the inspection thereof. The rejection notice must include sufficient details regarding the rejection to provide for a path for subsequent approval and acceptance. For the avoidance of doubt, this Section 2.3 shall apply only to Public Improvements, including right-of-way improvements, as applicable, but not to any otherwise private improvements, such as the Developer station or track and rail facilities.

2.4 City Review and Inspection of Public Improvements. With respect to the review of a Submittal with respect to Public Improvements, Developer agrees to pay for a third party reviewer if necessary to meet the deadlines noted in Section 2.3 above. With respect to the inspection of Public Improvements, to the extent desired by the City, Developer agrees to use and pay for a City Public Works employee in lieu of a third-party Inspector of Record so long as the City agrees to expedite such inspection work consistent with the expedited Inspector of Record Process. For the avoidance of doubt, the timing for review, approval, and inspection set forth in Section 2.3 above also applies to such public right-of-way work.

2.5. Failure to Timely Approve; Work Stoppage. Subject to the last sentence of this Section 2.5, if the Approving Agency fails to meet the established deadlines above and additionally fails to respond to the notice to cure established above, then Developer may direct its contractor to perform the work, on a conditional basis pending the Approving Agency's compliance. Neither Party shall arbitrarily or capriciously withhold or delay any action or approval required under this Agreement or necessary to complete the Project. In no event shall work be stopped in the event of a claim or dispute, except for reasons of public health or safety, or where the Inspector of Record orders a halt to the work or where it is absolutely necessary to first resolve the dispute in order to be able to continue work.

9. Developer Address. Developer's notice address in Section 8.1 of the DDA is hereby updated as follows:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: President

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

With a copy to Developer's Legal Department
At the Developer address above

10. Full Force and Effect. This Amendment, together with the DDA, as previously amended, constitutes the entire agreement between Seller and Developer regarding the matters set forth herein or therein, and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements or understandings. Except as otherwise specifically provided herein, the DDA shall remain unmodified and shall continue in full force and effect.

11. Counterparts; Execution by Electronic Means. This Amendment may be signed by the parties in two or more counterparts which, including the execution and transmission via electronic means, when taken together, shall constitute one and the same instrument and shall have the same force and effect as if the originally executed copies of this Amendment were delivered to all parties.

[SIGNATURES ON FOLLOWING PAGE]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

SELLER:

CITY OF RANCHO CUCAMONGA,
a California municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM:

_____

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY,
a public entity

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM:

_____

DEVELOPER:

DESERTXPRESS ENTERPRISES, LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM:

_____

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBITS "A-3" – A-7

CITY/SBCTA PROPERTY

[See Attached]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-3'

Legal Description of the City/ SBCTA Property

APN: 0209-272-11, 0209-272-22, & 0209-143-21

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with a portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on said Parcel Map, filed in the Office of said County Recorder, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, together with a portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet to the **Point of Beginning**;

Thence South 00°00'00" West 568.51 feet to the southeasterly line of Parcel 15 per said Parcel Map;

Thence along said southeasterly line South 46°46'47" West 23.71 feet to the southerly line of said Parcel 15;

Thence along said southerly line South 89°36'24" West 269.11 feet to the beginning of a tangent curve, concave northeasterly, having a radius of 117.00 feet;

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Preliminary
04/04/2024 10:16:13 AM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence northwesterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43’39” an arc length of 60.70 feet;

Thence leaving said southerly line North 00°10’37” West 569.98 feet to said northerly line of the Rancho Cucamonga Metrolink Station Phase I;

Thence along said northerly line North 89°43’55 East 346.26 feet to the **Point of Beginning;**

Excepting therefrom that portion of the land described below as **Parcel “B”**.

Parcel contains 115,115 square feet, more or less.

AND

Parcel “B”

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29’50” East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43’55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43’55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00’00” West 220.19 feet;

Thence South 90°00’00” West 10.47 feet to the **Point of Beginning;**

Thence South 90°00’00” West 248.00 feet;

Thence South 00°00’00” East 348.75 feet;

Thence North 90°00’00” East 248.00 feet;

Thence North 00°00’00” East 348.75 feet to the **Point of Beginning.**

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary
04/04/2024 10:16:22 AM

Parcel contains 86,490 square feet, more or less.

Excepting from Parcel B that eight-foot-high portion of the real property depicted on Exhibits A-7 attached hereto.

See Exhibits 'A-3', 'A-4', 'A-5', 'A-6', and 'A-7' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

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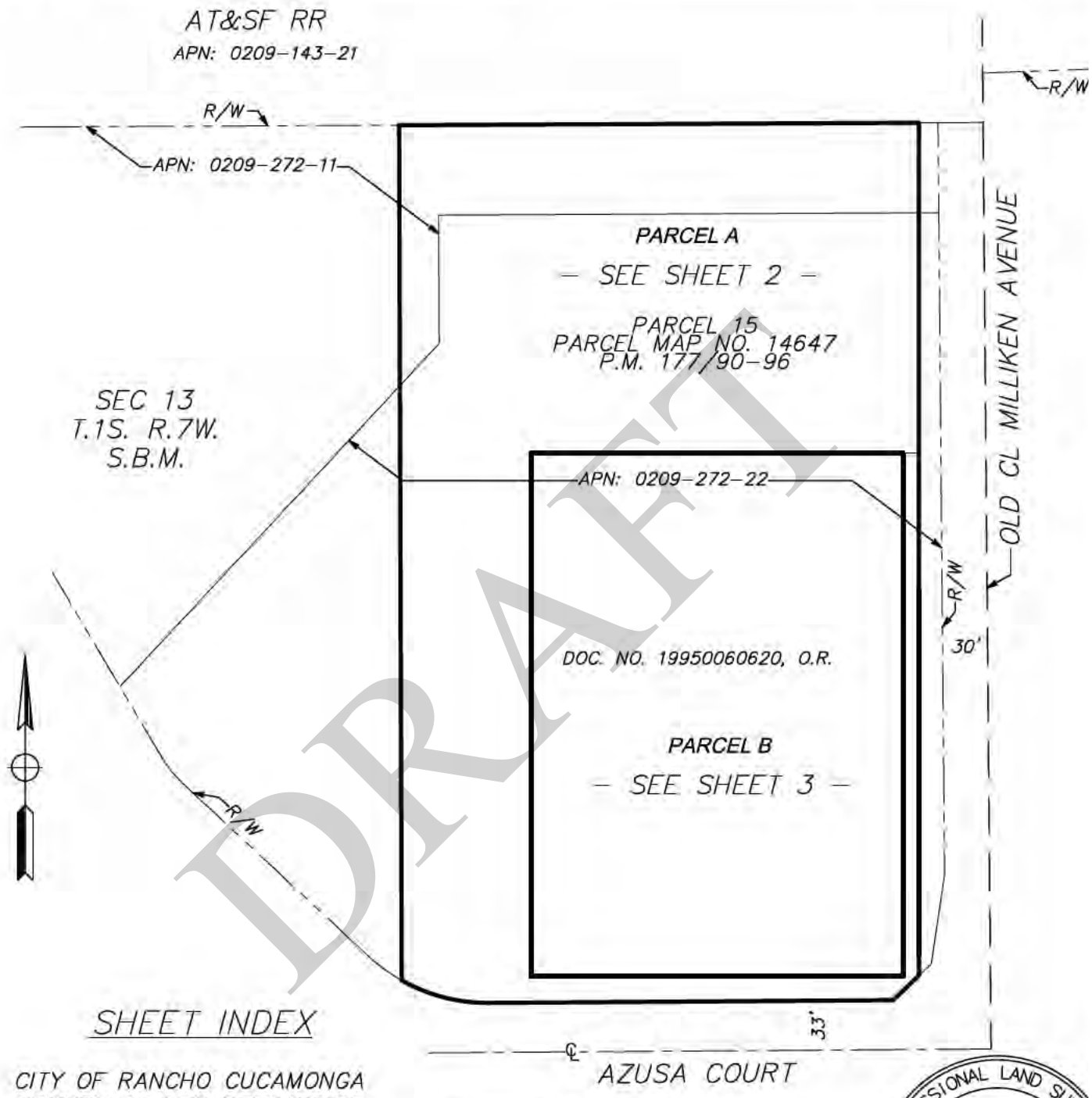
04/04/2024 10:16:25 AM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-4'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: N/A



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SHEET INDEX

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA
SEAN M. SMITH
No. 8233

FEET 0 50 100 200 400

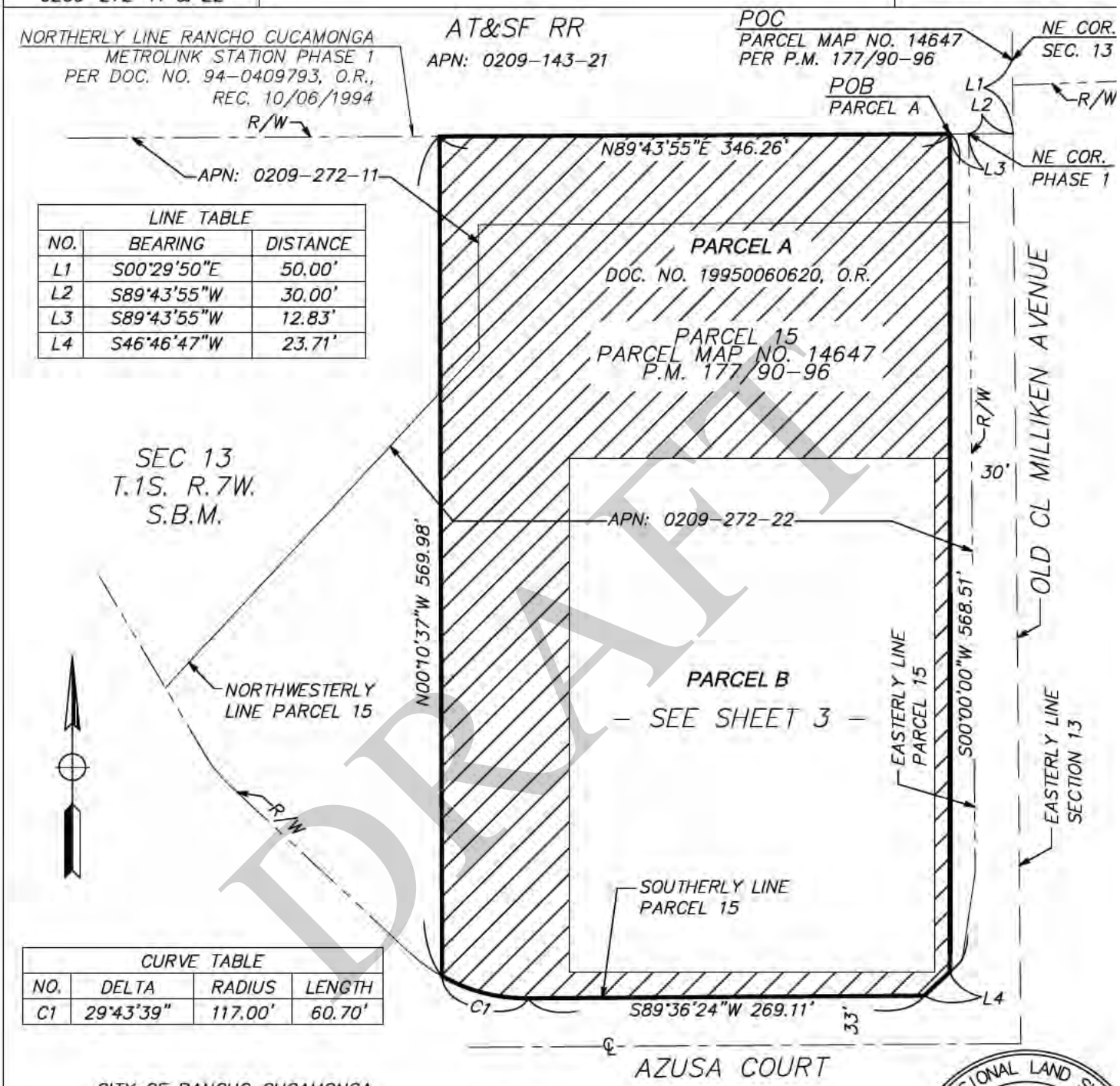
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-5'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 115,115 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	23.71'

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	29°43'39"	117.00'	60.70'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ SEAN M. SMITH No. 8233 ★ STATE OF CALIFORNIA

LEGEND

////	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

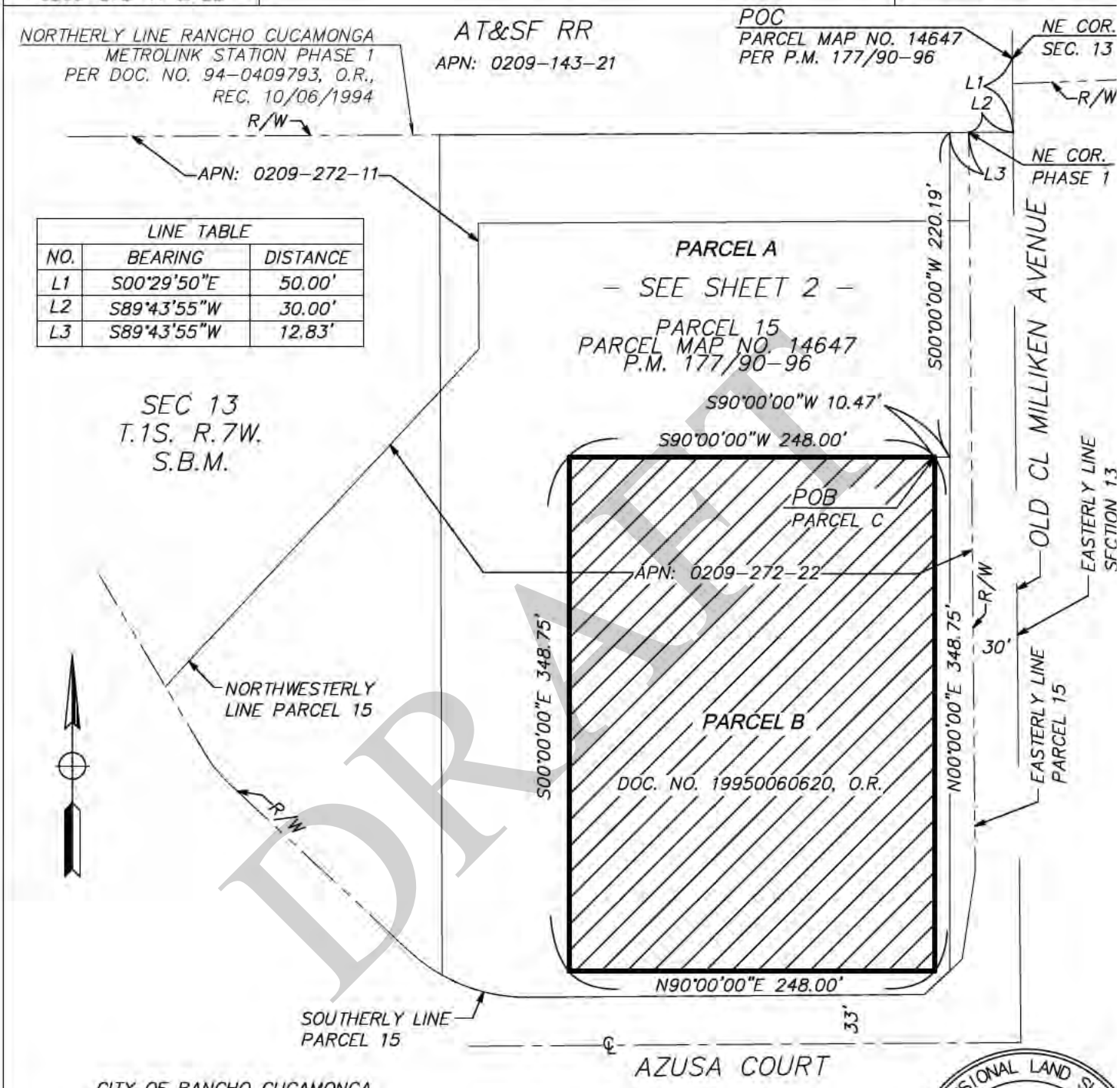
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-6'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 86,490 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ SEAN M. SMITH No. 8233 ★ STATE OF CALIFORNIA

FEET 0 50 100 200 400

DRAFT
Preliminary

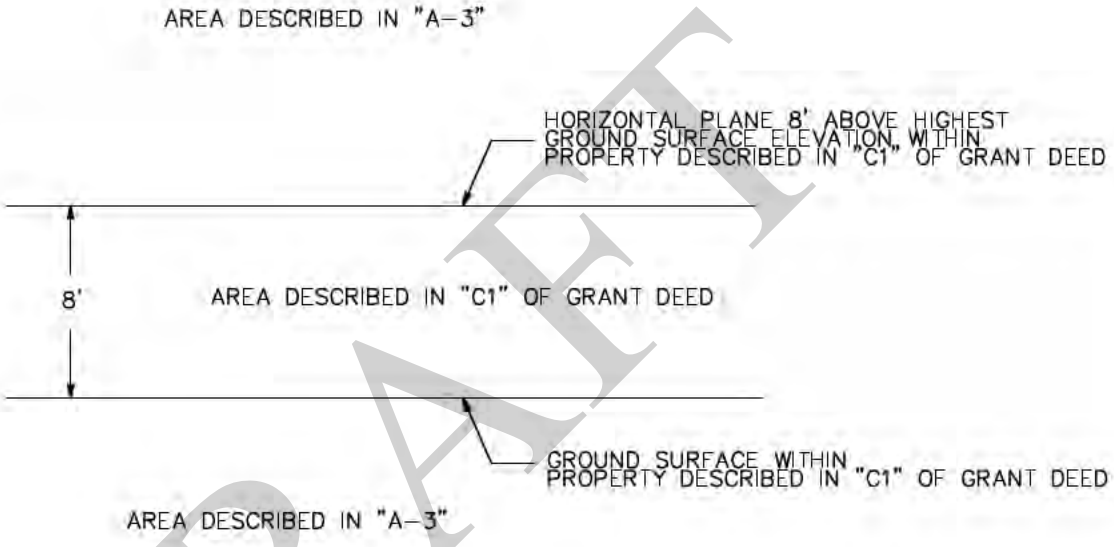
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-7'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: N/A



AIR SPACE RESERVATION PROFILE DETAIL

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	N/A	4	

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"

SITE PLAN

[See attached]

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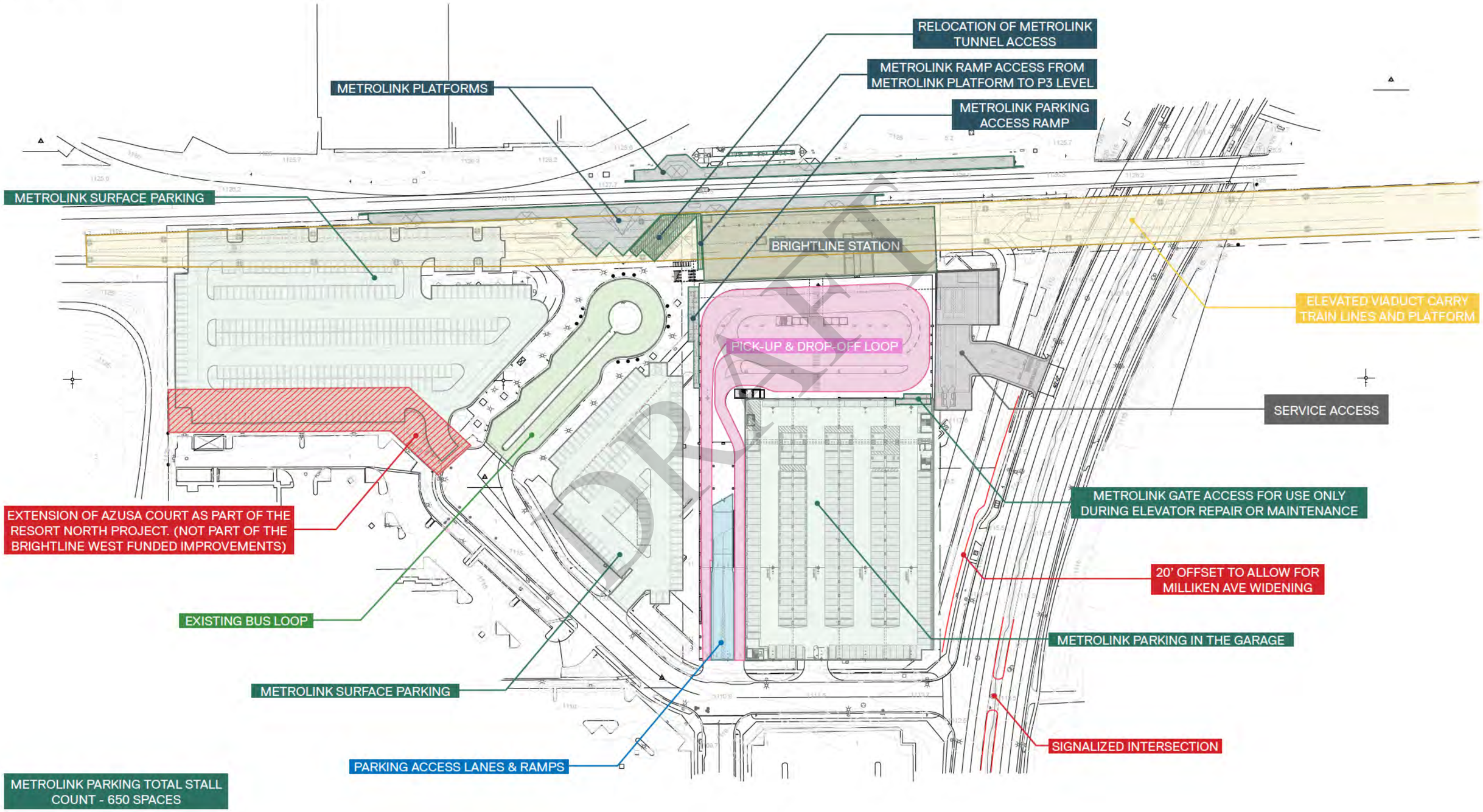
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

Site Plan



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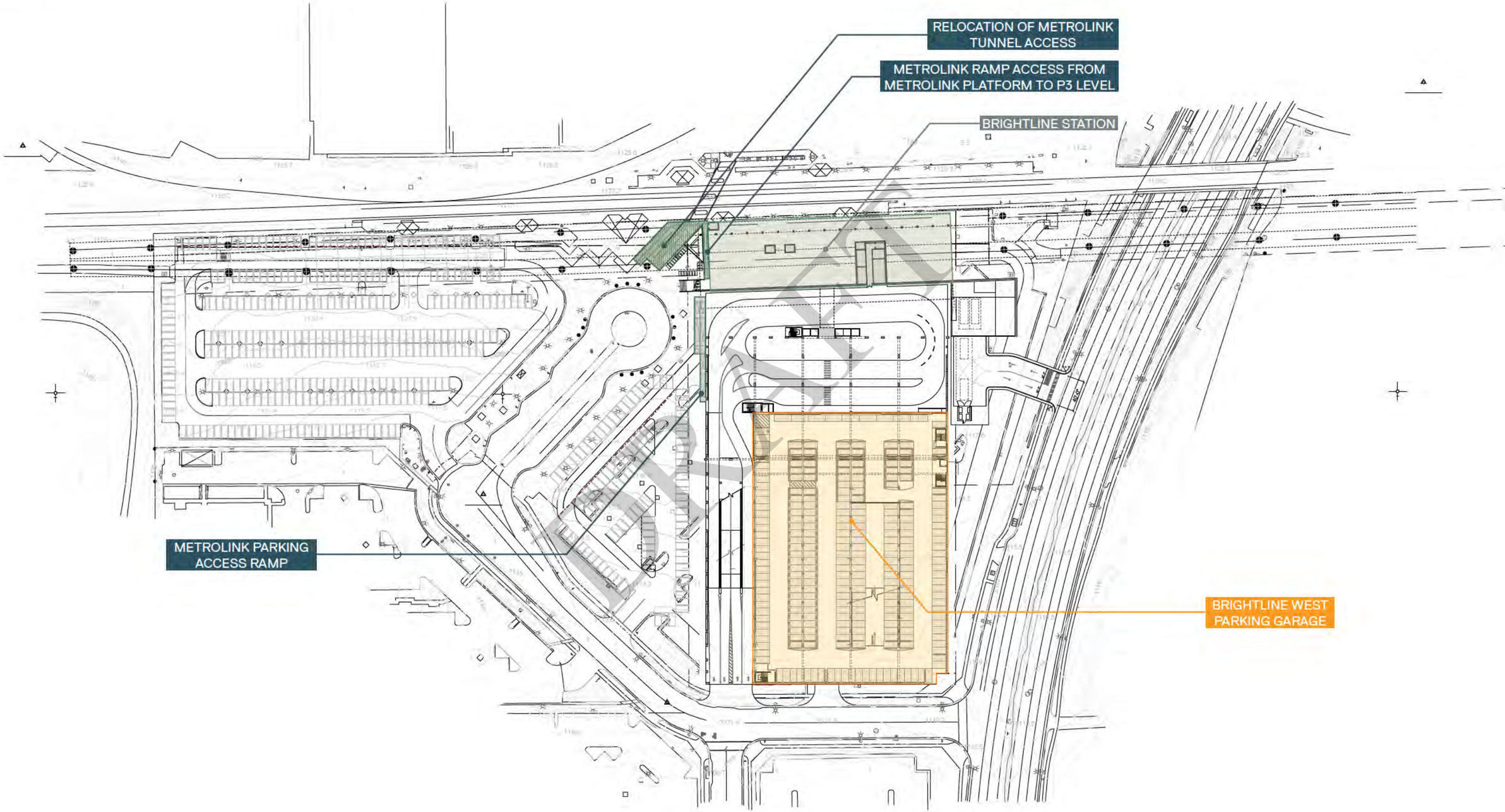
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

P2 Plan



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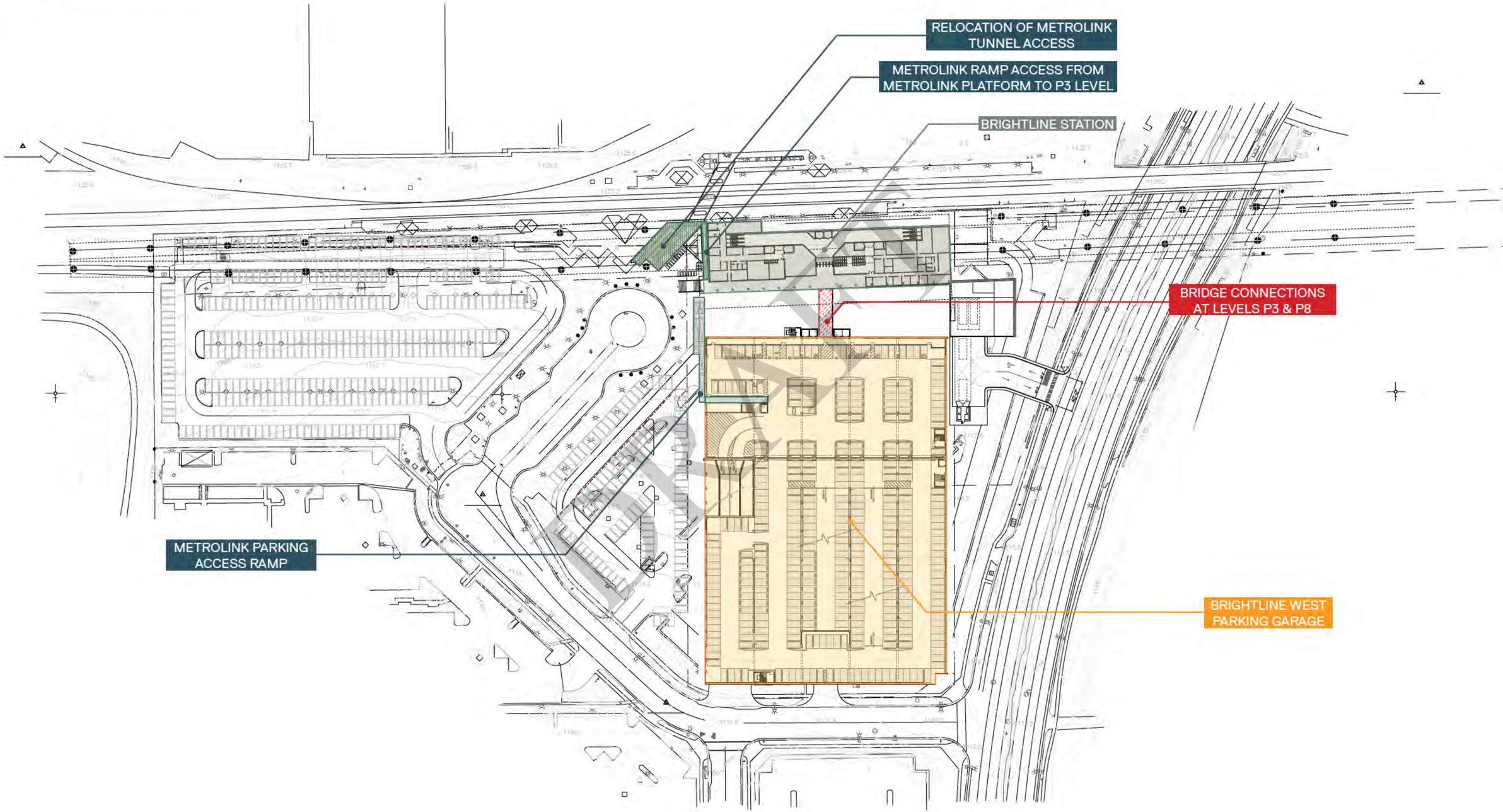
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

P3 Parking Plan



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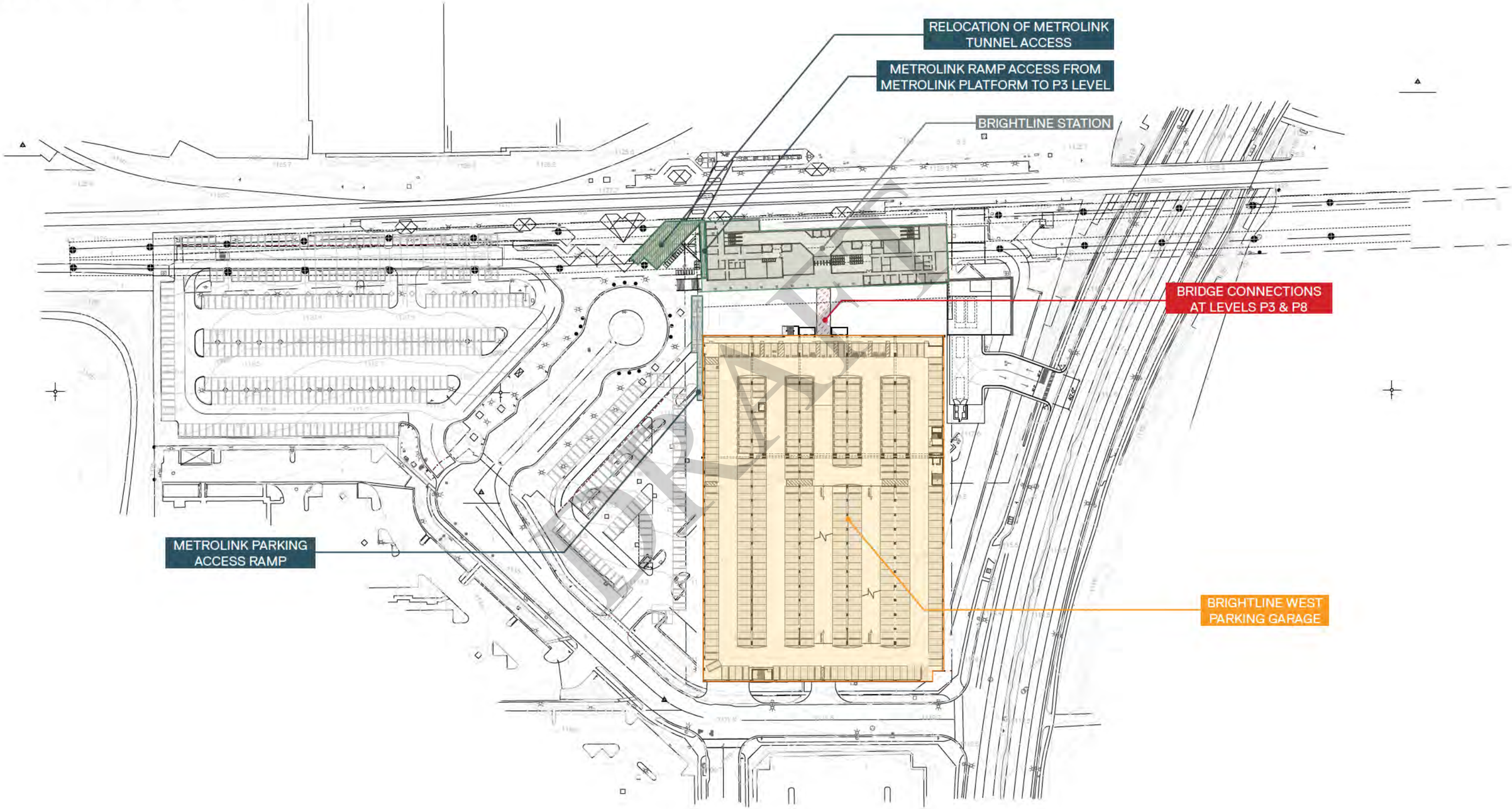
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

Typical Parking Plan



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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "D"

GRANT DEED

[See attached]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO,
AND MAIL TAX STATEMENTS TO:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

APN(s): Portion of 0209-143-21 and 0209-272-22

(Space above for Recorder's Use)
Exempt From Recording Fee Per Government Code Section 27383

Documentary transfer tax is $_____, based on the purchase price of the property conveyed.

GRANT DEED

The undersigned grantor(s) declare(s):

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF RANCHO CUCAMONGA ("City") and the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY ("SBCTA"), collectively the "Grantor, hereby GRANT to DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company ("Grantee") the land described on Exhibit "A-1", Exhibit "B-1" and Exhibit "C-1" and depicted on Exhibit "A-2", Exhibit "B-2" and Exhibit "C-2" and any improvements thereon (the "Property")

EXCEPTING THEREFROM in fee a portion of the Property described on Exhibit "C-1" and depicted on Exhibit "C-3" attached hereto ("Reserved Property").

EXCEPTING THEREFROM AND RESERVING UNTO GRANTOR a non-exclusive access easement appurtenant over that portion of the Property described on Exhibit "D-1" and depicted on Exhibit "D-2" and Exhibit "D-3" attached hereto in favor of the Reserved Property for access to and from Azusa Court for a driveway and mechanical, electrical or other miscellaneous conduit and equipment appurtenant to the operation of the Reserved Property for parking purposes.

EXCEPTING THEREFROM AND RESERVING UNTO GRANTOR a non-exclusive utility easement appurtenant over that portion of the Property described on Exhibit "D-1" and depicted on Exhibit D-2" and Exhibit "D-4" attached hereto in favor of the Reserved Property for utilities to and from Azusa Court to service the Reserved Property. Following the installation of the utilities per plans approved by both Grantor and Grantee during the initial construction of the improvements on the Property by Grantee, the foregoing utility easement shall be replaced with a utility easement within (1) the driveway easement area described on Exhibit "D-1" and depicted on Exhibit "D-2" and Exhibit "D-3" and (2) a utility easement five (5) feet (or such larger area, as necessary) on each side adjacent to each such installed utility between Azusa Court and the Reserved Property that provides utility service to the Reserved Property. For the avoidance of

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

doubt, if Grantor desires to modify or add utilities in the future, Grantee shall have reasonable review and approval rights with respect to any such modification or addition.

EXCEPTING THEREFROM AND RESERVING UNTO GRANTOR a non-exclusive access easement over that portion of the Property shown and depicted on Exhibit "E" attached hereto, in favor of the adjacent transit center property to the west owned by the City and SBCTA described and depicted on Exhibit "F" attached hereto, for access to and from the north Metrolink platform via an underground tunnel.

EXCEPTING THEREFROM AND RESERVING UNTO SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY ("SBCTA") an exclusive easement for the construction, maintenance, repair, operation and use of one or more tunnels, including appurtenant facilities necessary or convenient thereto, in and through that portion of the Property described and depicted on Exhibit "G" ("Tunnel Easement Area") attached hereto and subject to the terms and provisions of Schedule 1 attached hereto ("Tunnel Easement").

SUBJECT TO, all matters of record and all matters visible upon a diligent inspection.

1. This grant of the Property is subject to the terms of a Disposition and Development Agreement entered into by and between Grantor and Grantee dated as of October 5, 2022 (as amended, the "DDA"), which includes an irrevocable parking license in favor of Grantor to the extent and for so long as the Property can be used for parking pending the required and contemplated development of the Property pursuant to the DDA.

2. As provided in, and subject to the provisions contained in, Section 5.2.2 of the DDA, the Grantor shall have the right, at its option, to reenter and take possession of the Property hereby conveyed, with all improvements thereon and to terminate and revest in Grantor the Property hereby conveyed to the Grantee (or its successors in interest).

3. Section 4.1 of the DDA contains specific and reasonable restrictions on transfer of the Property and on transfer of interests in Developer until completion of the Project, with certain specific exceptions. The Grantee covenants, for itself and its successors and assigns, to comply with such restrictions, which are hereby incorporated herein by reference.

4. Upon written request by Grantee, the City Manager of the City and the Executive Director of the SBCTA shall execute a "Certificate of Completion" in recordable form, cause it to be acknowledged and deliver it to Grantee for recording to confirm that such development has been timely completed in accordance with the DDA.

5. The covenants and restrictions in this Grant Deed shall bind, benefit and burden the Property, the Grantor and the Grantee and their respective successors, assigns and successors in interest to all or any portion of or interest in the Property.

[Signatures on Following Page]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of the date set forth below.

Dated: _____, 2024

CITY OF RANCHO CUCAMONGA

By: _____

Print Name: _____

Title: _____

ATTEST:

_____

City Clerk

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____

Print Name: _____

Title: _____

ATTEST:

_____

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

)
)

_____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

)
)

_____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT A TO GRANT DEED

PROPERTY DESCRIPTION AND DEPICTION

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

4862-5387-9124.10
378683.00002//mrf

EXHIBIT 'A1'

Legal Description

APN: 0209-143-21

That portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on Parcel Map No. 14647, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of San Bernardino County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, in the City of Rancho Cucamonga, County of San Bernardino, State of California, described as follows:

Commencing at the northeast corner of said Section 13;

Thence along the easterly line of said Section 13 South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation South 89°43'55" West 30.00 feet to the northeasterly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55" West 12.83 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43'55" West 346.26 feet;

Thence leaving said easterly prolongation North 00°10'37" West 33.38 feet;

Thence North 87°50'29" East 346.61 feet;

Thence South 00°00'00" East 44.81 feet to the **Point of Beginning**;

Parcel contains 13,539 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-2' attached hereto and made a part hereof.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: 9/27/2022

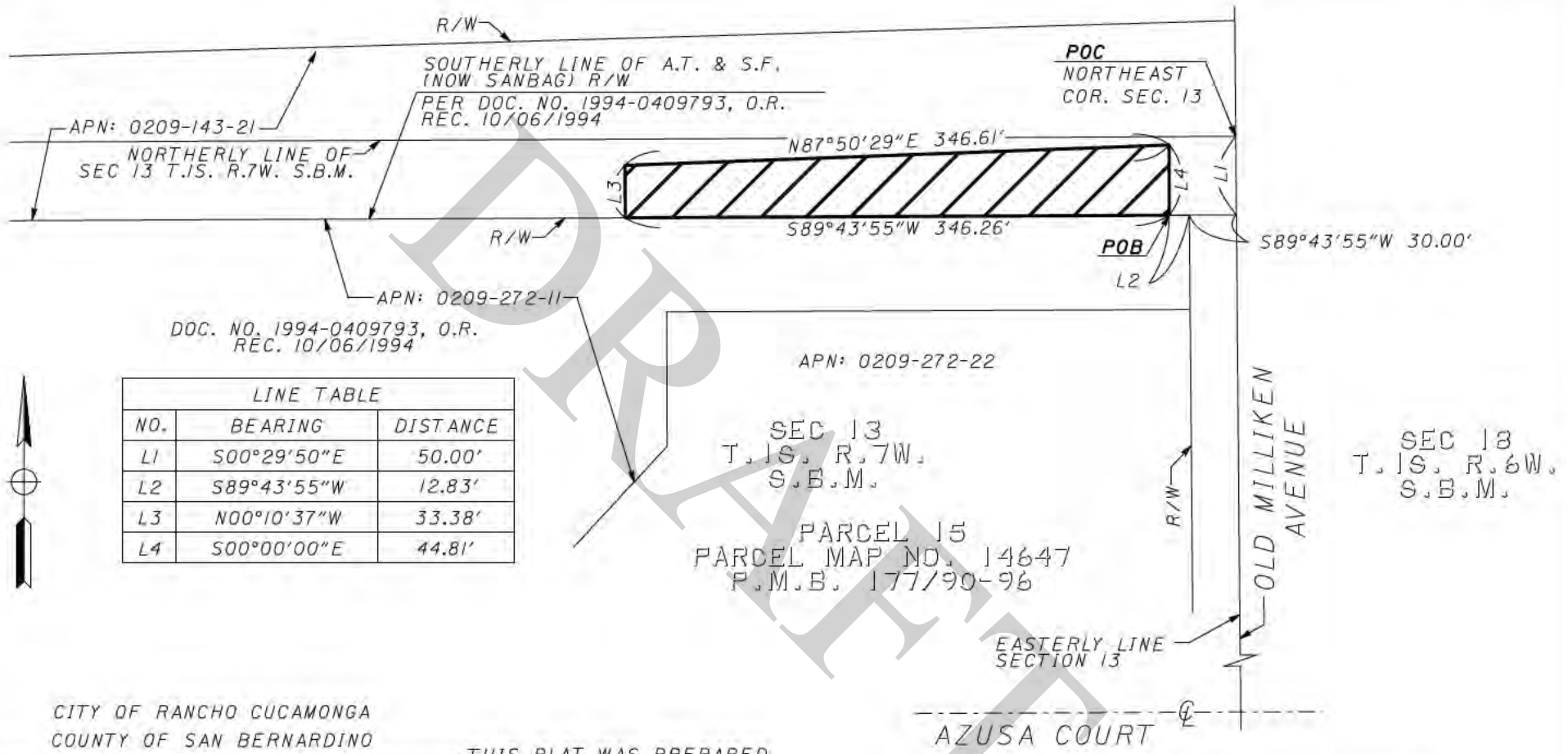
DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

5/7.214Ã+4803560Ã-&Ã(*)!)#) Ã $##Ã#"!)Ã(,!,Ã$$%%)%**%$'$

EXHIBIT 'A-2'

APN	TYPE OF ESTATE	AREA
0209-143-21	FEE	13,539 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	12.83'
L3	N00°10'37"W	33.38'
L4	S00°00'00"E	44.81'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 — DATE 9/27/2022

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 300

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riv
195

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT B TO GRANT DEED

PROPERTY DESCRIPTION AND DEPICTION (CONTINUED)

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

4862-5387-9124.10
378683.00002//mrf

EXHIBIT 'B-1'

Legal Description

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with a portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet to the **Point of Beginning**;

Thence South 00°00'00" West 568.51 feet to the southeasterly line of Parcel 15 per said Parcel Map;

Thence along said southeasterly line South 46°46'47" West 23.71 feet to the southerly line of said Parcel 15;

Thence along said southerly line South 89°36'24" West 269.11 feet to the beginning of a non-tangent curve, concave northeasterly, a radial line to said point bears South 00°23'39" East and having a radius of 117.00 feet;

Thence northeasterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43'39" an arc length of 60.70 feet;

Thence leaving said southerly line North 00°10'37" West 569.98 feet to said northerly line of the Rancho Cucamonga Metrolink Station Phase I;

DRAFT

Preliminary
04/19/2024 2:52:55 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence along said northerly line North 89°43’55 East 346.26 feet to the **Point of Beginning;**

Parcel contains 115,115 square feet, more or less.

Excepting therefrom that portion of said Parcel 15 per said Parcel Map, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29’50” East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43’55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43’55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00’00” West 220.19 feet;

Thence South 90°00’00” West 10.47 feet to the **Point of Beginning;**

Thence South 90°00’00” West 248.00 feet;

Thence South 00°00’00” East 348.75 feet;

Thence North 90°00’00” East 248.00 feet;

Thence North 00°00’00” East 348.75 feet to the **Point of Beginning.**

Parcel contains 86,490 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibits ‘B-2’ attached hereto and made a part hereof.

DRAFT

Preliminary
04/19/2024 2:52:59 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

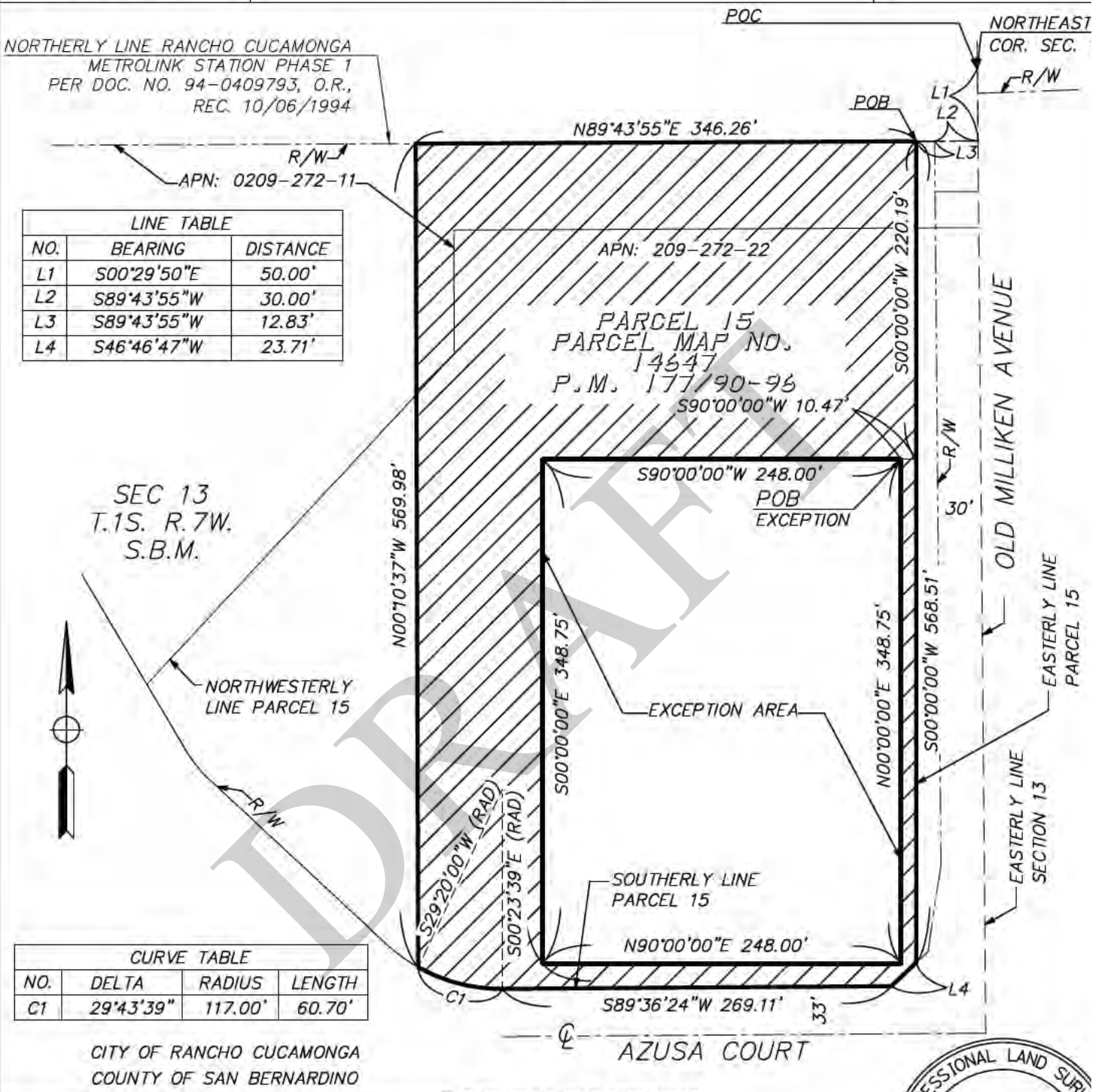
DRAFT

Preliminary
04/19/2024 2:53:03 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	EASEMENT	TOTAL: 115,115 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	23.71'

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	29°43'39"	117.00'	60.70'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA
SEAN M. SMITH
No. 8233

FEET 0 100 200 400 600

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT C TO GRANT DEED

PROPERTY DESCRIPTION AND DEPICTION (CONTINUED) AND DESCRIPTION AND DEPICTION OF THE RESERVED PROPERTY

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

4862-5387-9124.10
378683.00002//mrf

EXHIBIT 'C-1'

Legal Description

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00'00" West 220.19 feet;

Thence North 90°00'00" West 10.47 feet to the **Point of Beginning;**

Thence North 90°00'00" West 248.00 feet;

Thence South 00°00'00" West 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" West 348.75 feet to the **Point of Beginning.**

Parcel contains 86,490 square feet, more or less.

DRAFT

Preliminary
03/14/2024 3:53:30 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Reserving to the City of Rancho Cucamonga and San Bernardino County Transportation Authority the air space above the above-described land, contained between a horizontal plane eight (8) feet above the existing ground surface and existing ground surface.

The foregoing 8-foot-tall portion shall exist prior to the construction of improvements by Grantee at an elevation range between 1109-1117 above mean sea level and following the construction of improvements by Grantee, the lower boundary of such 8-foot-tall portion shall commence at the finished ground floor surface and continue directly 8 feet above, as measured perpendicularly to the finished ground floor surface described in a Certificate of Compliance recorded by the City Engineer within 30 days after the completion of construction.

The level plane elevation described above is expressed in terms of North American Vertical Datum of 1988. The elevation is based on the San Bernardino County Benchmark No. UF206 with a published elevation of 1,114.07 feet above mean sea level.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibits ‘C-2’ and ‘C-3’ attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor’s Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

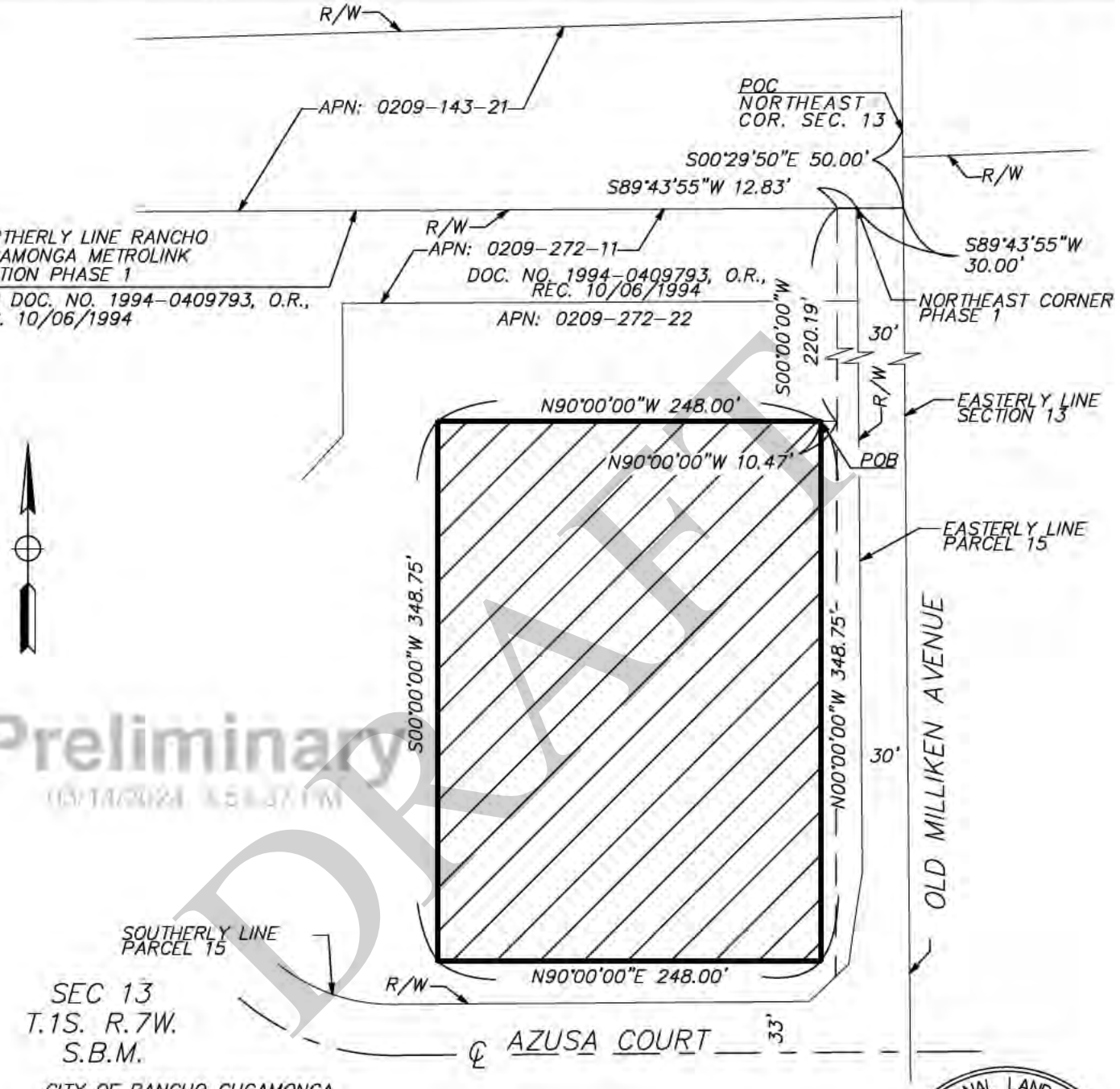
DRAFT

Preliminary
03/14/2024 3:53:34 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	86,490 SF



Preliminary
DRAFT

LEGEND

▨	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 300

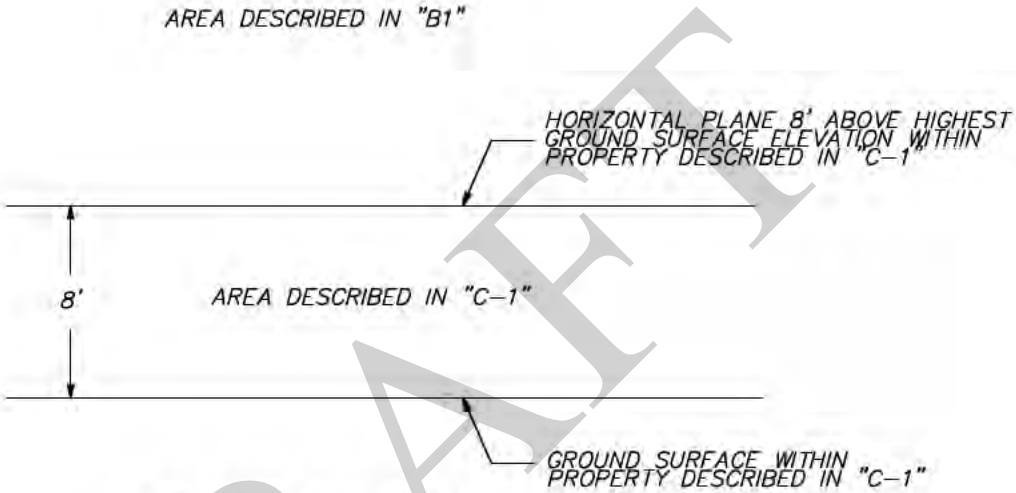
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C-3'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 86,490 SF



DRAFT
Preliminary

AIR SPACE RESERVATION PROFILE DETAIL

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	N/A	2	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT D TO GRANT DEED

DESCRIPTION AND DEPICTION OF DRIVEWAY AND UTILITY EASEMENT

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-1'

Description of the Driveway and Utility Easement

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Parcel "A" - Driveway Easement

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83;

Thence South 00°00'00" West 568.51 feet to the northerly right of way of Azusa Avenue, as shown on said Parcel Map;

Thence along said northerly right of way the following four (4) courses:

1) Thence South 46°46'47" West 0.63 feet to a point hereinafter referred to as **Point "A"**;

2) Thence South 46°46'47" West 23.08 feet to the southerly line of said Parcel 15;

3) Thence South 89°36'24" West 133.70 feet to the **Point of Beginning;**

4) Thence South 89°36'24" West 30.75 feet;

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence North 00°00’00” West 16.93 feet;

Thence South 90°00’00” East 30.75 feet;

Thence South 00°00’00” West 16.72 feet to the **Point of Beginning.**

Parcel contains 517 square feet, more or less.

AND

Parcel “B” – Utility Easement

Beginning at the above-described **Point “A”**;

Thence along said northerly right of way the following three (3) courses:

1) Thence South 46°46’47” West 23.08 feet to the southerly line of said Parcel 15;

2) Thence South 89°36’24” West 269.11 feet to the beginning of a non-tangent curve, concave northeasterly, a radial line to said point bears South 00°23’39” East and having a radius of 117.00 feet;

3) Thence northwesterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43’33” an arc length of 60.70 feet;

Thence leaving said southerly line and along the westerly line of herein described Exhibit “A”, as shown on a document recorded as Document No. 2024-XXXXXX, Official Records, in the Office of the County Recorder of said County, North 00°10’37” West 2.65 feet;

Thence North 90°00’00” East 344.04 feet to the **Point of Beginning.**

Parcel contains 5,381 square feet, more or less.

See Exhibits ‘D-2’, ‘D-3’ and ‘D-4’ attached hereto and made a part hereof.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

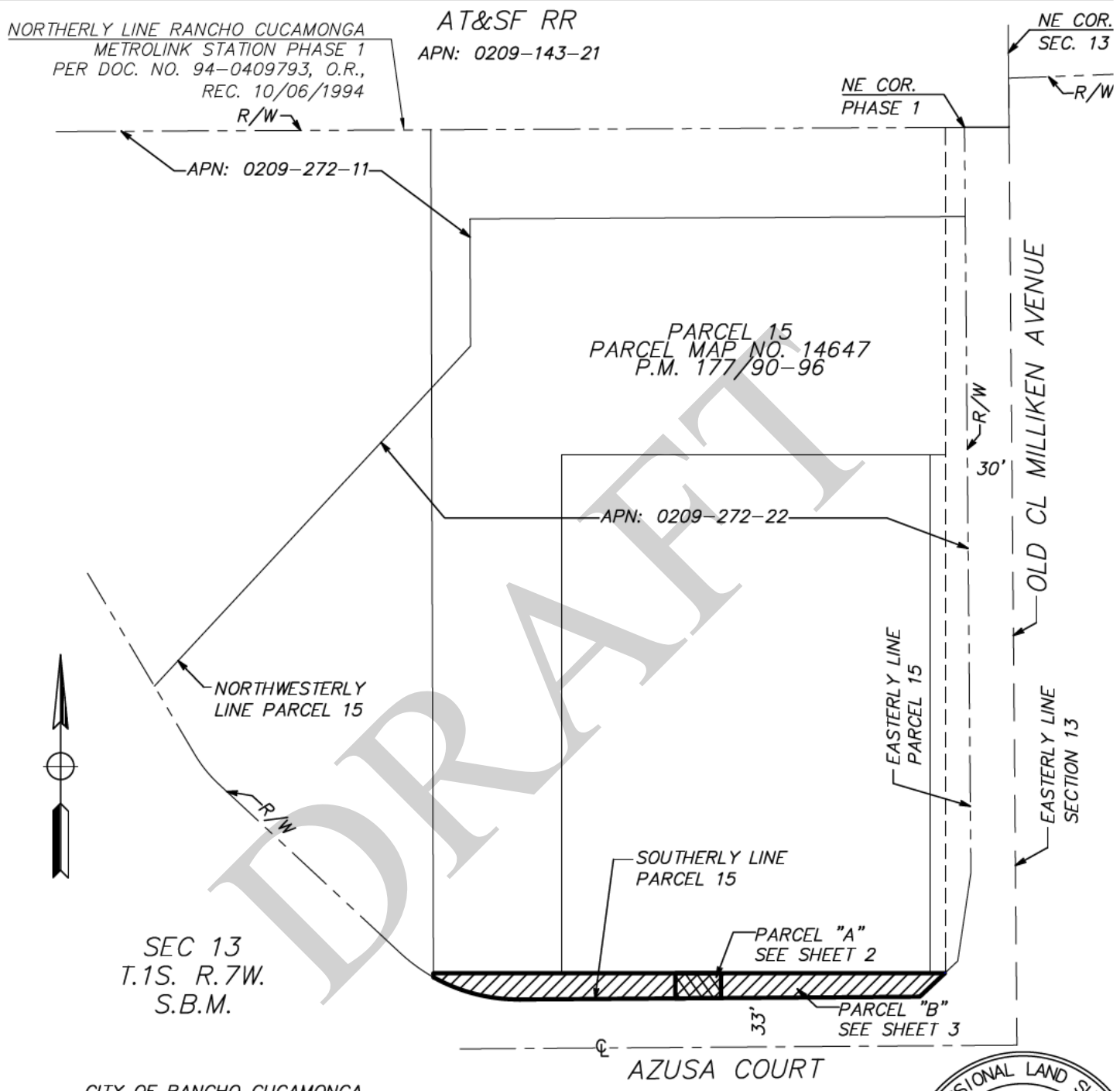
Date: _____

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	EASEMENT	TOTAL: --- SF



DRAFT

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

SEAN M. SMITH, PLS 8233 DATE

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

FEET 0 50 100 200 400

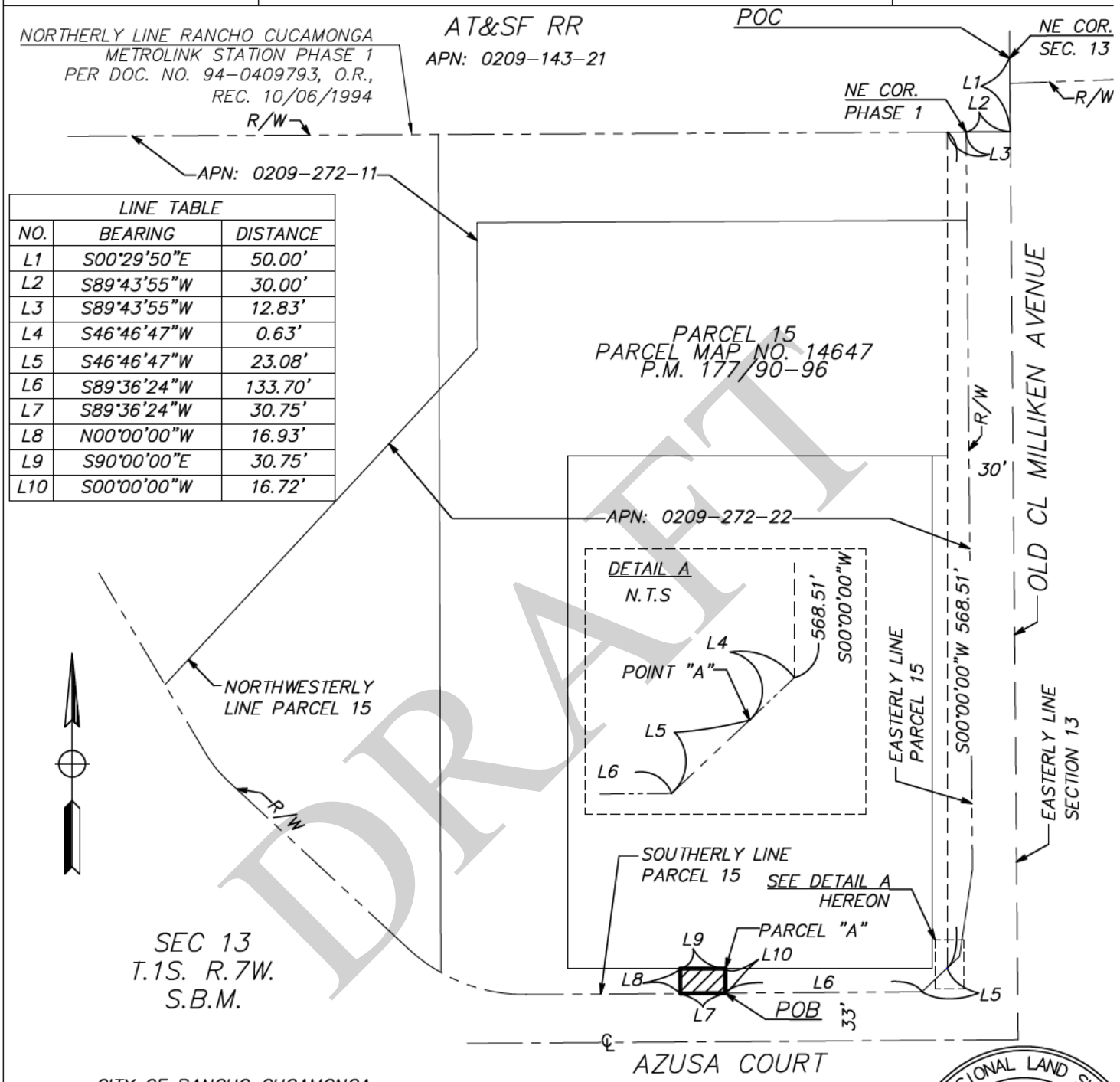
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-3'-DRIVEWAY

APN	TYPE OF ESTATE	AREA
0209-272-22	DRIVEWAY EASEMENT	TOTAL: 517 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	0.63'
L5	S46°46'47"W	23.08'
L6	S89°36'24"W	133.70'
L7	S89°36'24"W	30.75'
L8	N00°00'00"W	16.93'
L9	S90°00'00"E	30.75'
L10	S00°00'00"W	16.72'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

SEAN M. SMITH, PLS 8233 DATE

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

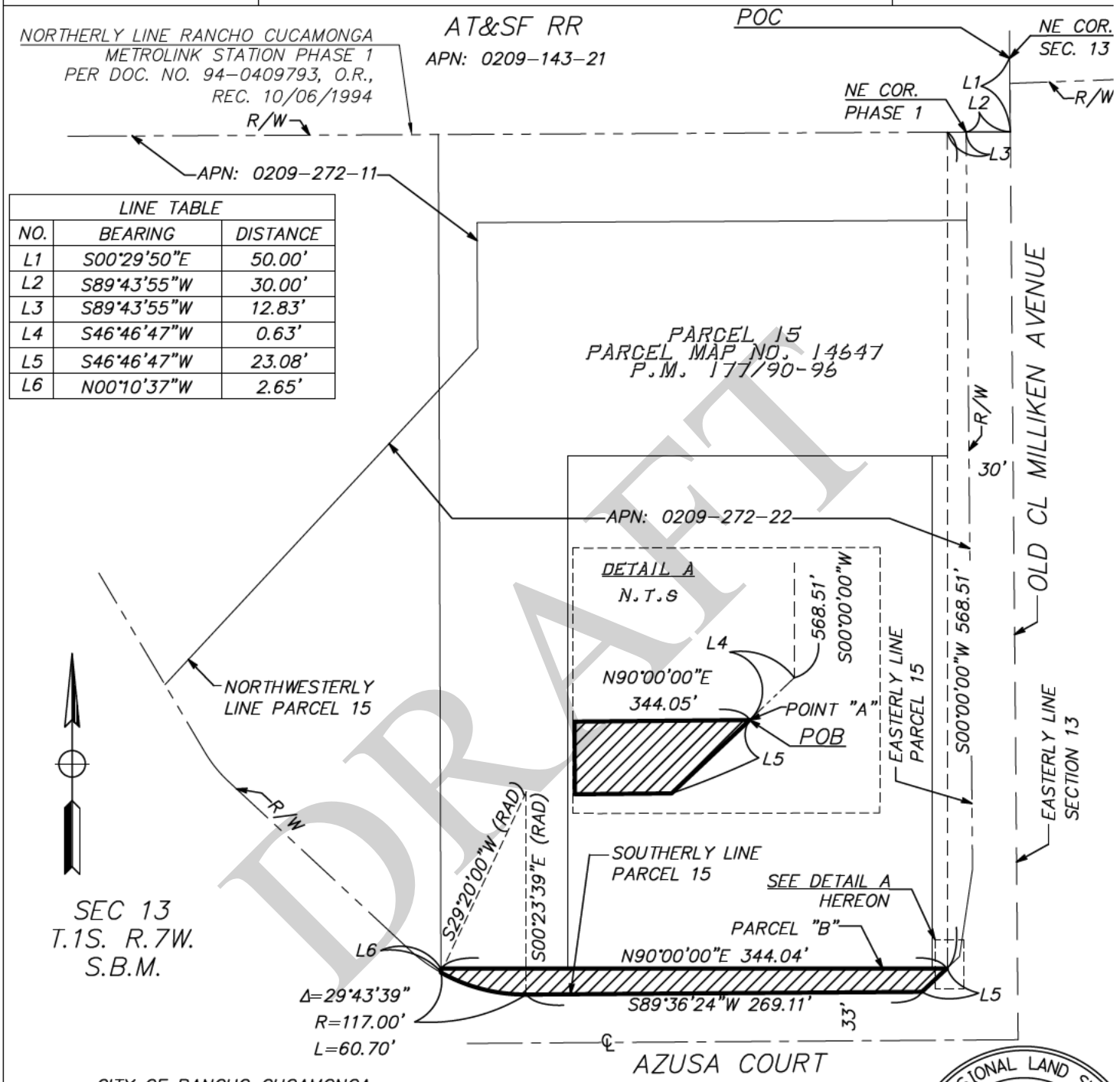
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-4'-UTILITY

APN	TYPE OF ESTATE	AREA
0209-272-22	UTILITY EASEMENT	TOTAL: 5,381 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	0.63'
L5	S46°46'47"W	23.08'
L6	N00°10'37"W	2.65'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT E TO GRANT DEED

DESCRIPTION AND DEPICTION OF ACCESS EASEMENT TO THE UNDERGROUND PEDESTRIAN METROLINK TUNNEL

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'E'

Description of Access Easement to the Underground Pedestrian Metrolink Tunnel

APN: 0209-143-21

That portion of portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 352.94 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43'55 West 6.16 feet;

Thence leaving said northerly line North 00°10'37" West 33.38 feet;

Thence North 87°50'29" East 24.23 feet;

Thence South 27°38'38" West 38.68 feet to the **Point of Beginning.**

Parcel contains 509 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibits 'E-1' attached hereto and made a part hereof.

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04/19/2024 2:43:09 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

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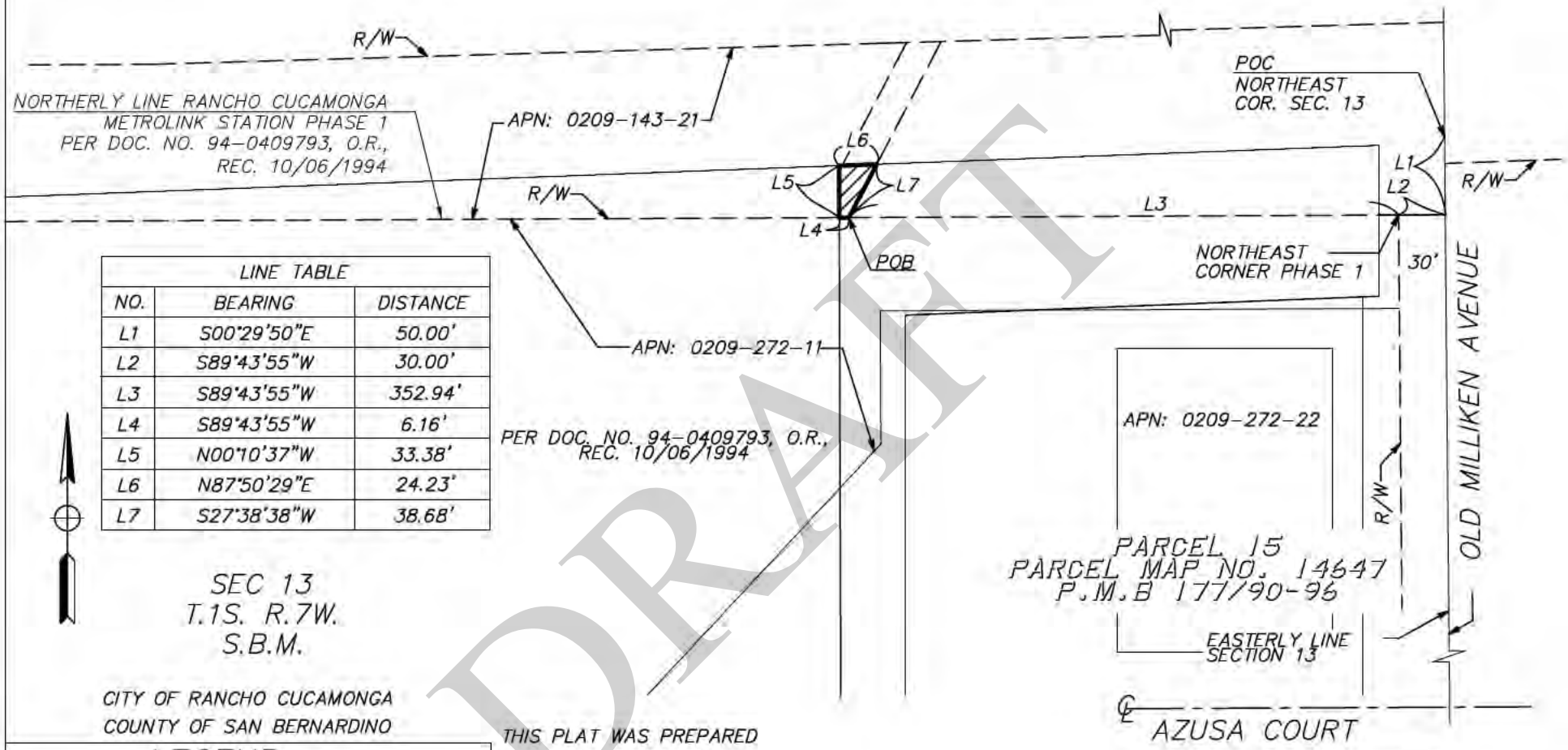
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary
04/19/2024 2:43:14 PM

EXHIBIT 'E-1'

APN	TYPE OF ESTATE	AREA
0209-143-21	EASEMENT	509 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	352.94'
L4	S89°43'55"W	6.16'
L5	N00°10'37"W	33.38'
L6	N87°50'29"E	24.23'
L7	S27°38'38"W	38.68'

SEC 13
T.1S. R.7W.
S.B.M.

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

FEET 0 50 100 200 300

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	1

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT F TO GRANT DEED

DESCRIPTION AND DEPICTION OF THE ADJACENT TRANSIT CENTER

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

All that portion of said Parcel 15, together with all that portion of said Rancho Cucamonga Metrolink Station Phase I;

Excepting therefrom that portion lying easterly of the following described line:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning**;

Thence South 00°10'37" West 569.98 feet to the southerly line of said Parcel 15, also being the **Point of Terminus**;

Parcel contains 227,529 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.00 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'F-1' attached hereto and made a part hereof.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: 9/27/2022

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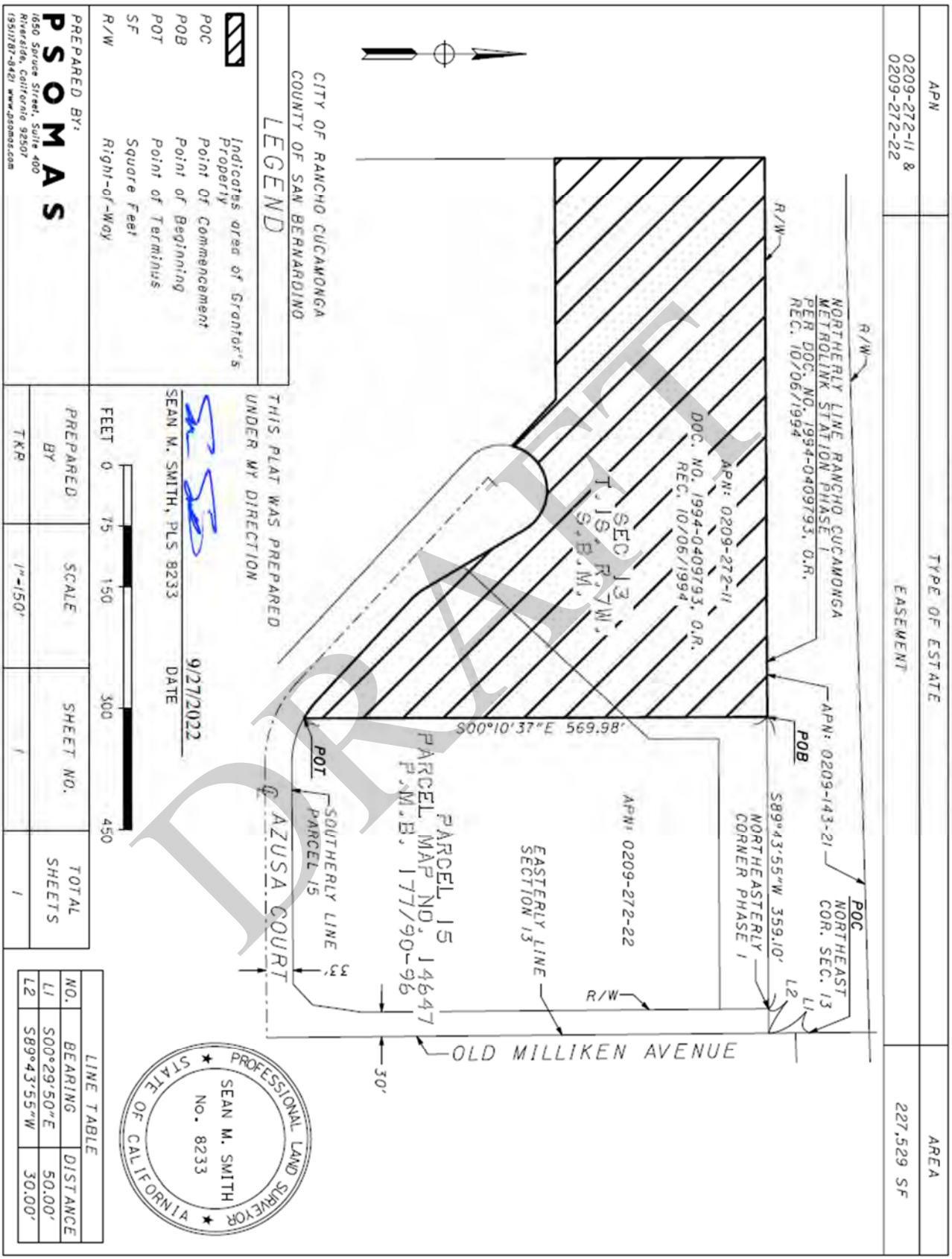
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT G TO GRANT DEED

DESCRIPTION AND DEPICTION OF TUNNEL EASEMENT

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'G'

Legal Description of Tunnel Easement

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of Section 13 of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line South 00°00'00" West 311.62 feet**;**

Thence South 89°36'24" West 345.30 feet to the westerly line of the land described in Exhibit A-3 and as shown on the plat in Exhibit A-4;

Thence along said westerly line South 00°10'37" East 98.41 feet to the **Point of Beginning**;

Thence leaving said westerly line South 47°37'41" East 257.13 feet to the southerly line of said Parcel 15, also being the southerly line of the land described in Exhibit B-1 and shown on the plat in Exhibit B-2;

Thence along said southerly line South 89°36'24" West 82.47;

Thence leaving said southerly line North 47°37'41" West 145.18 feet to a point on said westerly line;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence along said westerly line North 00°10’37” West 76.01 feet to the **Point of Beginning.**

Parcel contains 11,265 square feet, more or less.

Excepting therefrom that portion of the above-described parcel lying above a level plane elevation of 1095.50 feet above mean sea level.

The level plane elevation described above is expressed in terms of North American Vertical Datum of 1988. The elevation is based on the San Bernardino County Benchmark No. UF206 with a published elevation of 1,114.07 feet above mean sea level.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit ‘G’ attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor’s Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

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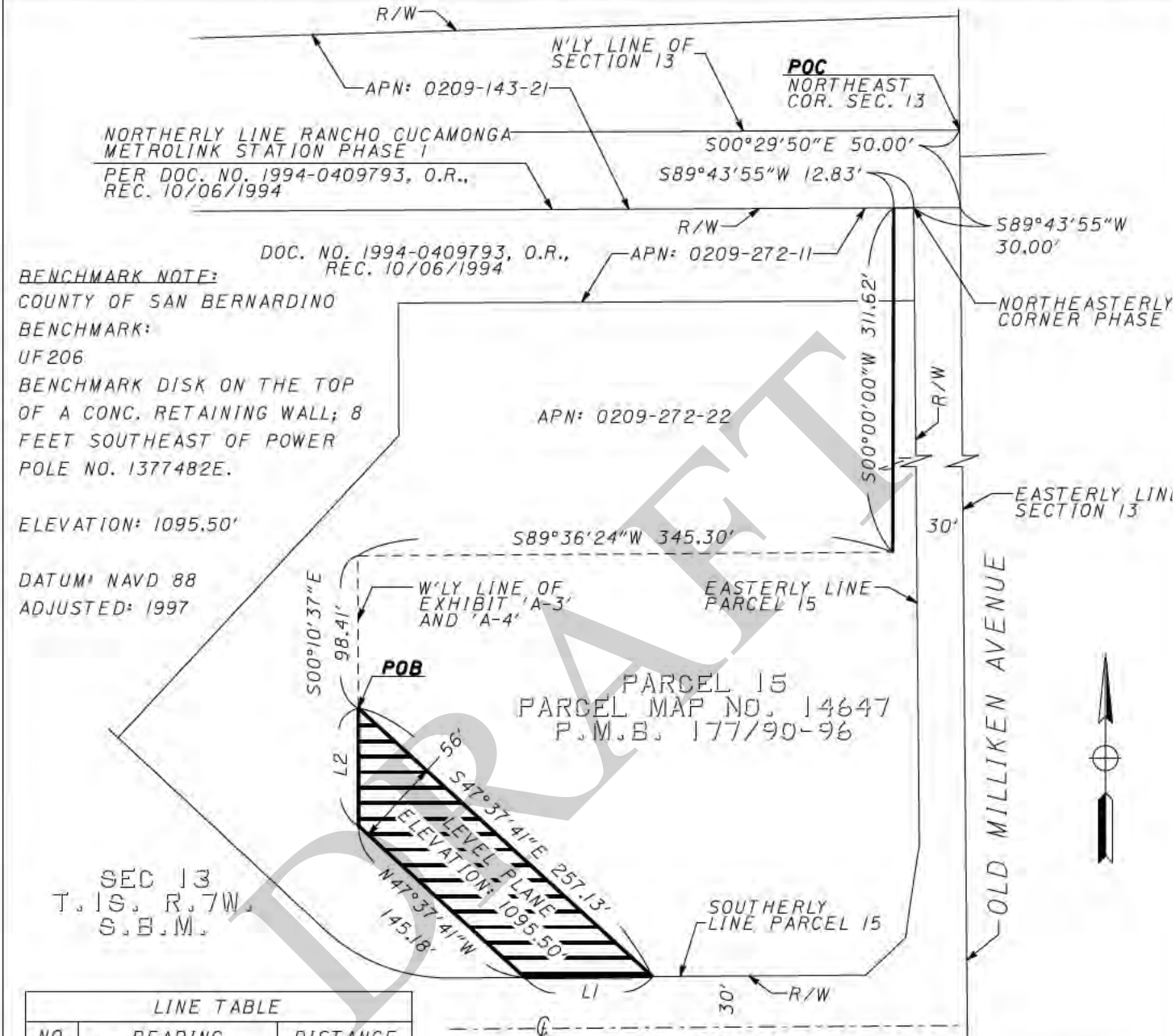
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'G'

APN	TYPE OF ESTATE	AREA
0209-272-22	EASEMENT	11,265 SF



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LINE TABLE		
NO.	BEARING	DISTANCE
L1	S89°36'24"W	82.47'
L2	N00°10'37"W	76.01'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

Preliminary
03/14/2024 3:54:36 PM

THIS PLAT WAS PREPARED UNDER MY DIRECTION

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

SEAN M. SMITH, PLS 8233 DATE

LEGEND

▨	Indicates area of easement
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

FEET 0 50 100 200 300

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

SCHEDULE 1 TO GRANT DEED

TERMS AND CONDITIONS OF TUNNEL EASEMENT

1. The party first constructing improvements shall/must engineer its improvements to be located exclusively on and rely upon structural support exclusively from its property, whether the Property, exclusive of the Tunnel Easement Area, as to Grantee or the Tunnel Easement Area as to SBCTA, to accommodate the future construction by the other party of improvements on its property as aforementioned. Prior to construction, the party first constructing improvements shall/must provide to the other party the engineering plans and specifications for such improvements and the non-constructing party has reasonable review rights (within 30 days of delivery) with respect thereto for the limited purpose of providing results of review comments to the constructing party for avoiding and minimizing conflicts for such future improvements by the non-constructing party.

2. For all future construction on the Property, including without limitation the Tunnel Easement Area, beyond the initial construction and any maintenance activities by either party that could foreseeably impact the structural integrity of the improvement(s) of, by or for the other party on its property as described in and as limited by Paragraph 1 above and Paragraph 3 below, the non-constructing or non-maintaining party has reasonable review rights with respect to any such construction (within 30 days of delivery of the construction engineering plans and specifications provided by the constructing party at least 30 days prior to commencing such construction) or maintenance (within 5 business days of delivery of the maintenance plans provided by the maintaining party at least 5 business days prior to commencing such maintenance) by the other party, which review shall be limited to the non-constructing or non-maintaining party providing results of review comments to the constructing or maintaining party for avoiding or minimizing risks to the improvements or operations of the non-constructing or non-maintaining party. Nothing in the foregoing shall change or supersede the Inspector of Record process set forth in Exhibit H to the Disposition and Development Agreement.

3. The constructing party shall ensure that any temporary and permanent improvements do not adversely affect the structural integrity, safety, durability, maintainability, or continued efficient operation of any existing or future facilities of the non-constructing party; provided, however that, except as otherwise expressly agreed in writing by the parties, each party acknowledges and agrees that the structural integrity, safety, durability, maintainability and continued efficient operation of its existing or future facilities must rely exclusively on such party's property as described in and limited by Paragraph 1 above, including any improvement(s) thereon or thereto, whether the Property, exclusive of the Tunnel Easement Area, as to Grantee or the Tunnel Easement Area as to SBCTA.

4. It is anticipated that any tunneling in the Tunnel Easement Area will occur via modern tunnel boring machine or other similar tunneling methods (i.e., no surface entry within the Property) and not mining or blasting or another similar method without Grantee's prior written consent;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

provided, however, that such consent shall not be unreasonably withheld, conditioned or delayed.

5. It is also anticipated that any construction and development on the Property would use spread footers over the tunnel area and not pylons or another method without SBCTA's prior written consent; provided, however, that such consent shall not be unreasonably withheld, conditioned or delayed.

6. The constructing party shall provide the non-constructing party with 60 days advance written notice prior to the commencement of construction activities and 15 days advance written notice prior to the commencement of any maintenance activities that could foreseeably impact the structural integrity of the improvement(s) of the other party. The constructing party shall use commercially reasonable efforts to mitigate impacts to the operations of the non-construction party.

7. In the event that a party determines that an emergency situation exists that impacts the other party's respective property as described in Paragraph 1 above, the party seeking to address such emergency situation shall provide notice of the emergency situation to the other party as promptly after such determination and shall have the right, at its sole cost and risk (except to the extent that the emergency is caused or contributed to by the other party), to immediately act to address the emergency situation.

8. Grantee shall protect, indemnify, defend, and hold harmless SBCTA, Omnitrans (the contemplated tunnel operator), its/their successors and assigns, and any other tunnel operator(s), service provider(s), contractor(s) or subcontractor(s) from and against all claims, demands, expenses, liabilities, losses, damages, and costs relating to the Property, inclusive of the Tunnel Easement Area, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, to, any person or loss or damage to the extent arising as a result of the acts or omissions of Grantee, or any employee, agent, visitor, contractor, patron, guest or invitee (each a "Permittee") of Grantee on or related to the Property, inclusive of the Tunnel Easement Area.

9. SBCTA shall protect, indemnify, defend, and hold harmless Grantee, it successors and assigns, and any other train operator(s), service provider(s), contractor(s) or subcontractor(s) from and against all claims, demands, expenses, liabilities, losses, damages, and costs relating to the Property, inclusive of the Tunnel Easement Area, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, to, any person or loss or damage to the extent arising as a result of the acts or omissions of SBCTA or any Permittee of SBCTA on or related to the Tunnel Easement.

10. Notwithstanding anything to the contrary in Paragraphs 8 and/or 9 above, a party shall not be entitled to indemnification or any other right, remedy or relief provided under or pursuant to such paragraphs for claims, demands, expenses, liabilities, losses, damages and costs to the

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

extent caused or contributed to by, or arising out of, resulting from or relating to, its negligence or willful misconduct or the negligence or willful misconduct of its Permittees, including without limitation its breach of, default under or failure of performance with respect to these Tunnel Easement terms and conditions or any of them.

11. Commencing upon the construction of the tunnel(s) and at all times thereafter, SBCTA shall maintain (or require that the tunnel operator maintain) insurance coverage, or self-insurance, in amounts and coverage types, that SBCTA deems appropriate in its reasonable discretion, to which, if any, the Grantee will be named as an Additional Insured. During said period, SBCTA will provide (or require the tunnel operator to provide) to Grantee reasonable evidence of said insurance, or a statement of self-insurance, promptly following receipt of written request for the same from Grantee. During construction of the tunnel(s) in the Tunnel Easement Area, SBCTA will require all contractors to provide insurance coverage types and limits, that SBCTA deems appropriate in its reasonable discretion, and will require (or require the tunnel operator to require) all contractors to add Grantee as an indemnified party and an additional insured to all insurance required in any Tunnel Easement Area construction related contracts. Additionally, if the insurance Grantee requires or desires is in excess of what SBCTA or the tunnel operator, as applicable, is required to carry as outlined in this Paragraph 11, Grantee may, at its sole election and its sole cost and expense, timely obtain and pay for any upgrade/excess amount it requires or desires, such that there is no delay in construction or SBCTA shall be entitled to move forward without same.

12. SBCTA shall not prevent access by Grantee or Grantee's Permittees to the Property, exclusive of the Tunnel Easement Area, as a result of tunnel construction, maintenance or repair activities in the Tunnel Easement Area.

13. The constructing party, as to its respective property as described in Paragraph 1 above, shall ensure that an adequate performance bond is in place at or prior to the commencement of on-site construction activities.

14. The parties acknowledge and agree that, in connection with the DDA, each party and its counsel have reviewed this Grant Deed (including, without limitation, this Schedule 1),), and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Grant Deed (including without limitation this Schedule 1). This Grant Deed, including without limitation this Schedule 1, shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties.

15. The parties further acknowledge and agree that this Grant Deed, including without limitation this Schedule 1, together with all attachments and exhibits thereto, constitutes the entire understanding and agreement of the parties with respect to the tunnel, the Tunnel Easement and the Tunnel Easement Area. The Grant Deed, including exhibits thereto and this Schedule 1, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the tunnel, the Tunnel Easement and the Tunnel Easement Area.

[Signature Page Follows]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

IN WITNESS WHEREOF, the undersigned Grantee does hereby agree to, as well as acknowledge and accept, the Grant Deed, including without limitation this Schedule 1.

_____
, a Nevada limited liability company

By: _____
Sarah Watterson, _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "E"

EASEMENT FOR HIGH-SPEED RAIL OVERPASS

(8TH STREET)

[See Attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUEST BY,
AND WHEN RECORDED RETURN TO:

DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Free Recording Requested per Government Code 27383.

EASEMENT FOR HIGH-SPEED RAIL OVERPASS
(8TH STREET)

THIS EASEMENT FOR HIGH-SPEED RAIL OVERPASS ("**Agreement**") is dated as of _____ ___, 20__ and is entered into by and between the CITY OF RANCHO CUCAMONGA, a California municipal corporation ("**City**"), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California ("**DXE**"). City and DXE are sometimes hereinafter referred to individually as "**Party**" and collectively as the "**Parties**."

RECITALS

A. DXE plans to construct a high-speed passenger rail system from Las Vegas, Nevada to Rancho Cucamonga, California ("**HSR System**"). One portion of this system will include an elevated track structure along a portion of 8th Street in the City of Rancho Cucamonga and requires an easement from the City in order to construct, operate, and maintain this elevated track structure. The location of the easement is described in Exhibit "A" (the **"Easement Area"**), and the elevated high-speed rail track structure and ground-level supporting facilities is described in Exhibit "B" (the "**Improvements**").

B. The City's public purposes in entering into this Agreement include facilitating the development of transportation that will benefit the public, providing employment opportunities resulting from the work to be performed by DXE and the operation of a high-speed rail project, and obtaining fair market compensation for the easement interest granted herein (and such compensation shall become part of the general funds of the City and in turn used for public purposes).

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

AGREEMENT

1. **Grant of Easement; Consideration**. City hereby grants to DXE a nonexclusive perpetual easement ("Easement") in and through the Easement Area for the purpose of installing, maintaining, and operating the Improvements and operating passenger rail service thereon, subject to all applicable laws, it being understood that the non-vacated portion of 8th Street is a public street that will continue to be used by the public at the risk of DXE. The installation, maintenance, and operation of the Improvements shall be subordinate to any existing easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record on or under 8th Street. As a condition precedent to DXE's occupancy or use of the Easement Area, DXE will pay to City the one-time sum equal to the fair market price of the easement interest and rights described herein, as determined by an appraisal obtained by City.

2. **AS-IS**. DXE accepts the Easement Area in its current "AS-IS" condition, without representation or warranty, express or implied, and subject to all existing matters of record and all matters that would be revealed by a diligent inspection of the Easement Area. DXE also acknowledges that City makes no representations, express or implied, as to the physical condition of or title to the Easement Area. This Agreement does not constitute, nor grant permission to use or occupy property not belonging to, or under the control of City, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this Agreement.

3. **Authorized Improvements; Street Closures**. The rights of DXE to install, maintain, and operate the Improvements are subject to any applicable laws and permitting requirements and conditions (and the City does not waive any of its rights or powers in its governmental capacity in that regard to the extent applicable). City will review and approve all such Improvement plans in its proprietary capacity as property owner prior to construction of the Improvements only to ensure consistency and no material interference with the Public Improvements (as defined below) and not to review the HSR System. In addition, the location of any columns that support the elevated track structure within the Easement Area will be determined per plans approved in writing by the City Engineer after finding that the locations will not unreasonably impact the Public Improvements, including 8th Street and Rochester Avenue. Any and all street closures required for installation, maintenance, or repairs of the Improvements must be approved in advance in writing by the City Manager, and DXE shall pay or reimburse City within thirty (30) days after written demand for all costs incurred by City in connection with any such closures.

4. **Standards for Rail Facilities.** City acknowledges that standards promulgated by and decisions issued by the Federal Railroad Administration ("**FRA**") and Surface Transportation Board ("**STB**") govern the design, construction, operation, and maintenance of railroad facilities within their jurisdiction and that such regulations, standards, and decisions might as a matter of law preempt and supersede requirements that may otherwise apply under state or local laws. City acknowledges that it is not a regulatory agency under federal law or with respect to California utilities regulated by the California Public Utilities Commission, and the Parties agree that the City will have no liability for not inspecting rail facilities or operations on the Easement Area for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the California Public Utilities Commission. Notwithstanding this Section 4, City

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

reserves all of its governmental rights and powers, and DXE acknowledges that City is entering into this Agreement solely in its proprietary capacity.

5. **Repair of Damage**.

(a) Damage to Public Improvements. DXE shall promptly notify the City in writing if it becomes aware of any damage to 8th Street or Public Improvements (as defined below). Whether or not DXE notifies the City, if any damage is caused to 8th Street or Public Improvements directly or indirectly by DXE or its contractors, such repair work will be conducted by the City at DXE's sole cost and expense, or if so authorized in writing by City, may be repaired by DXE at its sole cost and expense (whereupon DXE shall promptly coordinate with City on any necessary street closures, and promptly perform the repairs).

(b) If City elects to perform repair work for which DXE has some or all responsibility, DXE shall reimburse City for its share of the reasonable costs of the repair work within thirty (30) days after delivery of a statement from City describing the costs, including a statement detailing such costs and expenses. In the event payment is not made within said thirty (30) day period, said payment shall include interest at a rate of ten percent (10%) per annum from the end of said thirty (30) day period until paid.

6. **Encumbrance.** DXE may, at any time and from time to time, encumber to any bank, insurance company or other institutional lender, herein called "Mortgagee," by one or more deeds of trust (the "Security Instrument"), all of DXE's interest under this Agreement and the interest created hereunder provided that (i) such Security Instrument is subject to the terms of this Agreement and all interests of the City hereunder, (ii) such Security Instrument shall not constitute in any way a lien or encumbrance on the City's interests, and (iii) the Security Instrument shall not encumber any obligations that do not relate to the HSR System. No Mortgagee shall be liable to City as the successor to the rights and obligations of DXE under this Agreement unless and until such Mortgagee acquires the easement interest hereunder through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other assignment, action or remedy, nor shall a Mortgagee be liable for any defaults that occur after it conveys its interest in the property associated with the Easement hereunder.

7. **Ownership of Improvements.** All Improvements shall be owned by DXE during the duration of this Agreement, and upon the termination of this Agreement, shall become the sole property of City without compensation to DXE, or, if City so elects and upon written notice to DXE within ninety (90) days of termination, shall be demolished and removed by DXE from the Easement Area at DXE's sole expense within twelve (12) months from the date of said notice (subject to extension for Force Majeure Events or by written agreement of the Parties), and the foregoing (and defense and indemnity obligations of DXE under this Agreement) shall survive the termination of this Agreement. Nothing herein affects City's rights or remedies as a governmental entity, such as the right to cause DXE to abate a nuisance, and in connection therewith, remove Improvements (if City has such a right as a governmental entity under applicable law). For the avoidance of doubt, the City acknowledges and agrees that the construction and operation of the HSR System in accordance with this Agreement and applicable law is not a nuisance.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

8. **Waiver and Release**. DXE expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies DXE may now or hereafter have against City, and its officials, officers, employees, consultants, attorneys and agents (collectively, "City Entities"), whether known or unknown, arising prior to the date of this Agreement and relating to the condition of the Easement Area, or 8th Street or adjacent property, and all claims of contribution and reimbursement for costs of remediating Hazardous Materials (defined in Section 12 below) released or existing prior to the date of this Agreement in, on or near the Easement Area.

DXE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, DXE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____
DXE's Initials

The waivers and releases by DXE contained herein shall survive the termination of this Agreement and shall be binding upon the assignees, transferees, and successors-in-interest of DXE.

9. **Access**. DXE acknowledges that 8th Street contains certain City-owned public facilities collectively and hereinafter referred to as "Public Improvements" as well as publicly and privately owned utilities, including storm drains, water, sewer, gas, electrical, cable television, fiber optics and other public and privately owned utilities and facilities. Except for access to the elevated high-speed rail track structure or associated facilities relating thereto ("**Restricted Facilities**"), which access is covered in the following sentence, the City and utility providers shall have access at any time to the Easement Area. Except in the event of an emergency, in which event telephonic notice as soon as practical is acceptable in lieu of five (5) business day advance written notice, if the City (1) desires to do any digging or trenching in the Easement Area, (2) desires to operate a crane in the Easement Area, or (3) desires access to the Restricted Facilities, the City shall notify DXE either in writing at least five (5) business days prior to such desired entry. In such event, DXE shall cooperate with the City to determine how to safely provide access to 8th Street for purposes of the work to be performed. DXE shall have the right, but not the obligation, to add appropriate signage to the Restricted Facilities, including, without limitation, signs prohibiting access and requiring advance notice and permission prior to entry. Under no

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

circumstances shall the City be liable in damages to DXE, or to any assignee or Mortgagee, for City's failure to provide advance notice of entry and DXE covenants on behalf of itself and its successors in interest not to sue for or claim damages against City as a result of City's breach of the notice requirements in this Section 9.

10. **Safety Protocols.** DXE and the City will comply in good faith with all safety procedures and protocols mutually developed by the parties, as the same may be amended in writing from time to time. It is contemplated that such procedures and protocols will address both planned and emergency access needs for access by City and utility companies. Either party can at any time present draft safety procedures and protocols to the other party for its reasonable review and approval and the parties shall thereafter reasonably cooperate to finalize such procedures and protocols.

11. **Utilities.** As between DXE and the City, any required relocation of a utility that interferes with DXE's project within the Easement Area is the sole responsibility of DXE. Upon written request by DXE, City will provide utility contact information known to City and make its right-of-way utility staff available (on a reimbursable basis) for meetings with third-party utility owners to help facilitate DXE's property access and construction and maintenance activities.

12. **Termination**. In the event DXE fails to use the Easement Area for rail transportation purposes for a period of five (5) consecutive years ("**Abandonment**"), the City may, after thirty (30) days written notice to DXE, deem the easement abandoned and terminate this Agreement; provided, however, the City may not terminate this Agreement if DXE cures the Abandonment by using the Easement Area for rail transportation purposes during the thirty (30) day period after written notice by the City. Additionally, City may terminate this Agreement if DXE fails to comply with this Agreement and then fails to cure such default within thirty (30) days after written notice from City, and then continues to fail to cure such default within five (5) business day following a second written notice from the City sent after the initial 30-day period, with each such notice (i) sent via certified mail or another delivery method requiring a signature by the recipient and (ii) stating in all capital and bolded letters of at least 12 point font: "FAILURE TO CURE SHALL RESULT IN TERMINATION"; provided, however, the City may not terminate this Agreement if DXE commences to cure the default during the applicable cure period after written notice by the City and thereafter diligently prosecutes the cure to completion.

(a) Right of Mortgagee to Cure Defaults. Each Mortgagee will have the same period, commencing upon written notice to each such Mortgagee of such default, to remedy or cause to be remedied the default complained of as DXE has hereunder to cure such default, plus an additional ninety (90) days in the case of any other default which is capable of being cured by the Mortgagee (and such ninety (90) day period will be extended for a reasonable period of time to gain possession of the interest of DXE under the Agreement through legal proceedings if necessary to cure such default provided the Mortgagee commences the proceedings within one hundred eighty (180) days after the initial written notice by the City and thereafter diligently prosecuting such proceedings) which period will be extended as necessary for a Mortgagee to obtain relief from any stay in a bankruptcy proceeding in which DXE is a debtor, provided the Mortgagee is diligently prosecuting such relief and has assumed the obligations of this Agreement in writing (and such written assumption shall have been delivered to City), and City will accept performance by such Mortgagee within the time specified herein as timely performance by DXE;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

provided, however, that (i) nothing contained herein will be deemed to impose upon any Mortgagee the obligation to perform any obligation of DXE under this Agreement or to remedy any default by DXE hereunder, and (ii) in the event that the Mortgagee or a third party succeeds to DXE's interest under this Agreement pursuant to foreclosure of the Security Agreement, exercise of a power of sale thereunder or a deed in lieu thereof, City waives, as against the Mortgagee or such third party, any default by DXE that is not susceptible to cure by the Mortgagee. Any provision of this Agreement to the contrary notwithstanding, no performance by or on behalf of a Mortgagee will cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Property or bound by or liable under this Agreement, unless the Mortgagee is actually in possession of the Property. In addition, the parties agree that if there is more than one (1) Mortgagee (or collateral assignee), then all cure periods provided in this paragraph will run concurrently. Upon the full and timely performance by Mortgagee of the obligation or obligations the nonperformance of which was the subject of the notice of default given to Mortgagee pursuant to this Section, such default shall be deemed cured and shall no longer give rise to any rights and remedies of City; provided, however, that Mortgagee's cure of any default under this Agreement by DXE shall not excuse or waive any future default under this Agreement by DXE or preclude or limit the exercise of any rights or remedies afforded City under this Agreement as a result of such future default. Notwithstanding any provision to the contrary contained elsewhere in this Agreement, City will not have the right to terminate this Agreement or re-enter the Property by reason of a default by DXE that is reasonably susceptible of cure by Mortgagee, during the period specified in this Section 12 in which a Mortgagee is entitled to cure a default by DXE.

13. **Hazardous Materials**.

(a) DXE covenants that it will not handle or transport Hazardous Materials in the Easement Area except for removal, transportation and disposal in compliance with laws regarding excavated soils that are or may be contaminated with Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance,

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or passenger trains; and (d) asbestos. Notwithstanding the foregoing, DXE may handle and transport Hazardous Materials normally and customarily used in the development, construction and operation of railroad infrastructure, including passenger stations, that are used, stored, transported and disposed of in accordance with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record. As an example only, train infrastructure typically entails refueling maintenance vehicles or using cleaning supplies for routine maintenance.

(b) DXE further agrees that at City's request it will furnish City with proof, satisfactory to City, that DXE is in compliance with all such laws, rules, regulations, orders, decisions and ordinances regarding Hazardous Materials.

(c) Notwithstanding anything else contained in this Agreement, DXE shall indemnify, defend and hold harmless City from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to injuries to any person, including wrongful death, or damage to property, including without limitation, property of City and DXE, or otherwise (including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs) resulting in whole or in part from DXE's failure to comply with DXE's obligations under this Agreement with respect to Hazardous Materials, provided, however, that the foregoing shall not apply to releases of Hazardous Materials by City Entities' active negligence or willful misconduct or to Hazardous Materials not brought onto the Easement Area by DXE or its contractors. DXE agrees to reimburse City for all reasonable costs of any kind incurred as a result of the DXE's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of DXE's handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and/or 8th Street or adjacent property.

(d) City shall have the right at any time to inspect the Improvements, 8th Street and Public Improvements in order to monitor DXE's compliance with this Agreement, subject to the provisions of Section 9 above.

14. **Insurance**. DXE shall obtain and maintain insurance, at its sole cost and expense, as required in **Exhibit "C"** attached hereto.

15. **Indemnity**. DXE shall defend, indemnify and hold City and its officials, officers, agents, employees and contractors free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of DXE, its partners, affiliates, agents officials, officers, employees or contractors in performance of this Agreement, use of the Easement Area or the construction, use, or operation of the Improvements or the failure to comply (or failure of its contractors to comply) with California Labor Code Section 1720 et seq., including without limitation Labor Code Section 1781. DXE shall further defend, indemnify and hold harmless the

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

City and its officials, officers, agents and employees from all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings (brought against the City or its departments, commissions, agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul any City decision made in connection with this Agreement or DXE's use of the Easement Area (based on noncompliance with the California Environmental Quality Act or otherwise). DXE shall defend, with counsel reasonably acceptable to City and at DXE's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against City, its officials, officers, agents, employees or contractors. DXE shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, agents, employees or contractors. DXE shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this Agreement or the indemnity herein provided. DXE's obligations hereunder shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, agents or, employees or contractors.

16. **Covenant Running With Land**. This Agreement shall be deemed a covenant running with the land with respect to the Easement Area, burdening the Easement Area and benefitting the real property interests associated with the HSR System. All of the covenants, obligations, and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives, assigns and successors-in-interest to the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of the Easement Area shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person acquires an interest in the Easement Area. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the Easement Area or any portion thereof or interest therein shall conclusively be deemed to have been executed, delivered and accepted subject to this Agreement.

17. **Estoppel Certificates.** Each of the Parties hereto agree, promptly upon request from the other Party hereto, to furnish from time to time in writing certificates containing truthful estoppel information and/or confirmations of the agreements, obligations and easements contained in this Agreement and otherwise in a form and substance reasonably satisfactory to the Party from whom such certificate is sought.

18. **Cooperation; Further Assurances.** The Parties agree to execute any reasonable documents necessary to effectuate or protect a Party's rights under this Agreement.

19. **Attorneys' Fees**. In the event either Party brings a suit, action, or other proceeding against the other Party that in any way relates to or arises out of this Agreement, the prevailing Party (meaning the Party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other Party all reasonable costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which Party is the prevailing Party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding, such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal.

20. **Miscellaneous**.

(a) Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

DXE: DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: General Counsel

City: City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

Such notice shall be deemed made when delivered by certified mail, return receipt requested, first class postage prepaid, or by reputable overnight messenger delivery service, and addressed to the Party at its applicable address and shall be deemed delivered on the date of delivery or refusal to accept or inability to delivery shown on the return receipt, or one (1) business day after delivery to the messenger service for overnight delivery, as applicable.

(b) Entire Understanding. This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein.

(c) Invalidity. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors of the respective Parties. Except as set forth in Section 6 above, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

(e) Governing Law. Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to DXE because of its status as a common carrier regulated by the federal government.

(f) Venue. Venue for any legal action between the Parties related to this Agreement will be in the Superior Court of San Bernardino County, California or the United States

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

District Court, Central District Court of California. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located.

(g) Exhibits. All exhibits attached hereto form material parts of this Agreement.

(h) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(i) Survival. All defense, indemnity, and payment obligations of DXE that arise or relate to events occurring prior to the termination of this Agreement shall survive such termination.

21. **Property Taxes, Including Possessory Interest Taxes**. This Agreement creates a possessory interest that may be subject to possessory interest tax (a type of California property tax), and DXE shall pay any such possessory interest taxes that may be assessed. If the Improvements are taxed as an improvement on the Easement Area, DXE shall, upon demand, pay such taxes allocable to the Improvement, as determined by the taxing authority. City shall cooperate and assist DXE, at no costs to City, in any efforts to obtain a separate assessment for the Improvements, including executing any reasonably required applications or reasonable documents. DXE shall pay when due all personal property taxes levied against or relating to the Improvements.

22. **Encroachment Permit(s)**. DXE shall obtain encroachment permits from City, which City shall not unreasonably deny (upon written application at least forty-five (45) days in advance, but City shall endeavor to process such permits more quickly if possible), in areas outside of but adjacent to the Easement Area as needed for: (i) temporary construction staging; (ii) any public improvements thereon that will be affected (including closure of areas open to the public) or need to be altered or repaired as a result of work done by DXE; or (iii) or access for the foregoing purposes. DXE shall pay all related permit fees and reimburse City within ten (10) business days after written demand for costs of processing the applications.

[Signature Page Follows]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

The Parties have executed this Agreement as of the date first written above.

DXE:

DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company

By: _____
Sarah Watterson
President

CITY:

CITY OF RANCHO CUCAMONGA, a California municipal corporation

_____
By: _____, Mayor

ATTEST:

_____
_____, City Clerk

APPROVED AS TO FORM:

_____
Nicholas Ghirelli,
City Attorney

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "A"

DESCRIPTION OF EASEMENT AREA

[SEE ATTACHED]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A'

Legal Description

APN: 0209-272-11, 0229-262-35 & 0229-262-36

Those portions of Milliken Avenue and Parcel 1, as shown on Parcel Map No. 7555, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 77, pages 42 and 43 of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of Parcel 1 of Parcel Map No. 7797, in said City, filed in Book 80, pages 29 through 32, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with that portion lying within 8th Street Right-of-Way, as shown on the Record of Survey filed in Book 118, pages 77 and 78, in the Office of the County Recorder of said County, together with a portion of the land in said City described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, State of California, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, as shown on Parcel Map No. 14647 filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, said point being on the westerly line of Section 18, Township 1 South, Range 6 West, San Bernardino Meridian, as shown on said Parcel Map No. 7555;

Thence along the westerly line of said Section 18 South 00°29'50" East 3.79 feet to the **Point of Beginning**;

Thence leaving said westerly line North 87°50'29" East 509.29 feet;

Thence North 87°48'05" East 258.95 feet;

Thence North 86°59'53" East 149.87 feet;

Thence North 10°47'55" East 1.81 feet;

Thence North 55°47'55" East 1.41 feet;

Thence South 79°12'05" East 8.00 feet;

Thence South 36°17'13" East 0.62 feet;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence North 86°34’19” East 148.67 feet;

Thence North 42°11'39" East 1.43 feet;

Thence North 86°34’31” East 8.00 feet;

Thence South 48°28’38” East 1.38 feet;

Thence North 86°18’40” East 79.13 feet;

Thence North 87°14’34” East 85.84 feet;

Thence North 88°08’53” East 93.15 feet;

Thence North 87°54’53” East 419.57 feet;

Thence North 02°05’07” West 3.00 feet;

Thence North 87°54'53" East 106.18 feet;

Thence South 02°05'07" East 3.00 feet;

Thence North 87°54'53" East 1,377.58 feet;

Thence North 88°01'32" East 46.56 feet;

Thence North 88°41'30" East 46.74 feet;

Thence South 89°45'16" East 31.17 feet;

Thence North 88°28'08" East 146.29 feet;

Thence South 85°51'37" East 8.00 feet;

Thence South 87°58'21" East 107.78 feet;

Thence South 74°01'15" East 8.00 feet;

Thence South 89°40'47” East 116.04 feet;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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Thence South 44°38'23" East 6.21 feet to a point hereinafter referred to as **Point "A"**, said point being on the southerly line of the Railroad Right-of-Way as shown on said Record of Survey;

Thence continuing South 44°38'23" East 21.59 feet;

Thence South 87°56'20" East 76.88 feet to the easterly line of Rochester Road as shown on said Record of Survey;

Thence along said easterly line South 00°09'46" West 53.26 feet;

Thence leaving said easterly line North 88°01'57" West 77.71 feet;

Thence North 87°41'11" West 22.86 feet;

Thence North 84°42'33" West 129.75 feet;

Thence North 80°18'23" West 107.04 feet;

Thence North 85°57'27" West 23.10 feet;

Thence North 86°57'43" West 47.82 feet;

Thence North 88°21'24" West 48.91 feet;

Thence South 87°51'40" West 44.94 feet;

Thence South 87°52'16" West 15.79 feet;

Thence South 87°54'53" West 2,029.24 feet;

Thence South 86°56'35" West 23.54 feet;

Thence South 86°33'18" West 33.69 feet;

Thence South 79°10'13" West 53.07 feet;

Thence South 79°13'27" West 89.48 feet to the northerly line of said Section 18;

Thence South 79°13'27" West 24.46 feet;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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Thence South 87°50'06" West 8.00 feet;

Thence South 81°58'53" West 137.33 feet;

Thence South 87°55'09" West 943.00 feet to the westerly line of said Section 18;

Thence along said westerly line North 0°29'50" West 60.02 feet to a point hereinafter referred to as **Point "B"**, said point being on the southerly line of the Railroad Right-of-Way as shown on said Record of Survey;

Thence continuing North 0°29'50" West 13.25' to the **Point of Beginning**.

Excepting therefrom that portion lying northerly of the following described line:

Commencing at the above-described **Point "A"**;

Thence South 87°55'10" West 3,762.19 feet to the above referenced **Point "B**.

Reserving all that portion lying below a level plane 16.00 feet above the existing ground, except that portion occupied by viaduct columns at locations described on Exhibit 'A-2' attached hereto.

Parcel contains 131,094 square feet, more or less.

AND

Parcel "B"

Commencing at said northeast corner of said Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map No. 14647;

Thence along the easterly line of said Section 13 South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I, said point also being the **Point of Beginning**;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line South 00°00'00" West 28.43 feet;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary
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Thence North 87°55'10" East 13.09 feet to the easterly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence North 87°55'10" East 30.01 to the easterly line of said Section 13;

Thence along said easterly line of Section 13 North 00°29'50" West 27.07 feet to said easterly prolongation and the **Point of Beginning**.

Parcel contains 1,192 square feet, more or less.

Excepting therefrom all that portion below a level plane 16.00 feet above the existing ground, except that portion occupied by viaduct columns at a location described on Exhibit 'A-2' attached hereto.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

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Preliminary
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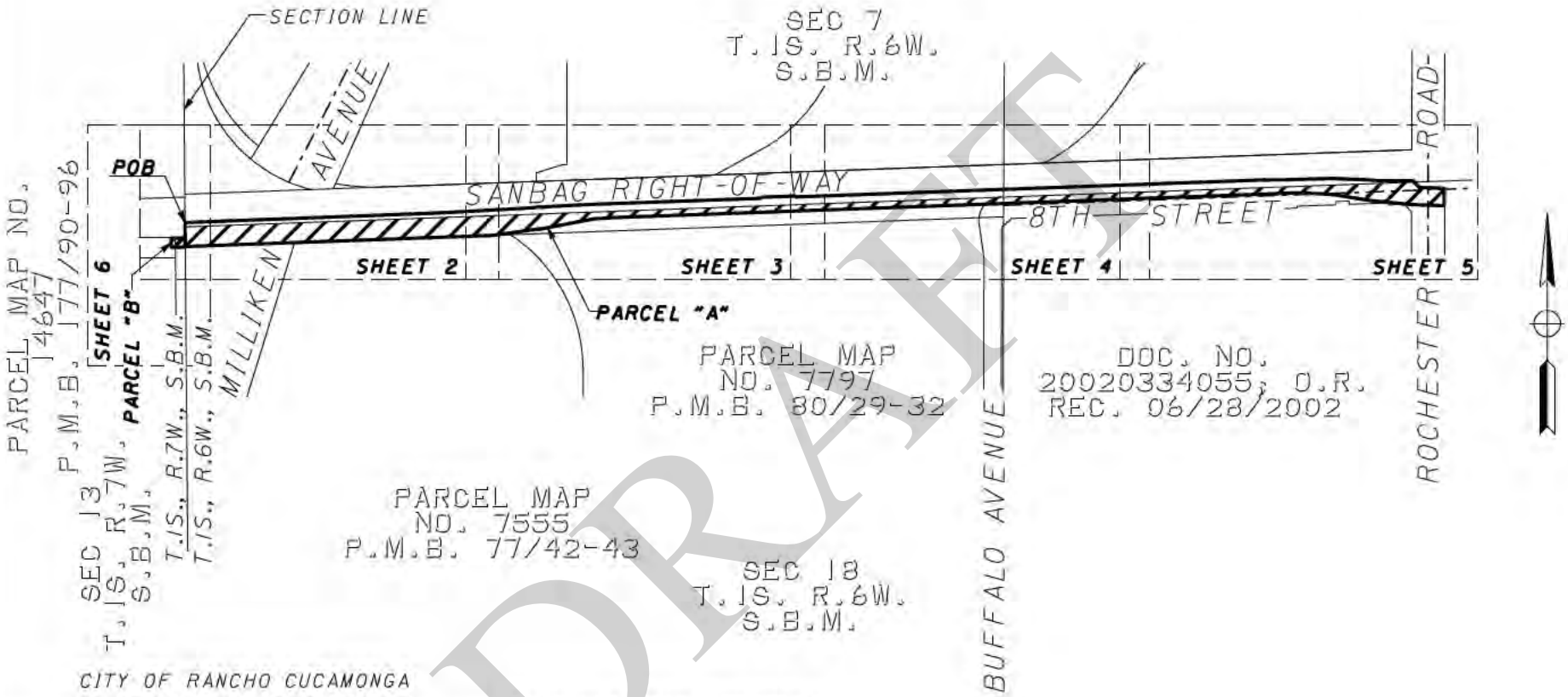
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	EASEMENT	PARCEL "A"= 131,094 SF PARCEL "B"= 1,192 SF

INDEX MAP



CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

LEGEND

	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet

FEET 0 250 500 1000 1500

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

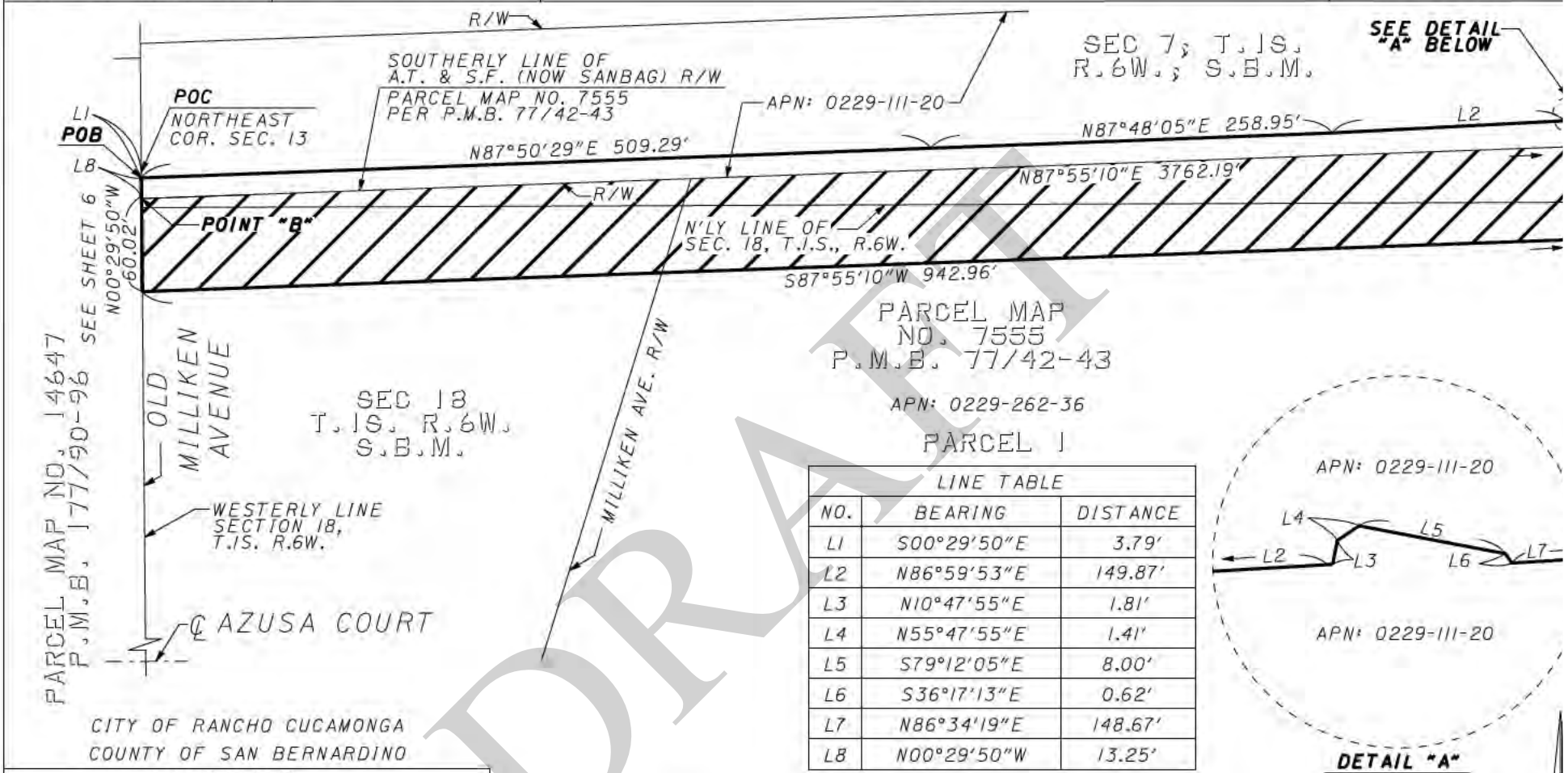
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=500'	1	7

DRAFT
Preliminary

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	3.79'
L2	N86°59'53"E	149.87'
L3	N10°47'55"E	1.81'
L4	N55°47'55"E	1.41'
L5	S79°12'05"E	8.00'
L6	S36°17'13"E	0.62'
L7	N86°34'19"E	148.67'
L8	N00°29'50"W	13.25'

DETAIL "A"
NTS

LEGEND

	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

FEET 0 50 100 200 300

DRAFT
Preliminary

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PSOMAS
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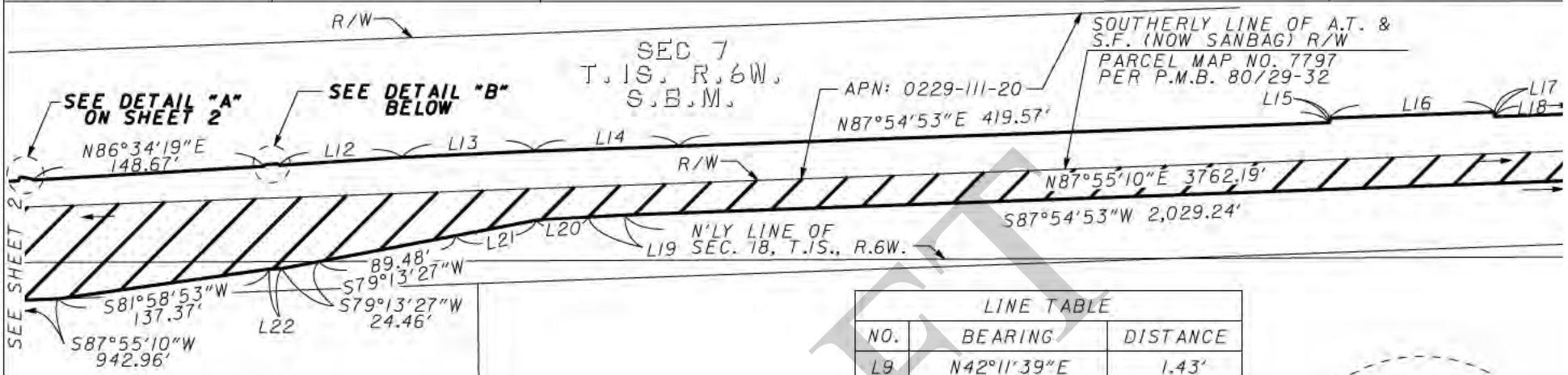
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	2	7

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



APN: 0229-262-36

SEC 18
T.1S., R.6W.
S.B.M.

PARCEL 1

PARCEL MAP
NO. 7555
P.M.B. 77/42-43

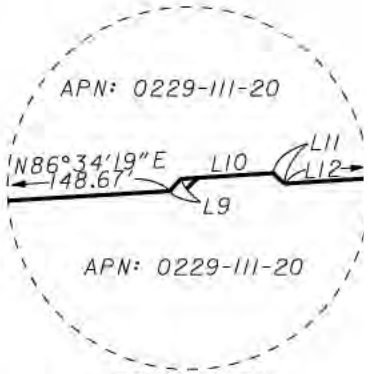
PARCEL 1
PARCEL MAP
NO. 7797
P.M.B. 80/29-32

EASTERLY LINE PARCEL 1
PARCEL MAP NO. 7555
PER P.M.B. 77/42-43

APN: 0229-262-35

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LINE TABLE		
NO.	BEARING	DISTANCE
L9	N42°11'39"E	1.43'
L10	N86°34'31"E	8.00'
L11	S48°28'38"E	1.38'
L12	N86°18'40"E	79.13'
L13	N87°14'34"E	85.84'
L14	N88°08'53"E	93.15'
L15	N02°05'07"W	3.00'
L16	N87°54'53"E	106.18'
L17	S02°05'07"E	3.00'
L18	N87°54'53"E	1,377.58'
L19	S86°56'35"W	23.54'
L20	S86°33'18"W	33.69'
L21	S79°10'13"W	53.07'
L22	S87°50'06"W	8.00'



DETAIL "B"
NTS

LEGEND

	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

FEET 0 50 100 200 300

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Preliminary

PREPARED BY:
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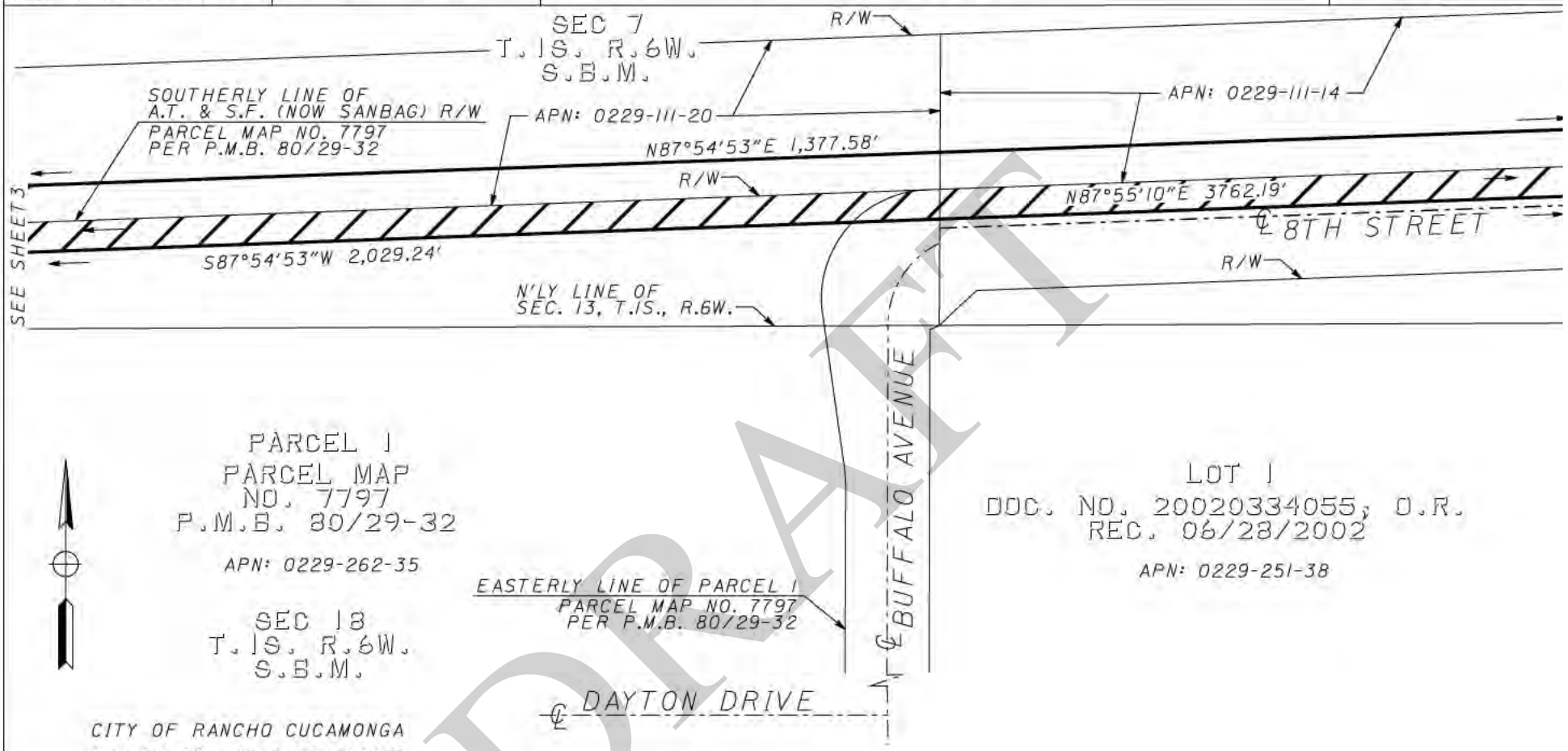
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	3	7

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-14 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



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Preliminary

LEGEND

	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

FEET 0 50 100 200 300

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PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	4	7

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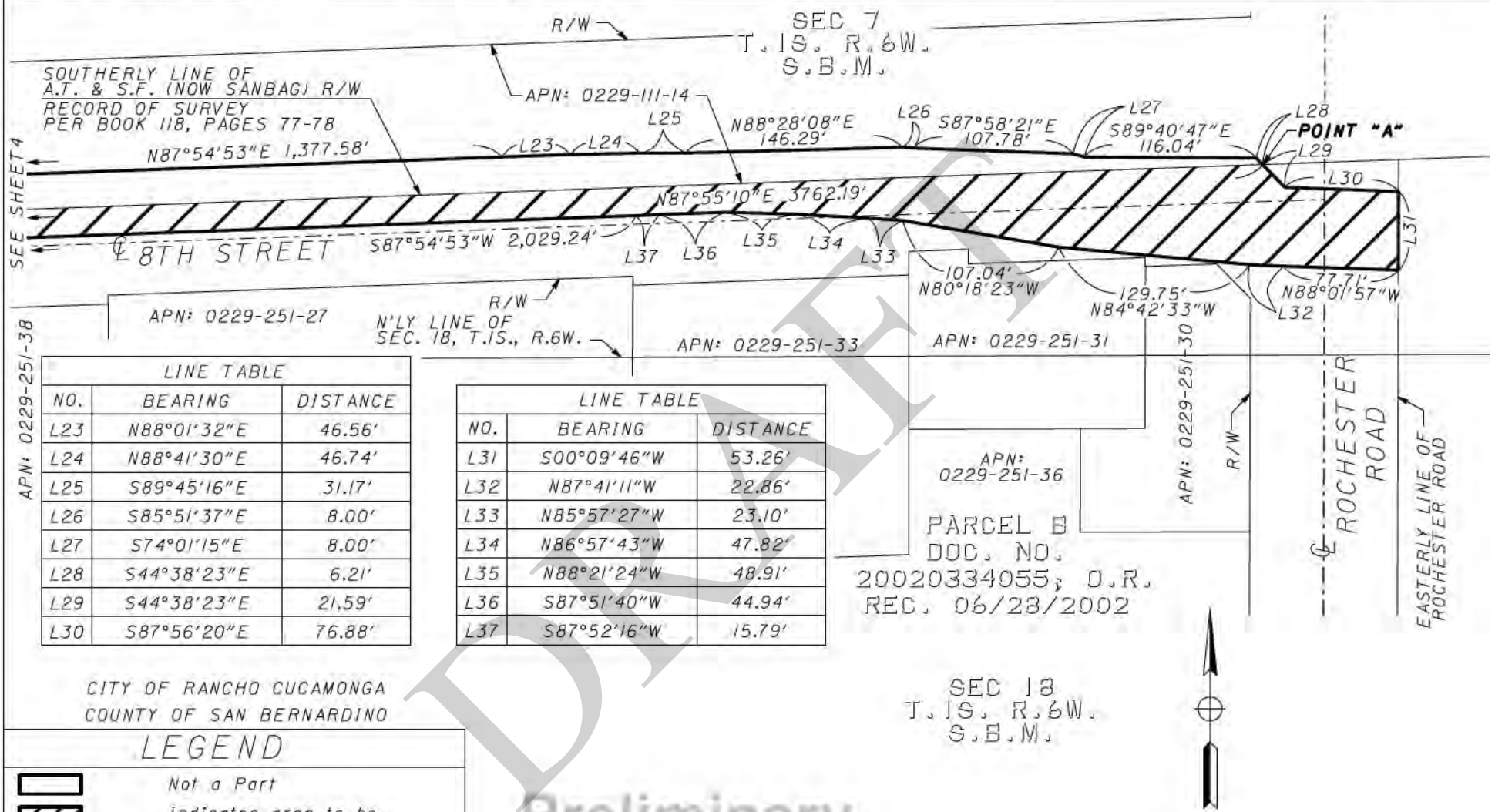
EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L23	N88°01'32"E	46.56'
L24	N88°41'30"E	46.74'
L25	S89°45'16"E	31.17'
L26	S85°51'37"E	8.00'
L27	S74°01'15"E	8.00'
L28	S44°38'23"E	6.21'
L29	S44°38'23"E	21.59'
L30	S87°56'20"E	76.88'

LINE TABLE		
NO.	BEARING	DISTANCE
L31	S00°09'46"W	53.26'
L32	N87°41'11"W	22.86'
L33	N85°57'27"W	23.10'
L34	N86°57'43"W	47.82'
L35	N88°21'24"W	48.91'
L36	S87°51'40"W	44.94'
L37	S87°52'16"W	15.79'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

FEET 0 50 100 200 300

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PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	5	7

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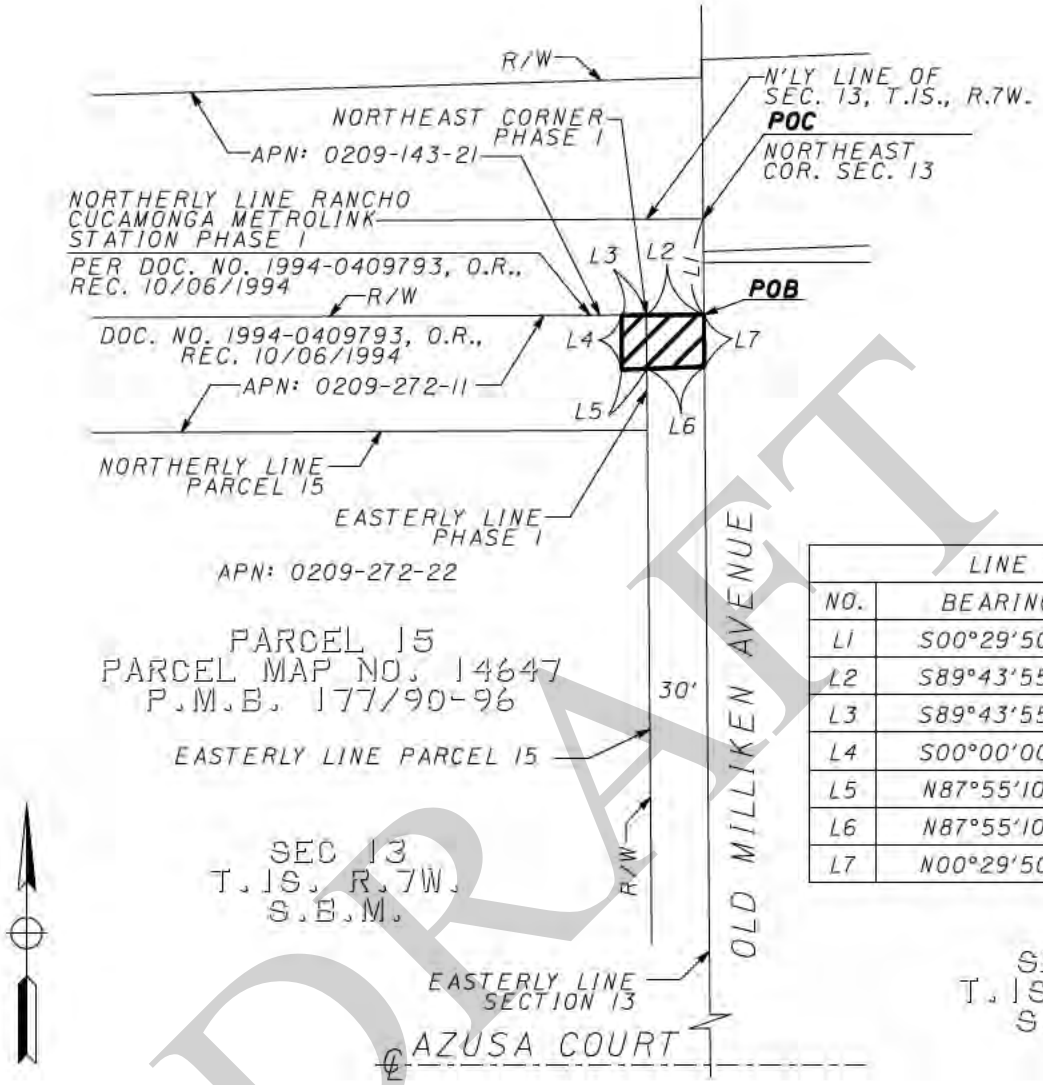
Preliminary

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0209-272-11	PARCEL "B"	EASEMENT	1,192 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S00°00'00"E	28.43'
L5	N87°55'10"E	13.09'
L6	N87°55'10"E	30.01'
L7	N00°29'50"W	27.07'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

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FEET 0 50 100 200 300

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PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	6	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "B"

DESCRIPTION OF IMPROVEMENTS

The Improvements will consist of an elevated railroad viaduct and approximately twenty-one (21) associated support columns and ground-level supporting facilities, such as footings, stairs, utility lines, fencing, access pathways, and grounding mats, located in the Easement Area.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"

Required Insurance

(a) Prior to Construction. On or before DXE's entry onto the Easement Area, DXE shall procure and maintain, at its sole cost and expense, the following insurance:

(1) Commercial General Liability (CGL) with a limit not less than twenty-five million dollars ($25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars ($25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must provide coverage to the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 10. Coverage shall be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement and the location and placement of improvements within the Easement Area, unless caused by an Indemnified Party's gross negligence or willful misconduct.

(b) Insurance During Construction. Prior to commencing physical construction within the Easement Area, DXE shall procure or cause to be procured and maintained throughout construction the following insurance coverage:

(1) Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars $300,000,000 each occurrence, three hundred million dollars ($300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars ($300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the Project. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms providing equivalent coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must cover the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 or 20 10 and accompanied by 20 37 or equivalent forms with approval from City providing coverage to the additional insured for completed operation losses. Coverage must be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement, unless caused by an Indemnified Party's gross negligence or willful misconduct.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

from the completion date of the Project. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

(2) Commercial Automobile Insurance. During all phases of the Project, DXE shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than one million dollars ($1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). During all phases of the Project, DXE shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars ($25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

(3) Workers' Compensation and Employers Liability Insurance. During all phases of the Project, DXE shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars ($1,000,000) each accident, one million dollars ($1,000,000) each employee by disease, and a policy limit of one million dollars ($1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars ($25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies must provide the following:

a. A waiver of subrogation in favor of City and the Indemnified Parties;

b. A provision extending coverage to all states' operations;

c. A voluntary compensation endorsement;

d. An alternative employer endorsement, if applicable to DXE operations;

e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and

g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

(4) Professional Liability Insurance. During all phases of the Project, DXE shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in constructing the Project on the Easement Area, procured, and maintained by those third parties performing such work for or on behalf of DXE. For the lead design contractor for the improvements in privity with DXE, the coverage must not be less than ten million dollars ($10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the Project, the coverage must not be less than five million dollars ($5,000,000) per claim and in the aggregate. DXE shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of the Project, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars ($1,000,000) per claim and in the aggregate. DXE shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars ($25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against DXE by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for DXE or any lead design entity is permitted to exceed five hundred thousand dollars ($500,000), unless commercially unavailable and without prior written approval from City, in its good faith discretion. Coverage must apply specifically to professional activities performed or contracted by DXE in support of the Project. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. DXE agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and DXE shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after the commencement of revenue service or to purchase an extended reporting period for no less than three (3) years after the commencement of revenue service.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(5) Contractor's Pollution Liability. DXE shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with Project dedicated limits of no less than twenty-five million dollars ($25,000,000) per occurrence and twenty-five million dollars ($25,000,000) in the aggregate per policy period dedicated to the Project. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Project. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, DXE shall furnish City evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars ($5,000,000) per loss and an annual aggregate of five million dollars ($5,000,000).

(6) Railroad Protective Liability. DXE shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from City, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad. 20.2.1.7. Aircraft Liability. If applicable, DXE shall procure, or cause to be procured and maintained, aircraft liability insurance with a limit of not less than ten million dollars ($10,000,000) per occurrence in all cases where any aircraft is used on the Project that is owned, leased or chartered by any contractor-related entity or its subcontractors of any tier, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by City or any of the Indemnified Parties is subject to review and written acceptance by City prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance is acceptable in lieu of the coverage listed above but must be provided prior to use of the aircraft.

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(7) Builder's Risk Insurance. DXE shall, upon commencement of construction and with approval of City, obtain and maintain a policy of builder's risk insurance for the Project. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Project. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and SBCTA, and City. Coverage must include property owned by City and the Indemnified Parties that is part of the Project and must not be limited by use of the phrase "as their interests may appear." The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for incorporation into the works located at the Easement Area, in storage or in the course of transit to the Easement Area and all improvements that are within the Easement Area.

The builder's risk policy must include coverage for:

a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;

b. Machinery accidents and operational testing involving equipment covered by the policy;

c. Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars ($25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;

d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;

e. Replacement value of any property or equipment stored either on or off the Easement Area;

f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:

- Collapse;
- Terrorism;
- Earthquake;
- Flood;

g. Plans, blueprints and specifications; and

h. Demolition and increased cost of construction as required by law or

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of DXE.

The policy must provide a "severability of interests provision," "multiple insured's clause" or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

DXE shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction of the Project and prior to commencing operations of the Project within the Easement Area, DXE shall provide evidence of "all risk" property insurance covering the Project/Improvements, with coverage sufficient to cover the probable maximum loss of such improvements and alterations made by DXE pursuant to the terms hereof, which must include "all risk" coverage using the ISO Causes of Loss - Special Form or (with approval from City) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

(c) Insurance During Operations. Upon the commencement of revenue service operations, DXE shall procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars ($323,000,000), or such other limit of liability as Congress may establish from time to time applicable to DXE's passenger rail operations. Such policy or policies must provide coverage to all Indemnified Parties as additional insureds. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy and the policies up to three hundred twenty-three million dollars $323,000,000 must include one reinstatement limit for the period of the policy(ies) term.

(d) Self Insurance. The policy or policies under which coverage required by this Agreement is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars ($10,000,000) on the condition that:

(1) Each insurance policy expressly provides that the obligations of the policy issuer to City as an additional insured are not to be diminished in any way by DXE's failure to pay its deductible or self-insured retention obligation for any reason;

(2) DXE provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to City and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that DXE has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars ($1,000,000); and

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(3) DXE promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

(e) Definition of "Self Insurance". As used in this Agreement, "self insurance" means that DXE is itself acting as if it were the insurance company providing the insurance required under the provisions of this Agreement.

(f) Evidence of Insurance. In accordance with the insurance requirements above, DXE shall furnish evidence of insurance reasonably acceptable to City before DXE enters the Easement Area, before commencing physical construction of the Project within the Easement Area, and before the beginning of operations, as applicable. DXE shall provide City with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. DXE shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to DXE starting work on the Project, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of DXE, any of the coverage required becomes unavailable, DXE shall provide good faith alternative insurance packages and programs, subject to prior approval by City, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

(g) Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, must be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name the Indemnified Parties as additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of DXE under this Agreement, coverage for such additional insureds must not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for City to vicarious liability but shall allow coverage for City to the full extent provided by the policy.

(h) Waiver of Subrogation Rights. To the fullest extent permitted by law, DXE hereby waives all rights of recovery under subrogation against the additional insureds named herein, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of City, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, DXE shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. DXE shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit DXE from waiving the right of subrogation prior to a loss or claim.

(i) Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by City. DXE shall furnish to City, not less than fifteen (15) days before the date the insurance is first required to be carried by DXE, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by City. Such certificates must provide that should any policies described therein be cancelled before the expiration date thereof, notice is to be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, DXE agrees that the insurance coverage required hereunder is not to be terminated or modified in any material way without thirty (30) days advance written notice from DXE to City.

(j) Cure. If DXE fails to procure and maintain insurance required under this Agreement or fails to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, subject to the provisions herein, City is entitled, after thirty (30) days prior written notice to DXE of DXE's default hereunder and DXE's failure to cure such default within said thirty (30) days, ten (10) days for non-payment, to require DXE to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until DXE has provided City reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of DXE under this Section have been met. No cessation of construction or operations required by City under this Section releases or relieves DXE of any of its other obligations under this Agreement.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "F"

EASEMENT FOR AERIAL PLATFORM

[See Attached]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUEST BY,
AND WHEN RECORDED RETURN TO:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

San Bernardino County Transportation Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit and Rail

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Free Recording Requested per Government Code 27383.

EASEMENT FOR AERIAL PLATFORM
(Brightline West Platform)

THIS EASEMENT FOR AERIAL PLATFORM ("**Agreement**") is dated as of _____ 20__ ("**Effective Date**") and is entered into by and between the CITY OF RANCHO CUCAMONGA, a California municipal corporation ("**City**") and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a California municipal corporation ("**SBCTA**") (City and SBCTA, collectively, "**Grantor**"), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California ("**Grantee**"). City, SBCTA and Grantee are sometimes hereinafter referred to individually as "**Party**" and collectively as the "**Parties**." Decisions of Grantor under this Agreement shall require the joint consent or approval of both SBCTA and City, with the manner of providing such consent or approval determined by each agency.

RECITALS

A. Grantee plans to construct a high-speed passenger rail system from Las Vegas, Nevada to Rancho Cucamonga, California ("**HSR System**"). One portion of this system will include an elevated track and passenger platform structure within a portion of property jointly owned by SBCTA and the City that is improved with parking and transit improvements, said property being more particularly described on **Exhibit A** attached hereto and made a part hereof ("**Grantor's Property**").

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

B. Grantee desires that it be granted an aerial easement for the elevated track and platform structure for passenger rail (the "**Elevated Structure**") over the portion of the Grantor's Property legally described and depicted in **Exhibit B** attached hereto and made a part hereof (the "**Aerial Easement Area**"), and a surface and subsurface easement for ground-level supporting facilities within, through and across only those portions of the Ground Easement Area expressly and specifically designated on plans approved in advance and in writing by the Public Agencies which plans Grantee must ensure specifically show such ground-level supporting facilities, as necessary to support the Elevated Structure and the HSR System, such as columns, footings, stairs, utility lines, grounding mats, fencing, access pathways, and sheer walls (seismic) supporting the Elevated Structure (collectively, the "**Supporting Facilities**" and, together with the Elevated Structure, the "**Improvements**") on, over, under, through, above and across the portions of the Grantor's Property below the Aerial Easement Area as necessary to support the Improvements (collectively, the "**Ground Easement Area**", and with the Aerial Easement Area, hereinafter collectively referred to as the "**Easement Area**"). The Improvements must be designed and constructed by Grantee to continue to allow equipment to pass under and between such Improvements as necessary for the Public Agencies to access and maintain, in a commercially reasonable manner, the adjacent Metrolink tracks; provided, however, the Public Agencies must exercise commercially reasonable care to avoid contact with any of the Improvements during the movement of any such equipment.

C. Grantor's public purposes in entering into this Agreement include facilitating the development of transportation that will benefit the public, providing employment opportunities resulting from the work to be performed by Grantee and the operation of a high-speed rail project, and obtaining fair market compensation for the easement interest granted herein (and such compensation shall become part of the general funds of the City, in part, and SBCTA, in part, and in turn used for public purposes).

D. Any elevation described in this Agreement is given in [NAVD 88] datum.

AGREEMENT

1. Grant of Easement; Term; Consideration.

(a) Exclusive Easement for Improvements. Subject to the terms and conditions of this Agreement, Grantor does hereby grant, bargain, sell and convey to Grantee, its successors and assigns, the following: (i) an exclusive, permanent aerial easement for the purpose of constructing, installing, inspecting, maintaining, repairing, replacing, removing, using and operating the Elevated Structure over the portion of the Grantor's Property within the Aerial Easement Area (the "**Aerial Easement**"); and (ii) a permanent exclusive easement on, over, under, above, through and across the Ground Easement Area for the purpose of constructing, installing, inspecting, maintaining, repairing, replacing, and removing the Supporting Facilities supporting the Elevated Structure (collectively, the "**Ground Easement**", and with the Aerial Easement, hereinafter collectively referred to as the "**Easements**").

(b) Non-Exclusive Access Easement. In addition, the Grantor hereby grants to Grantee, its contractors, subcontractors, agents, employees, lessees, licensees, successors and assigns, a permanent and non-exclusive easement for vehicular and pedestrian ingress, egress and

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

access on, over, across and upon the Grantor's Property, as the same may be developed and redeveloped from time to time provided that in all events access to the Easement Area is provided, as reasonably necessary for the purpose of performing such inspection and minor maintenance and repair of the Improvements. For purposes of this Section 1(b), minor maintenance and repair of Improvements involves any maintenance and repair work that does not require the closure of any parking spaces or materially impact Grantor's access through Grantor's Property.

(c) Access for Construction and Installation. Any access to Grantor's Property for the initial construction and installation of the Improvements within the Easement Area shall be pursuant to the temporary construction easement provided for in the Disposition and Development Agreement between Grantor and Grantee and dated October 5, 2022 ("**DDA**"). Any additional construction or installations shall be covered by Section 1(e) below and shall require the consent of Grantor. Grantee acknowledges and agrees that it is not permitted to construct or install any improvements outside the Easement Area.

(d) Access for Major Maintenance and Repair. Except for minor maintenance and repair covered by Section 1(b) above or in the event of an emergency, in which event telephonic notice as soon as practical is acceptable in lieu of advance written approval, any access to Grantor's Property for maintenance and repair shall require the prior written approval of Grantor, not to be unreasonably withheld, conditioned or delayed, and which request shall be reviewed and granted or denied within ten (10) business days of the written request. Grantee shall tailor its request for access to avoid interference with Grantor's rights to or use of Grantor's Property where possible or minimize interference to the extent avoidance is not possible. Any such access shall be consistent with the safety protocols described in Section 12 and shall at all times maintain at least one reasonably convenient ADA compliant path of pedestrian travel to all public transit and rail services located on or adjacent to Grantor's Property and furthermore, any such access shall maintain no less than the minimum number of ADA accessible parking stalls pursuant to statutory requirements.

(e) Access for Replacement and Removal. Any access to Grantor's Property for construction, installation, replacement or removal of the Improvements after initial construction and installation under Section 1(b) above shall require an encroachment agreement or other temporary construction easement from Grantor, not to be unreasonably withheld, conditioned, or delayed.

(f) Adjustments to Easement Area. Construction of the Improvements must be within the boundaries of the Easement Area, however, the Parties acknowledge that final design and construction of the Elevated Structure and Supporting Facilities may require a non-material adjustment of the description of the Easement Area; provided, however, the location of the Supporting Facilities shall be designed to maximize Grantor's ability to use the surface area below the Aerial Easement Area for parking, pedestrian access, and any legally permitted purposes that does not materially interfere with the Easements granted herein; the plans for the Supporting Facilities shall be subject to Grantor's approval. Upon completion of the construction of the Elevated Structure and Supporting Facilities, Grantee shall provide an accurate as-built survey to Grantor and detailed as necessary for Grantee to produce a revised legal description acceptable to Grantor, and Grantor and Grantee agree to amend this Agreement (which amendment shall be recorded) to replace and refine (but not materially enlarge) the descriptions of the applicable

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Easement Area attached to this Agreement with the descriptions for the same as set forth in the as-built survey by mutually executing and recording such amendment in the Official Records of the County of San Bernardino. In connection with the foregoing, the Parties acknowledge and Grantee agrees that the area below the Aerial Easement Area, excluding the Ground Easement Area, is retained by the Grantor and may continue to be used by the public for transportation and related purposes as well as supporting and ancillary purposes and uses (which may include without limitation parking) or any other valid legal use, provided such other use does not unreasonably interfere with Grantee's use of the Ground Easement Area for the purposes set forth in this Agreement.

2. **Compensation.** As a condition precedent to Grantee's occupancy or use of the Easement Area, Grantee will pay to Grantor the one-time sum equal to the fair market value of the easement interest and rights described herein, as determined by an appraisal obtained by Grantor, with one half of such sum payable directly to SBCTA and the other half payable directly to City.

3. **AS-IS.** Grantee accepts the condition of the Grantor's Property, including without limitation the Easement Area, in its current "AS-IS," "WHERE IS" and "WITH ALL FAULTS" condition, without representation or warranty, express or implied, and subject to all existing matters of record and all matters that would be revealed by a diligent inspection of the Easement Area. Grantee agrees that its rights and remedies under this Agreement, including the Easement as well as its rights and interests in the Easement Area, including with respect to the installation, maintenance, and operation of the Improvements, are subject and subordinate to any (and all) existing easement(s), covenant(s), condition(s), restriction(s), reservations, rights of way, liens, encumbrances, and other matters of record on, under, affecting or relating to the Easement Area. Grantee also acknowledges that Grantor makes no representations, express or implied, as to the legal compliance, including compliance with laws governing Hazardous Materials (defined below) and other environmental laws, the physical condition, including the environmental condition, of or title to the Easement Area. This Agreement does not constitute, nor grant permission to use or occupy property, including property rights or interests, not belonging to, in the possession of or under the control of Grantor, and permission to use or occupy such property must be obtained from every owner, holder, user, possessor and controller of such property, separate from and in addition to this Agreement.

4. **Authorized Improvements.** The rights of Grantee to install, maintain, and operate the Improvements are subject to the terms of this Agreement, including Grantor's right to review and approve any and all Improvement plan(s), in its proprietary capacity as outlined below, as well as any applicable laws and license, permitting and approval requirements and conditions (and Grantor does not waive or release, and shall continue to have, any and all of its right(s) or power(s) in its governmental capacity in that regard to the extent applicable). In addition, any review and/or approval of any or all of such Improvement plan(s) by Grantor in its proprietary capacity as property owner prior to construction of the Improvements (i) shall not be deemed to be a review of any plans, drawings or specifications from an engineering or technical standpoint, (ii) may not be relied upon by Grantee (other than for the purpose of indicating that such review and approval occurred) and (iii) does not release, relieve or waive any obligation, liability or duty of Grantee or any right or remedy of Grantor (other than relating to whether the review and/or approval, as applicable, has occurred).

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

5. **Standards for Rail Facilities.** Grantor acknowledges that standards promulgated by and decisions issued by the Federal Railroad Administration ("**FRA**") and Surface Transportation Board ("**STB**") govern the design, construction, operation, and maintenance of railroad facilities within their jurisdiction and that such regulations, standards, and decisions might as a matter of law preempt and supersede requirements that may otherwise apply under state or local laws. Grantor acknowledges that it is not a regulatory agency under federal law or with respect to California utilities regulated by the California Public Utilities Commission, and the Parties agree that Grantor will have no liability for not inspecting or any failure to inspect rail facilities or operations on the Easement Area for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the California Public Utilities Commission. Notwithstanding this Section 5, Grantor reserves and does not waive or release any (or all) of its governmental right(s) and power(s), and Grantee acknowledges that Grantor is entering into this Agreement solely in its proprietary capacity.

6. **Repair of Damage.**

(a) Damage to Public Improvements. Grantee shall promptly notify Grantor in writing if it becomes aware of any damage to or destruction of Public Improvements (as defined below). Whether or not Grantee notifies Grantor, if any damage is caused to Public Improvements directly or indirectly by Grantee (including, without limitation, Grantee's officers, directors, agents, representatives, employees, partners, managers, contractors, or subcontractors (collectively "**Grantee Parties**")) such repair work may be conducted by Grantor at Grantee's sole cost and expense or, if so authorized in writing by Grantor, may be repaired by Grantee at Grantee's sole cost and expense (whereupon Grantee shall promptly coordinate with Grantor on any necessary closures, and promptly perform the repairs). Grantee acknowledges and agrees that the foregoing terms of this Agreement, including their operation, will not waive, relieve or release Grantee from liability for damage or destruction, including any claim, demand, loss, liability, damage, cost or expense, including attorneys' fees, incurred or suffered by Grantor or others, including damage to any property or injury to, including death of, any person, arising out of, resulting from or related to such damage or destruction caused directly or indirectly by Grantee or the Grantee Parties.

(b) If Grantor elects to perform repair work for which Grantee has some or all responsibility, Grantee shall reimburse Grantor for its share of the reasonable costs of the repair work within thirty (30) days after delivery of a statement from Grantor describing the costs, including a statement detailing such costs and expenses. In the event payment in full is not made within said thirty (30) day period, the outstanding balance shall accrue interest at the maximum legal rate or a rate of twelve percent (12%) per annum, whichever is less, compounding monthly from the end of said thirty (30) day period until paid to cover administrative and other costs and expenses.

7. **Encumbrance.** Grantee may, at any time and from time to time, encumber to any bank, insurance company or other institutional lender, herein called "Mortgagee," by one or more deeds of trust (the "**Security Instrument**"), all of Grantee's easement interest under this Agreement, provided that (i) such Security Instrument is subject and subordinate to this Agreement and all other interests of the Grantor hereunder, (ii) such Security Instrument shall not constitute in any way a lien or encumbrance on Grantor's rights or interests, and (iii) the Security Instrument shall not encumber any obligations that do not relate to the HSR System. No Mortgagee shall be

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

liable to Grantor as the successor to the rights and obligations of Grantee under this Agreement unless and until such Mortgagee acquires the easement interest hereunder through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other assignment, action or remedy, nor shall a Mortgagee be liable for any defaults that occur after it conveys the easement interest hereunder.

8. **Ownership of Improvements.** The Improvements shall be owned by Grantee during the duration of this Agreement. Upon the termination of this Agreement by Grantor pursuant to (and subject to) Section 14, or otherwise by Grantee, the Improvements shall become the sole property of Grantor without compensation to Grantee or any Mortgagee, or, if Grantor so elects and upon written notice to Grantee within ninety (90) days of termination, shall be demolished and removed by Grantee from the Easement Area at Grantee's sole expense within twelve (12) months from the date of said notice (subject to extension for Force Majeure Events or by written agreement of the Parties), and the foregoing (and defense and indemnity obligations of Grantee under this Agreement) shall survive the termination of this Agreement. Nothing herein affects Grantor's rights or remedies as a governmental entity, such as the right to cause Grantee to abate a nuisance, and in connection therewith, remove Improvements (if Grantor has such a right as a governmental entity under applicable law). Except as expressly limited by the terms of this Agreement, including, but not limited to, Section 14 of this Agreement, in the event of a breach, default or failure of performance by Grantee, Grantor shall have such rights and remedies as are provided under applicable law or in equity, including the right or remedy of declaratory relief, specific performance, injunction and restitution. For the avoidance of doubt, Grantor acknowledges and agrees that the construction and operation of the HSR System in accordance with this Agreement and applicable law and in a commercially reasonable manner is not a nuisance.

9. **Waiver and Release.** Grantee expressly waives, releases and relinquishes (a) any and all claims, causes of action, rights and remedies Grantee may now or hereafter have against Grantor, and its officials, officers, employees, consultants, contractors, attorneys and agents (collectively, "**Grantor Entities**"), whether known or unknown for all events and circumstances arising prior to the date of this Agreement, with respect to liability for any (and all) claim(s), demand(s), loss(es), liability(ies), damage(s), cost(s) and expense(s), including damage to or loss, upon, above, beneath, or across the Easement Area or adjacent property owned by Grantor or either of them, unless and except to the extent such damage or loss is caused by the gross negligence or willful misconduct of Grantor Entities, and (b) all claims of contribution and reimbursement for costs of remediating Hazardous Materials (defined in Section 15 below) released or existing prior to the date of this Agreement in, on or near the Easement Area.

GRANTEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, GRANTEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____
Grantee's Initials

The waivers and releases by Grantee contained in this Agreement shall survive the termination of this Agreement and shall be binding upon the assignees, transferees, and successors-in-interest of Grantee.

10. **Grantor's Access.** Grantee acknowledges that the Grantor's Property, including without limitation the Easement Area, may contain certain Grantor-owned facilities, whether public, enterprise, proprietary or otherwise as well as publicly and/or privately owned utilities, including, without limitation, storm drains, water, sewer, gas, electrical, cable television, fiber optics and appurtenant facilities, hereinafter referred to collectively as "**Public Improvements**". Except for access to the Improvements, which access is covered in the following sentence, Grantor and utility providers shall have access at any time, from time to time and without notice or liability to the Easement Area, including without limitation the Public Improvements. Except in the event of an emergency, in which event telephonic notice as soon as practical is acceptable in lieu of advance written approval, if Grantor (being either or both SBCTA and City, as the case may be) desires access to the Improvements, Grantor shall request Grantee's prior written approval, not to be unreasonably withheld, conditioned or delayed, and which request shall be reviewed and granted or denied within ten (10) business days of the written request, and Grantee shall endeavor to deliver approval of such request within five (5) business days when possible. Grantor shall tailor its request for access so that it does not unreasonably interfere with Grantee's rights to or use of the Easement Area. Any such access must be consistent with the safety protocols described in Section 12 and Grantee shall cooperate with Grantor to determine how to safely provide access to the Easement Area for purposes of the work to be performed. Grantee shall have the right, but not the obligation, to add appropriate signage to the Improvements, including, without limitation, signs prohibiting access and requiring advance notice and permission prior to entry. Under no circumstances shall Grantor be liable in damages to Grantee, or to any successor, assign, assignee or Mortgagee, including any successor in interest, for Grantor's failure to request or obtain Grantee's permission, and Grantee covenants on behalf of itself and its successors and assigns, including successors in interest and any Mortgagee, not to sue for or claim damages against Grantor as a result of Grantor's breach of the notice requirements in this Section 10.

11. **Coordination of Grantor Construction Activities**. If Grantor (being either or both SBCTA and City, as the case may be) desires to (i) do any digging or trenching on its property within twenty-five (25) feet of any of Grantee's columns built as part of the Supporting Facilities or below the Improvements or digging or trenching adjacent to underground utilities or grounding mats (other than minor digging for sprinklers, sign posts, or similar non-substantive digging), or (ii) operate a crane or other equipment in a location and/or configuration which is capable of extending into or above the Aerial Easement Area or within twenty-five (25) horizontal feet of

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

such Aerial Easement Area, then the Grantor shall give Grantee notice of such intent no later than forty-five (45) days (or for small machinery fifteen (15) days) before such work is to commence, and Grantee shall have fifteen (15) days (or five (5) business days for small machinery) in which to review and comment on the intended work. Grantor shall reasonably consider Grantee's concerns, but Grantor shall not be prevented from operation, use, or construction on Grantor's Property, so long as Grantor complies with all applicable standards, laws, regulations, and policies in order to reasonably safeguard the Improvements and rail operations.

12. **Safety Protocols.** Grantee and Grantor will comply in good faith with all written safety procedures and protocols mutually developed by the Parties, as the same may be amended by the Parties in writing from time to time, and in all events to be prepared prior to the start of construction and rail operations. The Parties acknowledge that additional agencies, including the Federal Railroad Administration and emergency responders, will participate in the development of safety protocols and procedures.

13. **Utilities.** As between Grantee and Grantor, any required relocation of a utility that interferes with Grantee's project within the Easement Area is the sole responsibility of Grantee. Upon written request by Grantee, Grantor will provide utility contact information known to Grantor and make its right-of-way utility staff, if any, reasonably available on a reimbursable basis and Grantee shall pay or reimburse Grantor (within thirty (30) days after delivery (including deemed receipt pursuant to Section 21(a) below) of written demand) for said reasonable cost(s) and expense(s) incurred by Grantor. Grantee shall also be subject to the interest upon late payments as described in Section 6.

14. **Termination.** In the event (i) Grantee fails to commence construction of either the Improvements within the Easement Area or the adjacent train station within three (3) years of the Effective Date (as will be extended by Grantor if Grantee has made material progress toward meeting the requirements to commence construction), (ii) Grantee fails to complete construction within seven (7) years of the Effective Date (subject to a Force Majeure Event or any extension by written agreement of the Parties) or (iii) if, after commencement or re-commencement of passenger rail service, Grantee fails to actively operate the Improvements for a period of eighteen (18) consecutive months (any period of non-operation due to construction or maintenance work which Grantee is performing with reasonable diligence, or subject to a Force Majeure Event or any extension by written agreement of the Parties is deemed to be operating for the purposes of this item iii) ("**Abandonment**"), Grantor may, subject to Section 14(a) below, after thirty (30) days written notice to Grantee, deem the Easements abandoned and terminate this Agreement; provided, however, Grantor may not terminate this Agreement if Grantee cures the Abandonment by resuming daily passenger rail service within the Easements within the thirty (30) day period after written notice by Grantor. Additionally, Grantor may terminate this Agreement if Grantee fails to comply with this Agreement and then fails to cure such default within thirty (30) days after written notice from Grantor, and then continues to fail to cure such default within five (5) business days following a second written notice from the Grantor sent after the initial 30-day period, with each such notice stating in all capital and bolded letters of at least 12 point font: "FAILURE TO CURE SHALL RESULT IN TERMINATION"; provided, however, the Grantor may not terminate this Agreement if Grantee commences to cure the default during the applicable cure period after written notice by the Grantor and thereafter diligently prosecutes the cure to completion.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(a) Right of Mortgagee to Cure Defaults. Provided that Mortgagee or Grantee has provided Grantor in writing the address for sending notices to the Mortgagee and satisfactory documentation of its status as a Mortgagee, each Mortgagee who has been so identified to the Grantor as a Mortgagee will have the same period, commencing upon written notice to each such Mortgagee of such default, to remedy or cause to be remedied the default complained of as Grantee has hereunder to cure such default, plus an additional ninety (90) days in the case of any other default which is capable of being cured by the Mortgagee (and such ninety (90) day period, upon written notice provided to Grantor within said ninety (90) day period, will be extended for a reasonable period of time to gain possession of the interest of Grantee under the Agreement through legal proceedings if necessary to cure such default, provided the Mortgagee commences the proceedings within one hundred eighty (180) days after the initial written notice by Grantor and thereafter diligently prosecutes such proceedings) which period will be extended as necessary for a Mortgagee to obtain relief from any stay in a bankruptcy proceeding in which Grantee is a debtor, provided the Mortgagee is diligently prosecuting such relief and has assumed the obligations of this Agreement in writing (and such written assumption shall have been delivered to Grantor), and Grantor will accept performance by such Mortgagee within the time specified herein as timely performance by Grantee; provided, however, that (i) nothing contained herein will be deemed to impose upon any Mortgagee the obligation to perform any obligation of Grantee under this Agreement or to remedy any default by Grantee hereunder, and (ii) in the event that the Mortgagee or a third party succeeds to Grantee's interest under this Agreement pursuant to foreclosure of the Security Agreement, exercise of a power of sale thereunder or a deed in lieu thereof, Grantor waives, as against the Mortgagee or such third party, any default by Grantee that is not susceptible to cure by said Mortgagee or third party due to the default being personal to Grantee, including without limitation and as an example only, an obligation of Grantee to provide a financial statement. For avoidance of doubt, any default that can be cured with the payment of money is susceptible to cure. Any provision of this Agreement to the contrary notwithstanding, no performance by or on behalf of a Mortgagee will cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Property or bound by or liable under this Agreement, unless the Mortgagee is actually in possession of the Property. In addition, the Parties agree that if there is more than one (1) Mortgagee (or collateral assignee), then all cure periods provided in this paragraph will run concurrently. Upon the full and timely performance by Mortgagee of the obligation or obligations the nonperformance of which was the subject of the notice of default given to Mortgagee pursuant to this Section, such default shall be deemed cured and shall no longer give rise to any rights and remedies of Grantor; provided, however, that Mortgagee's cure of any default under this Agreement by Grantee shall not excuse or waive any future default under this Agreement by Grantee or preclude or limit the exercise of any rights or remedies afforded Grantor under this Agreement as a result of such future default. Notwithstanding any provision to the contrary contained elsewhere in this Agreement, Grantor will not have the right to terminate this Agreement or re-enter the Property by reason of a default by Grantee that is reasonably susceptible of cure by Mortgagee, during the period specified in this Section 14 in which a Mortgagee is entitled to cure a default by Grantee.

(b) In each instance of a default, Grantor may in its reasonable discretion determine that no party with a right to cure is diligently prosecuting a cure to completion; provided, however, that where cure of the subject default has not been completed within three hundred (300) days of Grantor's first notice to Grantee to cure said default, such a determination shall be deemed reasonable under this Agreement. Should Grantor reasonably determine that no party is diligently

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

prosecuting a cure to completion, subject to the prior sentence, then all cure periods for the default subject to Grantor's determination shall be deemed to have run their course and Grantor has the right to immediately terminate this Agreement.

15. **Hazardous Materials.**

(a) Grantee covenants that it will not handle or transport Hazardous Materials in the Easement Area except for removal, transportation and disposal in compliance with laws regarding excavated soils which are or may be contaminated with Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or passenger trains; and (d) asbestos. Notwithstanding the foregoing, Grantee may handle and transport Hazardous Materials normally and customarily used in the development, construction and operation of railroad infrastructure, including passenger stations, that are used, stored, transported and disposed of in accordance with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record. As an example only, train infrastructure typically entails refueling maintenance vehicles or using cleaning supplies for routine maintenance.

(b) Grantee further agrees that, at Grantor's request, it will furnish Grantor with proof, satisfactory to Grantor, that Grantee is in compliance with all such laws, rules, regulations, orders, decisions and ordinances regarding Hazardous Materials.

(c) Notwithstanding anything else contained in this Agreement, Grantee shall indemnify, defend and hold harmless Grantor Entities from and against any and all claims, demands, liabilities, losses, damages, costs and expenses arising out of, resulting from or relating

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

to injuries to any person, including wrongful death, or damage to property, including without limitation, property of Grantor and Grantee, or otherwise (including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs) resulting in whole or in part from Grantee's acts or omissions with respect to Hazardous Materials; provided, however, that the foregoing shall not apply to the extent which a release of Hazardous Materials is the result of Grantor Entities' negligence or willful misconduct following the Effective Date. Grantee agrees to reimburse Grantor for all reasonable costs of any kind incurred as a result of the Grantee's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of Grantee's handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and or adjacent property.

(d) Grantor shall have the right at any time to inspect the Improvements and Public Improvements in order to monitor Grantee's compliance with this Agreement, subject to the provisions of Section 10 above.

16. **Insurance.** Grantee shall obtain and maintain insurance, at its sole cost and expense, as required in **Exhibit "D"** attached hereto.

17. **Indemnity.** Grantee shall defend, indemnify and hold Grantor Entities free and harmless of, from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind, including attorneys' fees and costs, in any manner arising out of, resulting from or relating to any acts, omissions or willful misconduct of or by Grantee or the Grantee Parties in performance of this Agreement, breach, default or failure of performance of this Agreement, including failure of timely performance, use of the Easement Area or the construction, use, or operation of the Improvements or the failure to comply with law, including the failure to comply (or failure of its contractors to comply) with California Labor Code Section 1720 et seq., including without limitation Labor Code Section 1781, which are (a) suffered or incurred by or alleged against Grantor, Grantor Entities and/or any of the Grantee Parties, in law or equity, and/or (b) to persons or property, including death. Grantee shall further defend, indemnify and hold harmless Grantor Entities from any and all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings brought against the Grantor Entities to challenge, attack, seek to modify, set aside, void or annul any Grantor decision made in connection with this Agreement or Grantee's use of the Easement Area (based on noncompliance with the California Environmental Quality Act or otherwise). Grantee shall defend, with counsel reasonably acceptable to Grantor and at Grantee's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, which may be brought or instituted against any Grantor Entities. Grantee shall pay and satisfy any judgment, award or decree that may be rendered against any Grantor Entities. Grantee shall reimburse such parties for any and all legal expenses and costs incurred by one or more of them in connection with this Agreement or the indemnity and/or related rights, remedies and other protections herein provided. Grantee's obligations hereunder shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by Grantor Entities.

18. **Covenant Running With Land.** This Agreement shall be deemed a covenant running with the land with respect to the Easement Area, burdening the Easement Area and benefitting the real property interests associated with the HSR System. All of the covenants,

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

obligations, and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives, assigns and successors-in-interest to the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of the Easement Area shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person acquires an interest in the Easement Area. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the Easement Area or any portion thereof or interest therein shall conclusively be deemed to have been executed, delivered and accepted subject to this Agreement.

19. **Estoppel Certificates.** Each of the Parties hereto agrees, promptly following a request from the other Party hereto, to furnish from time to time in writing certificates containing truthful estoppel information and/or confirmations of the agreements, obligations and easements contained in this Agreement, or otherwise appurtenant to this Agreement, in a form and substance reasonably satisfactory to the Party from whom such certificate is sought.

20. **Attorneys' Fees.** In the event either Party brings a suit, action, or other proceeding against the other Party that in any way relates to or arises out of this Agreement, each Party shall bear its own legal costs and expenses.

21. **Miscellaneous.**

(a) Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Grantee: DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: Legal Department

City: City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SBCTA San Bernardino County Transportation Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit and Rail

Such notice shall be deemed made when delivered by certified mail, return receipt requested, or by reputable overnight messenger delivery service, and addressed to the Party at its applicable address and shall be deemed delivered on the date of delivery or refusal to accept or inability to effect delivery shown on the return receipt, or one (1) business day after delivery to the messenger service for overnight delivery, as applicable.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(b) Entire Understanding. This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein. The recitals are hereby incorporated herein by reference.

(c) Invalidity. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors of the respective Parties. Except as set forth in Section 7 above, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

(e) Governing Law. Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to Grantee because of its status as a common carrier regulated by the federal government.

(f) Venue. Venue for any legal action between the Parties related to this Agreement will be in the Superior Court of San Bernardino County, California or the United States District Court, Central District Court of California. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located.

(g) Exhibits. All exhibits attached hereto form material parts of this Agreement.

(h) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(i) Survival. All defense, indemnity, and payment obligations of Grantee that arise or relate to events occurring prior to the termination of this Agreement shall survive such termination.

(j) Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane (or tropical cyclone), lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond Grantee's or Grantor's control prevent performance of this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing Party, (a "**Force Majeure Event**") then performance of this Agreement by either Party will be suspended or excused to the extent and for a period commensurate with such occurrence.

22. **Property Taxes, Including Possessory Interest Taxes.** This Agreement creates a possessory interest that may be subject to possessory interest tax (a type of California property tax), and Grantee shall pay any such possessory interest taxes that may be assessed. If the

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Improvements are taxed as an improvement on the Easement Area, Grantee shall, upon demand, pay such taxes allocable to the Improvements, as determined by the taxing authority. Grantor shall reasonably cooperate and assist Grantee, at no costs to Grantor, in efforts to obtain a separate assessment for the Improvements, including executing any reasonably required applications or reasonable documents. Grantee shall pay when due all personal property taxes levied against or relating to the Improvements.

[Signature Page Follows]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

The Parties have executed this Agreement as of the date first written above.

CITY:	**SBCTA:**	**Grantee:**
CITY OF RANCHO CUCAMONGA, a California municipal corporation	SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a California county transportation authority	DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability corporation
By: L. Dennis Michael Mayor City of Rancho Cucamonga	By: Art Bishop Board President San Bernardino County Transportation Authority	By: Sarah Watterson President DesertXpress Enterprises, LLC

ATTEST:

By:
Janice C. Reynolds
City Clerk
City of Rancho Cucamonga

APPROVED AS TO FORM	APPROVED AS TO FORM	APPROVED AS TO FORM
By: Nicholas R. Ghirelli, City Attorney Richards, Watson & Gershon	By: Julianna K. Tillquist General Counsel San Bernardino County Transportation Authority	By: David Pickett Associate General Counsel DesertXpress Enterprises, LLC

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A'

Legal Description of Grantor's Property

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

All that portion of said Parcel 15, together with all that portion of said Rancho Cucamonga Metrolink Station Phase I;

Excepting therefrom that portion lying easterly of the following described line:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning**;

Thence South 00°10'37" West 569.98 feet to the southerly line of said Parcel 15, also being the **Point of Terminus**;

Parcel contains 227,529 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.00 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-1' attached hereto and made a part hereof.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: 9/23/2022

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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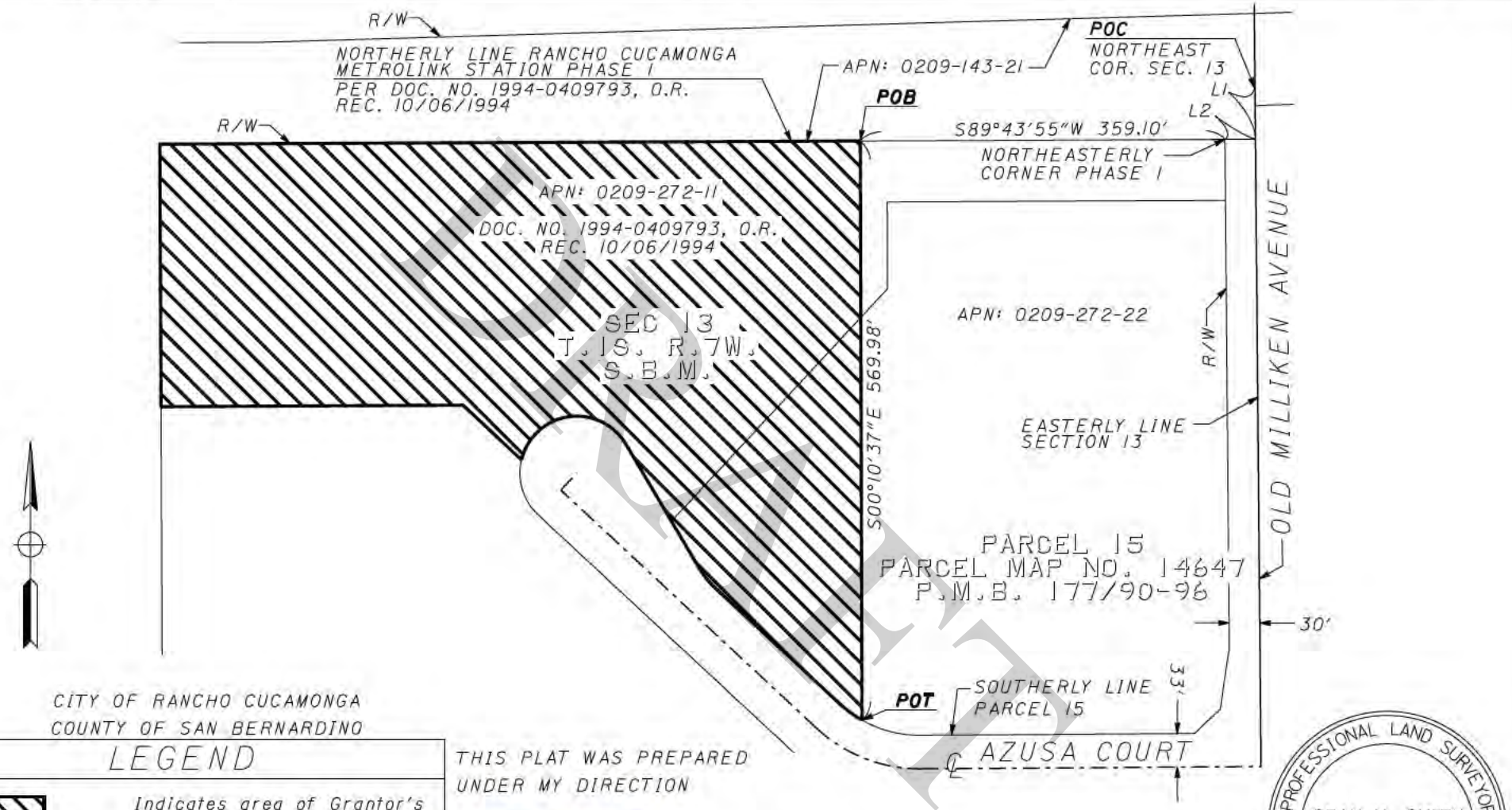
EXHIBIT 'A-1'

APN	TYPE OF ESTATE	AREA
0209-272-11 & 0209-272-22	EASEMENT	227,529 SF



LEGEND

	Indicates area of Grantor's Property
POC	Point Of Commencement
POB	Point of Beginning
POT	Point of Terminus
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 — DATE 9/23/2022

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 75 150 300 450

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riv
195

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "B"

DESCRIPTION OF AERIAL EASEMENT AREA

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B'

Legal Description

APN: 0209-272-11

That portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of San Bernardino County, in the City of Rancho Cucamonga, in said County, State of California, described as follows:

Commencing at the northeast corner of said Section 13 of Township 1 South, Range 7 West, S.B.M., as shown on Parcel Map No. 14647, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County;

Thence along the easterly line of said Section 13, as shown on said Parcel Map, South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning;**

Thence continuing along said northerly line South 89°43'55 West 651.28 feet;

Thence leaving said northerly line South 02°09'27" East 60.00 feet;

Thence North 87°54'30" East 649.57 feet;

Thence North 00°10'37" West 39.29 feet to said northerly line and the **Point of Beginning.**

Parcel contains 32,283 square feet, more or less.

Excepting therefrom all that portion below a level plane 16.00 feet above the existing ground.

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Preliminary
02/26/2024 5:15:14 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'B-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

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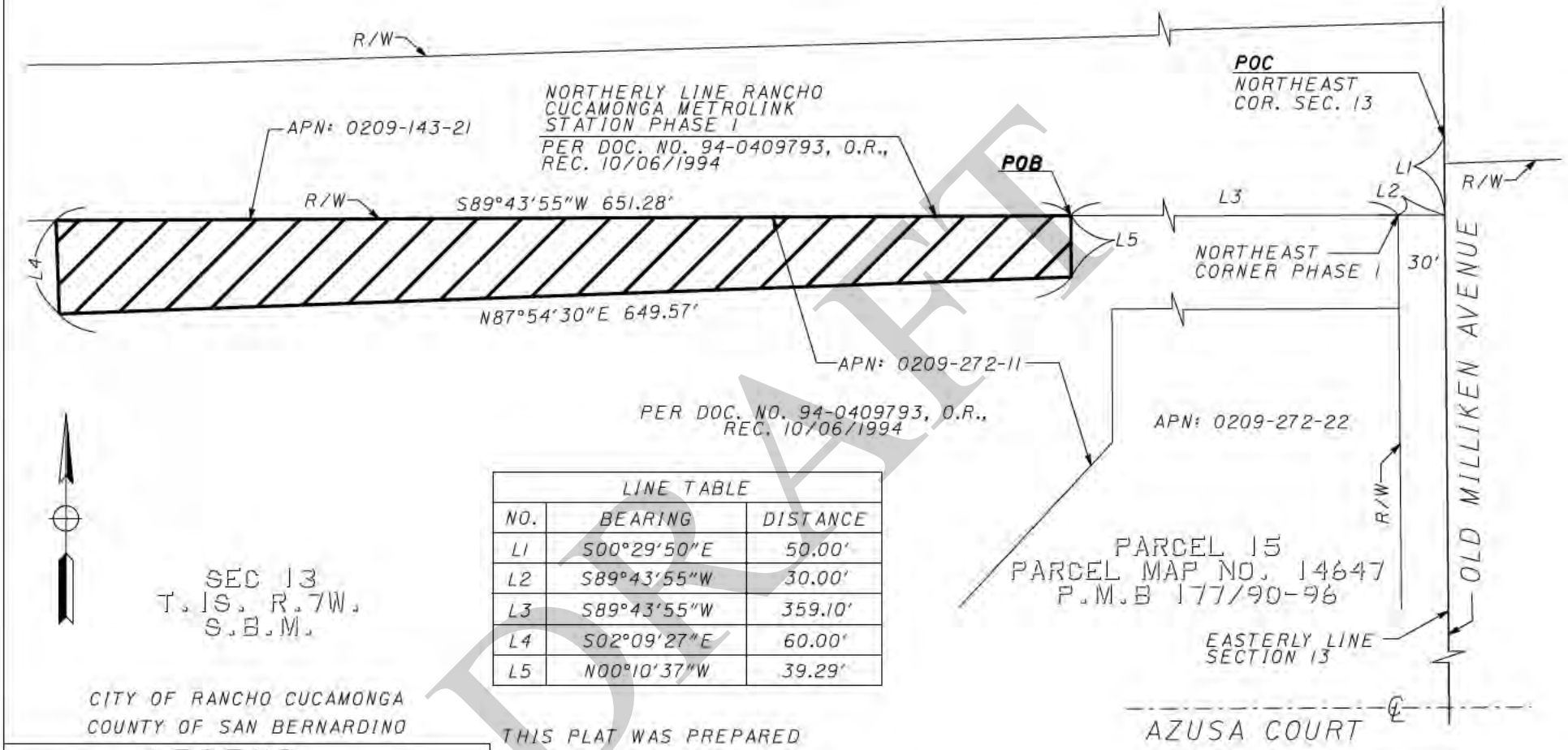
Preliminary
02/26/2024 5:15:16 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-1'

APN	TYPE OF ESTATE	AREA
0209-272-11	EASEMENT	32,283 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	359.10'
L4	S02°09'27"E	60.00'
L5	N00°10'37"W	39.29'

SEC 13
T.1S., R.7W.,
S.B.M.

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary
02/26/2024 3:15:12 PM

SEAN M. SMITH, PLS 8233 DATE

FEET 0 50 100 200 300

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

LEGEND

▨	Indicates area to be acquired
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	1

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"

INTENTIONALLY OMITTED

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "D"

Required Insurance

(a) Prior to Construction. On or before Grantee's entry onto the Easement Area, Grantee shall procure and maintain, at its sole cost and expense, the following insurance:

(1) Commercial General Liability (CGL) with a limit not less than twenty-five million dollars ($25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars ($25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from Grantor) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must provide coverage to the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 and CG 20 24, or their equivalent. Coverage shall be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement and the location and placement of improvements within the Easement Area, unless caused by an Indemnified Party's gross negligence or willful misconduct.

(b) Insurance During Construction. Prior to commencing physical construction within the Easement Area, Grantee shall procure or cause to be procured and maintained throughout construction the following insurance coverage:

(1) Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars $300,000,000 each occurrence, three hundred million dollars ($300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars ($300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the Project. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from Grantor) substitute forms providing equivalent coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must cover the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 (or CG 20 26, CG 20 24, and 20 10 with the restriction that the work is being done for or on behalf of an additional insured removed from the endorsement accompanied by 20 37 or equivalent forms and subject to market availability with approval from SBCTA providing coverage to the additional insured for completed operation losses with the restriction that the work is being done for or on behalf of an additional insured removed from the endorsement). Coverage must be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement, unless caused by an Indemnified Party's gross negligence or willful misconduct.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years from the completion date of the Project. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

(2) Commercial Automobile Insurance. During all phases of the Project, Grantee shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from Grantor, substitute form providing equivalent liability coverage) with a limit not less than one million dollars ($1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). During all phases of the Project, Grantee shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from Grantor, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars ($25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

(3) Workers' Compensation and Employers Liability Insurance. During all phases of the Project, Grantee shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars ($1,000,000) each accident, one million dollars ($1,000,000) each employee by disease, and a policy limit of one million dollars ($1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars ($25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies must provide the following:

a. A waiver of subrogation in favor of Grantor and the Indemnified Parties;

b. A provision extending coverage to all states' operations;

c. A voluntary compensation endorsement;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

d. An alternative employer endorsement, if applicable to Grantee operations;

e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and

g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

(4) Professional Liability Insurance. During all phases of the Project, Grantee shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in constructing the Project on the Easement Area, procured, and maintained by those third parties performing such work for or on behalf of Grantee. For the lead design contractor for the improvements in privity with Grantee, the coverage must not be less than ten million dollars ($10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the Project, the coverage must not be less than five million dollars ($5,000,000) per claim and in the aggregate. Grantee shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of the Project, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars ($1,000,000) per claim and in the aggregate. Grantee shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars ($25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against Grantee by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for Grantee or any lead design entity is permitted to exceed five hundred thousand dollars ($500,000), unless commercially unavailable and without prior written approval from Grantor, in its good faith discretion. Coverage must apply specifically to professional activities performed or contracted by Grantee in support of the Project. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. Grantee agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and Grantee shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after the commencement of revenue service or to purchase an extended reporting period for no less than three (3) years after the commencement of revenue service.

(5) Contractor's Pollution Liability. Grantee shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with Project dedicated limits of no less than twenty-five million dollars ($25,000,000) per occurrence and twenty-five million dollars ($25,000,000) in the aggregate per policy period dedicated to the Project. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Project. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Grantee shall furnish Grantor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars ($5,000,000) per loss and an annual aggregate of five million dollars ($5,000,000).

(6) Railroad Protective Liability. Grantee shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from Grantor, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad. 20.2.1.7. Aircraft Liability. If applicable, Grantee shall procure, or cause to be procured and maintained, aircraft liability insurance with a limit of not less than ten million dollars ($10,000,000) per occurrence in all cases where any aircraft is used on the Project that is owned, leased or chartered by any contractor-related entity or its subcontractors of any tier, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Grantor or any of the Indemnified Parties is subject to review and written acceptance by Grantor prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance is acceptable in lieu of the coverage listed above but must be provided prior to use of the aircraft.

(7) Builder's Risk Insurance. Grantee shall, upon commencement of construction and with approval of Grantor, obtain and maintain a policy of builder's risk insurance for the Project. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Project. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and Grantor. Coverage must include property owned by Grantor and the Indemnified Parties that is part of the Project and must not be limited by use of the phrase "as their interests may appear." The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for incorporation into the works located at the Easement Area, in storage or in the course of transit to the Easement Area and all improvements that are within the Easement Area.

The builder's risk policy must include coverage for:

a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;

b. Machinery accidents and operational testing involving equipment covered by the policy;

c. Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars ($25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;

d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;

e. Replacement value of any property or equipment stored either on or off the Easement Area;

f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:

- Collapse;
- Terrorism;
- Earthquake;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

• Flood;

g. Plans, blueprints and specifications; and

h. Demolition and increased cost of construction as required by law or ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of Grantee.

The policy must provide a "severability of interests provision," "multiple insured's clause" or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

Grantee shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction of the Project and prior to commencing operations of the Project within the Easement Area, Grantee shall provide evidence of "all risk" property insurance covering the Project/Improvements, with coverage sufficient to cover the probable maximum loss of such improvements and alterations made by Grantee pursuant to the terms hereof, which must include "all risk" coverage using the ISO Causes of Loss - Special Form or (with approval from Grantor) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

(c) Insurance During Operations. Upon the commencement of revenue service operations, Grantee shall procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars ($323,000,000), or such other limit of liability as Congress may establish from time to time applicable to Grantee's passenger rail operations. Such policy or policies must provide coverage to all Indemnified Parties as additional insureds. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy and the policies up to three hundred twenty-three million dollars $323,000,000 must include one reinstatement limit for the period of the policy(ies) term.

(d) Self Insurance. The policy or policies under which coverage required by this Agreement is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars ($10,000,000) on the condition that:

(1) Each insurance policy expressly provides that the obligations of the policy issuer to Grantor as an additional insured are not to be diminished in any way by Grantee's failure to pay its deductible or self-insured retention obligation for any reason;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(2) Grantee provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to Grantor and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that Grantee has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars ($1,000,000); and

(3) Grantee promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

(e) Definition of "Self Insurance". As used in this Agreement, "self insurance" means that Grantee is itself acting as if it were the insurance company providing the insurance required under the provisions of this Agreement.

(f) Evidence of Insurance. In accordance with the insurance requirements above, Grantee shall furnish evidence of insurance reasonably acceptable to Grantor before Grantee enters the Easement Area, before commencing physical construction of the Project within the Easement Area, and before the beginning of operations, as applicable. Grantee shall provide Grantor with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. Grantee shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to Grantee starting work on the Project, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of Grantee, any of the coverage required becomes unavailable, Grantee shall provide good faith alternative insurance packages and programs, subject to prior approval by Grantor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

(f) Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, must be endorsed by the ISO Form CG 20 10 11 85, CG 20 37, CG 20 24 and CG 20 26 as outlined in Paragraphs (a) and (b) above, to name the Indemnified Parties as additional insureds. The additional insured endorsements must not have any restriction requiring that the work is being done for or on behalf of an additional insured. With respect to general liability arising out of or connected with work or operations performed by or on behalf of Grantee under this Agreement, coverage for such additional insureds must not extend to liability to the extent prohibited by Section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for Grantor to vicarious liability but shall allow coverage for Grantor to the full extent provided by the policy.

(h) Waiver of Subrogation Rights. To the fullest extent permitted by law, Grantee hereby waives all rights of recovery under subrogation against the additional insureds named herein, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of Grantor, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, Grantee shall require similar

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

written express waivers and insurance clauses from each of its subcontractors of every tier. Grantee shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit Grantee from waiving the right of subrogation prior to a loss or claim.

(i) Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by Grantor. Grantee shall furnish to Grantor, not less than fifteen (15) days before the date the insurance is first required to be carried by Grantee, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by Grantor. Such certificates must provide that should any policies described therein be cancelled before the expiration date thereof, notice is to be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, Grantee agrees that the insurance coverage required hereunder is not to be terminated or modified in any material way without thirty (30) days advance written notice from Grantee to Grantor.

(j) Cure. If Grantee fails to procure and maintain insurance required under this Agreement or fails to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, subject to the provisions herein, Grantor is entitled, after thirty (30) days prior written notice to Grantee of Grantee's default hereunder and Grantee's failure to cure such default within said thirty (30) days, ten (10) days for non-payment, to require Grantee to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until Grantee has provided Grantor reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of Grantee under this Section have been met. No cessation of construction or operations required by Grantor under this Section releases or relieves Grantee of any of its other obligations under this Agreement.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "G"

MILLIKEN TRIANGLE EASEMENT

[See Attached]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUEST BY,
AND WHEN RECORDED RETURN TO:

DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Free Recording Requested per Government Code 27383.

EASEMENT
(RAMPS AND DRIVEWAYS)

THIS EASEMENT ("**Agreement**") is dated as of _____, 202__ and is entered into by and between the CITY OF RANCHO CUCAMONGA, a California municipal corporation ("**City**"), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California ("**DXE**"). City and DXE are sometimes hereinafter referred to individually as "**Party**" and collectively as the "**Parties**."

RECITALS

A. DXE plans to construct a high-speed passenger rail system from Las Vegas, Nevada to Rancho Cucamonga, California ("**HSR System**"). One portion of this system will include a train station in Rancho Cucamonga (the "**Train Station**") on property DXE is acquiring from the City and the San Bernardino County Transportation Authority ("**SBCTA**") (the "**Station Site**"). DXE desires an easement over a portion of property owned by the City adjacent to the Station Site for transit purposes, including without limitation, the right to construct, operate, and maintain (i) an access road (the "**Access Road**") to provide access between the Station Site and the Driveway (as defined below) and Milliken Avenue when widened to the boundary of the Access Road and (ii) vehicle ramps (the "**Ramp**" and together with the Access Road, "**Road and Ramp Improvements**") to service the parking structure to be constructed as part of the Train Station on the Station Site, both within the area described in **Exhibit "A"** attached hereto (the "**Easement Area**"). Further, DXE desires the right to construct, operate, and maintain an extension of the Access Road to provide access from the Easement Area to Milliken Avenue (the "**Driveway**") within a separate area described in **Exhibit "B"** attached hereto (the "**20 Foot Area**"). The Road and Ramp Improvements and the Driveway are collectively referred to herein as the "**Improvements**".

B. The City's public purposes in entering into this Agreement include facilitating the

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

development of transportation that will benefit the public, providing employment opportunities resulting from the work to be performed by DXE and the operation of a high-speed rail project, and obtaining fair market compensation for the easement interest granted herein (and such compensation shall become part of the general funds of the City and in turn used for public purposes).

AGREEMENT

1. **Grant of Easement; Term; Consideration**. City hereby grants to DXE an exclusive perpetual easement ("**Easement**") in and through the Easement Area for transit purposes, including, without limitation and subject to all applicable laws, the right to construct, operate, and maintain the Road and Ramp Improvements and appurtenant to the Easement the right to construct, operate, and maintain the Driveway within the 20 Foot Area. For the avoidance of doubt, the Road and Ramp Improvements are only allowed within the Easement Area and not the 20 Foot Area and only the Driveway is permitted within the 20 Foot Area. The location of the Driveway within the 20 Foot Area will be determined by DXE through its station design process, provided that the Driveway shall be no wider than sixty (60) feet unless a larger width is approved in writing by the City Engineer after finding that a wider Driveway is needed to accommodate vehicular traffic into and out of the Train Station and will not unreasonably impact surrounding City infrastructure and Milliken Avenue (including its future widening). The analysis regarding further widening of the Driveway shall involve the traffic study for the Train Station that DXE is currently preparing to assist the City Engineer in making any such finding and to the extent the pending traffic study does not sufficiently analyze the driveway wider than sixty (60) feet or impacts on surrounding infrastructure and Milliken Avenue (including its future widening), such additional traffic study (or peer review) prepared in cooperation between DXE and City/SBCTA (at DXE's expense) that is necessary for the City Engineer to make the finding. DXE shall coordinate the pending traffic study with the City/SBCTA in an effort to ensure that the pending traffic study is sufficient to avoid the necessity of an additional traffic study. Upon the determination of the location of the Driveway, the Easement Area shall be amended to include such portion of the 20 Foot Area on which the Driveway will be located. The installation, maintenance, and operation of the Improvements shall be subordinate to any existing easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record on or under the Easement Area and the 20 Foot Area, as applicable. If the City widens Milliken Avenue, the City shall be responsible at its cost to modify the Driveway to the extent necessary to accommodate such widening and the Easement Area shall be automatically modified to exclude any portion of the Easement Area that included the Driveway affected by the widening of Milliken Avenue. As a condition precedent to DXE's occupancy or use of the Easement Area and the limited use of the 20 Foot Area, DXE will pay to City the one-time sum equal to the fair market price of the easement interest and rights described herein, as determined by an appraisal obtained by City.

2. **AS-IS**. DXE accepts the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) in its current "AS-IS" condition, without representation or warranty, express or implied, and subject to all existing matters of record and all matters that would be revealed by a diligent inspection of the Easement Area and the 20 Foot Area. DXE also acknowledges that City makes no representations, express or implied, as to the physical condition of or title to the Easement Area or the 20 Foot Area. This Agreement does

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

not constitute, nor grant permission to use or occupy property not belonging to, or under the control of City, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this Agreement.

3. **Authorized Improvements; Street Closures**. The rights of DXE to install, maintain, and operate the Improvements are subject to any applicable laws and permitting requirements and conditions (and the City does not waive any of its rights or powers in its governmental capacity in that regard to the extent applicable). In addition, City will review and approve all such Improvement plans in its proprietary capacity as property owner prior to construction of the Improvements only to ensure consistency and no material interference with the Public Improvements (as defined below) and not to review the HSR System. Any and all street closures required for installation, maintenance, or repairs of the Improvements must be approved in advance in writing by the City Manager, and DXE shall pay or reimburse City within thirty (30) days after written demand for all costs incurred by City in connection with any such closures.

4. **Standards for Rail Facilities.** City acknowledges that standards promulgated by and decisions issued by the Federal Railroad Administration ("**FRA**") and Surface Transportation Board ("**STB**") govern the design, construction, operation, and maintenance of railroad facilities within their jurisdiction and that such regulations, standards, and decisions might as a matter of law preempt and supersede requirements that may otherwise apply under state or local laws. City acknowledges that it is not a regulatory agency under federal law or with respect to California utilities regulated by the California Public Utilities Commission, and the Parties agree that the City will have no liability for not inspecting access facilities or operations on the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the California Public Utilities Commission. Notwithstanding this Section 4, City reserves all of its governmental rights and powers, and DXE acknowledges that City is entering into this Agreement solely in its proprietary capacity.

5. **Repair of Damage**.

(a) Damage to Public Improvements. DXE shall promptly notify the City in writing if it becomes aware of any damage to Milliken Avenue or public utilities near the location of the Driveway ("**Public Improvements**"). Whether or not DXE notifies the City, if any damage is caused to Milliken Avenue or Public Improvements directly or indirectly by DXE or its contractors, such repair work will be conducted by the City at DXE's sole cost and expense, or if so authorized in writing by City, may be repaired by DXE at its sole cost and expense (whereupon DXE shall promptly coordinate with City on any necessary street closures, and promptly perform the repairs).

(b) If City elects to perform repair work for which DXE has some or all responsibility, DXE shall reimburse City for its share of the reasonable costs of the repair work within thirty (30) days after delivery of a statement from City describing the costs, including a statement detailing such costs and expenses. In the event payment is not made within said thirty (30) day period, said payment shall include interest at a rate of ten percent (10%) per annum from the end of said thirty (30) day period until paid.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

6. **Encumbrance**. DXE may, at any time and from time to time, encumber to any bank, insurance company or other institutional lender, herein called "**Mortgagee**," by one or more deeds of trust (the "**Security Instrument**"), all of DXE's interest under this Agreement and the interest created hereunder provided that (i) such Security Instrument is subject to the terms of this Agreement and all interests of the City hereunder, (ii) such Security Instrument shall not constitute in any way a lien or encumbrance on the City's interests, and (iii) the Security Instrument shall not encumber any obligations that do not relate to the HSR System. No Mortgagee shall be liable to City as the successor to the rights and obligations of DXE under this Agreement unless and until such Mortgagee acquires the easement interest hereunder through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other assignment, action or remedy, nor shall a Mortgagee be liable for any defaults that occur after it conveys its interest in the property associated with the Easement hereunder.

7. **Ownership of Improvements**. All Improvements shall be owned by DXE during the duration of this Agreement, and upon the termination of this Agreement, shall become the sole property of City without compensation to DXE, or, if City so elects and upon written notice to DXE within ninety (90) days of termination, shall be demolished and removed by DXE from the Easement Area at DXE's sole expense in a reasonable time period. If City has not provided written notice within such ninety (90) day period, DXE shall provide written notice of the termination to City. If City does not respond within thirty (30) days of delivery of such written notice, then DXE shall have no obligation to remove the Improvements. The foregoing (and defense and indemnity obligations of DXE under this Agreement) shall survive the termination of this Agreement. Nothing herein affects City's rights or remedies as a governmental entity, such as the right to cause DXE to abate a nuisance, and in connection therewith, remove Improvements (if City has such a right as a governmental entity under applicable law). For the avoidance of doubt, the City acknowledges and agrees that the construction and operation of the HSR System in accordance with this Agreement and applicable law is not a nuisance.

8. **Waiver and Release**. DXE expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies DXE may now or hereafter have against City, and its officials, officers, employees, consultants, attorneys and agents (collectively, "**City Entities**"), whether known or unknown, arising prior to the date of this Agreement and relating to the condition of the Easement Area or Milliken Avenue, and all claims of contribution and reimbursement for costs of remediating Hazardous Materials (defined in Section 10 below) released or existing prior to the date of this Agreement in, on or near the Easement Area.

DXE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("**SECTION 1542**"), WHICH IS SET FORTH BELOW:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

BY INITIALING BELOW, DXE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____
DXE's Initials

The waivers and releases by DXE contained herein shall survive the termination of this Agreement and shall be binding upon the assignees, transferees, and successors-in-interest of DXE.

9. **Utilities.** As between DXE and the City, any required relocation of a utility that interferes with DXE's project within the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) is the sole responsibility of DXE. Upon written request by DXE, City will provide utility contact information known to City and make its right-of-way utility staff available (on a reimbursable basis) for meetings with third-party utility owners to help facilitate DXE's property access and construction and maintenance activities.

10. **Hazardous Materials**.

(a) DXE covenants that it will not handle or transport Hazardous Materials in the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) except for removal, transportation and disposal in compliance with laws regarding excavated soils that are or may be contaminated with Hazardous Materials. As used in this Agreement, the term "**Hazardous Materials**" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "**the State Toxic Substances Law**"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or passenger trains; and (d) asbestos. Notwithstanding the foregoing, DXE may handle and transport Hazardous Materials normally and customarily used in the development, construction and operation of railroad infrastructure, including passenger stations, that are used, stored, transported and disposed of in accordance with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record. As an example only, train infrastructure typically entails refueling maintenance vehicles or using cleaning supplies for routine maintenance.

(b) DXE further agrees that at City's request it will furnish City with proof, satisfactory to City, that DXE is in compliance with all such laws, rules, regulations, orders, decisions and ordinances regarding Hazardous Materials.

(c) Notwithstanding anything else contained in this Agreement, DXE shall indemnify, defend and hold harmless City from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to injuries to any person, including wrongful death, or damage to property, including without limitation, property of City and DXE, or otherwise (including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs) resulting in whole or in part from DXE's failure to comply with DXE's obligations under this Agreement with respect to Hazardous Materials, provided, however, that the foregoing shall not apply to releases of Hazardous Materials by City Entities' active negligence or willful misconduct or to Hazardous Materials not brought onto the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) by DXE or its contractors. DXE agrees to reimburse City for all reasonable costs of any kind incurred as a result of the DXE's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of DXE's handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and or Milliken Avenue or adjacent property.

(d) City shall have the right at any time to inspect the Improvements in order to monitor DXE's compliance with this Agreement.

11. **Insurance**. DXE shall obtain and maintain insurance, at its sole cost and expense, as required in **Exhibit "C"** attached hereto.

12. **Indemnity**. DXE shall defend, indemnify and hold City and its officials, officers, agents, employees and contractors free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of DXE, its partners, affiliates, agents officials, officers, employees or contractors in performance of this Agreement, use of the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) or the construction, use, or operation of the Improvements or the failure to comply (or failure of its contractors to comply) with California Labor Code Section 1720 et seq., including without limitation Labor Code Section 1781. DXE shall further defend, indemnify and hold harmless the City and its officials, officers, agents and employees from all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings (brought against the City or its

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

departments, commissions, agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul any City decision made in connection with this Agreement or DXE's use of the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) (based on noncompliance with the California Environmental Quality Act or otherwise). DXE shall defend, with counsel reasonably acceptable to City and at DXE's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against City, its officials, officers, agents, employees or contractors. DXE shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, agents, employees or contractors. DXE shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this Agreement or the indemnity herein provided. DXE's obligations hereunder shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, agents or, employees or contractors.

13. **Covenant Running With Land**. This Agreement shall be deemed a covenant running with the land with respect to the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located), burdening said Easement Area and benefitting the real property interests associated with the HSR System. All of the covenants, obligations, and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives, assigns and successors-in-interest to the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of said Easement Area shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person acquires an interest in said Easement Area. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying said Easement Area or any portion thereof or interest therein shall conclusively be deemed to have been executed, delivered and accepted subject to this Agreement.

14. **Estoppel Certificates.** Each of the Parties hereto agrees, promptly upon request from the other Party hereto, to furnish from time to time in writing certificates containing truthful estoppel information and/or confirmations of the agreements, obligations and easements contained in this Agreement and otherwise in a form and substance reasonably satisfactory to the Party from whom such certificate is sought.

15. **Cooperation; Further Assurances.** The Parties agree to execute any reasonable documents necessary to effectuate or protect a Party's rights under this Agreement.

16. **Attorneys' Fees**. In the event either Party brings a suit, action, or other proceeding against the other Party that in any way relates to or arises out of this Agreement, the prevailing Party (meaning the Party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other Party all reasonable costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which Party is the prevailing Party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding, such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal.

17. **Miscellaneous**.

(a) Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

DXE: DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: General Counsel

City: City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

Such notice shall be deemed made when delivered by certified mail, return receipt requested, first class postage prepaid, or by reputable overnight messenger delivery service, and addressed to the Party at its applicable address and shall be deemed delivered on the date of delivery or refusal to accept or inability to effect delivery shown on the return receipt, or one (1) business day after delivery to the messenger service for overnight delivery, as applicable.

(b) Entire Understanding. This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein.

(c) Invalidity. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors of the respective Parties. Except as set forth in Section 6 above, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

(e) Governing Law. Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to DXE because of its status as a common carrier regulated by the federal government.

(f) Venue. Venue for any legal action between the Parties related to this Agreement will be in the Superior Court of San Bernardino County, California or the United States

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District Court, Central District Court of California. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located.

(g) Exhibits. All exhibits attached hereto form material parts of this Agreement.

(h) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(i) Survival. All defense, indemnity, and payment obligations of DXE that arise or relate to events occurring prior to the termination of this Agreement shall survive such termination.

(j) Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane (or tropical cyclone), lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond City's or DXE's control prevent performance of obligations relating to construction, repair, operation, maintenance, or demolition of the Improvements under this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing party, (a "**Force Majeure Event**") then performance of this Agreement by either party will be suspended or excused to the extent and for a period commensurate with such occurrence.

(k) Limits to Remedies. Under no circumstances shall either party be liable to the other party under this Agreement for any speculative, consequential, collateral, indirect or punitive damages or for any loss of profits suffered or claimed to have been suffered; provided, however, the foregoing prohibitions shall not prohibit the recovery of any direct damages.

18. **Property Taxes, Including Possessory Interest Taxes**. This Agreement creates a possessory interest that may be subject to possessory interest tax (a type of California property tax), and DXE shall pay any such possessory interest taxes that may be assessed. If the Improvements are taxed as an improvement on the Easement Area, DXE shall, upon demand, pay such taxes allocable to the Improvements, as determined by the taxing authority. City shall cooperate and assist DXE, at no costs to City, in any efforts to obtain a separate assessment for the Improvements, including executing any reasonably required applications or reasonable documents. DXE shall pay when due all personal property taxes levied against or relating to the Improvements.

19. **Termination**. If the City and/or SBCTA revests title to the fee property owned by DXE and described on **Exhibit "D"** attached hereto, this Agreement shall automatically terminate.

[Signature Page Follows]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

The Parties have executed this Agreement as of the date first written above.

DXE:

DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company

By: _____
Sarah Watterson
President

CITY:

CITY OF RANCHO CUCAMONGA, a California municipal corporation

_____
By: _____, Mayor

ATTEST:

_____
_____, City Clerk

APPROVED AS TO FORM:

_____
Nicholas Ghirelli,
City Attorney

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A'

Legal Description of Easement Area

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with those portions of Milliken Avenue, as shown on said Parcel Map No. 14647 and Parcel Map No. 7555 in said City, filed in Book 77, pages 42 and 43, of Parcel Maps, in the Office of the County Recorder of said County, together with the Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map No. 14647;

Thence along the easterly line of said Section 13 South 00°29'50" East 17.04 feet to the **Point of Beginning**;

Thence continuing along said easterly line South 00°29'50" East 32.96 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line South 00°00'00" West 311.62 feet;

Thence North 89°36'24" East 45.54 feet to said easterly line of Section 13;

Thence continuing North 89°36'24" East 28.02 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius of 2,058.70 feet, a line radial to said beginning bears North 73°05'58" West;

Thence northeasterly, along said curve an arc length of 379.13 feet through a central angle of 10°33'06" to the southerly SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on said Parcel Map No. 7555;

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence along said southerly line South 87°55'10" West 174.03 feet to the **Point of Beginning.**

Parcel contains 46,425 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: 9/22/2022

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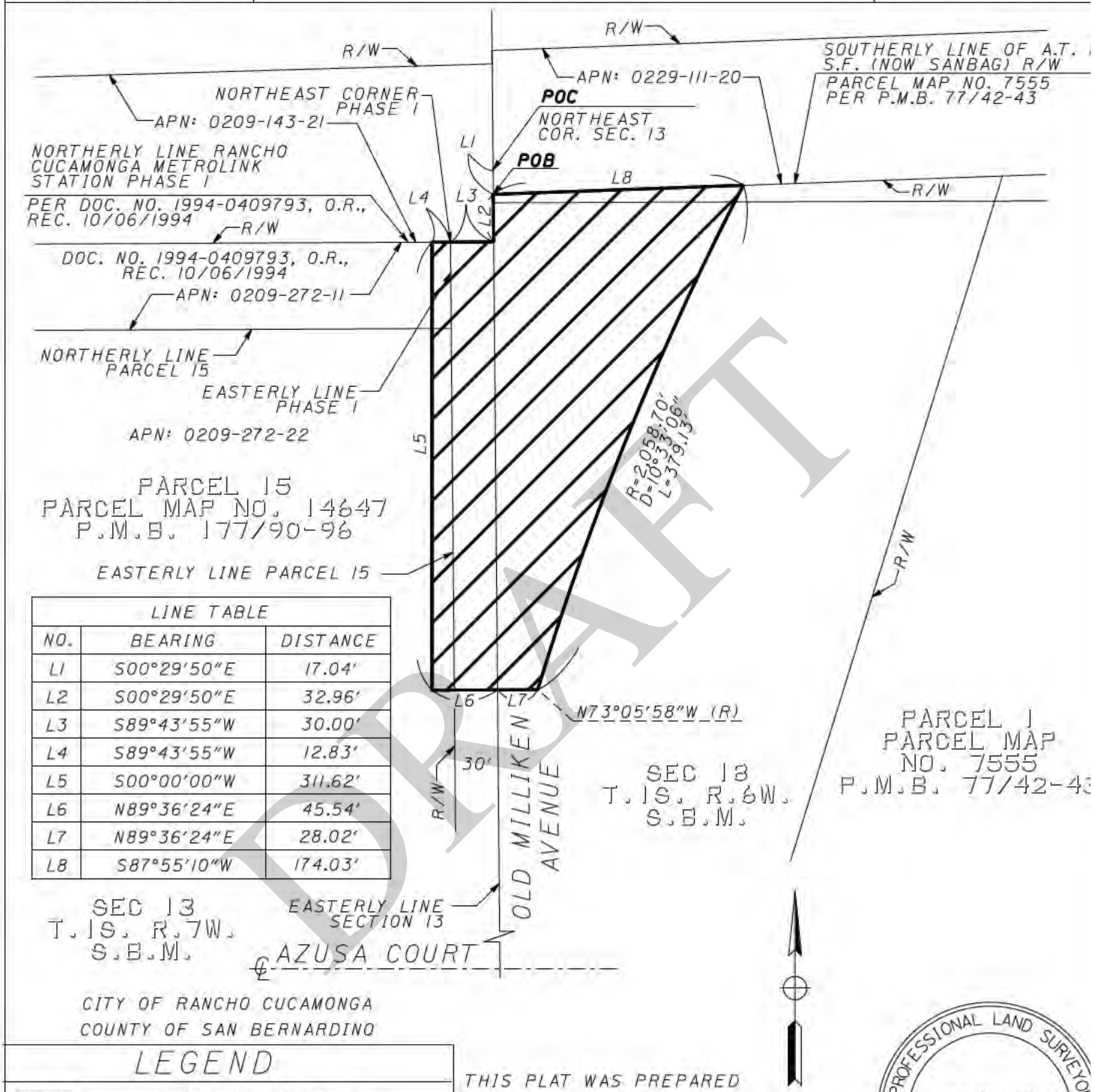
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	TYPE OF ESTATE	AREA
0209-272-11 & 0209-272-22	EASEMENT	46,425 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	17.04'
L2	S00°29'50"E	32.96'
L3	S89°43'55"W	30.00'
L4	S89°43'55"W	12.83'
L5	S00°00'00"W	311.62'
L6	N89°36'24"E	45.54'
L7	N89°36'24"E	28.02'
L8	S87°55'10"W	174.03'

LEGEND

▨	Indicates area to be acquired
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way
(R)	Radial Bearing

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 — DATE 9/27/2022

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 300

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B'

Legal Description of 20 Foot Area

APN: N/A

That portion of "Additional Widening to Milliken Avenue" shown on Parcel Map No. 7555, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 77, pages 42 and 43, of Parcel Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13 South 00°29'50" East 17.04 to the southerly line of A.T. & S.F. Railroad Right-of-Way as shown on said Parcel Map;

Thence along said southerly line North 87°55'10" East 174.03 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius 2,058.70 feet, a radial line to said beginning bears North 62°32'52" West, said beginning also being the **Point of Beginning**;

Thence southwesterly, along said curve an arc length of 379.13, feet through a central angle of 10°33'06";

Thence leaving said curve North 89°36'24" East 20.96 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius of 2,038.70 feet, a radial line to said beginning bears North 72°55'27" West, said curve being concentric with and distant 20.00 feet southeasterly, as measured radially, to last said curve course;

Thence northeasterly, along said curve, an arc length of 380.57 feet, through a central angle of 10°41'44" to said southerly line;

Thence along said southerly line South 87°55'10" West 23.02 feet to the **Point of Beginning**.

Parcel contains 7,597 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

See Exhibit 'B-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: 9/27/2022

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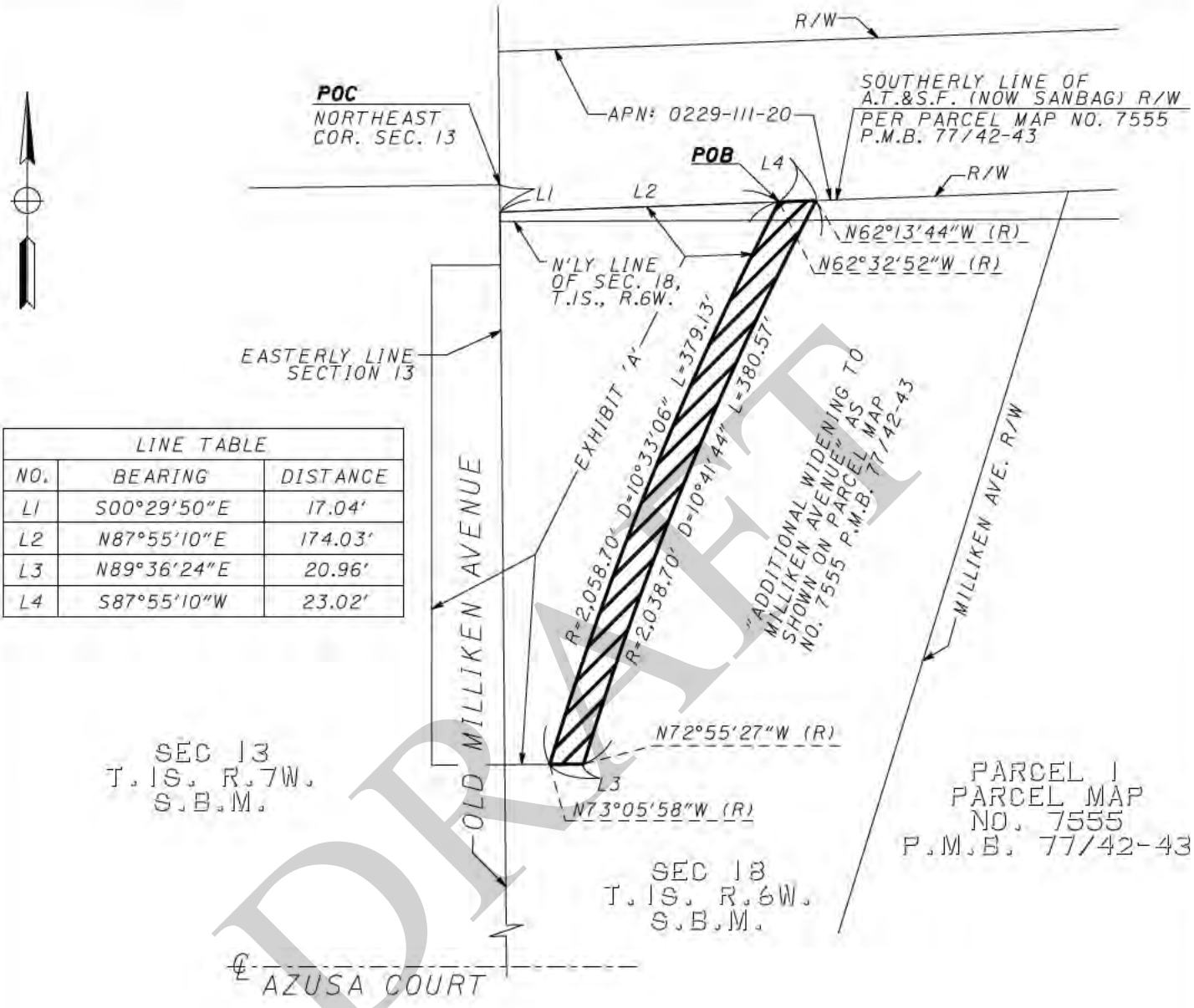
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-1'

PARCEL	TYPE OF ESTATE	AREA
N/A	EASEMENT	7,597 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	17.04'
L2	N87°55'10"E	174.03'
L3	N89°36'24"E	20.96'
L4	S87°55'10"W	23.02'

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CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be acquired
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
(R)	Radial Bearing
R/W	Right-of-Way

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 — DATE 9/28/2022

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"
REQUIRED INSURANCE

(a) Prior to Construction. On or before DXE's entry onto the Easement Area, DXE shall procure and maintain, at its sole cost and expense, the following insurance:

(1) Commercial General Liability (CGL) with a limit not less than twenty-five million dollars ($25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars ($25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must provide coverage to the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 10. Coverage shall be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement and the location and placement of improvements within the Easement Area, unless caused by an Indemnified Party's gross negligence or willful misconduct.

(b) Insurance During Construction. Prior to commencing physical construction within the Easement Area, DXE shall procure or cause to be procured and maintained throughout construction the following insurance coverage:

(1) Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars $300,000,000 each occurrence, three hundred million dollars ($300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars ($300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the Project. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms providing equivalent coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must cover the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 or 20 10 and accompanied by 20 37 or equivalent forms with approval from City providing coverage to the additional insured for completed operation losses. Coverage must be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement, unless caused by an Indemnified Party's gross negligence or willful misconduct.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years from the completion date of the Project. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(2) Commercial Automobile Insurance. During all phases of the Project, DXE shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than one million dollars ($1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). During all phases of the Project, DXE shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars ($25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

(3) Workers' Compensation and Employers Liability Insurance. During all phases of the Project, DXE shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars ($1,000,000) each accident, one million dollars ($1,000,000) each employee by disease, and a policy limit of one million dollars ($1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars ($25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies must provide the following:

a. A waiver of subrogation in favor of City and the Indemnified Parties;

b. A provision extending coverage to all states' operations;

c. A voluntary compensation endorsement;

d. An alternative employer endorsement, if applicable to DXE operations;

e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

an "if any" basis or as otherwise appropriate; and

g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

(4) Professional Liability Insurance. During all phases of the Project, DXE shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in constructing the Project on the Easement Area, procured, and maintained by those third parties performing such work for or on behalf of DXE. For the lead design contractor for the improvements in privity with DXE, the coverage must not be less than ten million dollars ($10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the Project, the coverage must not be less than five million dollars ($5,000,000) per claim and in the aggregate. DXE shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of the Project, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars ($1,000,000) per claim and in the aggregate. DXE shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars ($25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against DXE by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for DXE or any lead design entity is permitted to exceed five hundred thousand dollars ($500,000), unless commercially unavailable and without prior written approval from City, in its good faith discretion. Coverage must apply specifically to professional activities performed or contracted by DXE in support of the Project. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. DXE agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and DXE shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after the commencement of revenue service or to purchase an extended reporting period for no less than three (3) years after the commencement of revenue service.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(5) Contractor's Pollution Liability. DXE shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with Project dedicated limits of no less than twenty-five million dollars ($25,000,000) per occurrence and twenty-five million dollars ($25,000,000) in the aggregate per policy period dedicated to the Project. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Project. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, DXE shall furnish City evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars ($5,000,000) per loss and an annual aggregate of five million dollars ($5,000,000).

(6) Railroad Protective Liability. DXE shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from City, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad. 20.2.1.7.

(7) Builder's Risk Insurance. DXE shall, upon commencement of construction and with approval of City, obtain and maintain a policy of builder's risk insurance for the Project. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Project. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and SBCTA, and City. Coverage must include property owned by City and the Indemnified Parties that is part of the Project and must not be limited by use of the phrase "as their interests may appear." The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

incorporation into the works located at the Easement Area, in storage or in the course of transit to the Easement Area and all improvements that are within the Easement Area.

The builder's risk policy must include coverage for:

a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;

b. Machinery accidents and operational testing involving equipment covered by the policy;

c. Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars ($25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;

d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;

e. Replacement value of any property or equipment stored either on or off the Easement Area;

f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:

- Collapse;
- Terrorism;
- Earthquake;
- Flood;

g. Plans, blueprints and specifications; and

h. Demolition and increased cost of construction as required by law or ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of DXE.

The policy must provide a "severability of interests provision," "multiple insured's clause" or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

DXE shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction of the Project and prior to commencing operations of the Project within the Easement Area, DXE shall provide evidence of "all risk" property insurance covering the Project/Improvements, with coverage sufficient to cover the probable maximum loss of such improvements and alterations made by DXE pursuant to the terms hereof, which must include "all risk" coverage using the ISO Causes of Loss - Special Form or (with approval from City) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

(c) Insurance During Operations. Upon the commencement of revenue service operations, DXE shall procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars ($323,000,000), or such other limit of liability as Congress may establish from time to time applicable to DXE's passenger rail operations. Such policy or policies must provide coverage to all Indemnified Parties as additional insureds. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy and the policies up to three hundred twenty-three million dollars $323,000,000 must include one reinstatement limit for the period of the policy(ies) term.

(d) Self Insurance. The policy or policies under which coverage required by this Agreement is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars ($10,000,000) on the condition that:

(1) Each insurance policy expressly provides that the obligations of the policy issuer to City as an additional insured are not to be diminished in any way by DXE's failure to pay its deductible or self-insured retention obligation for any reason;

(2) DXE provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to City and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that DXE has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars ($1,000,000); and

(3) DXE promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

(e) Definition of "Self Insurance". As used in this Agreement, "self insurance" means that DXE is itself acting as if it were the insurance company providing the insurance required under the provisions of this Agreement.

(f) Evidence of Insurance. In accordance with the insurance requirements above, DXE shall furnish evidence of insurance reasonably acceptable to City before DXE enters the Easement

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Area, before commencing physical construction of the Project within the Easement Area, and before the beginning of operations, as applicable. DXE shall provide City with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. DXE shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to DXE starting work on the Project, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of DXE, any of the coverage required becomes unavailable, DXE shall provide good faith alternative insurance packages and programs, subject to prior approval by City, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

(g) Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, must be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name the Indemnified Parties as additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of DXE under this Agreement, coverage for such additional insureds must not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for City to vicarious liability but shall allow coverage for City to the full extent provided by the policy.

(h) Waiver of Subrogation Rights. To the fullest extent permitted by law, DXE hereby waives all rights of recovery under subrogation against the additional insureds named herein, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of City, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, DXE shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. DXE shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit DXE from waiving the right of subrogation prior to a loss or claim.

(i) Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by City. DXE shall furnish to City, not less than fifteen (15) days before the date the insurance is first required to be carried by DXE, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by City. Such certificates must provide that should any policies described therein be cancelled before the expiration date thereof, notice is to be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, DXE agrees that the insurance coverage required hereunder is not to be terminated or modified in any material way without thirty (30) days advance written notice from DXE to City.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

(j) Cure. If DXE fails to procure and maintain insurance required under this Agreement or fails to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, subject to the provisions herein, City is entitled, after thirty (30) days prior written notice to DXE of DXE's default hereunder and DXE's failure to cure such default within said thirty (30) days, ten (10) days for non-payment, to require DXE to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until DXE has provided City reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of DXE under this Section have been met. No cessation of construction or operations required by City under this Section releases or relieves DXE of any of its other obligations under this Agreement.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "D"
DESCRIPTION OF THE FEE PROPERTY

[SEE ATTACHED]

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Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

San Bernardino County Transportation Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit and Rail

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Free Recording Requested per Government Code 27383.

CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS

(RANCHO CUCAMONGA HSR STATION)

These Conditions, Covenants, Restrictions and Easements (RANCHO CUCAMONGA HSR STATION) (this "***Agreement***") are entered into by and among the **CITY OF RANCHO CUCAMONGA**, a California municipal corporation (the ***"City"***), the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**, a public entity (***"SBCTA")***, and together with the City, the ***"Public Agencies"***, and **DESERTXPRESS ENTERPRISES, LLC**, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California (***"Developer"***). The City, SBCTA, and the Developer may hereinafter be referred to individually as a ***"Party"*** and collectively as the ***"Parties"***.

R E C I T A L S :

A. Concurrently herewith, Developer acquired from the Public Agencies that certain real property legally described on ***Exhibit A*** attached hereto (the ***"Station Property"***) for the purpose of developing a train station and related infrastructure for a privately owned and publicly

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

accessible high-speed passenger railroad and local rail service, including station parking facilities and related station uses, subject to easements reserved by the Public Agencies (the ***"Reserved Easements"***) in the grant deed, recorded immediately prior hereto, whereby Developer acquired the Station Property (the ***"Grant Deed"***), all in accordance with the terms and conditions of that certain Disposition and Development Agreement, dated October 5, 2022, entered into between the Parties (as amended by the first, second, third and fourth amendments, the ***"DDA"***). The Station Property expressly excludes the Surface Property (defined below).

B. The Public Agencies retained ownership of that certain real property legally described on ***Exhibit B*** attached hereto (the ***"Surface Property"***) for the purpose of continuing to operate surface parking separate and distinct from the HSR Station (defined below).

C. The Station Property and the Surface Property (each individually a ***"Property"*** and collectively, the ***"Properties"***) are adjacent to a transit center owned and operated by the Public Agencies and which currently includes public parking and connections to the passenger railroad service operated and maintained by SCRRA ("***Metrolink***") and public buses (collectively, "***Transit Center***"). The Transit Center includes without limitation the real property on which the Transit Center is located as legally described on ***Exhibit C*** attached hereto.

D. The Station Property and the Surface Property are two legally independent separate interests in real property. The Station Property is above and below the Surface Property, there are easements that travel through specific limited areas of the Surface Property that permit columns and specific utilities adjacent to such columns to traverse through and exist within such specific limited areas of the Surface Property to support the HSR Station and the Surface Property requires certain easements over the Station Property to connect with the adjacent Transit Center, all as further described herein. The Parties are entering into this Agreement to establish easements, covenants and restrictions, all intended to establish and protect the estates, general plan of ownership, use and enjoyment of each Party's Property.

E. The Public Agencies and the Developer intend that this Agreement be a covenant running with the land pursuant to Section 1468 of the California Civil Code.

NOW, THEREFORE, for good and valuable consideration, the Parties hereby confirm the accuracy of the foregoing recitals, and covenant and agree as follows:

A G R E E M E N T :

1. **DEFINITIONS**. The following is not an exhaustive list of all defined terms in this Agreement and excludes many defined terms used in only one Section hereof, but instead includes certain key defined terms that are used throughout this Agreement.

1.1 **Agreement**. As set forth in the preamble above, ***Agreement*** means these Conditions, Covenants, Restrictions and Easements, as amended from time to time.

1.2 **City**. As set forth in the preamble above, ***City*** means the City of Rancho Cucamonga, California.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

1.3 **Developer Permittee**. ***Developer Permittee*** means employees, agents, visitors, contractors, patrons, guests or invitees of Developer.

1.4 **DDA**. ***DDA*** is defined in Recital A.

1.5 **HSR Station**. ***HSR Station*** means that certain private, but publicly accessible, passenger train station, including all train platforms, common areas, and parking areas located on the Station Property and columns within easements within the Surface Property, but otherwise expressly excluding the Surface Property, including:

1.5.1 the shell (including the exterior skin) and core of the HSR Station;

1.5.2 all structural support elements existing in, on, under and throughout the HSR Station shell and core, including all footings, girders, columns, braces, foundations, load-bearing walls, utility-bearing walls and other standard support elements, and every wall, column, floor, ceiling, footing, foundation or other vertical or horizontal improvement in the HSR Station;

1.5.3 the elevators, including the elevator shafts, elevator cabs, doors, elevator lobbies, and related machinery and equipment rooms, if any, in, to and serving the HSR Station;

1.5.4 area drains, scuppers, stairways, vaults, mechanical shafts, pipes, lines, mains, conduits, flues, risers, auxiliary generator room, clarifier, and any other equipment, fixtures, machinery, system or apparatus in, to and which benefit the HSR Station; and

1.5.5 any fire and life safety and sprinkler systems in, to and serving the HSR Station, including alarms, fire sprinkler pipes, and the sensors, pipes and fire sprinkler heads.

1.6 **Metrolink**. ***Metrolink*** is defined in Recital C.

1.7 **Official Records**. ***Official Records*** means the Official Records of San Bernardino County, California.

1.8 **Party**. ***Party*** is defined in the preamble.

1.9 **Permittee**. ***Permittee*** means either a Developer Permittee or a Public Agency Permittee.

1.10 **Properties**. ***Properties*** is defined in Recital C.

1.11 **Public Agencies Permittee**. ***Public Agencies Permittee*** means employees, agents, visitors, contractors, patrons, guests or invitees of either or both of the Public Agencies.

1.12 **San Gabriel Subdivision Lease Agreement**. ***San Gabriel Subdivision Lease Agreement*** means that certain San Gabriel Subdivision Lease Agreement entered into between SBCTA and Developer, dated March 2, 2022.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

1.13 **SBCTA**. As set forth in the preamble above, ***SBCTA*** means San Bernardino County Transportation Authority.

1.14 **Station Property**. ***Station Property*** is defined in Recital A and legally described on ***Exhibit A*** attached hereto.

1.15 **Surface Property**. ***Surface Property*** is defined in Recital B and legally described on ***Exhibit B*** attached hereto. For purposes of interpreting the maintenance rights and obligations described in this Agreement, the actual boundaries of the Surface Property shall be deemed to extend to the interior unfinished surfaces of the walls, floors, and ceilings that surround the ground floor level (first floor) of the HSR Station and shall exclude all components of the HSR Station described below.

1.16 **Transit Center**. ***Transit Center*** is defined in Recital C; and the Transit Center includes the real property on which it is located, as legally described on ***Exhibit C*** attached hereto.

2. **USE RESTRICTIONS**.

2.1 **Use Restrictions**. The Properties shall only be operated for transit and transit-related purposes, including without limitation appurtenances and appurtenant uses thereto.

2.2 **Maintenance and Security**. To the extent permitted by any applicable law, each Party hereby covenants and agrees to use commercially reasonable efforts to limit loitering, smoking, panhandling, vagrancy and other nuisance and/or unlawful conduct in and on its respective Property, including, without limitation, posting and maintaining signs that prohibit such activities in reasonable locations; however, (a) the Public Agencies' obligations under this Section shall be satisfied by enforcing the prohibitions for the Surface Property with the same level of security services that the Public Agencies obtain and provide for the Transit Center, and (b) the Developer's obligations under this Section shall be satisfied by enforcing the prohibitions for the Station Property with the level of security services required by this Section 2.2 or the highest level that Developer obtains and provides for any the other train station that is owned or operated by Developer within the State of California.

2.2.1 ***Repair and Maintenance of Vehicles and Equipment***. Except for short-term emergency situations, repair or maintenance of vehicles or mechanical equipment shall not be permitted within/in or on the Properties.

2.2.2 ***Security***. Each Party shall hire and maintain all such security services, including, without limitation, the presence of onsite security personnel and the placement of security cameras or devices within their respective Properties, as such Party reasonably determines may be appropriate.

2.2.3 ***Ceiling, Wall, Column and Floor Penetrations***. The Public Agencies and Public Agency Permittees shall be permitted to install signs, lighting, traffic safety mirrors, security systems and other parking related equipment on walls, floors and ceilings surrounding the Surface Property and columns within the Surface Property, and in connection therewith, reasonably bolt or otherwise affix and install items on the walls, columns, floors, and

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

ceilings that surround, or are within, the Surface Property; provided, however, that in connection with the foregoing, the Public Agencies shall not adversely impact the structural integrity of the HSR Station or any improvements therein. If a necessary repair or property improvement requires a penetration that would be reasonably likely to adversely affect the HSR Station, then the Public Agencies and/or Public Agency Permittee(s) shall reasonably coordinate such repairs or property improvements with the Developer. Notwithstanding the foregoing, nothing contained herein shall be deemed to prohibit the Public Agencies and Public Agency Permittees from reasonably painting or repainting (as necessary) parking stripes, parking stalls or directional signage on the paved floors, columns, and walls that enclose, or are within, the Surface Property.

3. **MAINTENANCE AND OPERATIONAL OBLIGATIONS**.

3.1 **Maintenance and Repair**. Except to the extent any damage is caused by another Party or Parties, in which event the damaging Party or Parties shall be responsible for such repair, each Party or Parties (that is, the Public Agencies) shall be solely responsible to perform all maintenance and repair obligations with respect to its or their respective Property, such that each Property is maintained in good condition and repair, including ensuring that its or their Property is on a reasonable periodic basis cleaned, swept and otherwise kept reasonably free of all trash, debris and standing water. For the avoidance of doubt, subject to the proviso at the beginning of the first sentence of this Section 3.1, Developer shall be solely responsible for maintaining the Station Property, including, without limitation, (a) the HSR Station, (b) the structural integrity of the columns which traverse the Surface Property and (c) any utilities serving the HSR Station that traverse the Surface Property adjacent to the columns while the Public Agencies shall be solely responsible for maintaining the Surface Property, including without limitation the interior surfaces of each of the walls, columns, floors, and ceilings that surround the Surface Property, including graffiti removal. For the purposes of clarity, subject to the proviso at the beginning of the first sentence of this Section 3.1 and except for periods in which Developer is installing subterranean improvements under the Surface Property such that maintenance by the Public Agencies would interfere therewith, if the paved floor is damaged, the Public Agencies shall have the right and the obligation to repair said floor and sufficient access is hereby granted by Developer to the Public Agencies to perform such repair work. The Public Agencies' right and obligation to make such repairs to the paved floor shall automatically terminate upon the Developer's installation of any subterranean improvements (other than utilities or other similar installations) under the Surface Property, if ever. For the avoidance of doubt, when a Party is responsible for repair or maintenance under this Section 3.1, such responsibility shall include all costs relating thereto.

3.2 **Cooperation**. The Developer and the Public Agencies shall reasonably cooperate with one another in good faith in the performance of their obligations under this Section 3.

3.3 **Operation of HSR Station**. Developer shall operate the HSR Station at the Station Property at all times Developer maintains a high-speed passenger rail system in Southern California so as to ensure that all regularly scheduled passenger trains stop at the Station Property in accordance with the San Gabriel Subdivision Lease Agreement. Express, special event, and charter train services are not required to stop at the Station Property; however, Developer may not provide only express, special event and/or charter train services.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

3.4 **Modifications After Initial Construction**. Following the completion of the HSR Station by Developer and the surface parking improvements by the Public Agencies, neither Party shall materially alter, renovate, modify or add to the exterior of any improvements without the prior written consent of the other Party, which consent is not to be unreasonably withheld, conditioned or delayed.

4. **EASEMENTS**.

4.1 **Easements for the Benefit of the Surface Property**. The Public Agencies and Public Agency Permittees shall benefit from, and there are hereby established and granted for the benefit of the Public Agencies and Public Agency Permittees, the following easements over portions of the Station Property, which shall be appurtenant to the Surface Property:

4.1.1 ***Access Easements***. Nonexclusive access easements over and across those portions of the Station Property for the purposes described below and subject to Public Agencies' approval of plans as described in DDA Section 3.4:

(a) a pedestrian access easement under, through and across those portions of the Station Property, including, without limitation, the stairs and elevator shown thereon, for free and unrestricted ingress and egress between the Surface Property and the Transit Center, as depicted on ***Exhibit D*** attached hereto (other than typical improvements, such as benches, signs, landscaping, etc., which do not interfere with the free and unrestricted ingress and egress between the Surface Property and the Transit Center). For the avoidance of doubt, such pedestrian access easement shall include a passenger elevator and stairs leading from the Surface Property to the P3 level of the Station Property, and then a walkway of at least six (6) feet in width within the Station Property leading from such elevator and stairs to the top of the exterior ramp leading down to the Transit Center, which walkway will not cross any garage drive aisles. For the avoidance of doubt, such pedestrian access easement as depicted on ***Exhibit D*** shall correspond to the actual constructed stairs, elevator, and walkway consistent with the foregoing description and plans approved by the Public Agencies in lieu of the area depicted on Exhibit D. Developer and the Public Agencies shall modify the CC&Rs if desired by either party in order to revise ***Exhibit D*** to conform with the as-built improvements. Additionally, when such elevator is inoperable or under maintenance or repair, Developer shall provide alternative access to the Public Agencies and Public Agency Permittees via access to and from and use of the elevators serving the Station Property until such elevator is operable, as referenced on the Site Plan.

(b) a pedestrian access easement over and across those portions of the Station Property designated by Developer, including stair and elevator access, that provides reasonable ingress and egress between the Surface Property and the communications building on adjacent property owned by the City ("***Communications Building***"). For equipment trucks that are too large to fit in the Surface Property, or which are necessary to be located within close proximity to the Communications Building when performing work on or inside of the Communications Building, and for fire and/or emergency vehicle access, Developer shall designate and maintain reasonable vehicular and parking access for such vehicles within the loading area off of Milliken Avenue or the drop off/pick up area on the main floor of the Station Property, together with pedestrian access designated by Developer that provides reasonable ingress and egress between such parking area and the Communications Building. Additionally, Developer

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

shall provide and maintain an access gate through the existing fence between the San Gabriel Subdivision right of way and the Communications Building and a gate through any other Developer owned physical barrier that would block access to the Communications Building, as applicable.

(c) For the avoidance of any doubt, the Grant Deed reserves to the Public Agencies additional utility, access, construction, and use easements over portions of the Station Property, as described and depicted in the Grant Deed.

4.2 **Easements for the Benefit of the Station Property**. The Developer and the Developer Permittees shall benefit from, and there are hereby established and granted for the benefit of the Developer and the Developer Permittees, the following easements over portions of the Surface Property, which shall be appurtenant to the Station Property:

4.2.1 ***Developer Maintenance Obligations***. Nonexclusive easements within, through and across the Surface Property as reasonably necessary for the purpose of performing the maintenance obligations described herein. The rights of Developer and Developer's Permittees under this easement are subject to the obligation not to unreasonably interfere with the use or operation of the Surface Property, and, except in an "Emergency Situation" (as that term is defined below), to notify the Public Agencies at least thirty (30) days in advance of the dates, times and scope of maintenance and to cooperate in good faith with the Public Agencies in minimizing interference with the use and operation of the Surface Property; provided, however, if such maintenance or repair work does not impact access to or parking at the Surface Property, then Developer shall only be obligated to provide the Public Agencies with at least five (5) business days advance notice. At all times Developer shall ensure that a minimum of four hundred (400) parking spaces total across the Surface Property and Transit Center (or such lesser amount if less than 400 parking spaces total exist at such time), including sufficient ADA compliant parking stalls to satisfy ADA requirements, are available to Public Agencies' Permittees. Anytime Developer reasonably determines that immediate maintenance or repair work is required to address an imminent threat to public health or safety (each, an ***"Emergency Situation"***), Developer shall give notice of such Emergency Situation to the Public Agencies as soon as possible after such determination and shall have the right to immediately act on providing such maintenance and repair work as is required to address the Emergency Situation; provided, however, that the foregoing language shall not be in denigration of any obligation, liability or duty of Developer under or pursuant to this Agreement or as provided by law, and the foregoing right shall not release or relieve Developer from any responsibility, liability or indemnification obligations arising out of, resulting from or relating to this Agreement.

4.2.2 ***Public Easements***. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the HSR Station for the performance of their respective duties. Additionally, easements are hereby reserved in favor of all Parties for emergency ingress and egress over, through and across all portions of the HSR Station.

4.2.3 ***Support Columns, Utilities, and Beams Serving HSR Station***. Exclusive easements within, through and across only those portions of the Surface Property expressly and specifically designated and developed with columns and beams and specified

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

utilities (i.e., only the following utilities: storm drain; water; sewer; electrical; telecommunication; and data, including similar future technologies) adjacent to such columns and beams per plans approved in advance and in writing by the Public Agencies which plans specifically show such beams, columns and utilities, for the purpose of installing, constructing, inspecting, placing, maintaining, repairing, replacing, and removing the structural columns, support beams, utilities within or adjacent to such columns, footings and any other structural components or support elements existing in, on, under and throughout the HSR Station, including incidental access as necessary to access such columns, utilities and beams for such purposes ("***Column and Beam Easement***"). Developer and the Public Agencies shall reasonably cooperate to designate the locations of such columns, utilities and beams on such plans to facilitate the optimal, but commercially reasonable, parking and vehicular and pedestrian circulation within the Surface Property. Developer, at Developer's sole cost and expense, shall ensure that, at all times, the columns, beams and utilities are located to provide at least 210 parking stalls available to Public Agencies' Permittees within the Surface Property, including sufficient ADA compliant parking stalls to satisfy ADA requirements. For the avoidance of doubt, Developer, at Developer's sole cost and expense, shall ensure that the Surface Property and the adjacent Transit Center, upon delivery by Developer to the Public Agencies following the initial construction of the Station Property by or for the benefit of Developer and temporary use and reconfiguration of the Transit Center pursuant to Section 4.2.4 below, collectively provide at least 650 parking stalls. Additionally, Developer, at Developer's sole cost and expense, shall ensure that the beams and any utilities adjacent to such beams are located to provide and maintain at least eight (8) feet of clear height space throughout the Surface Property. Except in an Emergency Situation, Developer shall notify the Public Agencies in writing at least thirty (30) days in advance for maintenance and at least sixty (60) days in advance for any construction, placing, repairing or removing work, of the dates, times and scope of maintenance or other work, and to cooperate in good faith with the Public Agencies in minimizing interference with the use and operation of the Surface Property; provided, however, if such maintenance or repair work does not impact parking at the Surface Property, then Developer shall only be obligated to provide the Public Agencies with at least five (5) business days advance notice. For the avoidance of doubt, if Developer desires to modify or add utilities in the future, the Public Agencies shall have reasonable review and approval rights with respect to any such modification or addition. Consistent with Section 4.2.1 above, anytime Developer reasonably determines that there is an Emergency Situation, Developer shall give notice of such Emergency Situation to the Public Agencies as soon as possible after such determination and shall have the right to immediately act on providing such maintenance and repair work as is required to address the Emergency Situation; provided, however, that the foregoing language shall not be in denigration of any obligation, liability or duty of Developer under or pursuant to this Agreement or as provided by law, and the foregoing right shall not release or relieve Developer from any responsibility, liability or indemnification obligations arising out of, resulting from, or relating to this Agreement.

4.2.4 ***Temporary Construction Easement on Transit Center and Milliken Site during the Initial Construction***. In connection with development of the HSR Station by Developer and during the construction thereof, the Public Agencies hereby grant to Developer a temporary construction easement for construction parking and staging purposes on the Transit Center, as well as the construction of ramps and stairs on the Transit Center, per plans approved by Public Agencies in accordance with Section 3.4 of the DDA, to facilitate ingress and egress between the Station Property and the Transit Center and the reconfigured pedestrian ramp for

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

access to the Pedestrian Tunnel, and the City hereby grants to Developer a temporary construction easement for construction parking on the adjacent parking lot owned by the City on Anaheim Place, abutting Azusa Court and Milliken Avenue ("***Milliken Site***") until the completion of the HSR Station, but in any event no later than seven (7) years after Close of Escrow. However, with respect to the Milliken Site, the City may terminate the temporary construction easement no earlier than six (6) months after written notice from the City to Developer indicating that the City has reached agreement with a buyer for the sale of all of the Milliken Site (or for a material portion of the Milliken Site that requires termination of such temporary construction easement), subject only to City Council approval of the agreement, if such date is earlier than the completion of the HSR Station. Developer shall ensure that the design and construction of the long ramp from the Station Property to the Transit Center is in accordance with all ADA requirements. Additionally, Developer shall ensure that the design and construction of such ramp includes and utilizes drains and non-slip surfaces; provided, however, that Developer shall ensure that such design and construction also provides for and is conducive to the commercially reasonable subsequent addition of an overhead covering to shield the ramp from rain. The Public Agencies shall assume responsibility for the ramps and stairs on the Transit Center following (i) the initial construction by Developer, at the sole cost of Developer, (ii) the inspection and acceptance thereof by the Public Agencies, at the sole cost of the Public Agencies, and (iii) the inspection and approval by a CASp certified inspector as part of the Inspector of Record process, at the sole cost of Developer. The Public Agencies and Developer shall coordinate regarding the location(s) and scope(s) of such construction parking and staging such that the combined Transit Center and Milliken Site continue to provide at least 400 parking stalls are available to Public Agencies' Permittees, at least four bus drop off locations (including on Azusa Court if necessary), pedestrian access between such parking and bus drop off locations and the Metrolink platforms and legally compliant ADA parking, all in a manner reasonably acceptable to the Public Agencies. Prior to exercising any such rights described within this Section 4.2.4, Developer shall provide the Public Agencies with thirty (30) days' notice of Developer's plans for any occupancy or use of the easement, and the Developer must demonstrate to the reasonable satisfaction of the Public Agencies that safe and adequate circulation of pedestrian, vehicular, and bus movements are and will be provided for at all times during the term(s) of the easement. Developer shall provide the Public Agencies at least thirty (30) days' notice of any changes to the affected area, to enable the Public Agencies to provide notice to Metrolink and/or its patrons, and such changes must otherwise be in accordance with the terms of this Agreement. Commencing on the date which Developer takes possession of any temporary construction easement area, Developer shall compensate the Public Agencies for the temporary construction easement by paying them, on a monthly basis, on or before the first business day of each calendar month, without offset or deduction, a sum of money which is equal to the product of the following factors: (i) the total number of square feet then affected by the temporary construction easement, (ii) the affected property's fee value per square foot, multiplied by (iii) one third of a percent (1/3%). The fee value per square foot of the affected property shall first be established by an appraisal no older than six months at the time Developer first takes possession of any temporary construction easement area and shall be scaled by a factor of one and four hundredths (1.04) each year on the anniversary of said appraisal's date of valuation. If payment is not made within ten (10) business days after written notice from the City, then the outstanding sum shall immediately begin to accrue interest at the rate identified in Section 7 until paid. During the term of the temporary construction easement, Developer shall maintain the temporary construction easement area in good condition and repair. Following the termination of the

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

temporary construction easement, Developer shall promptly return the portion of the Transit Center and Milliken Site used for the temporary construction easement to their condition immediately prior to the easement term.

For all facilities that the Public Agencies will own and control, Developer shall obtain customary and usual construction and installation warranties, shall assign all such warranties, on a non-exclusive basis and to the extent assignable, to the Public Agencies with respect thereto, and shall, whether or not such warranties are assigned, reasonably cooperate with the Public Agencies to enforce such warranties as necessary, including filing and pursuing warranty claims on behalf of the Public Agencies for non-assignable warranties.

4.2.5 ***Future Construction***. During the redevelopment of the Station Property, Developer on advance written notice, including without limitation the prior written approval of the Public Agencies of replacement parking as provided below, of not less than twelve (12) months, shall have the right to temporarily close the Surface Property for a reasonable period of time not exceeding thirty-six (36) months (as the same may be extended by force majeure, but not otherwise) during the actual construction on the Station Property and subject to the terms of this Section 4.2.5. If, as a consequence of Developer's future construction, the Public Agencies would not have at least 400 parking spaces available during the period of construction, Developer shall provide reasonable replacement parking, compliant with ADA and all other applicable law, taking into account both then existing ADA parking areas located on the Transit Center and ADA requirements relating to the replacement parking, as applicable, and otherwise reasonably acceptable to the Public Agencies during the construction period and thereafter until the Surface Property is returned to its prior condition. The amount of such replacement parking provided by Developer shall ensure that the Public Agencies would have (i) 400 parking spaces if the Public Agencies had 400 or more parking spaces just prior to Developer's construction, or (ii) if the Public Agencies had less than 400 parking spaces just prior to Developer's construction, an amount equal to such lesser amount. Following such construction, Developer shall promptly return the Surface Property to its prior condition as of the date Developer took possession. As an example only, if Developer develops a larger HSR station with below grade parking and the Surface Property, at the time of such construction, is used as a gated surface parking lot, Developer shall restore the Surface Property to a surface parking lot, including striping, lighting, and gates, as applicable (including any equipment that was previously installed by the Public Agencies).

4.2.6 ***Baggage Elevator Access***. Developer may in the future, without any obligation to do so or to continue such service once commenced, build a baggage elevator entirely on the Station Property that would open onto the Pedestrian Tunnel via a vestibule, also entirely on the Station Property, between the Pedestrian Tunnel and such elevator, to enable baggage service between BLW trains and Metrolink Trains. As part of the work to reconfigure the ramps and stairs providing access to the Pedestrian Tunnel, Developer shall construct the vestibule per plans approved in advance and in writing by the Public Agencies and gate such vestibule from the Pedestrian Tunnel to prevent access and vagrancy issues when not in use; said gate to be located entirely on the Station Property. Developer shall coordinate with the Public Agencies regarding the design thereof to maximize the continued functionality of the tunnels and any construction work relating thereto to minimize impacts to the Transit Center.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

5. **INSURANCE**.

5.1 **Public Agency Insurance Requirements**. With respect to the Surface Property, at all times the Public Agencies (or one of them) shall maintain property insurance coverage in amounts and types consistent with the coverage and amounts maintained on the Transit Center. To the extent both possible and reasonably available at commercially reasonable rates, Developer will be named as an Additional Insured on said insurance coverage and the Public Agencies will provide Developer reasonable evidence of said insurance upon request.

5.2 **Developer Insurance Requirements**. Developer at all times shall maintain the following insurance coverage:

5.2.1 ***Commercial General Liability (CGL)***. Developer shall maintain the insurance coverage set forth below in this Section 5.2.1 when the provisions of Section 5.3 do not apply. Commercial General Liability (CGL) with a limit not less than twenty-five million dollars ($25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars ($25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from the Public Agencies) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must provide coverage to the Insured Party as additional insureds using ISO Additional Insured Endorsement CG 20 10 and CG 20 26. Coverage shall be provided to the Insured Party for all claims arising from the Property of the Insured Party (as defined in Section 5.4.4 below), respectively, or proximately caused by reason of construction activities and the location and placement of improvements within the Property, unless caused by an Insured Party's gross negligence or willful misconduct.

5.3 **Insurance During Construction**. Developer shall maintain the following insurance coverage at all times during which it is performing construction work within either of the Properties:

5.3.1 ***Commercial General Liability (CGL)***. Commercial General Liability (CGL) with a limit not less than fifty million dollars ($50,000,000) each occurrence, fifty million dollars ($50,000,000) products and completed operations aggregate, and a general aggregate limit of not less than fifty million dollars ($50,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the HSR Station. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from the Public Agencies) substitute forms providing equivalent coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must cover the Insured Party as additional insureds using ISO Additional Insured Endorsement CG 20 26 or and 20 10 and accompanied by 20 37 or equivalent forms with approval from the Public Agencies providing coverage to the Insured Party for completed operation losses. Coverage must be provided to the Insured Party for claims proximately caused by reason of the uses authorized, unless caused by the gross negligence or willful misconduct of the Insured Party.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years from the completion date of such improvements. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

5.3.2 ***Commercial Automobile Insurance***. Developer shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from the Public Agencies, substitute form providing equivalent liability coverage) with a limit not less than one million dollars ($1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad. and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). Developer shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from the Public Agencies, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars ($25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars ($1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

5.3.3 ***Workers' Compensation and Employers Liability Insurance***. Developer shall provide evidence of Workers' Compensation insurance as required under California statutes including coverage for Employer's Liability with limits of at least one million dollars ($1,000,000) each accident, one million dollars ($1,000,000) each employee by disease, and a policy limit of one million dollars ($1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars ($25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies. The workers' compensation policies must provide the following:

(a) A waiver of subrogation in favor of the Insured Party and the Permittees of the Insured Party;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement, if applicable to the Insured Party's operations;

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

(d) Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

(e) Coverage for liability under Title 46 of the U.S.C. § 688 on an "if any" basis or as otherwise appropriate; and

(f) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

5.3.4 ***Professional Liability Insurance***. The Developer shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in connection with such construction, procured, and maintained by those third parties performing such work for or on behalf of Developer. For the lead design contractor for the improvements in privity with Developer, the coverage must not be less than ten million dollars ($10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars ($2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to such construction, the coverage must not be less than five million dollars ($5,000,000) per claim and in the aggregate. Developer shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of such construction work, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars ($1,000,000) per claim and in the aggregate. Developer shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars ($25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against Developer by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for Developer or any lead design entity is permitted to exceed five hundred thousand dollars ($500,000), without prior written approval from the Public Agencies, in their good faith discretion (which shall factor in whether such insurance is commercially available). Coverage must apply specifically to professional activities performed or contracted by Developer in support of the construction. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. Developer agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and Developer shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after completion of such construction.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

5.3.5 ***Contractor's Pollution Liability***. Developer shall procure or cause to be procured contractor's pollution liability ("***CPL***") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with dedicated limits of no less than twenty-five million dollars ($25,000,000) per occurrence and twenty-five million dollars ($25,000,000) in the aggregate per policy period dedicated to the Property. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Property. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Developer shall furnish the Insured Party evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars ($5,000,000) per loss and an annual aggregate of five million dollars ($5,000,000).

5.3.6 ***Railroad Protective Liability***. Developer shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from the railroad requiring such insurance, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad.

5.3.7 ***Builder's Risk Insurance***. Developer shall, upon commencement of construction, obtain and maintain a policy of builder's risk insurance for the construction. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Property. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and the Insured Party. The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the construction, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for incorporation into the works located at the Property, in storage or in the course of transit to the Property and all improvements that are within the Property. The builder's risk policy must include coverage for:

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

(a) Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;

(b) Machinery accidents and operational testing involving equipment covered by the policy;

(c) Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars ($25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all Properties

(d) Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;

(e) Replacement value of any property or equipment stored either on or off the Property;

(f) Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:

(i) Collapse;

(ii) Terrorism;

(iii) Earthquake;

(iv) Flood;

(g) Plans, blueprints and specifications; and

(h) Demolition and increased cost of construction as required by law or ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of Developer.

The policy must provide a "severability of interests provision," "multiple insured's clause" or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

Developer shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction, Developer shall provide evidence of "all risk" property insurance covering the improvements, with coverage sufficient to cover the probable maximum

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

loss of such improvements and alterations made by Developer pursuant to the terms hereof, which must include "all risk" coverage using the ISO Causes of Loss - Special Form or (with approval from the Public Agencies) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

5.4 **General Insurance Requirements**.

5.4.1 ***Self Insurance/Deductible***. The policy or policies under which coverage is provided by Developer may include a deductible or self-insured retention not in cumulative excess of ten million dollars ($10,000,000) on the condition that:

(a) Each insurance policy expressly provides that the obligations of the policy issuer to the Insured Party an additional insured are not to be diminished in any way by Developer failure to pay its deductible or self-insured retention obligation for any reason;

(b) Developer provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to the Insured Party and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that Developer has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars ($1,000,000); and

(c) Developer promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

5.4.2 ***Definition of "Self Insurance"***. As used in this Section, "self insurance" means that Developer is itself acting as if it were the insurance company providing the insurance required.

5.4.3 ***Evidence of Insurance***. Developer shall furnish evidence of insurance reasonably acceptable to the Insured Party before Developer commences physical construction within the Properties. Developer shall also provide the Insured Party with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. Developer shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to Developer starting work on the Properties, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of Developer, any of the coverage required becomes unavailable, Developer shall provide good faith alternative insurance packages and programs, subject to prior approval by the Public Agencies, with the goal of reaching agreement in good faith on a package providing coverage equivalent to that specified herein.

5.4.4 ***Additional Insured Coverage***. All Developer policies including property, except those for Workers' Compensation and Professional Liability insurance, must

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

name the Insured Party as additional insured. Commercial General Liability policies must be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name the Insured Party as additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of Developer on the Property, coverage for such additional insureds must not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for the Insured Party to vicarious liability but shall allow coverage for the Insured Party to the full extent provided by the policy. ***Insured Party*** means the Public Agencies and their directors, council members, officers, employees, contractors and agents.

5.4.5 ***Waiver of Subrogation Rights***. To the fullest extent permitted by law, Developer hereby waives all rights of recovery under subrogation against the Insured Party, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of the Insured Party, in connection with the planning, development and construction of any improvements. To the fullest extent permitted by law, Developer shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. Developer shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit Developer from waiving the right of subrogation prior to a loss or claim.

5.4.6 ***Eligible Insurers***. If policies are written by insurance carriers authorized and admitted to do business in the State of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the State of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by the Public Agencies.

5.5 **Coverage Amounts**. All insurance coverage amounts hereunder shall be increased every five (5) years based on increases, if any, in the consumer price index.

6. **INDEMNITY**.

6.1 **Indemnity**. Subject to the provisions of Section 6.2 below, Developer shall protect, indemnify, defend, and hold harmless the Public Agencies from and against all claims, demands, expenses, liabilities, losses, damages, and costs, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, howsoever caused, to, any person or loss or damage arising as a result of Developer's or Developer's Permittees' acts or omissions on or related to the Station Property, including without limitation, the Tunnel Easement Area as defined in the Grant Deed and the Temporary Construction Easement described in Section 4.2.4. Subject to the provisions of Section 6.2 below, the Public Agencies shall protect, indemnify, defend, and hold harmless the Developer from and against all claims, demands, expenses, liabilities, losses, damages, and costs, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, howsoever caused, to, any person or loss or damage arising

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

as a result of the Public Agencies' or their Permittees' acts or omissions on or related to the Surface Property.

6.2 **General Provisions**. Notwithstanding anything to the contrary in this Section 6, neither Party shall be entitled to indemnification for damage to the extent caused by or arising from its negligence or willful misconduct or the negligence or willful misconduct of its Permittees.

7. **ENFORCEMENT AND REMEDIES**. If any Party defaults in the performance of any obligation under this Agreement ("***Defaulting Party***" with respect to each individual instance of such default), and if such default remains uncured thirty (30) days after written notice from the other Party ("***Nondefaulting Party***" with respect to each such individual instance of such default), stating with particularity the nature and extent of such default, then Nondefaulting Party shall have the right to (i) perform such obligation on behalf of such Defaulting Party, (ii) be reimbursed by such Defaulting Party within thirty (30) days of written demand therefor, together with interest at the lesser of the rate of twelve percent (12%) per annum or the maximum rate permitted by law, and/or (iii) commence an action against the Defaulting Party for injunctive relief (including mandatory injunction or specific performance) and/or damages; and nothing in this Agreement, including without limitation the foregoing language and including that a cure period is provided and that a cure may timely occur, shall limit or be in denigration of the rights and remedies of the Nondefaulting Party, including the right to damages and/or other legal or equitable remedies or relief. The failure of the Nondefaulting Party to insist, in any one or more cases, upon the strict performance of any provision of this Agreement shall not be construed as a waiver of the future breach of such provision or any other provision of this Agreement.

8. **APPROVALS AND DISPUTE RESOLUTION**. Except as otherwise specifically provided herein, no approval shall be unreasonably withheld or delayed. If the Parties are not able to agree on any matter which is to be approved by Party or Parties pursuant to this Agreement, the matter shall, upon demand of any Party, be determined pursuant to the provisions set forth below.

8.1 **Meet and Confer**. If the Parties are unable to resolve a dispute within ten (10) days of written notice of a dispute, the Parties will, at the written request of any Party, require that the matter be reviewed by a senior level executive of each Party (in the case of Developer, by a Senior Vice President or higher, and in the case of the Public Agencies, by the Assistant City Manager or higher or the Deputy Executive Director or higher, as applicable). If senior level executives cannot reach a resolution within ten (10) days of commencing their meet and confer then any Party may seek judicial resolution.

8.2 **Costs**. Each Party will bear its own costs, including attorneys' fees, which it incurs. In the event the parties use a mediator or arbitrator, they will share equally in the costs of the mediator's services.

9. **REVERSIONARY RIGHT**.

9.1 **Reversionary Right**. Reference is hereby made to the reversionary right of the Public Agencies with respect to the Station Property as set forth in Section 5.2.2 of the DDA.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

With respect to such reversionary right, as a matter of clarification, the Parties agree that, if the Public Agencies repay the amount set forth in Section 5.2.2 of the DDA, and there is any secured loan or lien encumbering the Station Property, then the amount paid shall be paid to the secured lender or lienholder to the extent necessary to require a reconveyance/release of the applicable deed of trust or other lien under California law. Additionally, the reversionary right shall no longer apply following the completion of the required improvements set forth in the DDA by Developer and commencement of revenue service on the high speed rail line from the HSR Station.

10. **RIGHT OF FIRST NEGOTIATION**.

10.1 **First Negotiation**. If the Public Agencies elect to sell all or a portion of the Surface Property (which shall be subject to easements and/or licenses provided to Developer), or the Public Agencies receive a bona fide offer to buy all or a portion of the Surface Property from a purchaser which is acceptable to the Public Agencies, Developer shall have the right of first negotiation to purchase the Surface Property from the Public Agencies pursuant to the following terms and conditions:

10.1.1 ***Sale Notice***. If the Public Agencies elect to sell all or a portion of the Surface Property, the Public Agencies shall first notify Developer (or its successor owner of the Station Property) in writing before the Surface Property (or such portion) becomes available for sale to third parties, or if the Public Agencies receive the bona fide offer described above, the Public Agencies shall notify Developer that the Public Agencies have received such an offer ("***Sale Notice***"). Pursuant to such Sale Notice, the Public Agencies shall then negotiate with Developer to sell the Surface Property (or such portion) to Developer. The Sale Notice shall set forth the proposed economic terms (including, without limitation, purchase price) and conditions upon which the Public Agencies are willing to sell the Surface Property (or such portion) (collectively, the "***Economic Terms***").

10.1.2 ***Procedure for Acceptance***. If Developer wishes to exercise Developer's right of first negotiation, then within ten (10) business days of the delivery of the Sale Notice to Developer, Developer shall deliver a written notice to the Public Agencies of Developer's exercise of its right of first negotiation, whereupon the Public Agencies and Developer shall then negotiate the terms of the sale for a period of sixty (60) days ("***Negotiation Period***"). Developer must elect to exercise its right of first negotiation to purchase all of the Surface Property offered (not less than what is offered). If Developer does not so notify the Public Agencies within the ten (10) business day period, or terms acceptable to the staff of the Public Agencies (which they would recommend to decision-makers for approval) are not reached during the Negotiation Period, then the Public Agencies shall be free to sell the portion of the Surface Property offered to Developer to anyone the Public Agencies desire on any terms the Public Agencies desire, and Developer shall no longer have any right to purchase such portion of the Surface Property; provided, however, if the Public Agencies desire to sell such portion of the Surface Property (i) for less than ninety percent (90%) of the purchase price, or (ii) later than the date which is one year after the Negotiation Period, then the Public Agencies shall be obligated to give another Sale Notice to Developer in accordance with the terms of this Section 10.1.1 above.

10.1.3 ***Agreement***. If Developer and the Public Agencies agree on the terms of Developer's purchase of the Surface Property (or a portion thereof), then the Public

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Agencies and Developer shall, within ninety (90) days thereafter, execute a purchase agreement upon which Developer shall agree to purchase the Surface Property (or a portion thereof) with the following terms: (a) Developer shall complete its due diligence review of the Surface Property within thirty (30) days following the date of the purchase agreement, (b) the close of escrow under the purchase agreement shall not occur later that thirty (30) days following expiration of the due diligence period, and (c) all remaining terms of the purchase and sale of real property that are in the DDA and not specified in this Section 10.1 shall apply to the purchase and sale transaction.

11. TRAFFIC SIGNAL IMPROVEMENTS AND MAINTENANCE/REPAIR.

11.1 **Azusa Court/Milliken Avenue Intersection**. Developer shall construct a traffic signal and associated intersection improvements at the intersection of Milliken Avenue and Azusa Court ("***Intersection***") as part of the development and operation of the HSR Station.

11.2 **Milliken Avenue/Station Property Driveway**. Developer intends to utilize a right-in, right-out movement at the driveway entrance to the Station Property from Milliken Avenue ("***Driveway***") as part of the development and operation of the HSR Station. With this configurations, the City is not requiring a traffic signal to control traffic at the Driveway. However, Developer may not utilize a left-in, left-out movement at the Driveway unless and until a fully signalized T-intersection is constructed and installed at the Driveway in accordance with Section 11.4, unless otherwise agreed to by the City.

11.3 **Anaheim Place/Azusa Court Intersection and Azusa Court/Surface Property Driveway.** Developer completed a traffic study to determine whether any additional traffic improvements are required at the intersection of Anaheim Place and Azusa Court and at the driveway entrance to the Surface Property from Azusa Court. The study concluded that no traffic signal is required at the intersection and that a two-way stop and added turn lanes will handle the traffic flow in the area and the driveway entrance. Developer shall construct and install the recommended traffic improvements in the traffic study prior to opening passenger service operation at the HSR Station. The City shall process the permits for such improvements in accordance with the process set forth in Section 11.3.

11.4 **Permitting Process for Traffic Improvements.** Prior to beginning design of any traffic improvements, Developer's engineer shall meet with the City Engineer's traffic engineering staff to determine the appropriate design approach and operational characteristics for each traffic improvement. Developer will submit to the City a complete "Right-of-Way Application," including plans and specifications (the "***Application***") for approval of the construction and installation of each traffic improvement. The City will fairly and, in accordance with the City's customary practices, promptly process (i) the Application within one hundred twenty (120) calendar days of receipt of the Application from Developer (or its agents, representatives, or designees) and all additional applications by Developer (or its agents, representatives, or designees) for City permits necessary for the construction and installation of each traffic improvement, including not limited to, any requisite construction permits, grading permits, building permits, mechanical permits, electrical permits, drainage permits, permits, and requests for inspections and approvals. The City reserves all rights and inherent duties in processing the Application to conduct a good faith review of the Application and to perform its obligation to not approve an incomplete Application if the Application is missing required

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

technical information or is not in compliance with permit approval requirements. The City agrees to promptly notify Developer in writing of any incomplete items, missing information, and the City permit requirements. Developer shall construct and install all traffic improvements in accordance with then existing City standards. Provided the traffic improvements are accepted and completed in accordance with the foregoing (including applicable permits), the City agrees to accept and maintain all traffic improvements once complete.

12. **USE OF CITY-OWNED PROPERTY**. Developer and the Public Agencies cooperatively negotiated the DDA and associated easements to facilitate the development of the HSR Station. As a result thereof and as of the effective date of this Agreement, Developer acknowledges that the only City-owned property to be used for the HSR Station and any related facilities is identified in the DDA. Except as expressly set forth otherwise in the DDA, Developer shall not use or attempt to use the following City-owned property for transit uses as part of the initial development of the HSR Station without the prior written consent of the City in its sole and absolute discretion: (1) the Transit Center described in Exhibit C; (2) the Milliken Site; (3) the City-owned property adjacent to the I-15 Freeway and identified as APNs 0229-021-81-0000 and 0229-021-80-0000; and (4) property to be dedicated to the City for public use within the area governed by the Resort Specific Plan on the now-closed Empire Lakes Golf Course located north of Sixth Street, south of the BNSF/Metrolink rail line, west of Milliken Avenue, and east of Utica/Cleveland Avenues. Developer further acknowledges and agrees that if it needs additional City-owned property as part of the initial development of the HSR Station, it shall cooperatively negotiate directly with the City regarding the acquisition of such additional property. The foregoing shall not constitute a waiver of Developer's condemnation powers beyond the initial construction of the HSR Station (i.e., does not limit future use for expansions or reconstruction after the initial HSR Station is constructed and operational).

13. **PUBLIC ART**. If Developer receives approval of the Consolidated Rail Infrastructure and Safety Improvements grant ("***Grant Approval***"), Developer shall design, procure, fabricate, and install public art on the exterior facade of the parking garage as part of the HSR Station subject to the reasonable approval of the City ("***Art Installation***"), in an amount equal to 1.5% of the amount of such Grant Approval, not to exceed One Million Five Hundred Thousand Dollars ($1,500,000.00). If the City desires to enhance the design, procurement, fabrication or installation costs beyond Developer's funding commitment as outlined above, the City shall be responsible for any such additional costs. If Developer does not receive Grant Approval, Developer shall have no obligation to install the Art Installation or bear any costs relating thereto; provided, however, Developer shall include in the design of the HSR Station the future potential installation of the Art Installation by the City and shall reasonably cooperate, at no out-of-pocket cost to Developer, with the City regarding with the design, fabrication and installation of the Art Installation.

14. **MISCELLANEOUS**.

14.1 **Notices**. Except as otherwise provided herein, notice to be given to a Party must be in writing and may be delivered to the Party by nationally reputable overnight courier, charges prepaid, or by certified mail, return receipt requested, to the address below (or alternative address subsequently noted by such Party). Such notice is deemed delivered the first business day after delivery to such courier or, if sent by certified mail, the date of delivery or refusal to accept

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

delivery or inability to deliver shown on the return receipt. A party may change its address(es) for notices by a notice given pursuant to this Section.

City: City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SBCTA: San Bernardino County Transportation Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit & Rail Programs

With a copy to SBCTA General Counsel
At the SBCTA address above

Developer: DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: President
With a copy to Developer's Legal Department
At the Developer address above

14.2 **Interpretation**. This Agreement is not intended to create, nor shall it be construed to create, a joint venture, a partnership, or any other similar relationship among any of the parties. The captions of the various provisions of this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents thereof. Any references to "Section" or "Sections" contained in this Agreement shall refer to that "Section" or those "Sections" contained in this Agreement. This Agreement shall be construed in accordance with the laws of the State of California. Time is of the essence in this Agreement.

14.3 **Entire Agreement**. This Agreement supersedes all prior written or verbal representations or declarations of the parties with respect to the subject matter hereof. For the sake of clarity, the subject matter of the Reserved Easements are separate and distinct from this Agreement and, as such, this Agreement does not apply to, cover or address the Reserved Easements. In the event of any conflict or inconsistency, the Reserved Easements shall control.

14.4 **Amendments**. No addition, modification, amendment or waiver of any part of this Agreement shall be binding or enforceable unless executed in writing by the Parties and recorded in Official Records.

14.5 **Remedies Cumulative**. All remedies provided in this Agreement are cumulative. Therefore, notwithstanding the exercise by a Party of any remedy hereunder, such Party shall have recourse to all other remedies as may be available at law or in equity. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of any subsequent breach or default of any provision hereof by the same or any other Party.

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

14.6 **Covenants Running with Land**. The covenants contained in this Agreement shall constitute covenants running with the land; shall be binding upon, and shall inure to the benefit of, the Station Property, the Surface Property, and any portion thereof or interest therein; and shall be binding upon, and shall inure to the benefit of, the Developer, City, SBCTA and any person having or acquiring any interest therein and their successive owners and assigns.

14.7 **Recordation; Effective Date**. This Agreement shall be recorded in the Official Records and shall be effective upon the date thereof.

14.8 **Estoppel Certificate**. Each Party to this Agreement shall endeavor to issue to the requesting Party, or to any prospective purchaser of such requesting Party's parcel, within fifteen (15) days after the written request of any other Party, but in all events prior to thirty (30) days after such written request, an estoppel certificate stating (i) whether the Party to whom the request has been directed knows of any default under this Agreement and, if there are known defaults, specifying the nature thereof, (ii) whether this Agreement has been modified or amended in any respect and specifying the nature thereof, and (iii) whether this Agreement is, at that time, in full force and effect.

14.9 **Mechanics' Liens**. If a Party to this Agreement (the "***Responsible Party***") shall permit any mechanics' liens to be filed against another Party's parcel (an "***Affected Party***"), the Responsible Party shall either pay the same and have it discharged of record promptly, or take such action as may be required to reasonably and legally object to such lien and the placing of same against such Affected Party's parcel. In all events, the Responsible Party shall cause the lien to be discharged prior to the entry of judgment for foreclosure of such lien. Upon request of an Affected Party, the Responsible Party shall furnish such security, bond or indemnity to and for the benefit of such Affected Party as may be required to permit a title endorsement or title policy to be issued relating to such Affected Party's Parcel without showing thereon the effect of such lien.

14.10 **Duration**. Unless terminated by agreement of the Parties, including without limitation execution, acknowledgement and recording in the Official Record of an instrument confirming or otherwise reflecting such termination, this Agreement and each term, easement, covenant, restriction and undertaking contained herein will remain in effect for a term of ninety-nine (99) years following recordation hereof and will automatically be renewed for successive ten (10) year periods thereafter. Termination of this Agreement shall not discharge or excuse any unpaid obligation, and the rights and remedies for collection of any unpaid obligation shall survive the Agreement's termination. Notwithstanding any election by the Parties to terminate this Agreement, each easement created hereby which benefits the Station Property and/or the Surface Property and its respective owner or owners and Permittees shall be deemed to exist in perpetuity unless it is quitclaimed, or otherwise terminated and extinguished by each Party benefited by such easement. Any Party may request that such easement be documented by separate documentation in the event of a termination of this Agreement.

14.11 **Severability**. If any clause, sentence, or other portion of this Agreement shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

14.12 **Governmental Powers.** Nothing in this Agreement shall be construed as a waiver or modification of any governmental rights or powers of the Public Agencies.

14.13 **Force Majeure**. Provided that the Party or Parties claiming such delay gives written notice to the other Party or Parties of the nature of the cause of delay within ten (10) business days after the inception of the delay, and not otherwise, if any Party or Parties shall be delayed or hindered in or prevented from the performance of any construction or maintenance obligation required to be performed by such Party or Parties under this Agreement by reason of acts of God, natural disaster (including earthquake, hurricane, flood or severe prolonged adverse weather conditions), the outbreak of a pandemic virus or other pandemic disease, strikes, lockouts, unavailability of materials, failure of power, governmental laws or regulations, a declaration of a national, state or local emergency, directives or orders by a Governmental Authority (including orders by the federal Centers for Disease Control or its successor, or any state, county, or local public health department), riots, insurrections, adverse weather conditions preventing the performance of work as certified to by the licensed architect, engineer, or other individual overseeing the performance of the relevant work, war or other reason beyond such Party's or Parties' control, then the time for performance of such act shall be extended for a period equal to the period of such delay. Lack of adequate funds or financial inability to perform is not and shall not be deemed to be a cause beyond the control of a Party or Parties.

14.14 **Effect of Agreement; Binding Covenants; Equitable Servitudes**. Except as otherwise expressly provided herein, no rights or privileges conferred by this Agreement upon the Parties hereto shall inure to the benefit of any Permittee or other person or entity other than the Developer, City, SBCTA, or their respective successors and assigns, nor shall any such other person be deemed to be a third-party beneficiary of any of the provisions contained herein. Each and all of the restrictions, covenants, and easements of this Agreement (i) shall constitute equitable servitudes which shall apply to and be binding on the Parties hereto and each and all of their respective successors, assigns, and Permittees; and (ii) are imposed pursuant to a general plan for the improvement and use of the HSR Station and are designed for the mutual benefit of the Parties to this Agreement.

14.15 **Time of Essence**. Time is of the essence of every provision hereof in which time is a factor.

14.16 **City Manager Authority**. The City Manager of the City may give all approvals and make all elections described herein on behalf of the City provided they are in writing.

[SIGNATURES ON FOLLOWING PAGE]

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

The Parties have executed this Agreement as of _____, 2024.

DEVELOPER:

DESERTXPRESS ENTERPRISES, LLC,
a Nevada limited liability company

By: _____
Sarah Watterson, President

APPROVED AS TO LEGAL FORM:

_____
David M. Pickett,
Associate General Counsel

CITY:

CITY OF RANCHO CUCAMONGA

By: _____
L. Dennis Michael Mayor

APPROVED AS TO LEGAL FORM:

_____
Nicholas Ghirelli, City Attorney

SBCTA:

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Art Bishop,
Board President

APPROVED AS TO LEGAL FORM:

_____
Julianna K. Tillquist, General Counsel

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

NOTARY ACKNOWLEDGEMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

NOTARY ACKNOWLEDGEMENTS

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT A

LEGAL DESCRIPTION OF STATION PROPERTY

[See Attached]

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A1'

Legal Description of the Station Property

APN: 0209-272-11, 0209-272-22, & 0209-143-21

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with a portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on said Parcel Map, filed in the Office of said County Recorder, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, together with a portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet to the **Point of Beginning**;

Thence South 00°00'00" West 568.51 feet to the southeasterly line of Parcel 15 per said Parcel Map;

Thence along said southeasterly line South 46°46'47" West 23.71 feet to the southerly line of said Parcel 15;

Thence along said southerly line South 89°36'24" West 269.11 feet to the beginning of a non-tangent curve, concave northeasterly, a radial line to said point bears South 00°23'39" East and having a radius of 117.00 feet;

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Thence northwesterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43’39” an arc length of 60.70 feet;

Thence leaving said southerly line North 00°10’37” West 569.98 feet to said northerly line of the Rancho Cucamonga Metrolink Station Phase I;

Thence along said northerly line North 89°43’55 East 346.26 feet to the **Point of Beginning;**

Excepting therefrom that portion of the land described below as **Parcel “C”**.

Parcel contains 115,115 square feet, more or less.

AND

Parcel “B”

Commencing at the northeast corner of said Section 13;

Thence along the easterly line of said Section 13 South 00°29’50” East 50.00 feet to the easterly prolongation of the northerly line of the land of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation South 89°43’55” West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43’55” West 12.83 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43’55” West 346.26 feet;

Thence leaving said northerly line North 00°10’37” West 33.38 feet;

Thence North 87°50’29” East 346.61 feet;

Thence South 00°00’00” East 44.81 feet to the **Point of Beginning**;

Parcel contains 13,539 square feet, more or less.

AND

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Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Parcel "C"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line and northerly line South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 10.47 feet to the **Point of Beginning;**

Thence South 90°00'00" West 248.00 feet;

Thence South 00°00'00" East 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" East 348.75 feet to the **Point of Beginning.**

Parcel contains 86,490 square feet, more or less.

Excepting from Parcel "C" only that eight-foot-high portion of the real property described on Exhibit B-1 and depicted on Exhibits B-2 and B-3 attached hereto.

See Exhibits 'A2', 'A3', 'A4', and 'A5' attached hereto and made a part hereof.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Preliminary
04/19/2024 2:45:55 PM

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

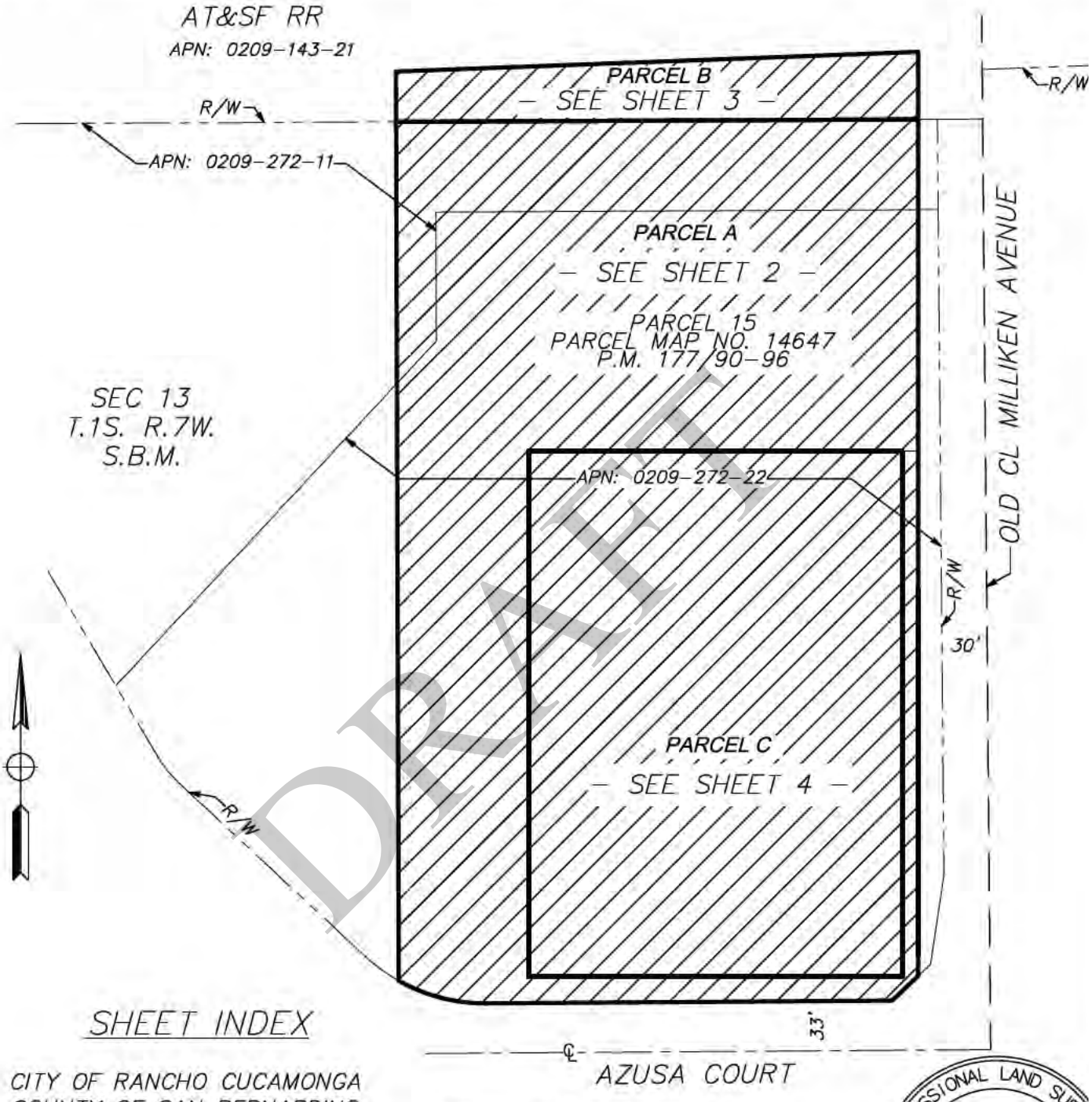
DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Preliminary
04/19/2024 2:46:00 PM

EXHIBIT 'A-2'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: N/A



SHEET INDEX

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA
SEAN M. SMITH
No. 8233

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

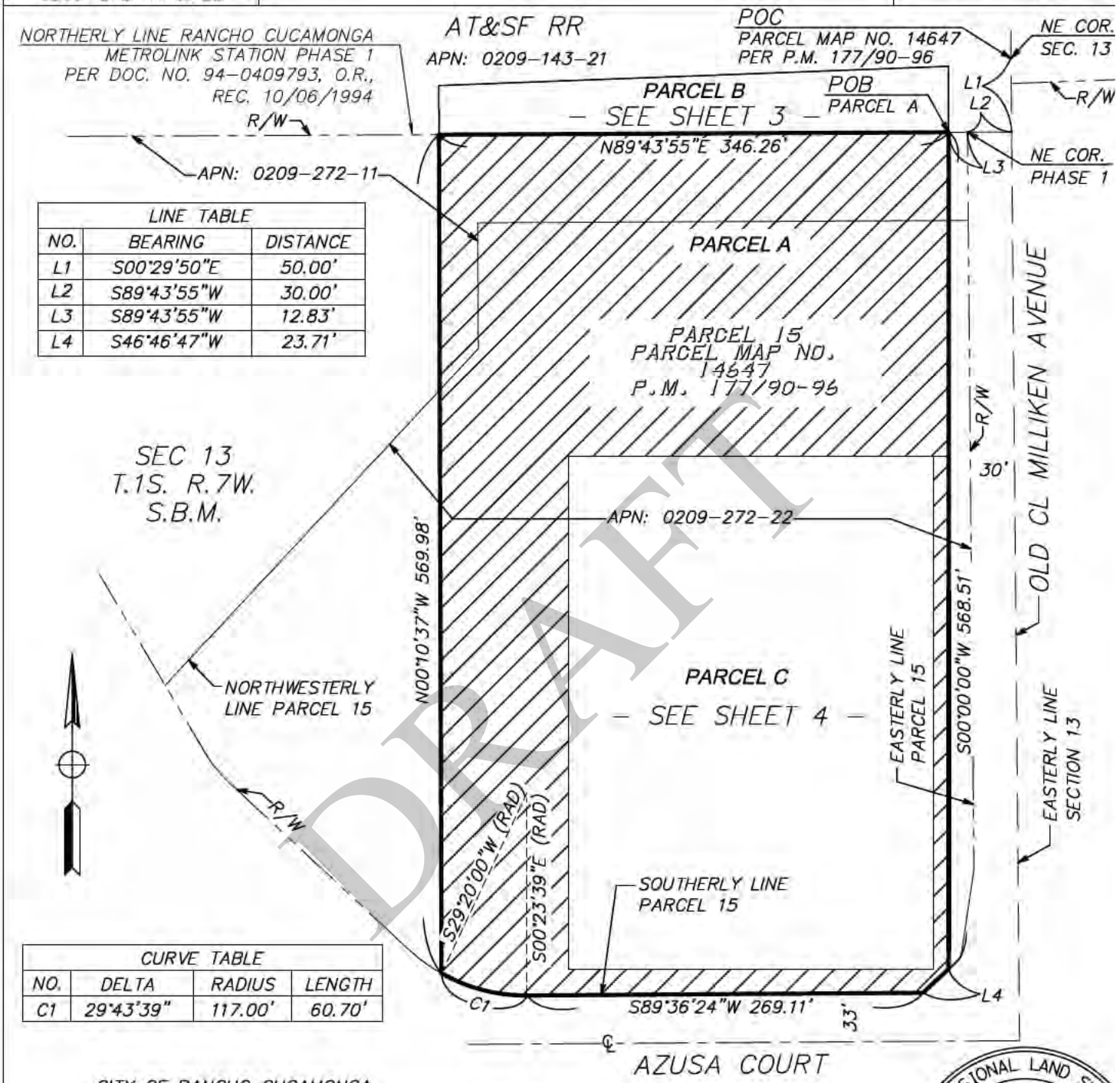
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-3'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 115,115 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	23.71'

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	29°43'39"	117.00'	60.70'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

////	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

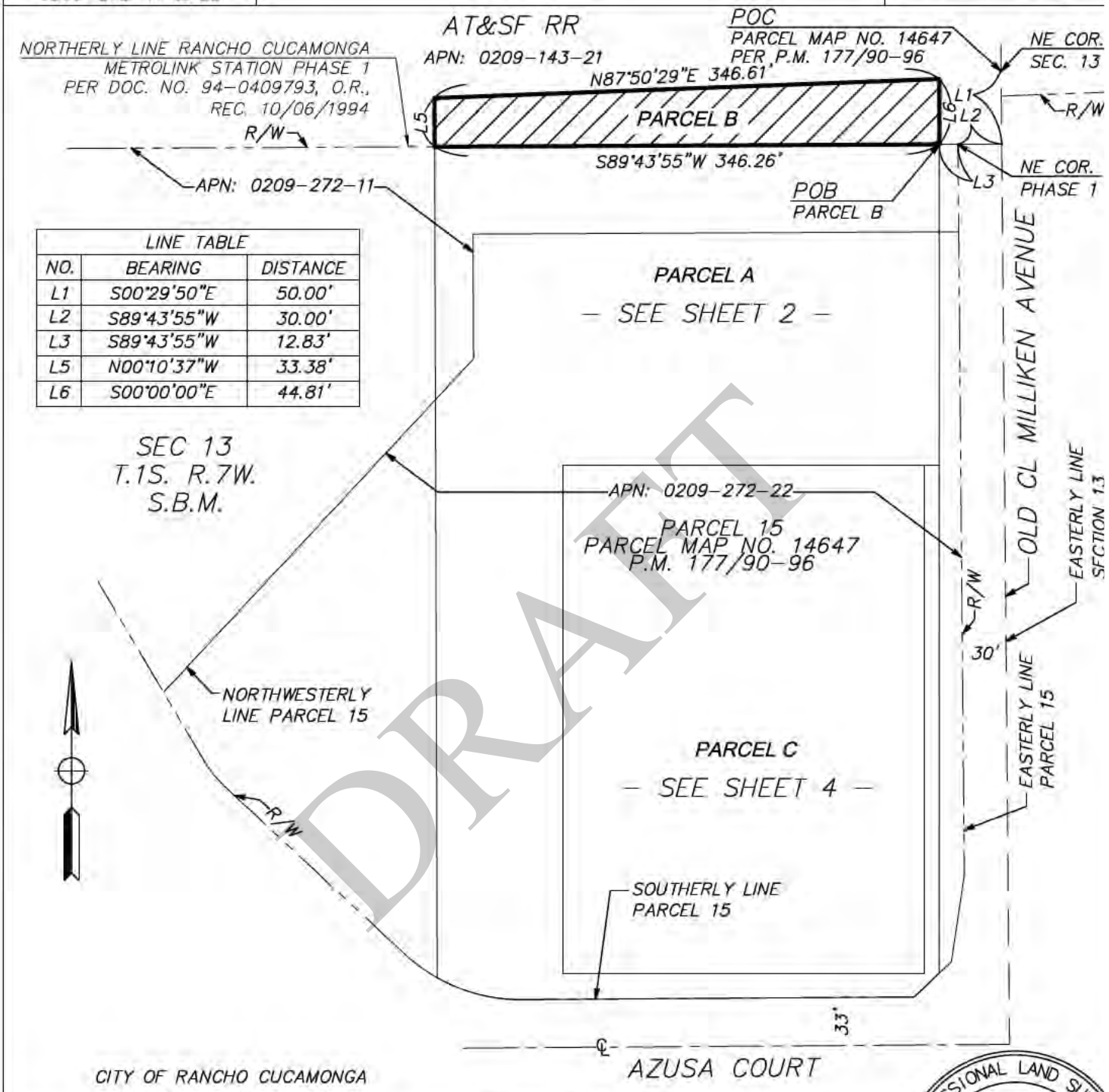
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-4'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 13,539 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L5	N00°10'37"W	33.38'
L6	S00°00'00"E	44.81'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA
SEAN M. SMITH
No. 8233

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

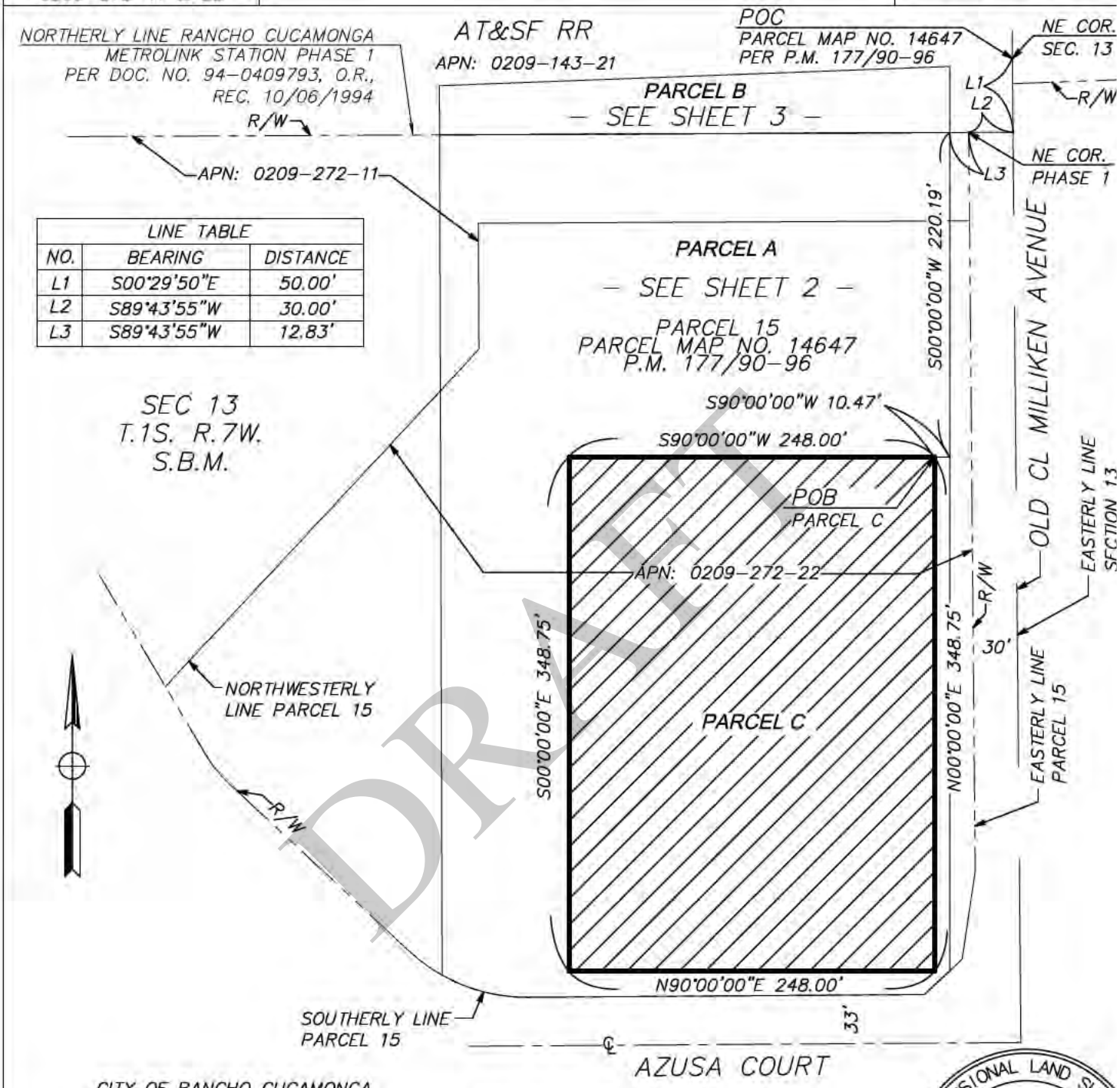
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-5'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 86,490 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

////	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA
SEAN M. SMITH
No. 8233

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	4	

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT B

LEGAL DESCRIPTION OF SURFACE PROPERTY

[See Attached]

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B1'

Legal Description of the Surface Property

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

That certain 8-foot-high portion of land, of the real property described herein, being the air space above the above-described land, contained between a horizontal plane eight (8) feet above the existing ground surface and existing ground surface, and as depicted in Exhibit B3;

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 10.47 feet to the **Point of Beginning;**

Thence South 90°00'00" West 248.00 feet;

Thence South 00°00'00" East 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" East 348.75 feet to the **Point of Beginning.**

DRAFT

Preliminary
02/26/2024 5:03:56 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Parcel contains 86,490 square feet, more or less.

See Exhibits ‘B2’ and ‘B3’ attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor’s Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

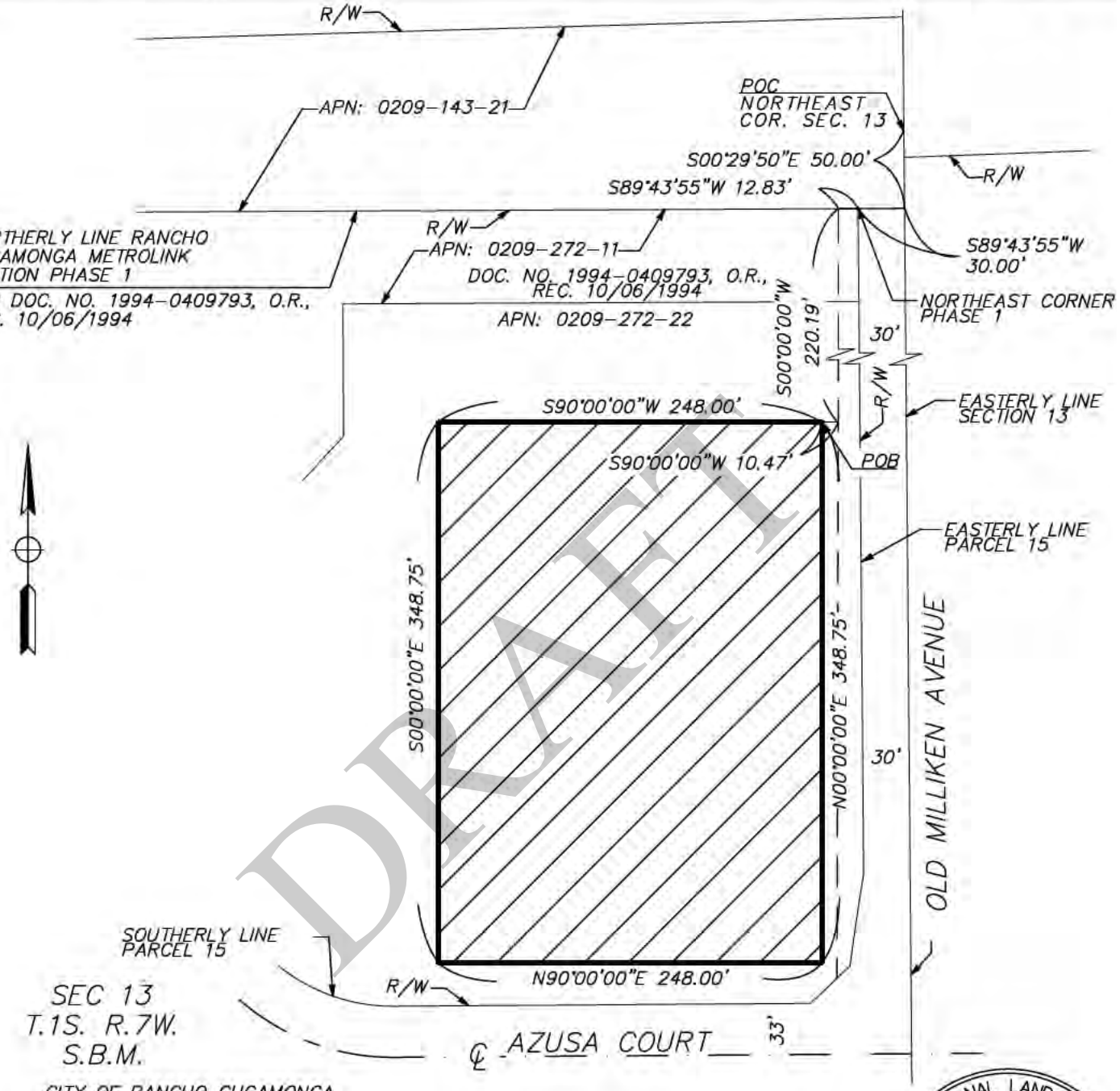
DRAFT

Preliminary
02/26/2024 5:04:01 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	86,490 SF



DRAFT

LEGEND

▨	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary
02/25/2024 5:34:54 PM

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 300

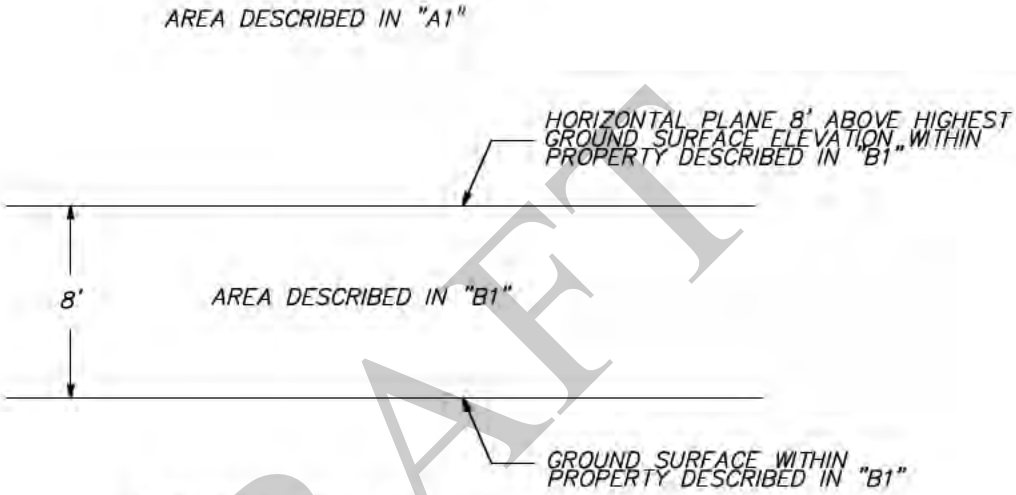
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-3'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 86,490 SF



AIR SPACE RESERVATION PROFILE DETAIL

DRAFT

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PREPARED BY:	PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
PSOMAS 1650 Spruce Street, Suite 400 Riverside, California 92507 (951)787-8421 www.psomas.com	AU	N/A	2	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C'

Legal Description

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

All that portion of said Parcel 15, together with all that portion of said Rancho Cucamonga Metrolink Station Phase I;

Excepting therefrom that portion lying easterly of the following described line:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning**;

Thence South 00°10'37" West 569.98 feet to the southerly line of said Parcel 15, also being the **Point of Terminus**;

Parcel contains 227,529 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.00 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'C-1' attached hereto and made a part hereof.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

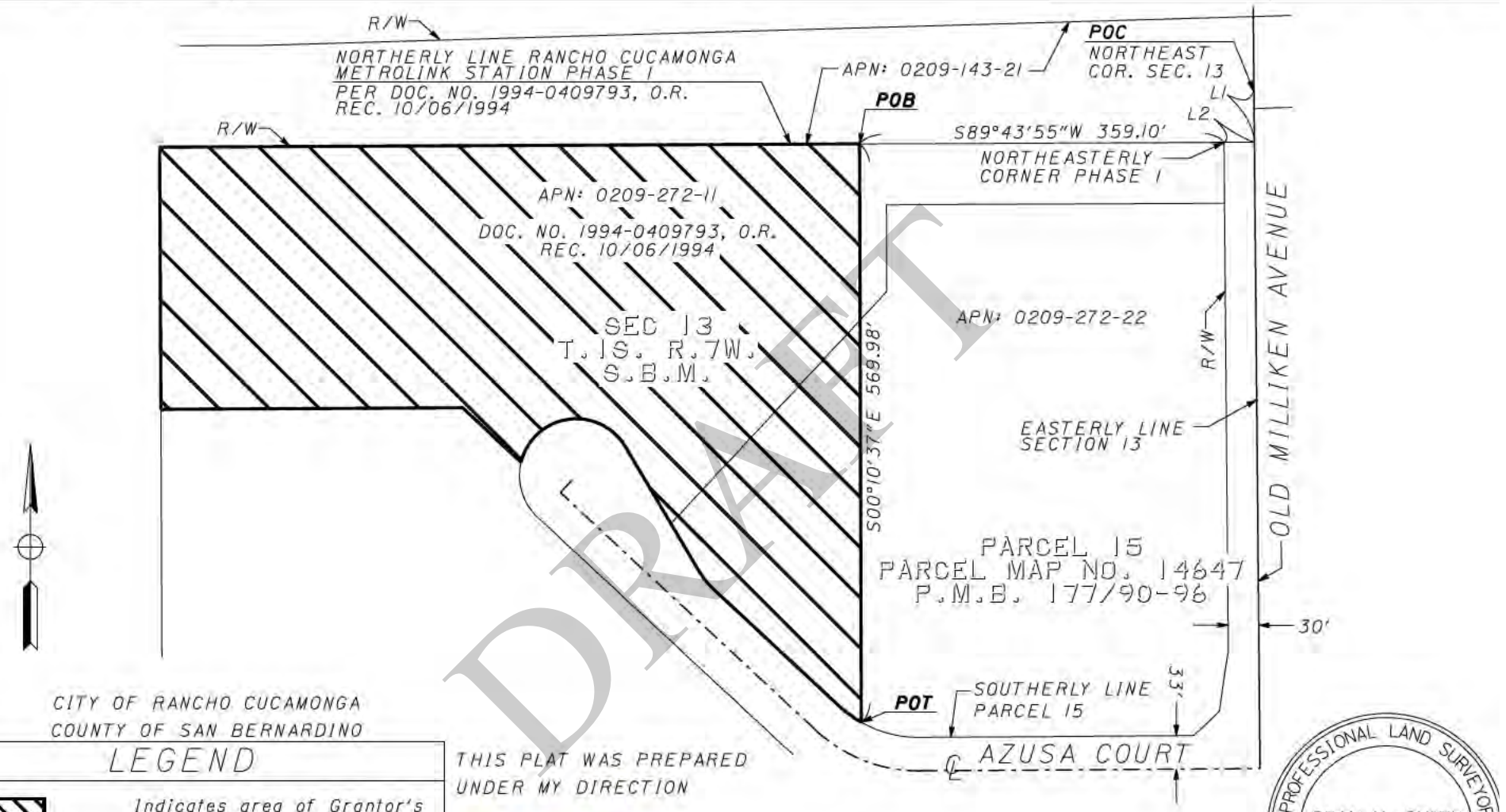
Date: 9/27/2022

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C-1'

APN	TYPE OF ESTATE	AREA
0209-272-11 & 0209-272-22	EASEMENT	227,529 SF



DRAFT

LEGEND

	Indicates area of Grantor's Property
POC	Point Of Commencement
POB	Point of Beginning
POT	Point of Terminus
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 — DATE 9/27/2022

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 75 150 300 450

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=150'	1	1

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT D

DEPICTION OF PEDESTRIAN ACCESS EASEMENT THROUGH STATION PROPERTY TO PROVIDE ACCESS BETWEEN THE SURFACE PROPERTY AND THE TRANSIT CENTER

[See Attached]

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D'

Depiction of Pedestrian Access Easement through Station Property to Provide Access Between the Surface Property and the Transit Center

APN: 0209-272-22

Those portions of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the Rancho Cucamonga Metrolink Station Phase I, as described in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 240.81 feet to the **Point of Beginning**;

Thence South 00°00'00" West 35.00 feet;

Thence North 00°00'00" East 15.50 feet;

Thence South 90°00'00" East 35.00 feet;

Thence South 00°00'00" East 15.50 feet to the **Point of Beginning**;

Parcel contains 543 square feet, more or less.

DRAFT

Preliminary
03/06/2024 9:31:00 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

AND

Parcel "B"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 235.14 feet;

Thence North 00°00'00" East 0.25 feet to the **Point of Beginning**;

Thence South 90°00'00" West 40.60 feet;

Thence North 00°00'00" West 15.00 feet;

Thence South 90°00'00" East 40.60 feet;

Thence South 00°00'00" East 15.00 feet to the **Point of Beginning**;

Parcel contains 609 square feet, more or less.

AND

Parcel "C"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

DRAFT

Preliminary
03/06/2024 9:31:05 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Thence along the easterly line of said Section 13, South 00°29’50” East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43’55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43’55 West 12.83 feet;

Thence South 00°00’00” West 220.19 feet;

Thence South 90°00’00” West 240.89 feet;

Thence North 00°00’00” East 0.25 feet to the **Point of Beginning**;

Thence South 90°00’00” West 34.85 feet;

Thence North 00°00’00” West 15.00 feet;

Thence South 90°00’00” West 46.73 feet;

Thence North 00°00’00” West 8.00 feet;

Thence South 90°00’00” East 81.58 feet;

Thence South 00°00’00” East 23.00 feet to the **Point of Beginning**;

Parcel contains 1,175 square feet, more or less.

See Exhibits ‘D2’, ‘D3’, ‘D4’, and ‘D5’ attached hereto and made a part hereof.

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Preliminary
03/06/2024 9:31:08 PM

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

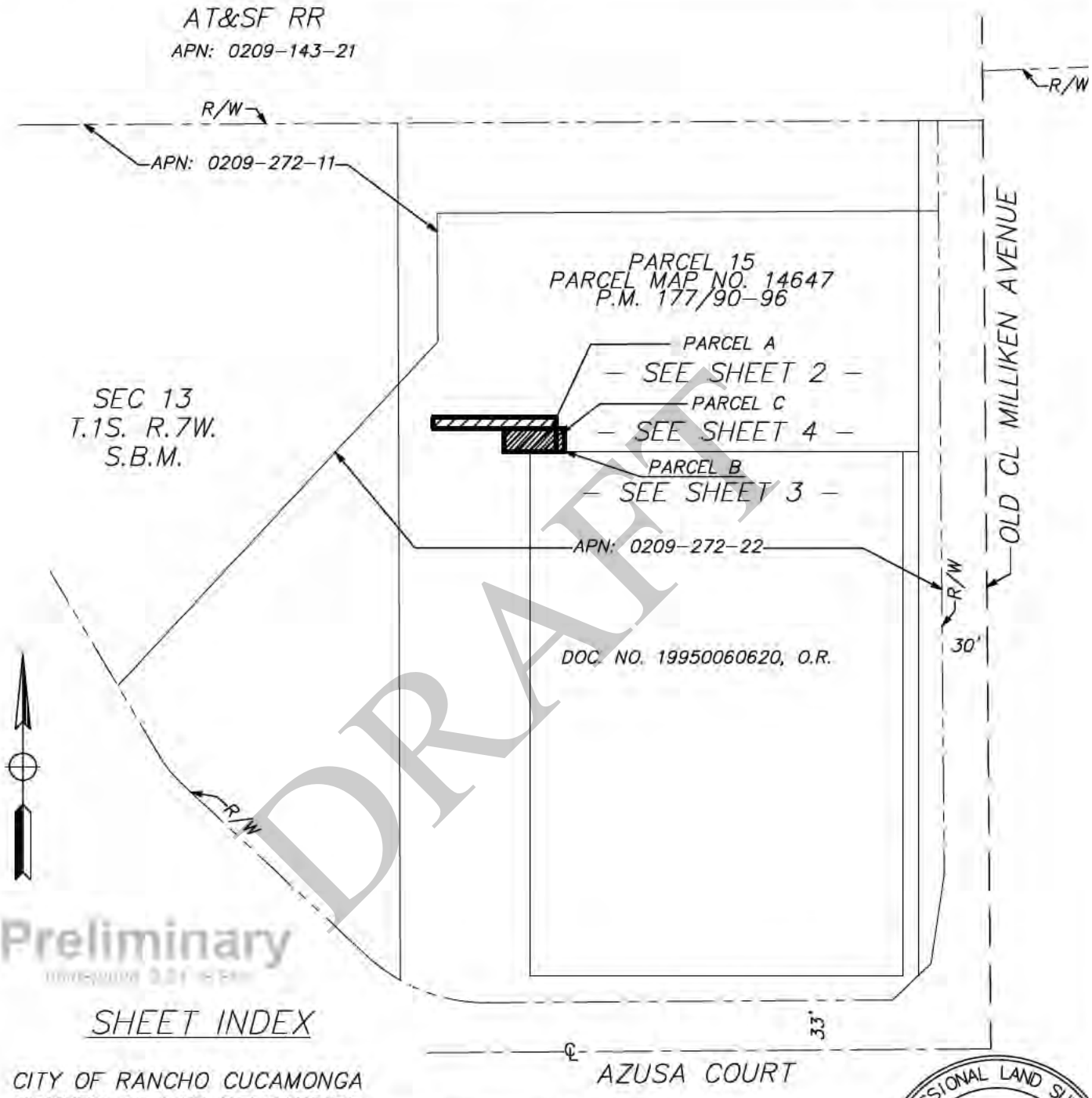
Date: _____

DRAFT
Preliminary
03/06/2024 9:31:10 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: N/A



SHEET INDEX

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 400

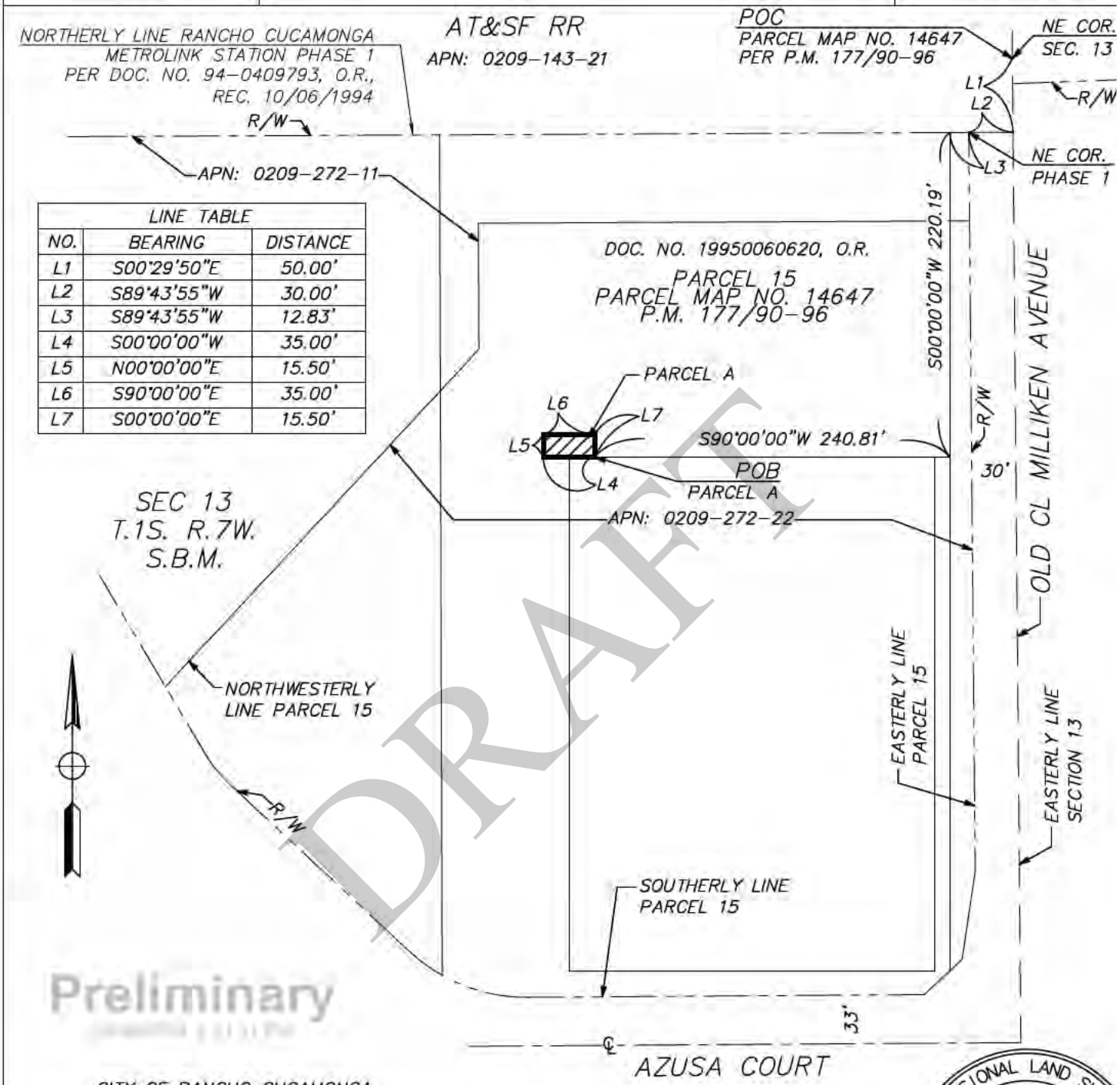
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-3'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 543 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S00°00'00"W	35.00'
L5	N00°00'00"E	15.50'
L6	S90°00'00"E	35.00'
L7	S00°00'00"E	15.50'

DRAFT
Preliminary

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA
SEAN M. SMITH
No. 8233

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

FEET 0 50 100 200 400

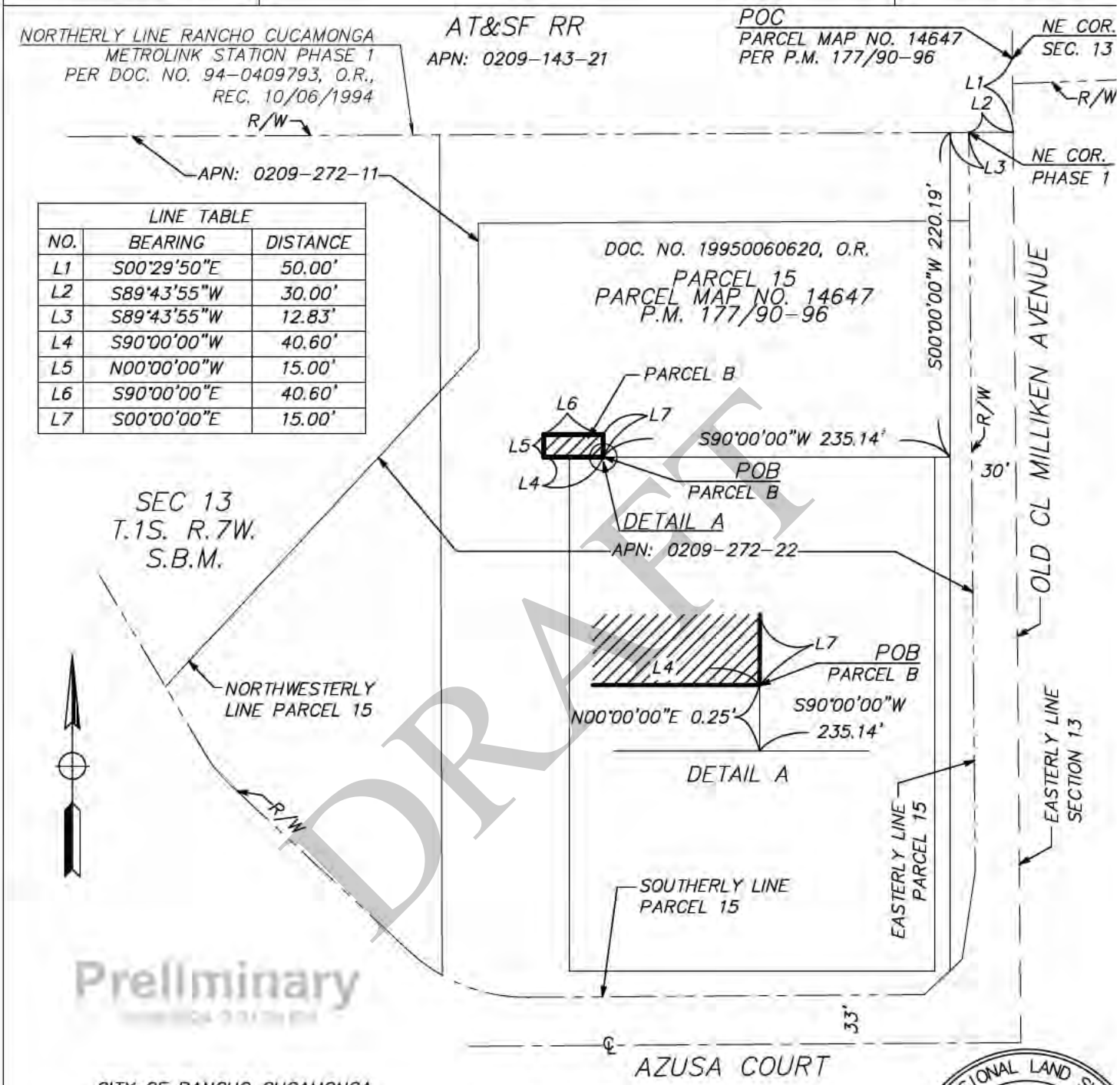
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-4'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 609 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S90°00'00"W	40.60'
L5	N00°00'00"W	15.00'
L6	S90°00'00"E	40.60'
L7	S00°00'00"E	15.00'

DRAFT
Preliminary

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

FEET 0 50 100 200 400

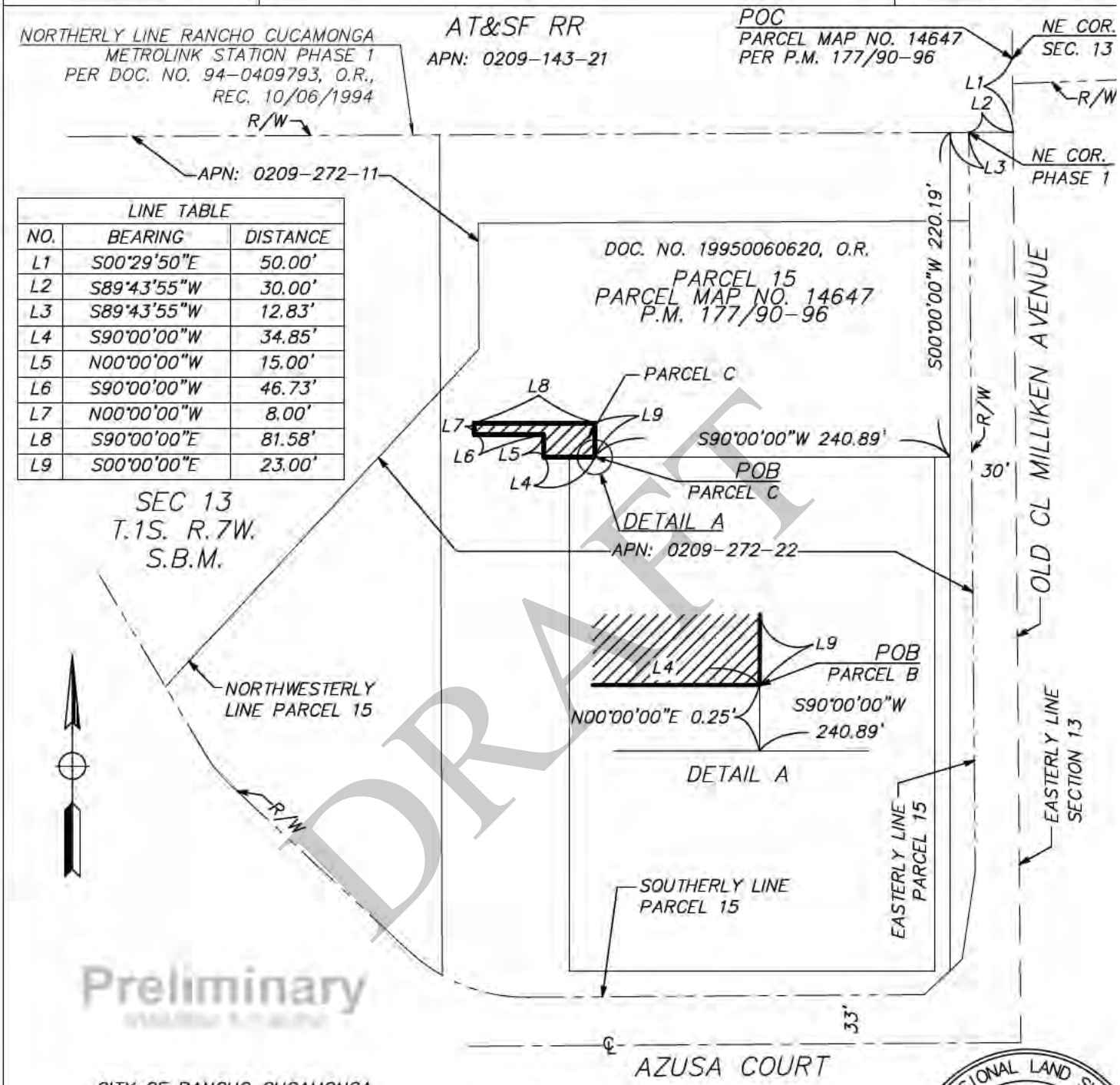
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-5'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 1,175 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S90°00'00"W	34.85'
L5	N00°00'00"W	15.00'
L6	S90°00'00"W	46.73'
L7	N00°00'00"W	8.00'
L8	S90°00'00"E	81.58'
L9	S00°00'00"E	23.00'

DRAFT
Preliminary

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

LEGEND

▨	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

FEET 0 50 100 200 400

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	4	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

TABLE OF CONTENTS

Page

1. DEFINITIONS 2
   - 1.1 Agreement 2
   - 1.2 City 2
   - 1.3 Developer Permittee 3
   - 1.4 DDA 3
   - 1.5 HSR Station 3
   - 1.6 Metrolink 3
   - 1.7 Official Records 3
   - 1.8 Party 3
   - 1.9 Permittee 3
   - 1.10 Properties 3
   - 1.11 Public Agencies Permittee 3
   - 1.12 SBCTA 3
   - 1.13 Station Property 4
   - 1.14 Surface Property 4
   - 1.15 Transit Center 4
2. USE RESTRICTIONS 4
   - 2.1 Use Restriction 4
   - 2.2 No Interference 4
3. MAINTENANCE AND OPERATIONAL OBLIGATIONS 5
   - 3.1 Maintenance and Repair 5
   - 3.2 Cooperation 5
   - 3.3 Operation of HSR Station 5
   - 3.4 Modifications After Initial Construction 5

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Page

4. EASEMENTS 5

4.1 Easements for the Benefit of the Surface Property 5

4.2 Easements for the Benefit of the Station Property 5

5. INSURANCE 6

5.1 Insurance Requirements 6

5.2 Insurance During Construction 7

5.3 General Insurance Requirements 12

5.4 Coverage Amounts 13

6. INDEMNITY 13

6.1 Indemnity 13

6.2 General Provisions 13

7. ENFORCEMENT AND REMEDIES 14

8. APPROVALS AND DISPUTE RESOLUTION 14

8.1 Dispute Resolution 14

8.2 Meet and Confer 14

8.3 Mediation 14

8.4 Admissibility 14

8.5 Costs 15

9. REVERSIONARY RIGHT 15

9.1 Reversionary Right 15

10. RIGHT OF FIRST NEGOTIATION 15

10.1 First Negotiation 15

11. MISCELLANEOUS 16

11.1 Davis-Stirling Act, Commercial and Industrial Common Interest Development Act Inapplicable 16

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Page

11.2 Notices 16

11.3 Interpretation 17

11.4 Entire Agreement 17

11.5 Amendments 17

11.6 Remedies Cumulative 17

11.7 Covenants Running with Land 17

11.8 Recordation; Effective Date 17

11.9 Estoppel Certificate 17

11.10 Mechanics' Liens 17

11.11 Duration 18

11.12 Severability 18

11.13 Attorneys' Fees; Court Costs 18

11.14 Force Majeure 18

11.15 Effect of Agreement; Binding Covenants; Equitable Servitudes 18

11.16 Boundaries of Parcels 19

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

BRIGHTLINE WEST PROJECT UPDATE for
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
July 3, 2024

brightline west

Attachment: Presentation Power Point-Project Update (9316 : Additional Brightline Contract Actions)

Brightline West - Connecting Las Vegas and Southern California

All-electric trains in a protected corridor with **zero** at-grade crossings

218-mile trip Las Vegas to Rancho Cucamonga

Up to 200 mph true high-speed rail

+11 million one-way passengers/year

SBCTA AND BRIGHTLINE WEST

- Points of interface:
  - Rancho Cucamonga (RC) Metrolink station
  - BLW Viaduct adjacent to San Bernardino line from RC station to I-15
  - Coordination with Express Lanes contract
  - Local Rail Service at Hesperia Station

- Agreements:
  - Disposition and Development – RC station(2022)
  - Lease of Metrolink corridor – BLW viaduct (2022)
  - Conditions, Covenants & Restrictions (CC&R) for RC station (current)
  - Local Rail Service (current)

- RAISE Grant
  - Victor Valley and Hesperia stations - $25M

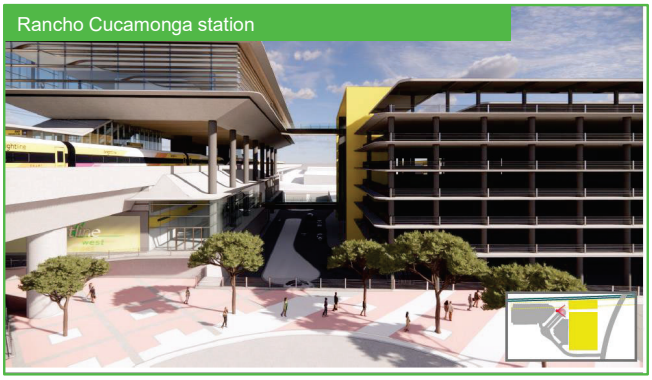
brightline west

CA Stations

Victor Valley and Hesperia in-line stations

Rancho Cucamonga station

Rancho Cucamonga station



METROLINK

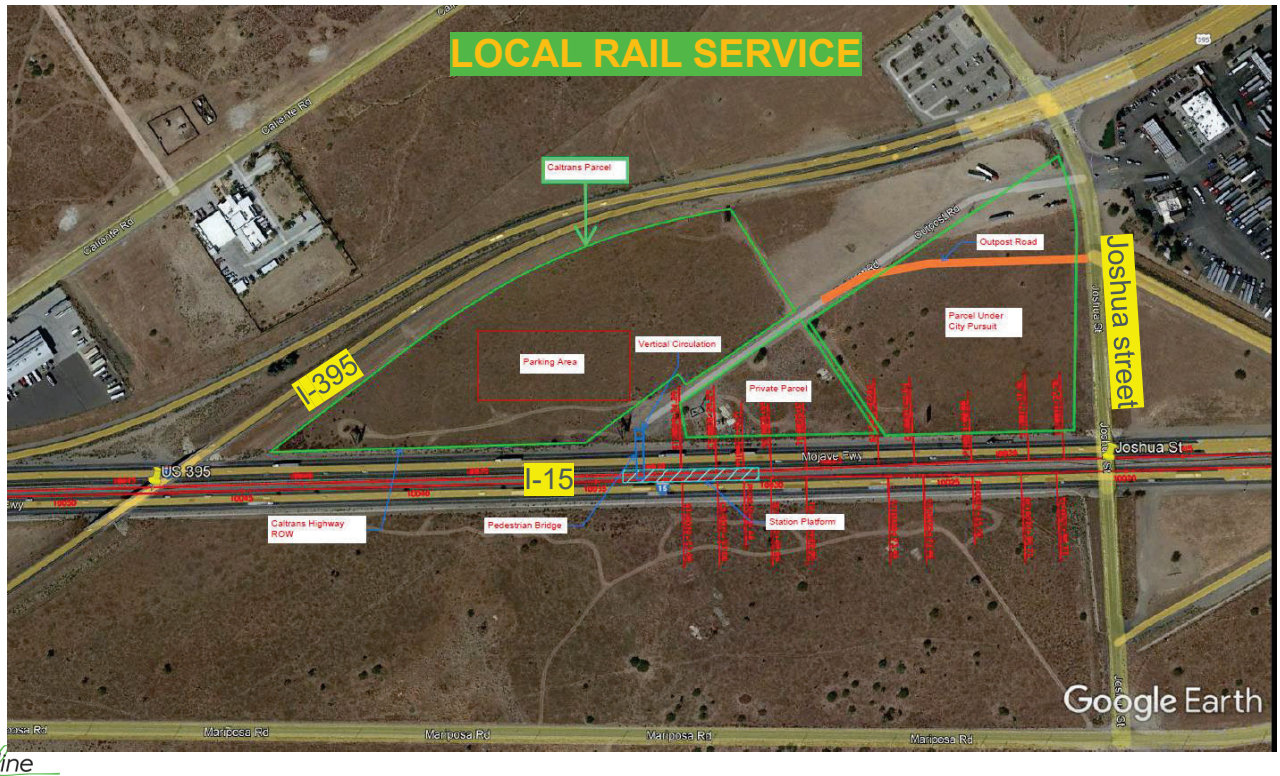
COORDINATION WITH METROLINK

- TIMETABLE SCHEDULING
- SEAMLESS TRANSFERS
- TICKETING
- BRANDING

brightline west

Attachment: Presentation Power Point-Project Update (9316 : Additional Brightline Contract Actions)

SBCTA and Brightline West



brightline west

Positioned for Service in 2028

$12B project, mostly to be funded by private dollars

Already invested **~$600M**

Awarded $3B federal grant through NDOT

Open in **~4 years**

NEVADA DOT SAFE AND CONNECTED + brightline west

- ☑ **Land & rights of way**
- ☑ **Permits**
- ☑ **Construction readiness**

brightline west

Attachment: Presentation Power Point-Project Update (9316 : Additional Brightline Contract Actions)

Groundbreaking – April 22, 2024

brightline west

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LINKEDIN
Brightline Trains
Brightline Florida
Brightline West Trains
Brightline West

Attachment: Presentation Power Point-Project Update (9316 : Additional Brightline Contract Actions)

Minute Action

AGENDA ITEM: 37

Date: July 3, 2024

Subject:
Legislative Recommendation to Support House Resolution 7650

Recommendation:
That the Board, acting as the San Bernardino County Transportation Authority:

Approve a support position on House Resolution (H.R.) 7650, by Representative Earl Carter and co-sponsored by Representative Jay Obernolte, regarding facilitation of efficient State implementation of National Ambient Air Quality Standards.

Background:
House Resolution (H.R.) 7650 (Carter) - Support

The Clean Air Act requires the promotion of National Ambient Air Quality Standards (NAAQS) for six criteria air pollutants: sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, ozone, and lead.

Under the current structure of the statute, the United States Environmental Protection Agency (EPA) is required to review periodically the scientific data upon which the NAAQS are based and revise the standards if necessary to maintain an adequate margin of safety that is requisite to protect public health.

The Air Quality Implementation Act of 2024 (H.R. 7650) would update how the standards are reviewed and implemented and provide more clarity in the law to enable better control of harmful emissions.

Specifically, this bill will:

- Dictate a predictable and adequate timeline of review for NAAQS.
- Ensure the attainability of a NAAQS is considered.
- Ensure that actions to mitigate wildfires, such as prescribed burns, are not penalized by the EPA.
- Ensure the EPA issues updated implementation guidance and regulations with a NAAQS revision.
- Provides essential flexibilities to areas in nonattainment of NAAQS.
- Ensures states are not punished for emissions beyond their control.
- Strengthen the states' role in the scientific advisory process of the NAAQS.
- Ensure the states have one year to revise State Implementation Plans before the EPA can issue a Federal Implementation Plan.

Currently, EPA is finalizing their disapproval of the South Coast Air Quality Management District's (SCAQMD) Contingency Measure Plan (CMP) to meet the federal 1997 ozone standard.

The proposed approach in the CMP required that EPA, California Air Resources Board (CARB), and SCAQMD reduce emissions from sources within each agency's authority. Nearly two-thirds of needed emissions reductions are under federal authority. In their proposed disapproval of the CMP, EPA does not recognize the responsibility of sources under federal authority and regulation.

Finalization of the disapproval of the CMP and a finding of nonattainment by EPA would begin a countdown to potential sanctions of the SCAQMD region. Potential sanctions include:

- Permit emission reduction offsets increase from 1.2:1 to 2:1, (18 months after EPA finding).
- Prohibition on federal highway funding, except for safety and transit (24 months after EPA finding).
- Imposition of Federal Implementation Plan (24 months after EPA finding).

A finding of nonattainment by EPA and imposition of sanctions would potentially have a devastating impact on San Bernardino County Transportation Authority's (SBCTA's) ability to access federal transportation funding and the agency's ability to conduct long-range planning for transportation projects.

Provisions contained within H.R. 7650 include a prohibition on sanctions of a state or local agency for nonattainment if the state or local agency would have reached attainment of standards but for:

- Emissions emanating from outside the nonattainment area.
- Emissions from mobile sources beyond the control of the state or local agency, and the state or local agency is fully implementing measures within their authority to control emissions from mobile sources.

H.R. 7650 updates the process by which EPA implements NAAQS and provides relief for states and local agencies, such as SCAQMD, that are deemed to be in nonattainment due to circumstances beyond their control.

More recently, CARB is seeking authorization from EPA to establish new emissions standards for rail locomotives as part of their In-Use Locomotive Regulation, that would require all locomotives manufactured after 2035 that travel through the state to operate in a zero emissions configuration.

Existing rail technologies, as well as those for the foreseeable future, make this requirement unachievable and would cripple the freight rail industry. Additionally, if the zero emissions requirement were to move forward, goods movement would lean more heavily on heavy trucks to transport goods, exacerbating emissions pollution and air quality issues in the SCAQMD.

Provisions contained in H.R. 7650 will not address CARB's request for this new regulatory authority. Despite this fact, SBCTA staff recommends that the SBCTA Board of Directors (Board) adopt a support position on H.R. 7650.

The SBCTA 2023-2024 Federal Legislative Platform approved by the Board, states that the agency will support efforts to "Remove the penalty of lost Federal transportation funding resulting from issues not addressed by Federal regulations". H.R. 7650 is consistent with that stance.

Bill text of H.R. 7650 can be found in Attachment A.

Financial Impact:
This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

Reviewed By:
This item has not received prior policy committee or technical advisory committee review. At the request of the Legislative Policy Committee, this item is being brought directly to Board for consideration.

Responsible Staff:
Otis Greer, Director of Legislative and Public Affairs

AUTHENTICATED
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INFORMATION
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I

ATTACHMENT A

118TH CONGRESS
2D SESSION

H. R. 7650

To facilitate efficient State implementation of national ambient air quality standards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2024

Mr. CARTER of Georgia (for himself, Mr. GUTHRIE, Mr. WEBER of Texas, Mr. VALADAO, Mr. JOYCE of Pennsylvania, Mr. ALLEN, Mr. PENCE, Mrs. HARSHBARGER, Mr. NEWHOUSE, Mr. CRENSHAW, Mr. BARR, Mr. OBERNOLTE, Mr. PFLUGER, Mr. BALDERSON, and Mr. LATTA) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To facilitate efficient State implementation of national ambient air quality standards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Air Quality Standards Implementation Act of 2024".

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

SEC. 2. FACILITATING STATE IMPLEMENTATION OF NATIONAL AMBIENT AIR QUALITY STANDARDS.

(a) TIMELINE FOR REVIEW OF NATIONAL AMBIENT AIR QUALITY STANDARDS.—Paragraphs (1) and (2)(B) of section 109(d) of the Clean Air Act (42 U.S.C. 7409(d)) are amended by striking ''five-year intervals'' each place it appears and inserting ''10-year intervals''.

(b) CONSIDERATION OF ATTAINABILITY.—Section 109(b)(1) of the Clean Air Act (42 U.S.C. 7409(b)(1)) is amended by inserting after the first sentence the following: ''If the Administrator, in consultation with the independent scientific review committee appointed under subsection (d), finds that a range of levels of air quality for an air pollutant are requisite to protect public health with an adequate margin of safety, as described in the preceding sentence, the Administrator may, as a secondary consideration in establishing and revising the national primary ambient air quality standard for such air pollutant, consider likely attainability of the standard.''.

(c) COMPOSITION OF INDEPENDENT SCIENTIFIC REVIEW COMMITTEE.—Section 109(d)(2)(A) of the Clean Air Act (42 U.S.C. 7409(d)(2)(A)) is amended—

(1) by striking ''one person representing State air pollution control agencies'' and inserting ''three persons representing State air pollution control agencies''; and

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(2) by adding at the end the following: ''The persons representing State air pollution control agencies shall be from geographically diverse areas with at least one person representing a State located in Region 1, 2, 3, or 5 of the Environmental Protection Agency, one person representing a State located in Region 4, 6, or 7 of the Environmental Protection Agency, and one person representing a State located in Region 8, 9, or 10 of the Environmental Protection Agency.''.

(d) CONSIDERATION OF ADVERSE PUBLIC HEALTH, WELFARE, SOCIAL, ECONOMIC, OR ENERGY EFFECTS.—Section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409(d)(2)) is amended by adding at the end the following:

''(D) Prior to establishing or revising a national ambient air quality standard, the Administrator shall request, and such committee, after receiving public comments, shall assess and provide advice under subparagraph (C)(iv) regarding any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standard.''.

(e) TIMELY ISSUANCE OF IMPLEMENTING REGULATIONS AND GUIDANCE.—Section 109 of the Clean Air Act

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(42 U.S.C. 7409) is amended by adding at the end the following:

"(e) TIMELY ISSUANCE OF IMPLEMENTING REGULATIONS AND GUIDANCE.—

"(1) IN GENERAL.—In publishing any final rule establishing or revising a national ambient air quality standard, the Administrator shall, to assist States, permitting authorities, and permit applicants, concurrently publish regulations and guidance for implementing the standard, including information relating to submission and consideration of a preconstruction permit application under the new or revised standard.

"(2) APPLICABILITY OF STANDARD TO PRECONSTRUCTION PERMITTING.—If the Administrator fails to publish final regulations and guidance that include information relating to submission and consideration of a preconstruction permit application under a new or revised national ambient air quality standard concurrently with such standard, then such standard shall not apply to the review and disposition of a preconstruction permit application until the Administrator has published such final regulations and guidance.

"(3) RULES OF CONSTRUCTION.—

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

"(A) Nothing in this subsection shall be construed to preclude the Administrator from issuing regulations and guidance to assist States, permitting authorities, and permit applicants in implementing a national ambient air quality standard subsequent to publishing regulations and guidance for such standard under paragraph (1).

"(B) Nothing in this subsection shall be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable.

"(C) Nothing in this subsection shall be construed to limit the authority of a State, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or Tribal law than national ambient air quality standards.

"(4) DEFINITIONS.—In this subsection:

"(A) The term 'best available control technology' has the meaning given to that term in section 169(3).

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

"(B) The term 'lowest achievable emission rate' has the meaning given to that term in section 171(3).

"(C) The term 'preconstruction permit'—

"(i) means a permit that is required under this title for the construction or modification of a stationary source; and

"(ii) includes any such permit issued by the Environmental Protection Agency or a State, local, or Tribal permitting authority.".

(f) OPPORTUNITY FOR STATES TO CORRECT DEFICIENCY PRIOR TO PROMULGATION OF FEDERAL IMPLEMENTATION PLAN.—Section 110(c)(1) of the Clean Air Act (42 U.S.C. 7410(c)(1)) is amended—

(1) by striking "at any time"; and

(2) by adding at the end the following: "Before promulgating the Federal implementation plan, the Administrator shall give the State at least one year after such finding or disapproval to submit a plan or plan revision to correct the deficiency. If the State submits a plan or plan revision to correct the deficiency, the Administrator may, notwithstanding the 2-year deadline under this paragraph to promulgate a Federal implementation plan, choose to take up to

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

3 years after such finding or disapproval to promulgate a Federal implementation plan.''.

(g) CONTINGENCY MEASURES FOR EXTREME OZONE NONATTAINMENT AREAS.—Section 172(c)(9) of the Clean Air Act (42 U.S.C. 7502(c)(9)) is amended by adding at the end the following: ''Notwithstanding the preceding sentences and any other provision of this Act, such measures shall not be required for any nonattainment area for ozone classified as an Extreme Area.''.

(h) PLAN SUBMISSIONS AND REQUIREMENTS FOR OZONE NONATTAINMENT AREAS.—Section 182 of the Clean Air Act (42 U.S.C. 7511a) is amended—

(1) in subsection (b)(1)(A)(ii)(III), by inserting ''and economic feasibility'' after ''technological achievability'';

(2) in subsection (c)(2)(B)(ii), by inserting ''and economic feasibility'' after ''technological achievability'';

(3) in subsection (e), in the matter preceding paragraph (1)—

(A) by striking ''The provisions of clause (ii) of subsection (c)(2)(B) (relating to reductions of less than 3 percent), the provisions of paragaphs'' and inserting ''The provisions of paragraphs''; and

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(B) by striking ", and the provisions of clause (ii) of subsection (b)(1)(A) (relating to reductions of less than 15 percent)"; and

(4) in paragraph (5) of subsection (e), by striking ", if the State demonstrates to the satisfaction of the Administrator that—" and all that follows through the end of the paragraph and inserting a period.

(i) PLAN REVISIONS FOR MILESTONES FOR PARTICULATE MATTER NONATTAINMENT AREAS.—Section 189(c)(1) of the Clean Air Act (42 U.S.C. 7513a(c)(1)) is amended by inserting ", which take into account technological achievability and economic feasibility," before "and which demonstrate reasonable further progress".

(j) EXCEPTIONAL EVENTS.—Section 319(b) of the Clean Air Act (42 U.S.C. 7619(b)) is amended—

(1) in the subsection heading, by inserting "OR ACTIONS TO MITIGATE WILDFIRE RISK" after "EVENTS";

(2) in paragraph (1)—

(A) in the paragraph heading, by striking "DEFINITION OF EXCEPTIONAL EVENT" and inserting "DEFINITIONS";

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(B) in subparagraph (A), by redesignating clauses (i) through (iv), as subclauses (I) through (IV), respectively;

(C) by striking ''(A)'' and all that follows through ''an event that—'' and inserting the following:

''(A) EXCEPTIONAL EVENT.—

''(i) IN GENERAL.—The term 'exceptional event' means an event that—'';

(D) by amending clause (III) of subparagraph (A)(i), as redesignated, to read as follows:

''(III) is an event that is—

''(aa) a natural event;

''(bb) caused by a human activity that is intended to mirror the occurrence or reoccurrence of a natural event; or

''(cc) caused by a human activity that is unlikely to recur.'';

(E) by striking subparagraph (B) and inserting the following:

''(ii) EXCLUSIONS.—In this subsection, the term 'exceptional event' does not include—

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

"(I) ordinarily occurring stagnation of air masses;

"(II) meteorological inversions; or

"(III) air pollution relating to source noncompliance."; and

(F) by adding at the end the following:

"(B) ACTION TO MITIGATE WILDFIRE RISK.—The term 'action to mitigate wildfire risk' means a prescribed fire or similar measure, undertaken in accordance with State approved practices, to reduce the risk and severity of wildfires.";

(3) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking "March 1, 2006" and inserting "18 months after the date of enactment of the Air Quality Standards Implementation Act of 2024";

(ii) by inserting "revisions to" before "regulations"; and

(iii) by adding "or actions to mitigate wildfire risk" before the period at the end;

(B) in subparagraph (B)—

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(i) by inserting ''or action to mitigate wildfire risk'' after ''an exceptional event''; and

(ii) by striking ''paragraph (3)'' and inserting ''this section'';

(C) by adding at the end the following:

''(C) REGIONAL ANALYSIS.—When more than one State notifies the Administrator of its intent to submit a petition for an exceptional event or an action to mitigate wildfire risk for the same air quality event, the Administrator shall conduct regional modeling and analysis, upon request by one or more States, to satisfy the analysis required for an exceptional event or an action to mitigate wildfire risk petition for such air quality event.

''(D) TRANSPARENCY.—Not later than 12 months after the date of enactment of the Air Quality Standards Implementation Act of 2024, the Administrator shall establish and update monthly a public website describing the status of all submitted petitions for exceptional events and actions to mitigate wildfire risk.'';

(4) in paragraph (3)(A)—

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(A) by redesignating clauses (ii) through (v) as clauses (iii) through (vi), respectively; and

(B) by inserting after clause (i) the following:

"(ii) the principle that actions to mitigate wildfire risk can play an important role in reducing the magnitude and frequency of wildfires;";

(5) in paragraph (3)(B)—

(A) in clause (i), by inserting "or action to mitigate wildfire risk" before "must be";

(B) by amending clause (ii) to read as follows:

"(ii) a clear causal relationship must exist, or be reasonably expected to exist, between the measured exceedances of a national ambient air quality standard and the exceptional event or action to mitigate wildfire risk to demonstrate that the exceptional event or action to mitigate wildfire risk caused a specific air pollution concentration at a particular air quality monitoring location;"; and

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(C) by amending clause (iv) to read as follows:

"(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events or actions to mitigate wildfire risk from use in determinations by the Administrator with respect to—

"(I) area or source exceedances or violations of the national ambient air quality standards;

"(II) the designation, redesignation, classification, or reclassification of an area;

"(III) the demonstration by a State of attainment of a national ambient air quality standard;

"(IV) attainment determinations;

"(V) attainment date extensions;

"(VI) finding a State implementation plan to be inadequate; or

"(VII) preconstruction demonstrations under section 165(a)(3).";

and

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(6) by striking paragraph (4).

(k) REPORT ON EMISSIONS EMANATING FROM OUTSIDE THE UNITED STATES.—Not later than 24 months after the date of enactment of this Act, the Administrator, in consultation with States, shall submit to the Congress a report on—

(1) the extent to which foreign sources of air pollution, including emissions from sources located outside North America, impact—

(A) designations of areas (or portions thereof) as nonattainment, attainment, or unclassifiable under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); and

(B) attainment and maintenance of national ambient air quality standards;

(2) the Environmental Protection Agency's procedures and timelines for disposing of petitions submitted pursuant to section 179B(b) of the Clean Air Act (42 U.S.C. 7509a(b));

(3) the total number of petitions received by the Agency pursuant to such section 179B(b), and for each such petition the date initially submitted and the date of final disposition by the Agency; and

(4) whether the Administrator recommends any statutory changes to facilitate the more efficient re-

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

view and disposition of petitions submitted pursuant to such section 179B(b).

(l) STUDY ON OZONE FORMATION.—

(1) STUDY.—The Administrator, in consultation with States and the National Oceanic and Atmospheric Administration, shall conduct a study on the atmospheric formation of ozone and effective control strategies, including—

(A) the relative contribution of man-made and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation in urban and rural areas, including during wildfires, and the most cost-effective control strategies to reduce ozone; and

(B) the science of wintertime ozone formation, including photochemical modeling of wintertime ozone formation, and approaches to cost-effectively reduce wintertime ozone levels.

(2) PEER REVIEW.—The Administrator shall have the study conducted under paragraph (1) peer reviewed by an independent panel of experts in accordance with the requirements applicable to a highly influential scientific assessment.

(3) REPORT.—The Administrator shall submit to Congress a report describing the results of the

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

study conducted under paragraph (1), including the findings of the peer review panel.

(4) REGULATIONS AND GUIDANCE.—The Administrator shall incorporate the results of the study conducted under paragraph (1), including the findings of the peer review panel under paragraph (2), into any Federal rules and guidance implementing the 2015 ozone standards.

SEC. 3. APPLICABILITY OF SANCTIONS AND FEES IF EMISSIONS BEYOND CONTROL.

The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by inserting after section 179B the following new section:

"SEC. 179C. APPLICABILITY OF SANCTIONS AND FEES IF EMISSIONS BEYOND CONTROL.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, with respect to any nonattainment area that is classified under section 181 as a Severe Area or an Extreme Area for ozone or under section 188 as a Serious Area for particulate matter, no sanction or fee under section 179 or 185 shall apply with respect to a State (or a local government or source therein) on the basis of a deficiency described in section 179(a), or the State's failure to attain a national ambient air quality standard for ozone or particulate matter by the applicable attainment

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

date, if the State demonstrates that the State would have avoided such deficiency or attained such standard but for one or more of the following:

"(1) Emissions emanating from outside the nonattainment area.

"(2) Emissions from an exceptional event (as defined in section 319(b)(1)).

"(3) Emissions from mobile sources to the extent the State demonstrates that—

"(A) such emissions are beyond the control of the State to reduce or eliminate; and

"(B) the State is fully implementing such measures as are within the authority of the State to control emissions from the mobile sources.

"(b) NO EFFECT ON UNDERLYING STANDARDS.—The inapplicability of sanctions or fees with respect to a State pursuant to subsection (a) does not affect the obligation of the State (and local governments and sources therein) under other provisions of this Act to establish and implement measures to attain a national ambient air quality standard for ozone or particulate matter.

"(c) PERIODIC RENEWAL OF DEMONSTRATION.—For subsection (a) to continue to apply with respect to a State (or local government or source therein), the State

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

involved shall renew the demonstration required by subsection (a) at least once every 5 years.''.

SEC. 4. CERTAIN PRECONSTRUCTION PERMITS.

(a) IN GENERAL.—The 2024 Primary Annual Particulate Matter$_{2.5}$ Standard shall not apply to the review and disposition of a preconstruction permit application if—

(1) the Administrator or the State, local, or Tribal permitting authority, as applicable, determines the application to be complete on or before the date of promulgation of the final designation of the area involved under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) with respect to the 2024 Primary Annual Particulate Matter$_{2.5}$ Standard; or

(2) the Administrator or the State, local, or Tribal permitting authority, as applicable, publishes a public notice of a preliminary determination or draft permit for the application before the date that is 60 days after the date of promulgation of the final designation of the area involved under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) with respect to the 2024 Primary Annual Particulate Matter$_{2.5}$ Standard.

(b) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(1) eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable; or

(2) limit the authority of a State, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or Tribal law than national ambient air quality standards.

SEC. 5. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BEST AVAILABLE CONTROL TECHNOLOGY.—The term ''best available control technology'' has the meaning given to that term in section 169(3) of the Clean Air Act (42 U.S.C. 7479(3)).

(3) HIGHLY INFLUENTIAL SCIENTIFIC ASSESSMENT.—The term ''highly influential scientific assessment'' means a highly influential scientific assessment as defined in the publication of the Office of Management and Budget entitled ''Final Informa-

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

tion Quality Bulletin for Peer Review'' (70 Fed. Reg. 2664 (January 14, 2005)).

(4) LOWEST ACHIEVABLE EMISSION RATE.—The term ''lowest achievable emission rate'' has the meaning given to that term in section 171(3) of the Clean Air Act (42 U.S.C. 7501(3)).

(5) NATIONAL AMBIENT AIR QUALITY STANDARD.—The term ''national ambient air quality standard'' means a national ambient air quality standard promulgated under section 109 of the Clean Air Act (42 U.S.C. 7409).

(6) PRECONSTRUCTION PERMIT.—The term ''preconstruction permit''—

(A) means a permit that is required under title I of the Clean Air Act (42 U.S.C. 7401 et seq.) for the construction or modification of a stationary source; and

(B) includes any such permit issued by the Environmental Protection Agency or a State, local, or Tribal permitting authority.

(7) 2015 OZONE STANDARDS.—The term ''2015 ozone standards'' means the national ambient air quality standards for ozone published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65292).

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

(8) 2024 PRIMARY ANNUAL PARTICULATE MATTER$_{2.5}$ STANDARD.—The term ''2024 Primary Annual Particulate Matter$_{2.5}$ Standard'' means the final rule titled ''Reconsideration of the National Ambient Air Quality Standards for Particulate Matter'' published in the Federal Register on March 6, 2024 (89 Fed. Reg. 16202).

○

Attachment: H.R. 7650 (10735 : Legislative Recommendation to Support House Resolution 7650)

ADDITIONAL INFORMATION

Communication: Attendance (Additional Information)

BOARD OF DIRECTORS ATTENDANCE RECORD – 2024

Name	Jan	Feb	March	April	May	June	July	Aug DARK	Sept	Oct	Nov	Dec
Paul Cook Board of Supervisors	X	X	X	X		X						
Jesse Armendarez Board of Supervisors	X	X	X	X		X						
Dawn Rowe Board of Supervisors	X	X	X	X	X	X						
Curt Hagman Board of Supervisors		X	X	X	X	X						
Joe Baca, Jr. Board of Supervisors	X	X	X	X	X	X						
Daniel Ramos City of Adelanto	X	X	X	X	X	X						
Art Bishop Town of Apple Valley	X	X	X	X	X	X						
Carmen Hernandez City of Barstow	*	X	X	X		X						
Rick Herrick City of Big Bear Lake		X	*	X	X	X						
Eunice Ulloa City of Chino	X	X	X	X	X	X						
Ray Marquez City of Chino Hills	X	X	X	X	X	X						
Frank Navarro City of Colton	X	X	X	X		X						
Acquanetta Warren City of Fontana	X	X	X	X		X						
Sylvia Robles City of Grand Terrace	X	X	*									
Bill Hussey City of Grand Terrace				X	X	X						
Rebekah Swanson City of Hesperia	X	X	X		X	X						

X = member attended meeting. * = alternate member attended meeting. Empty box = did not attend meeting Crossed out box = not a Board Member at the time. Shaded box=no meeting

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BOARD OF DIRECTORS ATTENDANCE RECORD – 2024

Name	Jan	Feb	March	April	May	June	July	Aug DARK	Sept	Oct	Nov	Dec
Larry McCallon City of Highland	X	*	X	X	X	X						
Bhavin Jindal City of Loma Linda	X	X	X	X								
Ron Dailey City of Loma Linda					*	X						
John Dutrey City of Montclair	X	X	X	X	X	X						
Janet Jernigan City of Needles		X	X	X		X						
Alan Wapner City of Ontario	X		X	X	X	X						
L. Dennis Michael City of Rancho Cucamonga	X	X	X	X	X	X						
Paul Barich City of Redlands						*						
Deborah Robertson City of Rialto				X								
Helen Tran City of San Bernardino		*	X	X		X						
Joel Klink City of Twentynine Palms	X		X	X	X							
Rudy Zuniga City of Upland	*	X	X	X	X	*						
Debra Jones City of Victorville	X	X	X	X	X	X						
Bobby Duncan City of Yucaipa	X	X	X	X	X	X						
Rick Denison Town of Yucca Valley	X	X	X	X	X	X						
Catalino Pining Ex-Official Member	X	X	Rebecca Guirado	X	X	X						

Communication: Attendance (Additional Information)

X = member attended meeting. * = alternate member attended meeting. Empty box = did not attend meeting Crossed out box = not a Board Member at the time. Shaded box=no meeting

Acronym List

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist Board Members and partners as they participate in deliberations at Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. Staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

Communication: Acronym List (Additional Information)

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
SRTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21st Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

Communication: Acronym List (Additional Information)

AGENCY REPORTS

Communication: Mobile Source Air Pollution Reduction Review Committee Agency Report (Agency Reports)

REPORT: Mobile Source Air Pollution Reduction Review Committee

FROM: Larry McCallon, SBCTA Representative to the MSRC

SYNOPSIS: The Mobile Source Air Pollution Reduction Review Committee held a hybrid meeting on Thursday, May 16, 2024. The following is a summary of the meeting.

MSRC Chair and MSRC Vice Chair Elected

Annually the MSRC elects its Chair and Vice Chair. At its May 16, 2024 meeting, the MSRC re-elected Mayor Larry McCallon as its Chair for a one-year term. Mayor McCallon is Mayor Pro Tem from District 5 for the City of Highland and represents the San Bernardino County Transportation Authority on the MSRC.

The MSRC also re-elected Mayor Brian Berkson as its MSRC Vice Chair for a one-year term. Mayor Berkson serves as Mayor Pro Tem from District 3 for the City of Jurupa Valley and represents the Riverside County Transportation Commission on the MSRC.

FYs 2016-18 Local Government Partnership Program

As part of the FYs 2016-18 Local Government Partnership Program, the MSRC originally awarded $72,580 to the City of Paramount to install a total of five charging stations: two public-access stations and three limited-access stations. The City subsequently requested to reduce the project's scope, decreasing the number of stations from five to three and making all three stations publicly accessible, with a corresponding value reduction to $64,675. The City completed installation of two stations. However, the contract was terminated prior to the City submitting a final report and invoice. The MSRC considered and approved a six-month contract for the two stations in an amount not to exceed $42,686 as part of the FYs 2016-18 Work Program, using a portion of the funds from the earlier contract. The other $21,989 will revert to the AB 2766 Discretionary Fund.

Contract Modification Requests

The MSRC considered three contract modification requests and took the following actions:

1. Air Products and Chemicals, Inc., Contract #MS18182 to install a hydrogen refueling station in Paramount, approval of 18-month term extension;

Communication: Mobile Source Air Pollution Reduction Review Committee Agency Report (Agency Reports)

2. City of Yucaipa, Contract #ML18129 to install EV charging infrastructure, approval of modified statement of work and payment schedule; and
3. Ryder Integrated Logistics, Inc., Agreement #MS21016 to procure two integrated power centers and four Mega Chargers, approval to extend the deadline for delivery of associated vehicles without extending the overall contract term.

Operational Policies and Procedures

The MSRC's "Operational Policies and Procedures" were originally adopted in 1993 and amended in 2020 with respect to the Regional Rideshare Agency position. The MSRC considered a more comprehensive set of proposed amendments to bring the policies up to date. Key language changes included making it apparent that the MSRC-TAC, in addition to the MSRC, is subject to the Conflict of Interest Code, and standardizing the withholding amount on invoices at 5 percent for any funding recipient, whether a public or private entity. The MSRC approved the proposed amendments.

Contracts Administrator's Report

The MSRC AB 2766 Contracts Administrator's report provides a written status report on all open contracts from FY 2011-12 to the present.

Communication: Mobile Source Air Pollution Reduction Review Committee Agency Report (Agency Reports)

COMMITTEE MEMBERSHIP

San Bernardino County Transportation Authority (SBCTA)
Representatives on SCAG Committees

APPOINTING/ELECTING AUTHORITY	REGIONAL COUNCIL (12:15 p.m.)	POLICY COMMITTEES (Regional Council Members Serve on One Each) (Subregional Appointments) (County Commissions Appoint One to TC) (10:00 a.m.)		
		Community, Economic, and Human Development	Energy and Environment	Transportation
District 6 (Grand Terrace, Colton, Loma Linda, Redlands, Yucaipa)	F. Navarro			F. Navarro
District 7 (San Bernardino, Highland)	D. Alexander		D. Alexander	
District 8 (Rialto, Fontana)	A. Warren	A. Warren		
District 9 (Rancho Cucamonga, Upland, Montclair)	L. Michael			L. Michael
District 10 (Chino, Chino Hills, Ontario)	R. Marquez			R. Marquez
District 11 (Barstow, Big Bear, Needles, Twentynine Palms, Yucca Valley)	R. Denison		R. Denison	
District 65 (Adelanto, Apple Valley, Hesperia, Victorville)	L. Becerra			L. Becerra
San Bernardino County	C. Hagman			C. Hagman
† Community of Concern Appointee	G. Reyes	G. Reyes		
†† San Bernardino County Transportation Authority Appointee	A. Wapner			A. Wapner
SBCTA Subregional Appointees* *One appointee to each policy committee for a total of three appointees per subregion, plus one additional appointee for every SCAG District over three in the subregion. SBCTA has a total of seven subregional appointees to the policy committees. Terms of appointment expire December 31 of odd-numbered years.		Bill Hussey Bobby Duncan Helen Tran	Carmen Hernandez Daniel Ramos Art Bishop	John Dutrey

Rules of Appointment

1) SBCTA policy stipulates that all SBCTA appointees be SBCTA Board Members. 2) SCAG President appoints Regional Council members to Standing and Policy Committees.

Terms of Appointment

Terms of appointment are two years, commencing on adjournment of the annual General Assembly in May of each year. Even-numbered District representatives' terms expire in even-numbered years; odd-numbered District representatives expire in odd-numbered years. † Community of Concern appointee, appointed by the County Regional Council representative for a two-year term. †† SBCTA Regional Council Representative serves a two-year term from the date of appointment.

Stipend Summary

SCAG Regional Council members receive a $150 stipend for attendance and travel to SCAG sponsored meetings. Regional Council members may also receive reimbursement for public transit expenses or a mileage reimbursement. Parking is validated at SCAG's downtown Los Angeles office for RC members. RC members are eligible to receive up to six (6) per diem stipends per month. Both RC members and Subregional Appointees, if eligible, may receive reimbursement ($150 + taxes) for lodging (please review SCAG rules before making expenditure). Subregional Appointees shall receive a $150 stipend for up to four Policy or Task Force meetings per month.

Meeting Information

The regular meetings of SCAG Regional Council and Policy Committees are on the 1st Thursday of each month at the SCAG offices located at 900 Wilshire Blvd., Ste. 700, Los Angeles. Generally, the Policy Committee meetings start at 10 AM and Regional Council meetings start at 12:15 PM.

Policy Committees

Community, Economic, and Human Development: Provides policy recommendations to the Regional Council on subjects of housing, land use, resource, economic, community development, infrastructure, employment, and regional disaster preparedness issues. Reviews and recommends to the Planning Committee revisions to the Housing, Economy, Growth Management, Human Resources, and Finance Chapters of the Regional Comprehensive Plan and Guide.

Energy and Environment: Acts as the policy advisory committee to the Regional Council on environmental issues, including air and water, hazardous, solid waste management, natural resources conservation, and energy conservation Reviews the Environmental Impact Report of the Regional Comprehensive Plan and Guide. Provides recommendations to the Planning Committee on state and federal legislative proposals and administrative guidelines affecting environmental quality, resource conservation.

Transportation: Acts as the policy advisory committee to the Regional Council on all regional matters pertaining to the movement of goods and people on land, water, and air. Reviews and recommends to the Regional Council all major utility development plans. Addresses the location, size, or capacity, timing, and impact of facilities.

Communication: Representatives on SCAG Committees (Committee Membership)

SBCTA/SBCOG Appointments to External Agencies

The San Bernardino County Transportation Authority (SBCTA) and San Bernardino Council of Governments (SBCOG) work closely with not only the County and cities within the County of San Bernardino, but with a number of regional governments that relate to the multiple counties within the Southern California region. Members of the SBCTA Board of Directors frequently take active roles in representing the interests of San Bernardino County on these regional bodies. This participation provides assurance that the unique needs and characteristics of San Bernardino County are taken into consideration as policies are developed which impact this County and its individual local government units. Active participation in regional organizations further promotes the interests of San Bernardino County and secures its appropriate role in the Southern California region.

The following table lists some of the regional bodies upon which SBCTA and SBCOG representatives serve.

Committee	Appointee	Appointing Authority	Purpose	Term
California Association of Councils of Governments	Alan Wapner, Ontario	President	CALCOG facilitates communication and information sharing among its members. Most members of CALCOG are Councils of Governments (COGs), while some are transportation commissions and others are the large Metropolitan Planning Organizations like SCAG and SANDAG. CALCOG is governed by a Board of Directors comprised of a representative from each member's Board of Directors.	12/31/24
Gold Line Phase II Joint Powers Authority	John Dutrey, Montclair, Primary Ray Marquez, Chino Hills, Alternate	Board of Directors	The Gold Line Phase II Construction Authority is a Joint Powers Authority (JPA) formed by 14 cities along the corridor and SBCTA. The JPA serves as a forum for the review, consideration, study, development and recommendation of policies and plans for the extension of the Gold Line from Pasadena to Montclair. Members receive $100 payment from Gold Line Authority for participation.	12/31/25 12/31/24
Inland Empire Economic Partnership (IEEP)	Dennis Michael, Rancho Cucamonga	President	The IEEP is a partnership that includes business, government and academic leaders to develop and carry out initiatives to benefit the region.	
Inland Regional Energy Network (I-REN) Program Executive Committee	Curt Hagman, County Supervisor Deborah Robertson, Rialto Art Bishop, Apple Valley	President	The I-REN Executive Committee consists of three represtative votes from SANBAG, WRCOG, and CVAG. The committee will meet quarterly and make executive decisions regarding the overall program. Stipends for the Executive Committee are not an allowable expense under the CPUC rules.	12/31/24 12/31/24 12/31/24
Metro Gold Line Foothill Extension Construction Authority	Alan Wapner, Ontario, Primary John Dutrey, Montclair, Alternate	President	The Authority is responsible for the development of a light rail project from the City of Los Angeles into San Bernardino County. The Authority board meets on the second and fourth Wednesday of the month at 12:00 p.m. at the Authority's office in Monrovia. Members receive $150 for each day spent on Authority business, not to exceed $600 per month.	12/31/24 12/31/24
Mobile Source Air Pollution Reduction Review Committee	Larry McCallon, Highland, Primary John Dutrey, Montclair, Alternate	Board of Directors	Develops and implements work programs which reduce mobile source emissions, funded by AB2766 (portion of the $4 motor vehicle registration fee). County Commissions, SCAQMD, and ARB have one appointment with alternates. In April 2005, SBCTA authorized a stipend of $100 per day. The MSRC meets on the third Thursday of the month at 2:00 p.m. at South Coast Air Quality Management District in Diamond Bar.	12/31/24 12/31/24

Committee	Appointee	Appointing Authority	Purpose	Term
One Water One Watershed (OWOW) Steering Committee of the Santa Ana Watershed Project Authority	Deborah Robertson, Rialto	Board of Directors	Responsible for developing the integrated Regional Water Management Plan for the Santa Ana River. The term of the appointment is for four years for a city representative from San Bernardino County. Officers leaving elected office after appointment are still eligible to serve. Beginning January 2016, the OWOW meets on the 4th Thursday of every other month at 11:00 a.m. at the Santa Ana Watershed Project Authority (SAWPA). Members of the Steering Committee do not receive a stipend.	12/31/26
SCAG Policy Committees	See associated table.	The Board has authorized the President to make appointments to SCAG Policy Committees.	SBCTA also has authority to appoint up to seven appointees to the three SCAG Policy Committees: i.e., Community Economic and Human Development, Energy and Environment, and Transportation. SCAG pays appointees to policy committees a stipend of $120 per meeting.	See associated table – Representatives on SCAG Committees
Southern California Regional Rail Authority	Alan Wapner, Ontario, Primary Larry McCallon, Highland, Primary Ray Marquez, Chino Hills, Alternate John Dutrey, Montclair, Alternate	Board of Directors (Recommendation made by the Transit Committee)	SCRRA serves as the governing body for Metrolink, the regional commuter rail system serving the five Southern California Counties. Members receive payment of $100 per day from SCRRA for participation.	Indefinite
SR 91 Advisory Committee	Ray Marquez, Chino Hills, Ex-Officio Member	Board of Directors	The Committee reviews issues and makes recommendations to OCTA regarding the transportation facilities acquired, including tolls imposed, operations, maintenance, use of toll revenues, and improvements in the area of SR 91 between I-15 and SR 55, including the identification and siting of alternate highways. SBCTA has not authorized payment of stipend for participation.	12/31/24
The Sam and Alfreda L. Maloof Foundation for Arts and Crafts	Deborah Robertson, Rialto	Board of Directors	A non-profit corporation that participates in the preparation of the Conservation Plan and oversees the activities and assets of the Foundation. A payment of stipend for participation has not been authorized.	12/31/24

San Bernardino County Transportation Authority (SBCTA) Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
General Policy Committee Membership consists of the following: SBCTA President, Vice President, and Immediate Past President 4 East Valley (3 City, 1 County)* 4 West Valley (3 City, 1 County) 4 Mt/Desert (3 City, 1 County) City members shall be SBCTA Board Members elected by caucus of city SBCTA Board Members within the subarea. Policy Committee and Board Study Session Chairs are members of this policy committee. All City members serving as Board officers, Committee chairs, or Board Study Session Chair, are counted toward their subareas City membership. Supervisors collectively select their representatives. The SBCTA Vice President shall serve as Chair of the General Policy Committee. ***Note: An exception to Policy 10002 was approved by the Board of Directors on July 5, 2023 to temporarily revise the composition of East Valley to 2 City, 2 County**	Makes recommendations to Board of Directors and: (1) Provides general policy oversight which spans the multiple program responsibilities of the organization and maintains the comprehensive organization integrity; (2) Provides policy direction with respect to administrative issues, policies, budget, finance, audit, and personnel issues for the organization; (3) Serves as policy review committee for any program area that lacks active policy committee oversight. The General Policy Committee is authorized to approve Contracts in excess of $100,000, Contract Task Orders in excess of $500,000, and amendments exceeding the Executive Director's authority in the event of significant time constraints, extenuating circumstances, or emergencies when approval is required, with notification to the Board. Notification shall be made at the next regularly scheduled meeting of the Board following such approval. (Brown Act)	<u>West Valley</u> Ray Marquez, Chino Hills (Chair/Vice President) Acquanetta Warren, Fontana Alan Wapner, Ontario Curt Hagman, Supervisor <u>East Valley</u> Frank Navarro, Colton Larry McCallon, Highland Dawn Rowe, Supervisor (Vice Chair/President) Joe Baca, Jr., Supervisor (MVSS Chair) <u>Mountain/Desert</u> Art Bishop, Apple Valley (Past President) Debra Jones, Victorville Rick Denison, Yucca Valley (TC Chair) Paul Cook, Supervisor (MDC Chair) Should the chairs of each Committee and the Officers all be from the East Valley, West Valley or Mountain/Desert, additional members may be added to maintain geographical balance. Additional Board Members may be appointed annually at the discretion of the Board President.	6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024 6/30/2024
Transit Committee Membership consists of 12 SBCTA Board Members: 10 Valley-members, two being Southern California Regional Rail Authority (SCRRA) primary (*) and two being SCRRA alternate (**) members, and 2 Mountain/Desert Board Members. SCRRA members and alternates serve concurrent with their term on the SCRRA Board of Directors as appointed by the SBCTA Board. Other members are appointed by the SBCTA President for 2-year terms.	Provides policy guidance and recommendations to the SBCTA Board of Directors and Southern California Regional Rail Authority (SCRRA) delegates with respect to commuter rail and transit service. * SCRRA Primary Member ** SCRRA Alternate Member (Brown Act)	Rick Denison, Yucca Valley (Chair) John Dutrey, Montclair** (Vice Chair) Eunice Ulloa, Chino Ray Marquez, Chino Hills** Frank Navarro, Colton Acquanetta Warren, Fontana Larry McCallon, Highland* Alan Wapner, Ontario* L. Dennis Michael, Rancho Cucamonga Bobby Duncan, Yucaipa Dawn Rowe, Supervisor Joe Baca, Jr., Supervisor	12/31/2024 (6/30/2024 Indeterminate (6/30/20 12/31/2024 Indeterminate 12/31/2025 12/31/2025 Indeterminate Indeterminate 12/31/2025 12/31/2025 12/31/2024 12/31/2024

Communication: Committee Membership (Committee Membership)

San Bernardino County Transportation Authority (SBCTA) Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Mountain/Desert Committee Membership consists of 11 SBCTA Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, and Third Districts.	Provides ongoing policy level oversight related to the full array of SBCTA responsibilities as they pertain specifically to the Mountain/Desert subregion. The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan. (Brown Act)	Paul Cook, Supervisor (Chair) Debra Jones, Victorville (Vice Chair) Daniel Ramos, Adelanto Art Bishop, Apple Valley Carmen Hernandez, Barstow Rick Herrick, Big Bear Lake Rebekah Swanson, Hesperia Janet Jernigan, Needles Joel Klink, Twentynine Palms Rick Denison, Yucca Valley Dawn Rowe, Supervisor	Indeterminate (6/30/20 Indeterminate (6/30/20 Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate
Legislative Policy Committee Membership consists of the following: President, Vice-President, Immediate Past President and four Board members appointed by the Board President. - 1 East Valley member - 1 West Valley member - 1 Mountain/Desert member - 1 County member Members shall serve for the duration of the State and Federal two-year legislative session in which they were appointed, with terms expiring December 31 of even-numbered years. The SBCTA Board President shall serve as Chair of the Legislative Policy Committee.	Provide guidance and recommendations to the Board of Directors regarding issues and actions relating to the executive, legislative or judicial branches of the State and Federal government, or any other local governing body. Review and provide input on drafting of State and Federal legislative platform, which will serve as guiding principles to support or oppose State and Federal legislation and regulations. (Brown Act)	Dawn Rowe, Supervisor (President) Ray Marquez, Chino Hills (Vice President) Art Bishop, Apple Valley (Past President) Larry McCallon, Highland Alan Wapner, Ontario Rick Denison, Yucca Valley Paul Cook, Supervisor	Indeterminate Indeterminate Indeterminate 12/31/2024 12/31/2024 12/31/2024 12/31/2024

Policy Committee Meeting Times

General Policy Committee	Second Wednesday, 9:00 a.m., SBCTA Office
Legislative Policy Committee	Second Wednesday, 9:30 a.m., SBCTA Office
Transit Committee	Second Thursday, 9:00 a.m., SBCTA Office
Mountain/Desert Committee	Third Friday, 9:30 a.m., Victorville, CA

Board of Directors Study Sessions for Metro Valley Issues

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
Board of Directors Study Sessions for Metro Valley Issues Refer to SBCTA Policy 10007.	To review, discuss, and make recommendations for actions to be taken at regular meetings of the Board on issues relating to Measure I Projects in the Valley. (Brown Act)	Board of Directors Joe Baca Jr., Supervisor (Chair) Eunic Ulloa, Chino (Vice Chair)	 6/30/2024 6/30/2024

Meeting Time: Second Thursday, 9:30 a.m., SBCTA Office

Communication: Committee Membership (Committee Membership)

Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Public and Specialized Transportation Advisory and Coordinating Council (PASTACC) Membership consists of 11 members appointed by the SBCTA Executive Director. 5 representing Public Transit Providers 1 representing County Dept. of Public Works 2 representing the Consolidated Transportation Services Agency - Omnitrans and VVTA also represent CTSA for the Valley and High Desert respectively. 5 At Large Members representing Social Service Providers	Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC's statutory responsibilities; (1) Review and make recommendations on annual Unmet Transit Needs hearing findings (2)Score and make recommendations for Federal Transit Administration Section 5310 Capital Grant Program applications (3) Assist SBCTA in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan (4) Review call for projects for Federal Transit Administration Section 5310 grant applications (5) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit (6) Monitor and disseminate information in reference to State level law and recommendations as they relate to transit and specialized transit (7) Receive annual reports on funded specialized programs funded through FTA Section 5310 and Measure I (8) Identify regional or county level areas of unmet needs (9) Address special grant or funding opportunities (10) Address any special issues of PASTACC voting and non-voting members (Brown Act)	Standing Membership – Morongo Basin Transit Authority Mountain Transit City of Needles Transit Services Omnitrans Victor Valley Transit Authority County of San Bernardino Dept. of Public Works At Large Membership – San Bernardino Dept. of Aging and Adult Services Foothill Aids Anthesis Reach Out Morongo Basin Loma Linda University Health	 On-going On-going On-going On-going On-going On-going 5/31/2027 9/30/2026 9/30/2026 6/30/2025 5/31/2024

Meeting Dates and Time: Bi monthly, beginning in January, 2nd Tuesday of the month, 10:00 a.m., (Location rotates: SBCTA Office, VVTA, MBTA)

Communication: Committee Membership (Committee Membership)

Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan The ITOC shall provide citizen review to ensure that all Measure I funds are spent by the San Bernardino County Transportation Authority (hereby referred to as the Authority) in accordance with provision of the Expenditure Plan and Ordinance No. 04-01. The ordinance specifies that each member of the ITOC have certain credentials or experience as follows: A. One member who is a professional in the field of municipal audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector. B. One member who is a licensed civil engineer or trained transportation planner with at least five years of demonstrated experience in the fields of transportation and/or urban design in government and/or the private sector. No member shall be a recipient or sub-recipient of Measure "I" funding. C. One member who is a current or retired manager of a major publicly financed development or construction project, who by training and experience would understand the complexity, costs and implementation issues in building large scale transportation improvements. D. One member who is current or retired manager of a major privately financed development or construction project, who by training and experience would understand the complexity, costs and implementation issues in building large scale transportation improvements. E. One public member, who possesses the knowledge and skills which will be helpful to the work of the ITOC. In addition to the appointed members, the SBCTA President and Executive Director will serve as ex-officio members.	The ITOC shall review the annual audits of the Authority; report findings based on the audits to the Authority; and recommend any additional audits for consideration which the ITOC believes may improve the financial operation and integrity of program implementation. The Authority shall hold a publicly noticed meeting, which may or may not be included on the agenda of a regularly scheduled Board meeting, with the participation of the ITOC to consider the findings and recommendations of the audits. (Brown Act)	Cole Jackson (A) Gerry Newcombe (B) Vacant (C) Vacant (D) Patrick Morris (E) Dawn Rowe, Ex-Officio Ray Wolfe, Ex-Officio	10/31/2024 12/31/2024 03/01/2025

SBCTA Ad Hoc Committees

The Brown Act does not apply to ad hoc or temporary advisory committees composed of less than a majority of the Board or a standing policy committee. The President of the Board of Director may designate ad hoc committees to study specific projects or matters for a set time frame subject to the concurrence of the Board of Directors, and shall make appointments to the ad ho committees. When the subject matter of the ad hoc committee is of relevance to the geographical region of the County as a whole, geographical representation should be considered and if ther is lack of interested members to ensure geographical balance the Board President may seek out participation from specific members.

COMMITTEE	PURPOSE	MEMBERSHIP
Housing Trust Ad Hoc Committee On January 4, 2023, the Board approved the establishment of this ad hoc committee composed of Board members appointed by the Board President, for a term ending December 31, 2023. On December 6, 2023, the Board approved a 6-month extension of this ad hoc, for a new term ending June 30, 2024. On February 7, 2024, the Board approved a 6-month extension of this ad	To take a broad look into the housing trust and how it interacts with the Council of Governments. This ad hoc has a term ending December 31, 2024.	Eunice Ulloa, Chino Deborah Robertson, Rialto Alan Wapner, Ontario L. Dennis Michael, Rancho Cucamonga Daniel Ramos, Adelanto Rick Denison, Yucca Valley Curt Hagman, Supervisor

Communication: Committee Membership (Committee Membership)

hoc, for a new term ending December 31, 2024.		
Transportation Investment Plan Ad Hoc Committee On June 29, 2022 the Board approved the establishment of this ad hoc committee composed of Board members appointed by the Board President. At the Board Workshop on November 30, 2023, the Board approved a 1-year extension of this ad hoc, for a new term ending December 31, 2024	To look at future Measure options and make recommendations relating to any future local measure. This ad hoc has a term end date of December 31, 2024.	Art Bishop, Apple Valley Larry McCallon, Highland Alan Wapner, Ontario L. Dennis Michael, Rancho Cucamonga Joel Klink, Twentynine Palms Debra Jones, Victorville Bobby Duncan, Yucaipa Jesse Armendarez, Supervisor

SBCTA Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
Transportation Technical Advisory Committee (TTAC) Committee membership consists of a primary staff representative of each SBCTA member agency designated by the City Manager or County Administrative Officer.	SBCTA's Transportation Technical Advisory Committee was formed by SBCTA management to provide input to SBCTA staff on technical transportation-related matters and formulation of transportation-related policy recommendations to the SBCTA Board of Directors. The TTAC is not a Brown Act committee.	Generally meets on the first Monday of each month at 1:30 PM, at SBCTA.
City/County Manager's Technical Advisory Committee (CCM TAC) The committee is composed of up to two representatives of the County Administrator's Office and the city manager or administrator from each city and town in the County.	SBCTA's City/County Manager's Technical Advisory Committee was established in the Joint Powers Authority that established San Bernardino Associated Governments (SANBAG). The primary role of the committee is to provide a forum for the chief executives of SANBAG's member agencies to become informed about and discuss issues facing SANBAG/SBCTA. It also provides a forum for the discussion of items of mutual concern and a way to cooperate regionally in addressing those concerns. The CCM TAC is a Brown Act Committee.	Meets bimonthly on the first Thursday of th month at 10:00 AM, at SBCTA.
Planning and Development Technical Forum (PDTF) Committee membership consists of a primary staff representative of each SBCTA member agency designated by the City Manager or County Chief Executive Officer.	The SBCTA Planning and Development Technical Forum was formed by SBCTA management to provide an opportunity for interaction among planning and development representatives of member agencies on planning issues of multijurisdictional importance. The PDTF is not a Brown Act Committee.	Meets the 4th Wednesday of each month at 2:00 p.m. at the Santa Fe Depot (in the SCAG Office).
Project Development Teams	Project Development Teams (PDTs) are assembled for all major project development activities by SBCTA staff. Teams are generally composed of technical representatives from SBCTA, member jurisdictions appropriate to the project, Caltrans, and other major stakeholder entities that have significant involvement in the project. PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions. PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development. The PDTs are not Brown Act Committees.	Varies with the PDT.

Communication: Committee Membership (Committee Membership)

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San Bernardino County Transportation Authority

San Bernardino Council of Governments

MISSION STATEMENT

Our mission is to improve the quality of life and mobility in San Bernardino County. Safety is the cornerstone of all we do.

We achieve this by:

- Making all transportation modes as efficient, economical, and environmentally responsible as possible.
- Envisioning the future, embracing emerging technology, and innovating to ensure our transportation options are successful and sustainable.
- Promoting collaboration among all levels of government.
- Optimizing our impact in regional, state, and federal policy and funding decisions.
- Using all revenue sources in the most responsible and transparent way.

Approved December 4, 2019

Communication: Mission Statement (Mission Statement)