

AGENDA
Transit Committee Meeting

June 13, 2024

9:00 AM

Location

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

Transit Committee Membership

Chair

Rick Denison, Council Member
Town of Yucca Valley

Larry McCallon, Mayor Pro Tem
City of Highland

Vice Chair

John Dutrey, Mayor
City of Montclair

Alan Wapner, Council Member
City of Ontario

Eunice Ulloa, Mayor
City of Chino

L. Dennis Michael, Mayor
City of Rancho Cucamonga

Ray Marquez, Council Member
City of Chino Hills

Bobby Duncan, Council Member
City of Yucaipa

Frank Navarro, Mayor
City of Colton

Dawn Rowe, Supervisor
County of San Bernardino

Acquanetta Warren, Mayor
City of Fontana

Joe Baca, Jr., Supervisor
County of San Bernardino

**San Bernardino County Transportation Authority
San Bernardino Council of Governments**

AGENDA

Transit Committee Meeting

**June 13, 2024
9:00 AM**

Location

SBCTA Office

First Floor Lobby Board Room

1170 W. 3rd Street, San Bernardino, CA 92410

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 Rick Denison)

- i. Pledge of Allegiance
- ii. Attendance
- iii. Announcements
- iv. Agenda Notices/Modifications - Sandra Castro

Public Comment

Brief Comments from the General Public

Note: Public Comment on items listed on this agenda will be allowed only during this committee meeting. No public comment will be allowed on committee items placed on the Consent Agenda at the Board of Directors meeting. If an item has substantially changed after consideration during the committee meeting, the item will be placed on Discussion for Board and public comment will be allowed.

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. 10

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 of Directors 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. Transit and Rail Programs Contract Change Orders to On-Going Contracts

Pg. 12

Receive and file Change Order Report.

Presenter: Victor Lopez

This item is not scheduled for review by any other policy committee or technical advisory committee.

DISCUSSION ITEMS

Discussion - Administrative Matters

3. Election of Committee Chair and Vice Chair

Pg. 14

Conduct elections for members to serve as Chair and Vice Chair of the San Bernardino County Transportation Authority Transit Committee for terms to end June 30, 2025.

Presenter: Victor Lopez

This item is not scheduled for review by any other policy committee or technical advisory committee.

Discussion - Transit

4. Fiscal Year 2024/2025 Transit Operator Allocations

Pg. 20

That the Transit Committee recommend 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 is not scheduled for review by any other policy committee or technical advisory committee.

5. Fiscal Year 2024/2025 State of Good Repair Program Allocations

Pg. 30

That the Transit Committee recommend 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 is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item and the draft resolution.

6. ONT Connector Project Update and Shortlist of Operating System Providers and DB Teams

Pg. 40

That the Transit Committee recommend 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, ONTTheMove Joint Venture and Ontario Tunnel Constructors, 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.

Agenda Item 6 (Continued)

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 is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item. Special Counsel prepared and reviewed the RFP and draft agreement.

7. Dedicated Law Enforcement for Metrolink Service

Pg. 242

That the Transit Committee recommend 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.

Presenter: Rebekah Soto

This item is not scheduled for review by any other policy committee or technical advisory committee.

Comments from Board Members

Brief Comments from Board Members

ADJOURNMENT

Additional Information

Acronym List

Pg. 298

Attendance

Pg. 300

Mission Statement

Pg. 301

**The Transit Committee meeting will go dark in July.
The next Transit Committee meeting is scheduled for August 15, 2024.**

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

Minute Action

AGENDA ITEM: 1

Date: June 13, 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
4	Allocation	City of Needles	None
		Morongo Basin Transit Authority	None
		Mountain Area Regional Transit Authority	None
		Omnitrans	None
		Victor Valley Transit Authority	None
5	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
6	23-1002878	Glydways, Inc. Gokul Hemmady	Turner Engineering Corporation Roush Industries Khosla Ventures
	23-1002878	Oceaneering International, Inc. Kiel Clasing	2getthere

6 (cont.)	23-1002878	Ohmio, Inc. <i>Dean Zabrieszach</i>	EXP Drive Engineering Drive Integration AUTOCRYPT Iteris ACE Applications Mindshop Transnovation Inc. Via
	23-1002870	Ontario Tunnel Constructors, a Joint Venture - Skanska USA Civil West California District Inc., and Obayashi Corporation <i>James Bailey</i>	Michael Baker International Earth Mechanics
	23-1002870	ONTtheMove JV, a Joint Venture - Civil & Building North America, Inc., with BESSAC, Nicholson Construction Company, and Colas Construction USA <i>Giuseppe (Joe) Folco</i>	None
7	N/A	San Bernardino County Sheriff's Department	None

Financial Impact:

This item has no direct impact on the annual budget.

Reviewed By:

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

Responsible Staff:

Victor Lopez, Director of Transit & Rail Programs

Approved
 Transit Committee
 Date: June 13, 2024

Witnessed By:

Minute Action

AGENDA ITEM: 2

Date: June 13, 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 is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Victor Lopez, Director of Transit & Rail Programs

Approved
Transit Committee
Date: June 13, 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)		
	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 (10172 : Transit and Rail Programs Contract Change Orders to On-Going Contracts)

Minute Action

AGENDA ITEM: 3

Date: June 13, 2024

Subject:

Election of Committee Chair and Vice Chair

Recommendation:

Conduct elections for members to serve as Chair and Vice Chair of the San Bernardino County Transportation Authority Transit Committee for terms to end June 30, 2025.

Background:

Terms for the Chair and Vice Chair of each of the San Bernardino County Transportation Authority (SBCTA) policy committees and Metro Valley Study Session expire on June 30, 2024. Election of Chair and Vice Chair for each of the policy committees and Metro Valley Study Session is scheduled to immediately follow the annual election of SBCTA Officers, which occurred at the June Board of Directors meeting.

This item provides for an election to be conducted, which will identify the Chair and Vice Chair of the Transit Committee to serve until June 30, 2025. A complete listing of SBCTA policy committees, memberships, and chairs is attached to this item for reference.

Financial Impact:

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

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Victor Lopez, Director of Transit & Rail Programs

Approved
Transit Committee
Date: June 13, 2024

Witnessed By:

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

San Bernardino County Transportation Authority (SBCTA) Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p>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)</p> <p>City members shall be SBCTA Board Members elected by caucus of city SBCTA Board Members within the subarea.</p> <p>Policy Committee and Board Study Session Chairs are members of this policy committee.</p> <p>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.</p> <p>The SBCTA Vice President shall serve as Chair of the General Policy Committee.</p> <p>*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</p>	<p>Makes recommendations to Board of Directors and:</p> <p>(1) Provides general policy oversight which spans the multiple program responsibilities of the organization and maintains the comprehensive organization integrity;</p> <p>(2) Provides policy direction with respect to administrative issues, policies, budget, finance, audit, and personnel issues for the organization;</p> <p>(3) Serves as policy review committee for any program area that lacks active policy committee oversight.</p> <p>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.</p> <p>(Brown Act)</p>	<p><u>West Valley</u> Ray Marquez, Chino Hills (Chair/Vice President) Acquanetta Warren, Fontana Alan Wapner, Ontario Curt Hagman, Supervisor</p> <p><u>East Valley</u> Frank Navarro, Colton Larry McCallon, Highland Dawn Rowe, Supervisor (Vice Chair/President) Joe Baca, Jr., Supervisor (MVSS Chair)</p> <p><u>Mountain/Desert</u> Art Bishop, Apple Valley (Past President) Debra Jones, Victorville Rick Denison, Yucca Valley (TC Chair) Paul Cook, Supervisor (MDC Chair)</p> <p>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.</p>	<p>6/30/2024 6/30/2024 6/30/2024 6/30/2024</p> <p>6/30/2024 6/30/2024 6/30/2024 6/30/2024</p> <p>6/30/2024 6/30/2024 6/30/2024 6/30/2024</p>
<p>Transit Committee Membership consists of 12 SBCTA Board Members:</p> <p>10 Valley-members, two being Southern California Regional Rail Authority (SCRRA) primary (*) and two being SCRRA alternate (**) members, and 2 Mountain/Desert Board Members.</p> <p>SCRRA members and alternates serve concurrent with their term on the SCRRA Board of Directors as appointed by the SBCTA Board.</p> <p>Other members are appointed by the SBCTA President for 2-year terms.</p>	<p>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.</p> <p>* SCRRA Primary Member ** SCRRA Alternate Member</p> <p>(Brown Act)</p>	<p>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</p>	<p>12/31/2024 (6/30/2024) Indeterminate (6/30/2024) 12/31/2024 Indeterminate 12/31/2025 12/31/2025 Indeterminate Indeterminate 12/31/2025 12/31/2025 12/31/2024 12/31/2024</p>

San Bernardino County Transportation Authority (SBCTA) Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p>Mountain/Desert Committee Membership consists of 11 SBCTA Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, and Third Districts.</p>	<p>Provides ongoing policy level oversight related to the full array of SBCTA responsibilities as they pertain specifically to the Mountain/Desert subregion.</p> <p>The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan.</p> <p>(Brown Act)</p>	<p>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</p>	<p>Indeterminate (6/30/2024) Indeterminate (6/30/2024) Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate</p>
<p>Legislative Policy Committee Membership consists of the following: President, Vice-President, Immediate Past President and four Board members appointed by the Board President.</p> <ul style="list-style-type: none"> - 1 East Valley member - 1 West Valley member - 1 Mountain/Desert member - 1 County member <p>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.</p>	<p>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.</p> <p>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.</p> <p>(Brown Act)</p>	<p>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</p>	<p>Indeterminate Indeterminate Indeterminate 12/31/2024 12/31/2024 12/31/2024 12/31/2024</p>

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
<p>Board of Directors Study Sessions for Metro Valley Issues Refer to SBCTA Policy 10007.</p>	<p>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.</p> <p>(Brown Act)</p>	<p>Board of Directors Joe Baca Jr., Supervisor (Chair) Eunic Ulloa, Chino (Vice Chair)</p>	<p>6/30/2024 6/30/2024</p>

Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p>Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)</p> <p>Membership consists of 11 members appointed by the SBCTA Executive Director.</p> <p>5 representing Public Transit Providers</p> <p>1 representing County Dept. of Public Works</p> <p>2 representing the Consolidated Transportation Services Agency - Omnitrans and VVTA also represent CTSA for the Valley and High Desert respectively.</p> <p>5 At Large Members representing Social Service Providers</p>	<p>Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC’s statutory responsibilities;</p> <p>(1) Review and make recommendations on annual Unmet Transit Needs hearing findings</p> <p>(2) Score and make recommendations for Federal Transit Administration Section 5310 Capital Grant Program applications</p> <p>(3) Assist SBCTA in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan</p> <p>(4) Review call for projects for Federal Transit Administration Section 5310 grant applications</p> <p>(5) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit</p> <p>(6) Monitor and disseminate information in reference to State level law and recommendations as they relate to transit and specialized transit</p> <p>(7) Receive annual reports on funded specialized programs funded through FTA Section 5310 and Measure I</p> <p>(8) Identify regional or county level areas of unmet needs</p> <p>(9) Address special grant or funding opportunities</p> <p>(10) Address any special issues of PASTACC voting and non-voting members</p> <p>(Brown Act)</p>	<p>Standing Membership –</p> <p>Morongo Basin Transit Authority</p> <p>Mountain Transit</p> <p>City of Needles Transit Services</p> <p>Omnitrans</p> <p>Victor Valley Transit Authority</p> <p>County of San Bernardino Dept. of Public Works</p> <p>At Large Membership –</p> <p>San Bernardino Dept. of Aging and Adult Services</p> <p>Foothill Aids</p> <p>Anthesis</p> <p>Reach Out Morongo Basin</p> <p>Loma Linda University Health</p>	<p>On-going</p> <p>On-going</p> <p>On-going</p> <p>On-going</p> <p>On-going</p> <p>On-going</p> <p>5/31/2027</p> <p>9/30/2026</p> <p>9/30/2026</p> <p>6/30/2025</p> <p>5/31/2024</p>

Meeting Dates and Time: Bi monthly, beginning in January, 2nd Tuesday of the month, 10:00 a.m., (Location rotates: SBCTA Office, VVTA, MBTA)

Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p>Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan</p> <p>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:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>E. One public member, who possesses the knowledge and skills which will be helpful to the work of the ITOC.</p> <p>In addition to the appointed members, the SBCTA President and Executive Director will serve as ex-officio members.</p>	<p>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.</p> <p>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.</p> <p>(Brown Act)</p>	<p>Cole Jackson (A) Gerry Newcombe (B) Vacant (C) Vacant (D) Patrick Morris (E) Dawn Rowe, Ex-Officio Ray Wolfe, Ex-Officio</p>	<p>10/31/2024 12/31/2024 03/01/2025</p>

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 Directors 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 hoc 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 there is lack of interested members to ensure geographical balance the Board President may seek out participation from specific members.

COMMITTEE	PURPOSE	MEMBERSHIP
<p>Housing Trust Ad Hoc Committee</p> <p>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</p>	<p>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.</p>	<p>Eunice Ulloa, Chino Deborah Robertson, Rialto Alan Wapner, Ontario L. Dennis Michael, Rancho Cucamonga Daniel Ramos, Adelanto Rick Denison, Yucca Valley Curt Hagman, Supervisor</p>

May 14, 2024

Page 5 of 5

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 the 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.

Minute Action

AGENDA ITEM: 4

Date: *June 13, 2024*

Subject:

Fiscal Year 2024/2025 Transit Operator Allocations

Recommendation:

That the Transit Committee recommend 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.

Entity: San Bernardino County Transportation Authority

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

Transit Committee Agenda Item

June 13, 2024

Page 3

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 (VVTAA), 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.

San Bernardino County Transportation Authority

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 is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Nancy Strickert, Transit Manager

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Approved
Transit Committee
Date: June 13, 2024

Witnessed By:

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 are estimates and actuals will be given when FTA releases allocations.

Attachment: Attachment 1 Operator Allocation Table [Revision 2] (9992 : Fiscal Year 2024/2025 Transit

Attachment 2

Summary of Changes to SRTP Revenue Assumptions for FY 2024/2025¹

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
Amendment⁵	\$ 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 3

CMAQ Allocation Plan for Transit Operators¹

	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 competitive process and approved by SCAG

Minute Action

AGENDA ITEM: 5

Date: *June 13, 2024*

Subject:

Fiscal Year 2024/2025 State of Good Repair Program Allocations

Recommendation:

That the Transit Committee recommend 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
Entity: San Bernardino County Transportation Authority

Transit Committee Agenda Item

June 13, 2024

Page 2

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:

Transit Committee Agenda Item

June 13, 2024

Page 3

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.

Transit Committee Agenda Item

June 13, 2024

Page 4

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 is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item and the draft resolution.

Responsible Staff:

Nancy Strickert, Transit Manager

Approved
Transit Committee
Date: June 13, 2024

Witnessed By:

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)

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: _____
Dawn M. Rowe, 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 (9993 : 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.

- (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

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

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

Minute Action

AGENDA ITEM: 6

Date: June 13, 2024

Subject:

ONT Connector Project Update and Shortlist of Operating System Providers and DB Teams

Recommendation:

That the Transit Committee recommend 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, ONTTheMove Joint Venture and Ontario Tunnel Constructors, 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,

Entity: San Bernardino County Transportation Authority

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 PPWAs, \$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.

Transit Committee Agenda Item

June 13, 2024

Page 5

- 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.

San Bernardino County Transportation Authority

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 Pre-Proposal Works Agreement (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 is not scheduled for review by any other policy committee or technical advisory committee. 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

Approved
Transit Committee
Date: June 13, 2024

Witnessed By:



**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



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 Documents3
 - 2.2. Issuance of RFP, Addenda, and Project Information3
 - 2.3. Meetings4
- 3. PRE-PROPOSAL WORK.....5
 - 3.1. Notice to Proceed5
 - 3.2. Authorization and Scope of Pre-Proposal Work.....5
 - 3.3. Pre-Proposal Workshops6
 - 3.4. Pre-Proposal Deliverables.....7
 - 3.5. Subcontracting of Pre-Proposal Work7
 - 3.6. Force Majeure Events8
- 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 Property10
- 5. STIPEND.....11
 - 5.1. Limitation on Financial Obligations.....11
 - 5.2. Stipend Payment.....11
 - 5.3. Payment Timing12
 - 5.4. Set-off13
- 6. CHANGES13
 - 6.1. Process for Change Proposals13
 - 6.2. Memorandum Documenting Change Proposal.....13
- 7. PUBLIC RECORDS LAW REQUIREMENTS.....13



- 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



13.2. Available Insurance28

13.3. Limitation on Liability28

14. LIABILITY29

14.1. Joint and Several Liability29

14.2. Waiver of Consequential Damages.....29

14.3. No Personal Liability30

14.4. Governmental Immunity30

15. GOVERNING LAW30

16. PROTESTS & DISPUTES.....30

16.1. Consent to Jurisdiction30

16.2. Protest Procedures31

16.3. Dispute Resolution31

17. RESERVATION OF RIGHTS32

18. CONSENT TO SERVICE OF PROCESS32

19. NOTICE.....32

19.1. Notice Requirements.....32

20. PARTIES TO CONTRACT33

20.1. Binding Effect; Successors and Assigns.....33

20.2. Limitation on Third-Party Beneficiaries.....33

20.3. Independent Proposer Counterparty34

21. CONSTRUCTION OF CONTRACT34

21.1. Counterparts34

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. MISCELLANEOUS36

22.1. Taxes36



Proposed Execution Version

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



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



- 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.



- 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.



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- 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



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- 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;



Proposed Execution Version

- 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



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- 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



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.



Proposed Execution Version

- 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



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



- 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



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;



Proposed Execution Version

- 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.



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



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



Proposed Execution Version

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



- 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 Provisions¹

- 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



Proposed Execution Version

- 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



Proposed Execution Version

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.

- I. 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.



- 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;



Proposed Execution Version

- 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.



- 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.



Proposed Execution Version

- 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



Proposed Execution Version

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



Proposed Execution Version

- 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:



- 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.



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



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



Proposed Execution Version

- 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



- 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



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.



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.



EXHIBITS

EXHIBIT 1: RULES OF INTERPRETATION AND CONSTRUCTION

EXHIBIT 2: DEFINITIONS AND ABBREVIATIONS

EXHIBIT 3: PRE-PROPOSAL DELIVERABLES

EXHIBIT 4: FEDERAL REQUIREMENTS



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



Proposed Execution Version

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.



- 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



Proposed Execution Version

- 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.



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: <ul style="list-style-type: none"> 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;



Proposed Execution Version

- 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: <ul style="list-style-type: none"> 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, <p>in each case other than SBCTA.</p>
“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:



Proposed Execution Version

- (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.



Proposed Execution Version

“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”	<p>means any federal, State, or local:</p> <ol style="list-style-type: none"> 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, <p>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.</p>
“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.



Proposed Execution Version

“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.



Proposed Execution Version

“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”	<p>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:</p> <ol style="list-style-type: none"> 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”	<p>means Intellectual Property, excluding Work Product, that:</p> <ol style="list-style-type: none"> 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



Proposed Execution Version

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: <ol style="list-style-type: none"> 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.



Proposed Execution Version

“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.



Proposed Execution Version

“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.



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.



- 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 Specifications²
 - 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.



Proposed Execution Version

- 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:



Proposed Execution Version

- 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



Proposed Execution Version

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	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD
3	[]	TBD	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD
4	[]	TBD	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD
5	[]	TBD	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD
6	[]	TBD	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD
7	[]	TBD	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD
8	[]	TBD	<i>Contractor to propose agenda, theme, & deliverables in Phase 1 Work Plan</i>	TBD



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



Proposed Execution Version

- 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.



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;



Proposed Execution Version

- 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



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:



Proposed Execution Version

- 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



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.



Proposed Execution Version

- 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;



Proposed Execution Version

- 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



Proposed Execution Version

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 U.S.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;



Proposed Execution Version

- 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



Proposed Execution Version

- 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,



Proposed Execution Version

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



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.gov/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



Proposed Execution Version

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.



Proposed Execution Version

- 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



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.



- 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.



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



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



- 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.



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



- 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.



- 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,



- 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.



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



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.



**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**



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

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : Shortlisting of Design-Build Teams and



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

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : Shortlisting of Design-Build Teams and



15.1. Design-Build Team Members on More Than One Team20

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 PROJECTS22

PART D: RFP SUBMISSIONS22

18. RFP SUBMISSION REQUIREMENTS.....22

18.1. Proposal Submission Requirements22

18.2. Proposal Validity Period22

18.3. Proposal Letter23

18.4. Proposal Forms23

PART E: EVALUATION & SELECTION.....23

19. EVALUATION PROCESS23

19.1. Evaluation Criteria.....23

20. SELECTION AND POST-SELECTION PROCESS23

20.1. Selection and Announcement of Preferred Proposer23

20.2. Finalization of the Design-Build Contract for Execution24

20.3. Execution of the Design-Build Contract25

20.4. DBE Requirements26

PART F: PROTESTS AND RESERVED RIGHTS26

21. PROTESTS26

21.1. Applicability and Process26

21.2. Required Early Communication for Certain Protests26

21.3. Content of Protest26

21.4. Burden of Proof27

21.5. Decision on the Protest27

21.6. Protestor’s Payment of Costs27

22. SBCTA’S RIGHTS.....27

22.1. SBCTA’s Reserved Rights27

22.2. No Commitment or Liability29

PART G: DEFINITIONS AND RULES OF INTERPRETATION30

23. DEFINITIONS30

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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		



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.



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.



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.



- 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.



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



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.



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.



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.

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.



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")



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.



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.



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



- 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



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



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").



- 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;



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



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.



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



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



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.



- 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.



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.



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.



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



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



- 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;



- 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



- 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



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:



- 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.



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



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



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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : Shortlisting of Design-Build Teams and



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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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.



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 Contract ([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.



Part 2: Design-Build Contract Comments

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category A Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category B Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category C Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category D Comments</u>			

FOR REFERENCE ONLY



Part 3: Technical Provisions Comments

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category A Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category B Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category C Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category D Comments</u>			

FOR REFERENCE ONLY



Part 4: Operating Contract Comments

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category A Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category B Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category C Comments</u>			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For SBCTA Use Only</u>
<u>Category D Comments</u>			

FOR REFERENCE ONLY



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.]

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) (10415 : 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.



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 Requested⁹

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⁹ SBCTA may nevertheless require Proposers to present an ATC Submission at a One-on-One meeting.



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 ATC¹⁰.

[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]



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]

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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.



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]



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



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



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



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



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



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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX



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



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



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



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



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



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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : 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”	<p>“Affiliate” means in relation to any Person:</p> <ul style="list-style-type: none"> (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. <p>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.</p>
“Applicable Law”	<p>means any:</p> <ul style="list-style-type: none"> (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.



“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.



“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 of 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



	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: <ul style="list-style-type: none"> (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.



“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”	<p>means with respect to the Proposal, the period commencing at the Proposal Submission Deadline and ending on (and including) the earliest to occur of:</p> <ul style="list-style-type: none"> (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”	<p>means:</p> <ul style="list-style-type: none"> (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, <p>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.</p>
“Prospective Proposer”	has the meaning given to it in the Section 1.2.
“Public Access Inspections”	<p>means inspections of areas that are physically and legally accessible to members of the general public, to the extent such inspections:</p> <ul style="list-style-type: none"> (a) would be functionally distinguishable from the lawful activities of most other users of such areas; and/or



	(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: <ul style="list-style-type: none"> (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)

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.



ANNEX B: FORM OF DESIGN-BUILD CONTRACT¹¹

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.

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
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	<p>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.</p> <p>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.</p>

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.

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
3.	Statement of Purpose	<p>To:</p> <ul style="list-style-type: none"> 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



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<ul style="list-style-type: none"> provide for protections of the public interest in connection with the Project. <p>The Contract may otherwise forego the inclusion of recitals.</p>
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	<p>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".</p> <p>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".</p>
Assurances and Undertakings		
6.	Reference Materials and Due Diligence	<p>Without prejudice to Design-Builder's right to claim a Supervening Event under Section 42, Design-Builder:</p> <ul style="list-style-type: none"> 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	<p>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:</p> <ul style="list-style-type: none"> 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. <p>"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,</p>



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		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	<p>The Contract will include lists of affirmative and negative Design-Builder undertakings.</p> <p>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.</p> <p>The Design-Builder's undertakings will include:</p> <ul style="list-style-type: none"> • 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	<p>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.</p> <p>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.</p>



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
10.	Commencement and Completion Mechanics	<p>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.</p> <p>These mechanics will, as applicable, reference more detailed requirements listed in the Technical Provision Exhibits, but are generally expected to comprise the following NTPs:</p> <ul style="list-style-type: none"> • “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). <p>“Infrastructure Substantial Completion” will be achieved upon the completion of all construction work authorized by NTP-4, excluding the Operating System.¹²</p> <p>“Final Acceptance” means the stage in the Work where the following requirements have been satisfied by the Design-Builder:</p> <ul style="list-style-type: none"> • 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.



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>owners have been satisfied.</p> <p>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.</p> <p>“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.</p>
11.	Deadlines	<p>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.</p> <ul style="list-style-type: none"> • 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. <p>Deadlines may be extended only through a Change or as the result of a Supervening Event.</p>
12.	Consequences for Missed Deadlines	<p>Failure to achieve any of the following deadlines may result in default and termination.</p> <ul style="list-style-type: none"> • NTP-5 Completion Deadline • Infrastructure Substantial Completion Deadline • Final Acceptance Deadline • Readiness for Revenue Service Deadline <p>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.</p>

¹³ Anticipated in July 2025.

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
13.	Vehicle Procurement	<p>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.</p> <p>Vehicle procurement will be conducted as NTP-5 Work within the timelines established by the relevant deadlines.</p> <p>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.</p> <p>Each vehicle procurement must include an option for the acquisition of additional vehicles with the maximum duration permitted by the FTA / USDOT.</p> <p>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.</p>
Compliance with Law, Permits, and Third-Party Requirements		
14.	Compliance with Law	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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.



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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:</p> <ul style="list-style-type: none"> • 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, <p>(in which case it will be a “Compensable Change in Law”).</p>
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	<p>The lead agency for NEPA review is FTA. The lead agency for CEQA review is SBCTA.</p> <p>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.</p>
17.	Permitting	<p>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.</p>
18.	Third-Party Requirements	<p>SBCTA presently anticipates entering into third-party agreements setting forth the specific requirements applicable to the Work with certain key stakeholders, including the following:</p> <ul style="list-style-type: none"> • Omnitrans <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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)



Sec. Ref.	Subject	Terms
		<ul style="list-style-type: none"> • City of Rancho Cucamonga <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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) <p>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:</p> <ul style="list-style-type: none"> • Caltrans <ul style="list-style-type: none"> ○ CALTRANS Encroachment Permits, Guidelines and Specifications for Trenchless Technology Projects, August 2018 • MWD <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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 <p>(collectively, the “Third-Party Requirements”)</p> <p>The Design-Builder will comply with all Third-Party Requirements identified by SBCTA, as maybe updates from time to time.</p> <p>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:</p> <ul style="list-style-type: none"> • 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		

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
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	<p>The "Project Site" will be comprised of the outmost limits of the Project necessary for the Work including:</p> <ul style="list-style-type: none"> • 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. <p>SBCTA will make the Project Site available to the Design-Builder pursuant to the grant of rights under Sections 5 and 21.</p> <p>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.</p>
21.	Design-Builder Rights to Site	<p>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.</p> <p>The Design-Builder's rights to the Project Site:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>
22.	Additional Properties	SBCTA will entertain requests for acquisition of certain other parcels (" Additional Properties ") provided Design-Builder provides notice and

Sec. Ref.	Subject	Terms
		<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p>
Design and Construction		
23.	Environmental	<p>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.</p> <p>The Design-Builder is responsible for all identification, investigation, removal, treatment, storage, transportation, management, and/or disposal of hazardous materials.</p>

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
24.	Generator Status	<p>The Design-Builder will not be considered the generator and arranger of:</p> <ul style="list-style-type: none"> • 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. <p>However, the foregoing does not alter the Design-Builder’s obligations to undertake hazardous materials management.</p> <p>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.</p>
25.	Utilities	<p>SBCTA anticipates conducting advance relocation of certain known dry utilities, which will be identified in a utility matrix provided in the Reference Documents.</p> <p>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.</p> <p>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.</p> <p>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.</p>
26.	Site Conditions	<p>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:</p> <ul style="list-style-type: none"> • 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-

Sec. Ref.	Subject	Terms
		<p>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.</p> <p>Design-Builder will be required immediately to:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>
27.	<p>PCC Section 7104 Compliance</p>	<p>The Contract will incorporate detailed terms and provisions intended to fully comply with Public Contract Code Section 7104 as provided below.</p> <p>For purposes of compliance with Public Contract Code Section 7104(a):</p> <ul style="list-style-type: none"> • 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): <ul style="list-style-type: none"> ○ 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



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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").</p> <p>For purposes of compliance with Public Contract Code Section 7104(b):</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ 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



Sec. Ref.	Subject	Terms
		<p>result.</p> <p>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.</p>
Ownership		
28.	Ownership of Vehicles	<p>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.</p>
29.	Work Product and Intellectual Property (IP)	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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.



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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.</p> <p>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.</p>
<u>Economic Matters</u>		
30.	Payment Provisions	<p>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.</p> <p>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.</p> <p>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.</p> <p>SBCTA will not pay for materials not yet unincorporated in the Work unless such materials are:</p> <ul style="list-style-type: none"> • 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

Attachment: (Include) Tunnel to ONT - Draft RFP Incl. DB Term Sheet (2024-04-22) (1811693.13) (10415 : Shortlisting of Design-Build Teams and

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>instruments (in a form acceptable to SBCTA) conveying title to SBCTA free and clear of all liens;</p> <ul style="list-style-type: none"> 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. <p>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%).</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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.</p> <p>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.</p>
31.	Invoicing Mechanism	<p>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.</p> <p>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.</p> <p>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.</p>
32.	Tax	<p>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.</p> <p>SBCTA will not be responsible for any taxes of the kind referenced above or otherwise levied or imposed on the Design-Builder.</p>
<u>Public Interest Protections</u>		
33.	Bonds and Other Security	<p>Design-Builder shall obtain and maintain, or cause to be obtained and maintained, payment and performance bonds securing faithful performance with respect to:</p> <ol style="list-style-type: none"> i. all administrative, design, installation, compliance, permitting, construction, tunnel systems, commissioning, and related



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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</p> <p>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;</p> <p>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:</p> <ul style="list-style-type: none"> • 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). <p>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.</p>
34.	Remedial Plans	<p>SBCTA reserves the right to request a remedial plan in the event that:</p> <ul style="list-style-type: none"> • there are material defects in the Work; or • a Design-Builder default or other material fault event has occurred and not been cured. <p>In such event, SBCTA also reserves the right to increase oversight of the project and/or suspend the Work.</p>
35.	Warranties	<p>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.</p> <p>The Design-Builder shall cause the Operating System Provider to:</p> <ul style="list-style-type: none"> • warranty all aspects of the Operating System for a period ending



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>two (2) years after Final Acceptance; and</p> <ul style="list-style-type: none"> 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	<p>SBCTA and its authorized agents will have an unrestricted right to enter the Project Site for reasonable inspection purposes.</p> <p>The Design-Builder will maintain all project records and make such available for inspection by SBCTA upon reasonable notice from SBCTA.</p>
Subcontracting, Personnel, Labor, and Legal Requirements		
37.	Personnel	<p>“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.</p> <p>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.</p>
38.	Subcontracting	<p>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.</p> <p>All subcontracts must include terms required by law or necessary to comply with the Contract.</p> <p>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.</p>
39.	Workforce and Labor Requirements	<p>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.</p> <p>The Design-Builder shall comply will all applicable laws relating to EEO and nondiscrimination.</p> <p>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.</p>
40.	DBE Program	<p>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</p>



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	<p>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.</p> <p>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.</p> <p>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.</p>
42.	Supervening Events	<p>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.</p> <p>"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:</p> <ul style="list-style-type: none"> • a Non-Compensable Change in Law (as previously defined) and • force majeure. <p>"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:</p> <ul style="list-style-type: none"> • 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): <ul style="list-style-type: none"> ○ 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;



Sec. Ref.	Subject	Terms
		<ul style="list-style-type: none"> ○ 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 <p>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.</p> <p>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.</p>
43.	OSP Events ¹⁴	<p>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.</p> <p>The following is a non-exhaustive list of the OSP-related Deliverables or other milestones that will be required in the Technical Provisions:</p> <ul style="list-style-type: none"> ● 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; <p>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</p>

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.



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>Operating System or the Operating System Provider and not by the performance or non-performance of the Design-Builder of its obligations:</p> <ul style="list-style-type: none"> • 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.* <p>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.</p> <p>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.</p>

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.

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>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.</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p> <p>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</p> <p>If the OSP Delay Allowance is fully expended prior to Readiness for Revenue Service, either (a) SBCTA and Design-Builder will mutually</p>

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.



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.	Insurance¹⁹	<p>The Contract, by reference to an insurance exhibit, will require the Design-Builder to furnish insurance coverage and limits as follows:</p> <ul style="list-style-type: none"> (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.



Sec. Ref.	Subject	Terms
		<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>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.</p>
45.	Authority Indemnity	SBCTA will not have any obligation to indemnify the Design-Builder.
46.	Design-Builder Indemnity	<p>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:</p> <ul style="list-style-type: none"> • 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



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>operation of the Project; such claims and losses shall include those that are in respect to:</p> <ul style="list-style-type: none"> ○ death or personal injury ○ loss or damage to property ○ disruption to or interruption of performance of public services and activities ○ third party claims. <p>The foregoing indemnities operate as agreements pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).</p> <p>Any claim or loss that arises from any of the following shall be excluded from the Design-Builder's indemnity:</p> <ul style="list-style-type: none"> • where the loss was already subject to an indemnity claim from another indemnified party; and • directly caused by: <ul style="list-style-type: none"> ○ 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. <p>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.</p>
Default and Termination		
47.	Design-Builder Defaults	<p>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:</p> <ul style="list-style-type: none"> • 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	<p>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:</p>



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<ul style="list-style-type: none"> 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	<p>The Contract may be terminated early in the event of the following (subject to notice and, as applicable, rights to cure):</p> <ul style="list-style-type: none"> 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 <p>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.</p>
51.	Termination Payments	<p>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.</p> <p>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.</p>
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	<p>Customary waiver of consequential damages.</p> <p>If the Design-Builder, or any successor or assign, is at any time a joint venture, members to be jointly and severally liable.</p>



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		No personal liability for personnel, contractors, employees of the parties.
Assignments and Change of Control		
54.	Limitation on Liability	<p>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.</p> <p>This limitation on liability will not apply:</p> <ul style="list-style-type: none"> • 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	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>
Legal Matters		
56.	Design-Builder Representations and Warranties	<p>The Design-Builder representations and warranties as to:</p> <ul style="list-style-type: none"> • 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)

<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		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: <ul style="list-style-type: none"> • 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	<p>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”).</p> <p>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.</p>
60.	Dispute Resolution Procedure	<p>The dispute resolution procedures will comply with Public Contract Code Section 9204 to the extent applicable.</p> <p>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.</p> <p>Unresolved claims that become disputes shall be submitted to SBCTA through the dispute resolution process.</p> <p>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.</p> <p>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.</p> <p>Disputes exceeding \$375,000 may be submitted to judicial reference following a recommendation by the disputes review board.</p> <p>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.</p> <p>The dispute resolution process shall exclude matters that are excluded from such under the Contract, claims for injunctive relief, matters</p>



<u>Sec. Ref.</u>	<u>Subject</u>	<u>Terms</u>
		<p>regarding compliance with law or indemnification, DBE participation, claims against insurance companies and any claim or dispute that does not arise under the Contract.</p> <p>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.</p>
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	<p>Necessary "boilerplate" and other miscellaneous provisions, include:</p> <ul style="list-style-type: none"> • 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



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

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX



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



ANNEX C: FORM OF OPERATING CONTRACT

[To be released during the Pre-Proposal Period.]

FOR REFERENCE ONLY

San Bernardino County Transportation Authority
Tunnel to Ontario International Airport Project

DRAFT – Not for Issuance
Request for Proposals
RFP 24-XXXXXXX

Minute Action

AGENDA ITEM: 7

Date: *June 13, 2024*

Subject:

Dedicated Law Enforcement for Metrolink Service

Recommendation:

That the Transit Committee recommend 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.

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

Entity: San Bernardino County Transportation Authority

Transit Committee Agenda Item

June 13, 2024

Page 2

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 San Bernardino County Transportation Authority

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.

Financial Impact:

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

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Rebekah Soto, Multimodal Mobility Programs Administrator

Approved
Transit Committee
Date: June 13, 2024

Witnessed By:

ATTACHMENT A

SBCSD SCOPE OF WORK

Attachment: Attachment A - SBCSD Scope of Work (10641 : Dedicated Law Enforcement for Metrolink Service)

REDLANDS PASSENGER RAIL LAW ENFORCEMENT SERVICES

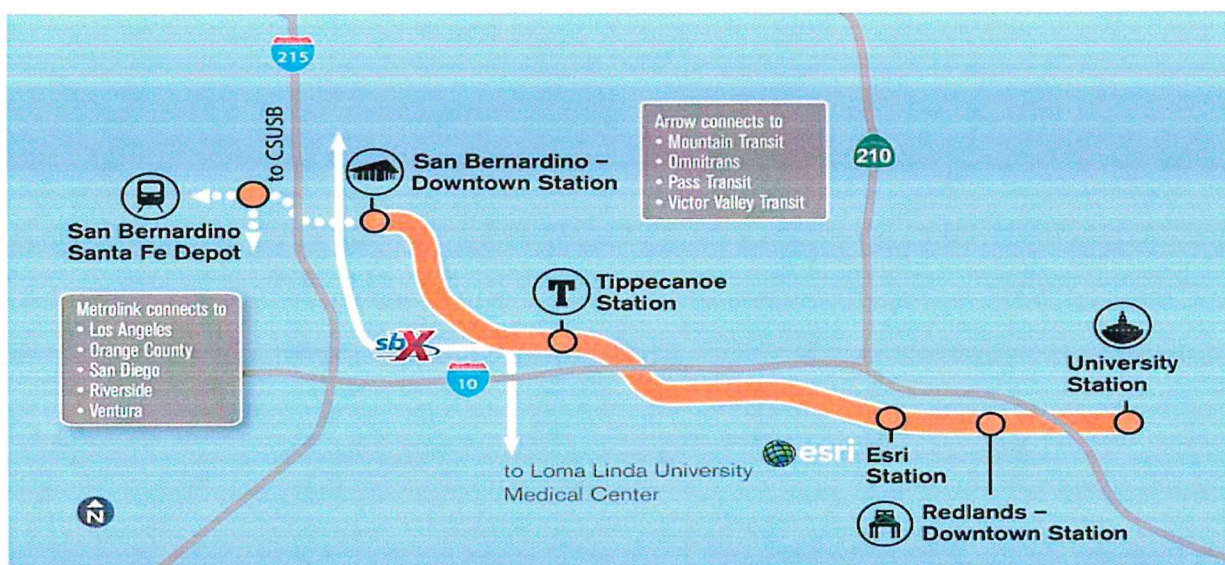
I. INTRODUCTION

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



- 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.

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.

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.

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

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)

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.

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

ATTACHEMENT B COST SCHEDULE

Attachment: Attachment A - SBCSD Scope of Work (10641 : 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

<u>LEVEL OF SERVICE</u>	<u>FY2022-23</u> <u>COST</u>
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 CHANGE¹

<u>LEVEL OF SERVICE</u>	<u>FY2023-24</u> <u>COST</u>
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

<u>LEVEL OF SERVICE</u>	<u>FY2024-25</u> <u>COST</u>
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
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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 B

LASD SCOPE OF WORK

Attachment: Attachment B - LASD Scope of Work (10641 : 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

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

<p>People & Safety</p> <p>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.</p>	<p>Quality</p> <p>We operate on best practices and principles with a continued focus on providing high-quality service to our customers every day on every ride.</p>	<p>Efficiency</p> <p>As responsible stewards of public funds, we embrace innovative solutions and continuous improvement for the lowest cost and most efficient operations.</p>	<p>Growth</p> <p>We continuously seek creative, progressive, and collaborative solutions to promote investment, develop partnerships, and increase capacity to improve the mobility of Southern Californians.</p>
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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,

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

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

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.

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



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:

- 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.

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

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

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

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 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

SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT
ATTACHMENT D
LAW ENFORCEMENT SERVICES CONTRACT

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY - REDLANDS COMMUTER TRAIN LINE
FY 2023/24

<u>CURRENT</u>		<u>PROPOSED INCREASES</u>		
<u>LEVEL OF SERVICE</u>	<u>COST</u>	<u>LEVEL OF SERVICE</u>	<u>COST</u>	<u>Total Cost</u>
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 Overtime)	573,965	Indirect Cost (37.69% of Direct Salaries and Overtime)	732,077	1,306,042
Indirect Cost (37.69% of Overtime)	35,587 ¹	Indirect Cost (37.69% of Overtime)	121,297	215,717
			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

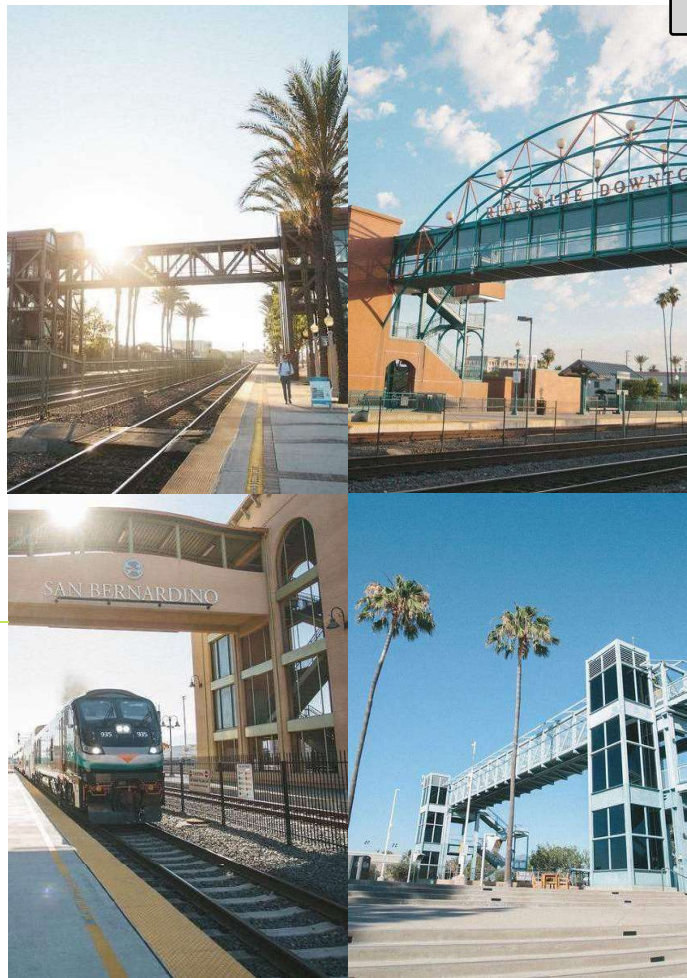
Southern California Regional Rail Authority (SCRRA) will be billed on a quarterly basis for actual hours of overtime worked for services provided under this Agreement.

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 (10641 : Dedicated

Attachment E SCRRA Law Enforcement Update

Safety, Security and Compliance
Department



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 Deputies: 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 (10641 : 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

<u>County</u>	<u>Train Line</u>
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

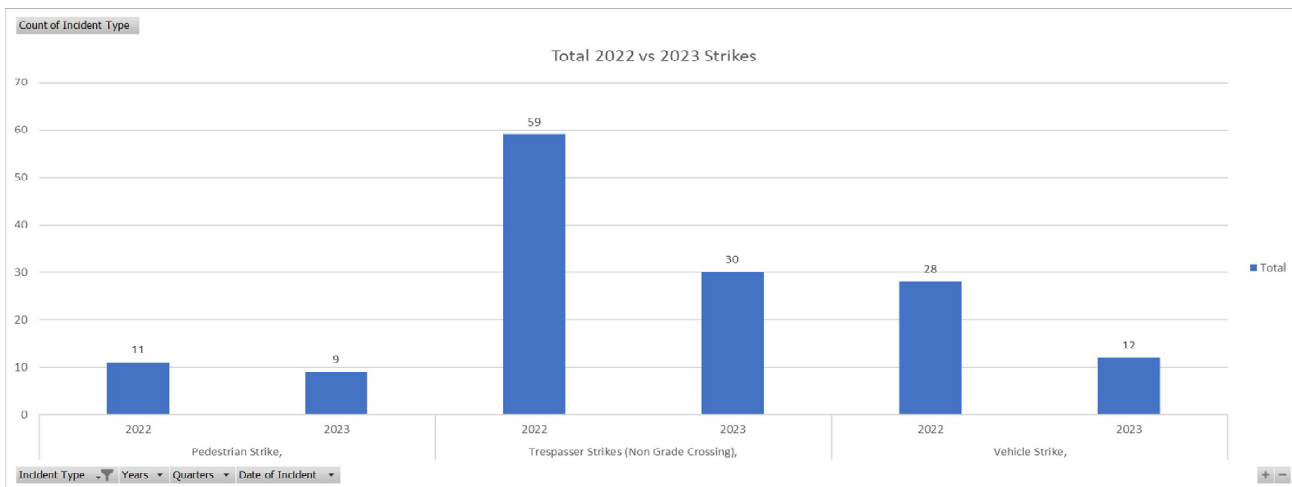
- Objective: Reduced crimes and conductor assaults
- Outcomes:
 - A. Crimes (FY22 vs FY23)
 - Crimes Against Person: Decrease of -13%
 - Crimes Against Property: Decrease of -9%
 - Crimes Against Society: Decrease of -16%
 - B. Reported Conducted Assaults
 - In CY 23, downward trend in reported conductor assaults compared to CY 22.

2. Direct Enforcements on Right-of-Way

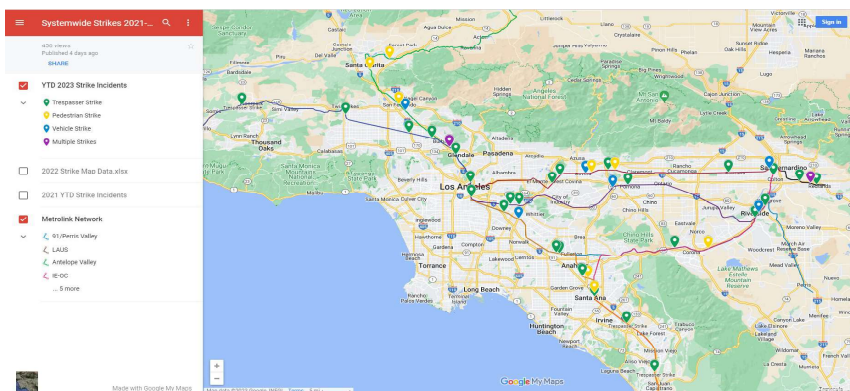
- Objective: Reduce system-wide strikes
- Outcome:
 - A. CY 2023: Downward trend in system-wide strikes.

METROLINK

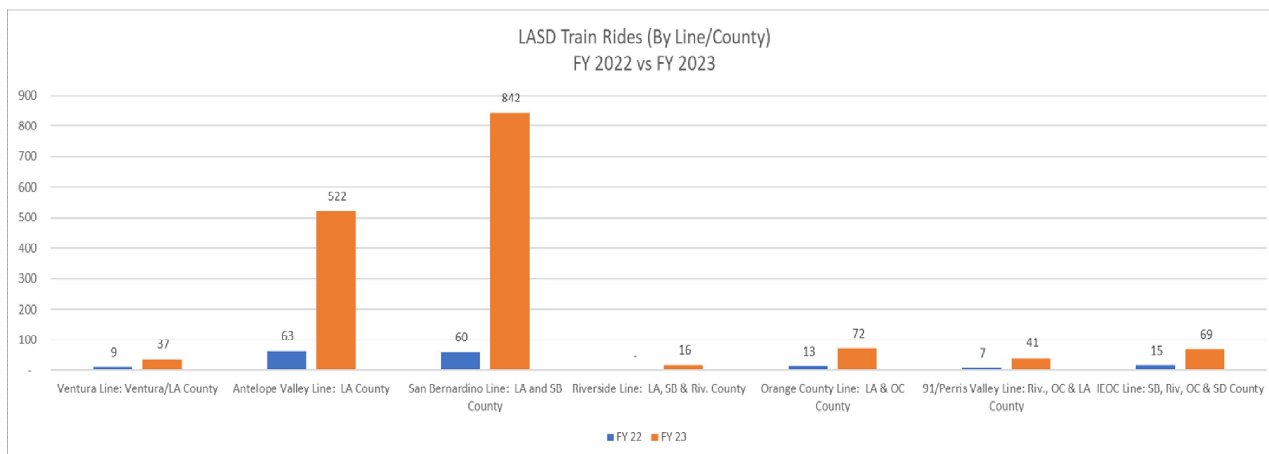
2022 vs 2023 Strikes (CY)



- CY 2023: Downward trend in system-wide strikes.



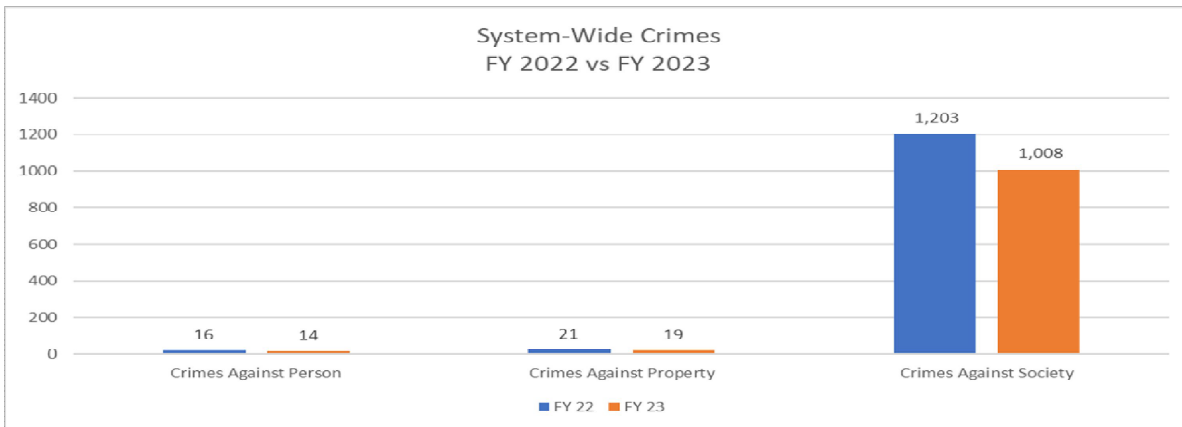
LASD Train Rides (By Line/County) FY 2022 vs FY 2023



In FY 23, LASD increased presence on trains to reduce crimes.



System-wide Crimes FY 2022 vs FY 2023

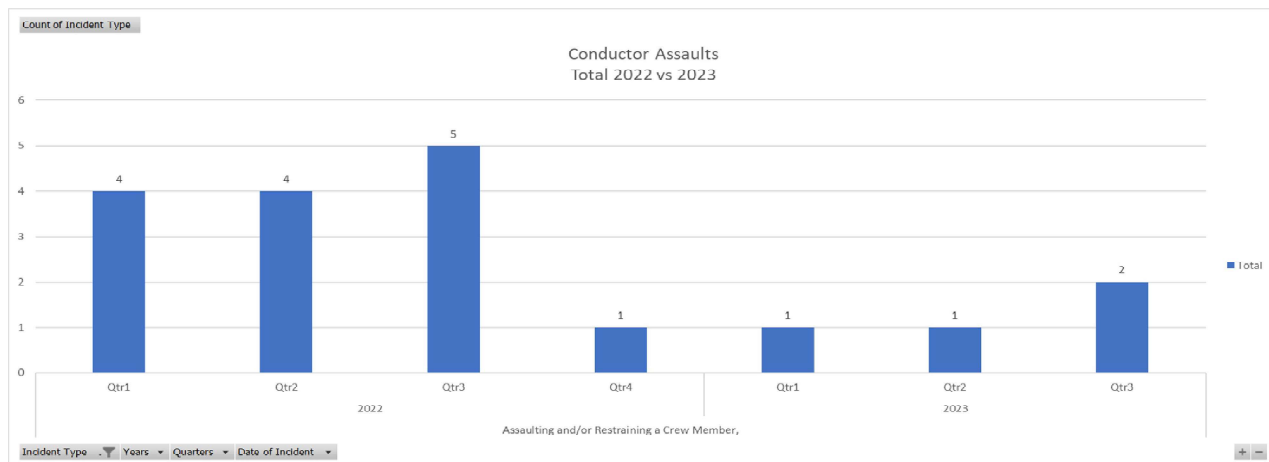


*Crimes Against Society
 • FY 22: 1,197 of 1,203 are for trespassing.
 • FY 23: 1,008 of 1,008 are for trespassing.

- Crimes Against Person: Decrease of - 13%
- Crimes Against Property: Decrease of - 9%
- Crimes Against Society: Decrease of - 16%



Reported Conductor Assaults CY 2022 vs CY 2023



- In CY 23, downward trend in reported conductor assaults compared to CY 22.



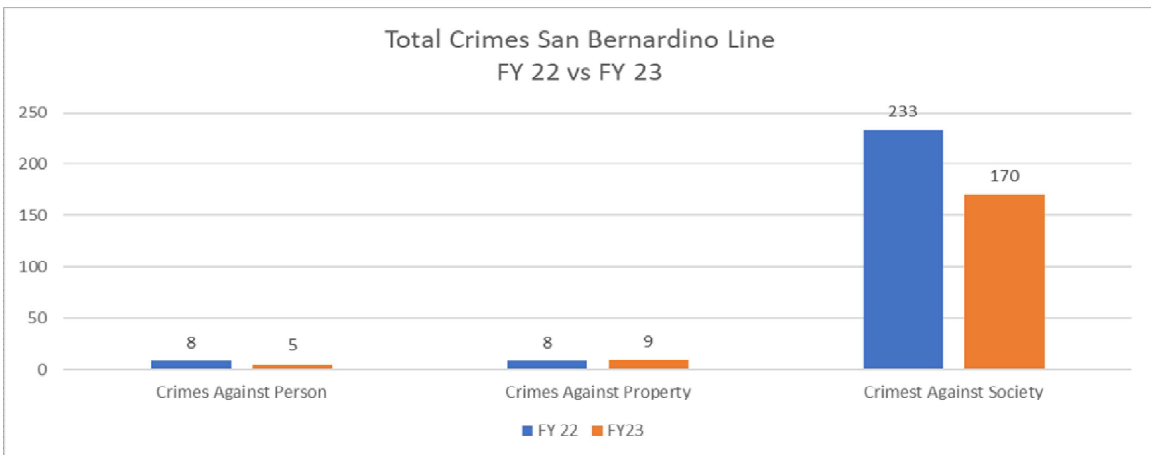
Appendix



- 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

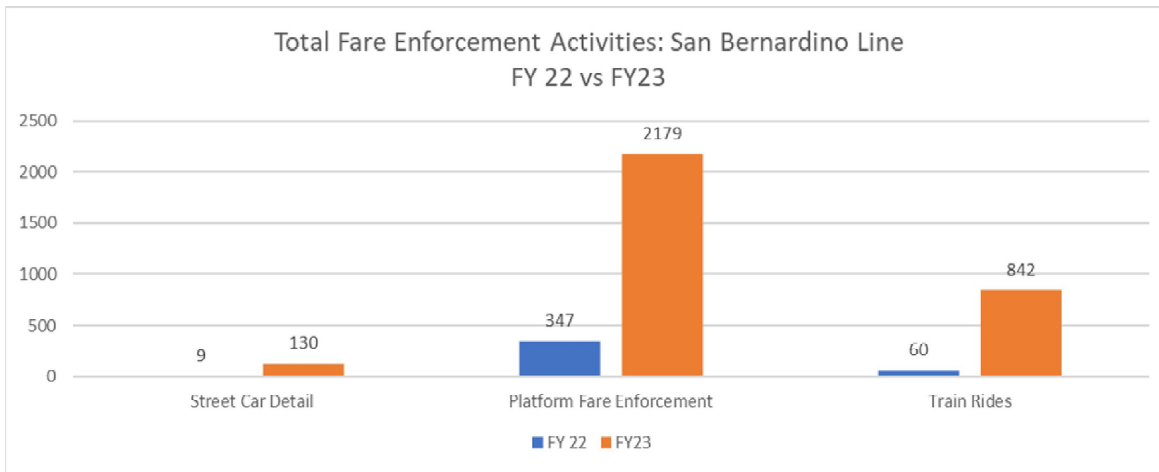
- Total Crimes: FY22 vs FY23



Crimes Against Person: Decrease of -37.5%
 Crimes Against Society: Decrease of -27%

San Bernardino Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

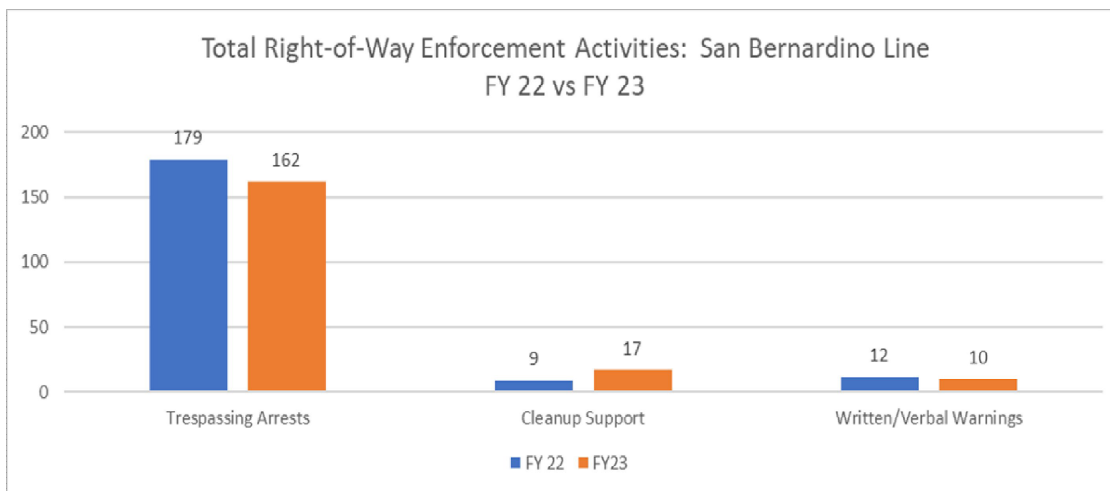


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



San Bernardino Line Incidents

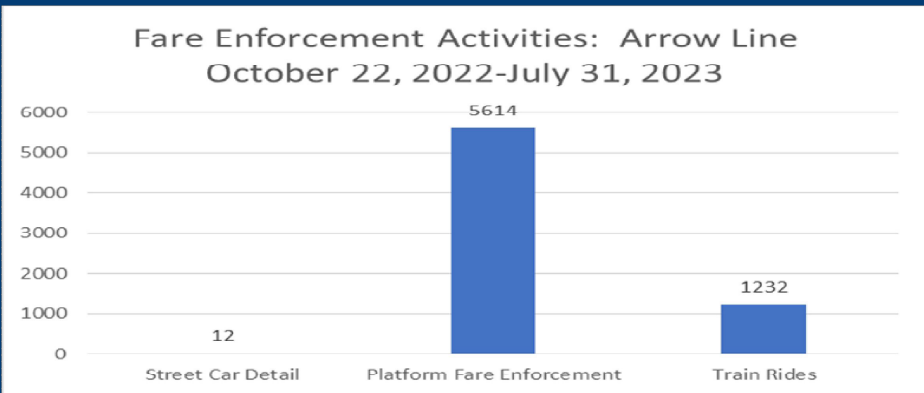
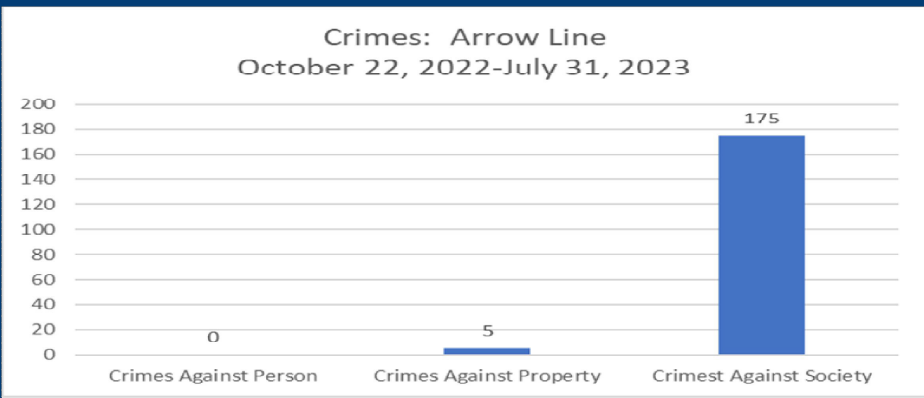
- Total Right-of-Way Enforcement Activities: FY22 vs FY23





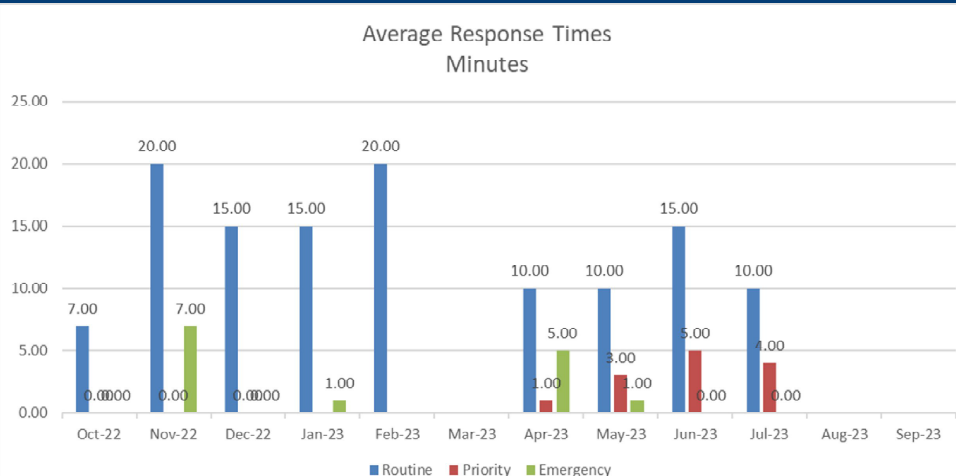
METROLINK

Arrow Line



METROLINK

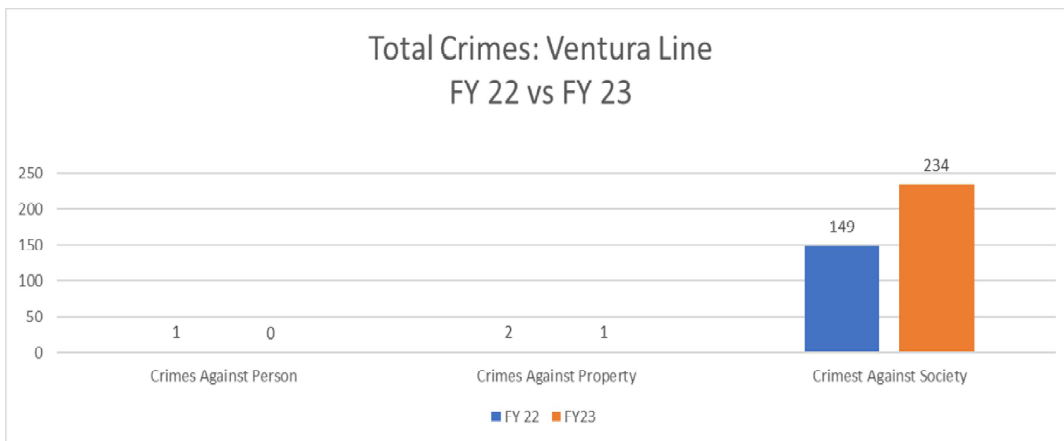
Arrow Line



Attachment: Attachment E - SCRRRA Law Enforcement Presentation (10641 : Dedicated Law Enforcement for Metrolink Service)

Ventura Line Incidents

- Total Crimes: FY22 vs FY23

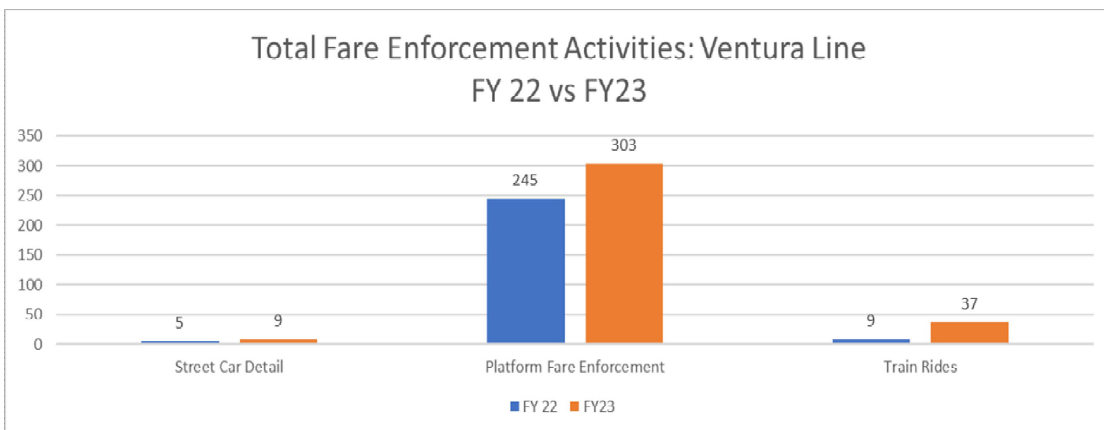


Crimes Against Society: Increased of 57% for FY 2023 compared to FY 2022. Contributing factor is trespassing.



Ventura Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

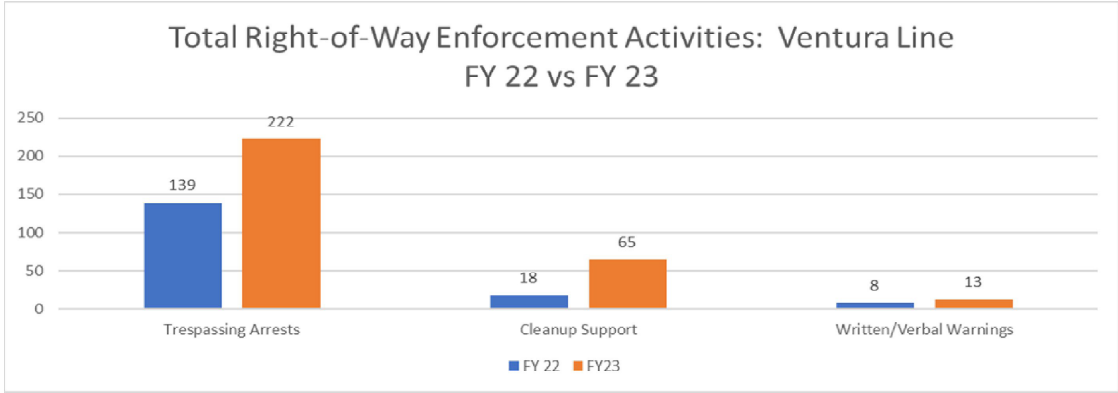


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



Ventura Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

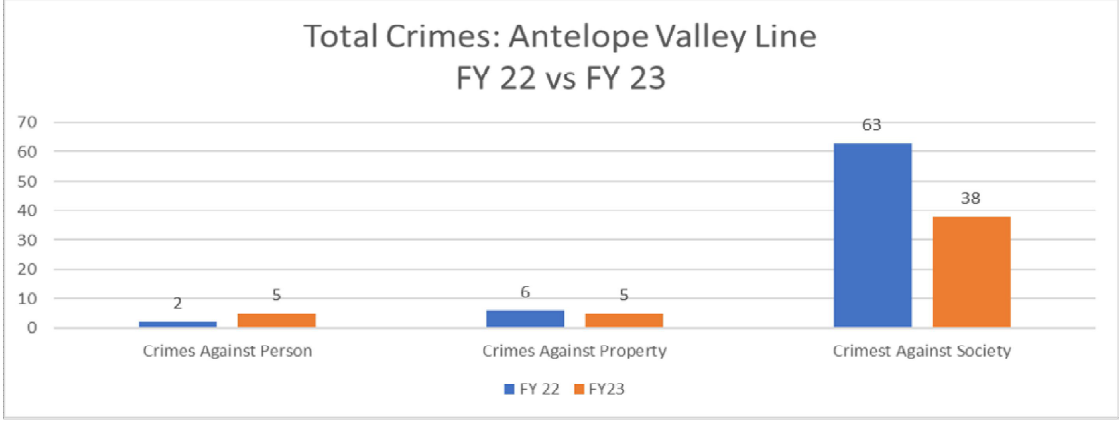


Increased focus on Right-of-Way enforcements and homeless encampment cleanups in FY 2023.



Antelope Valley Line Incidents

- Total Crimes: FY22 vs FY23

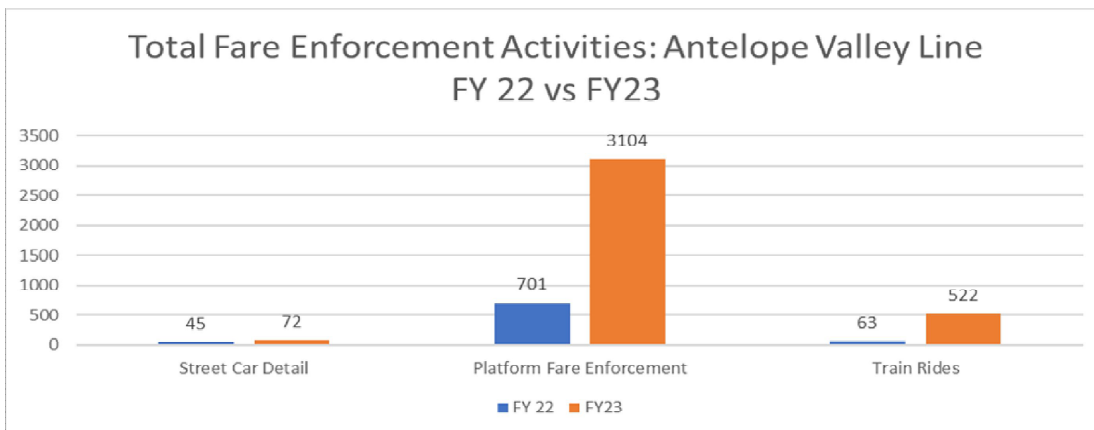


Crimes Against Society: Decrease of -40% for FY23 compared to FY 2022.



Antelope Valley Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

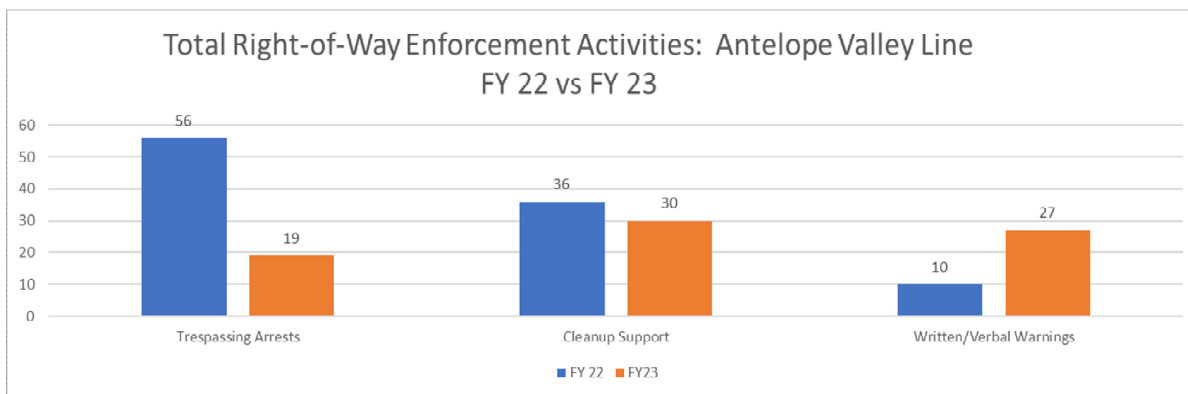


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



Antelope Valley Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

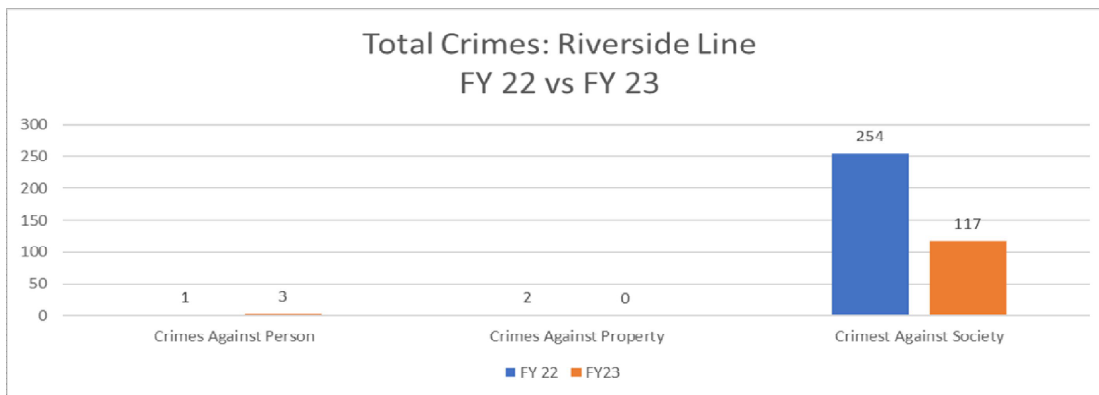


Decrease of -66% trespassing arrests in FY 2023 compared to FY 2022



Riverside Line Incidents

- Total Crimes: FY22 vs FY23

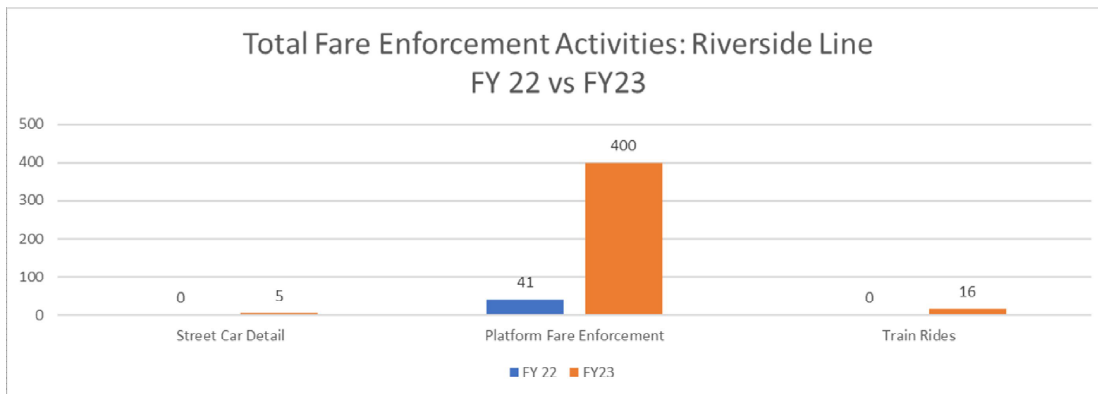


Crimes Against Society: Decrease of -54%. Contributing factor is the reduction of number of trespassing crimes.



Riverside Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

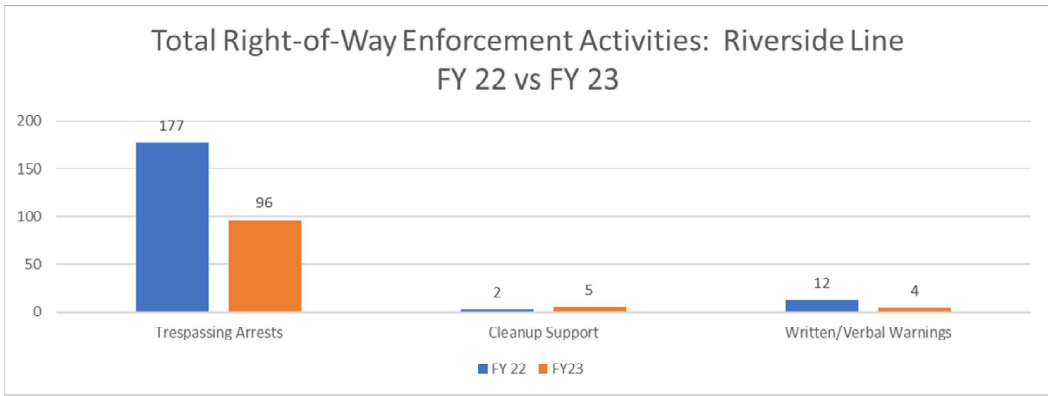


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



Riverside Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

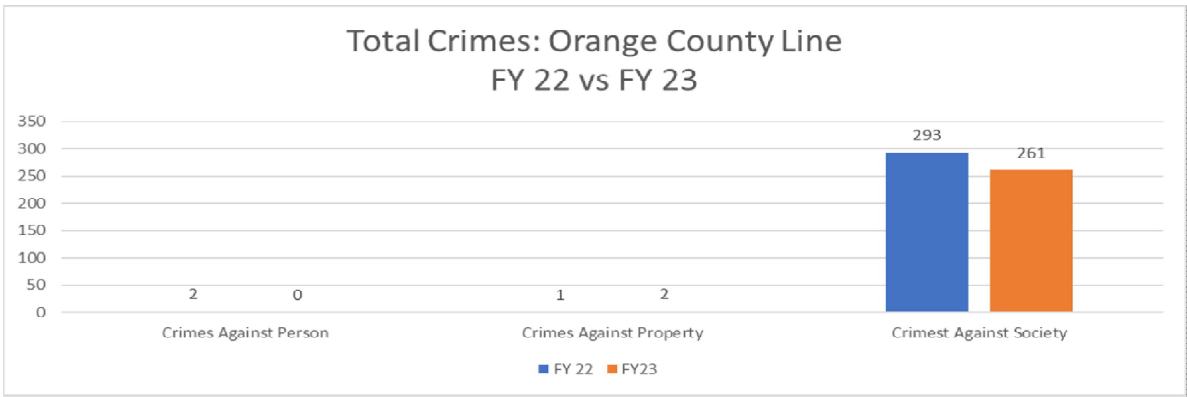


Decrease of -46% trespassing arrests in FY 2023.



Orange County Line Incidents

- Total Crimes: FY22 vs FY23

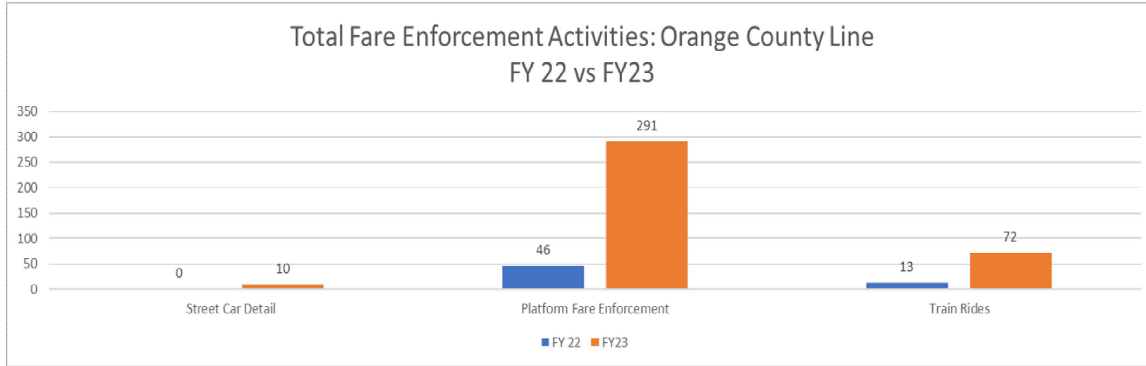


Crimes Against Society: Decrease of -11%. Contributing factor is the reduction of number of trespassing crimes.



Orange County Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

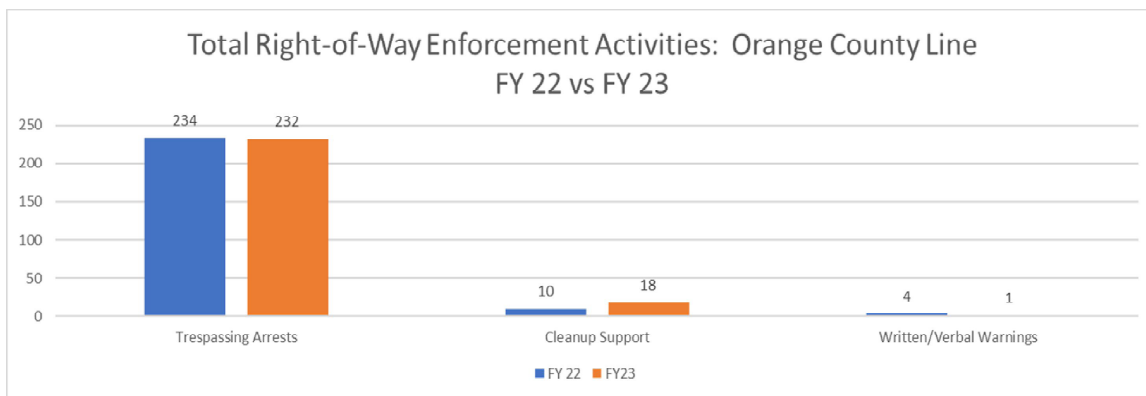


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



Orange County Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

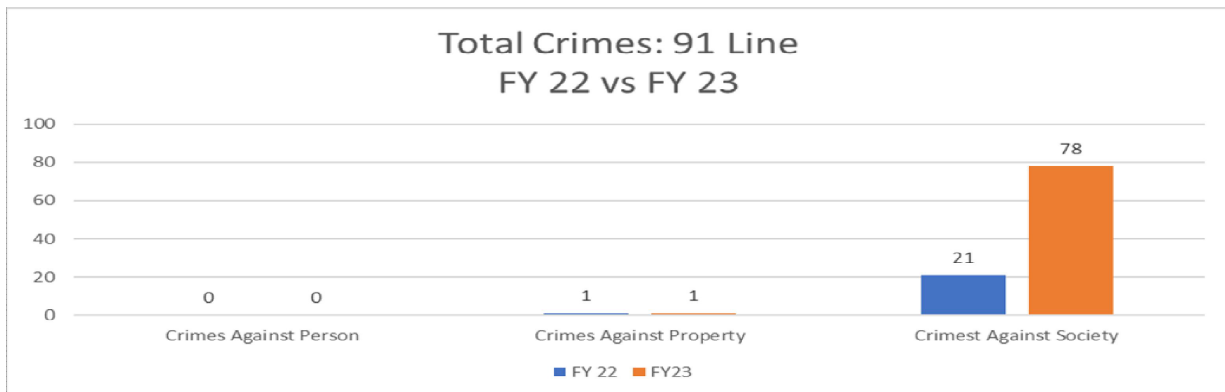


No noticeable change in trespassing arrests for FY 2023 compared to FY 2022.



91 Line Incidents

- Total Crimes: FY22 vs FY23

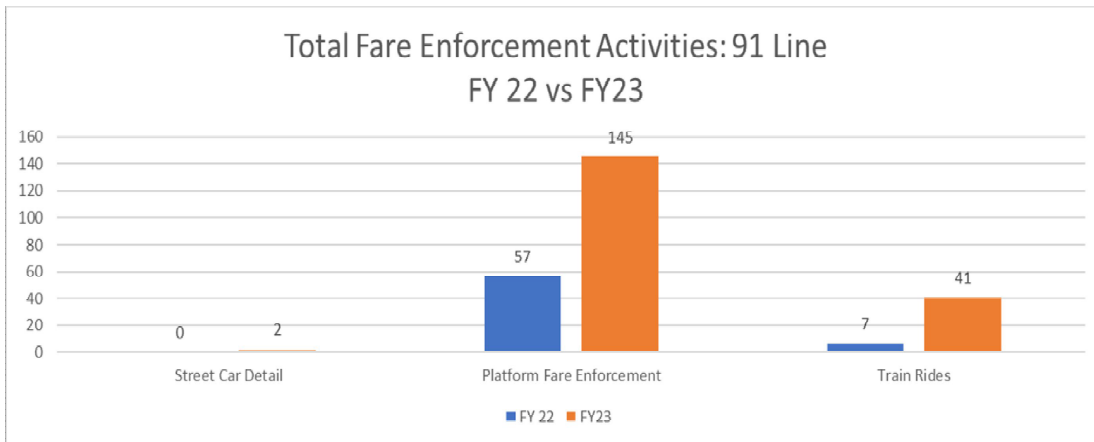


Crimes Against Society: Increase of 271%. Contributing factor is the increase in trespassing crimes.



91 Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

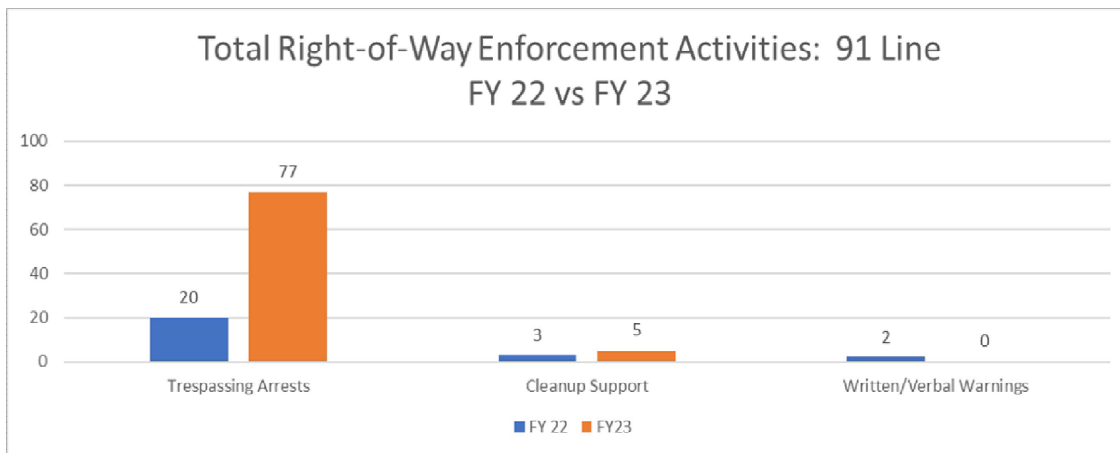


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



91 Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23

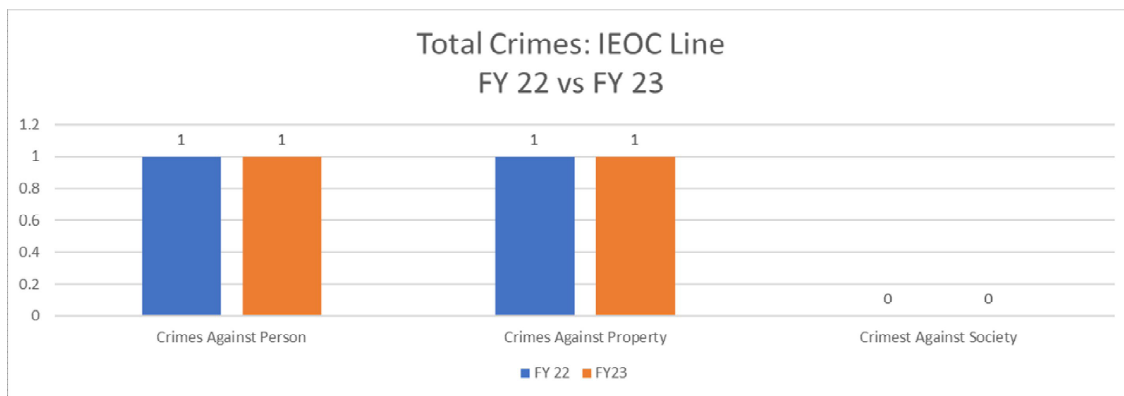


Increase of 285% trespassing arrests in FY 2023 compared to FY 2022.



IEOC Line Incidents

- Total Crimes: FY22 vs FY23

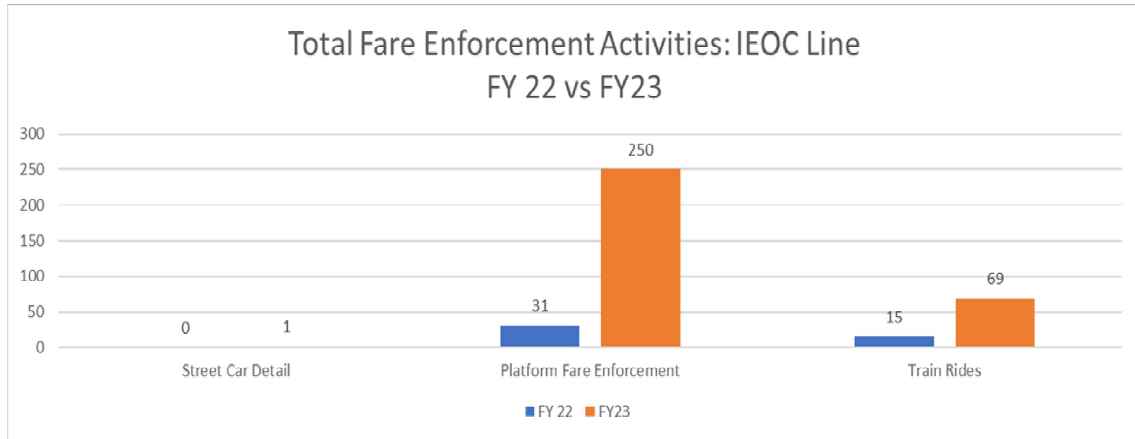


*Crimes Against Society: Does not include trespassing arrests



IEOC Line Incidents

- Total Fare Enforcement Activities: FY22 vs FY23

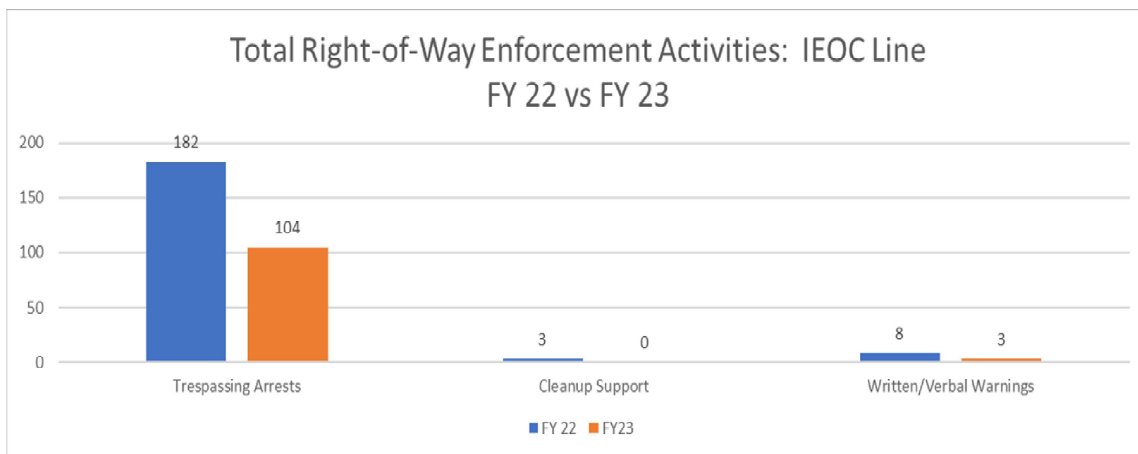


Increased street car detail, platform fare enforcement, and train riding to enhanced law enforcement presence and minimized incidents on the train.



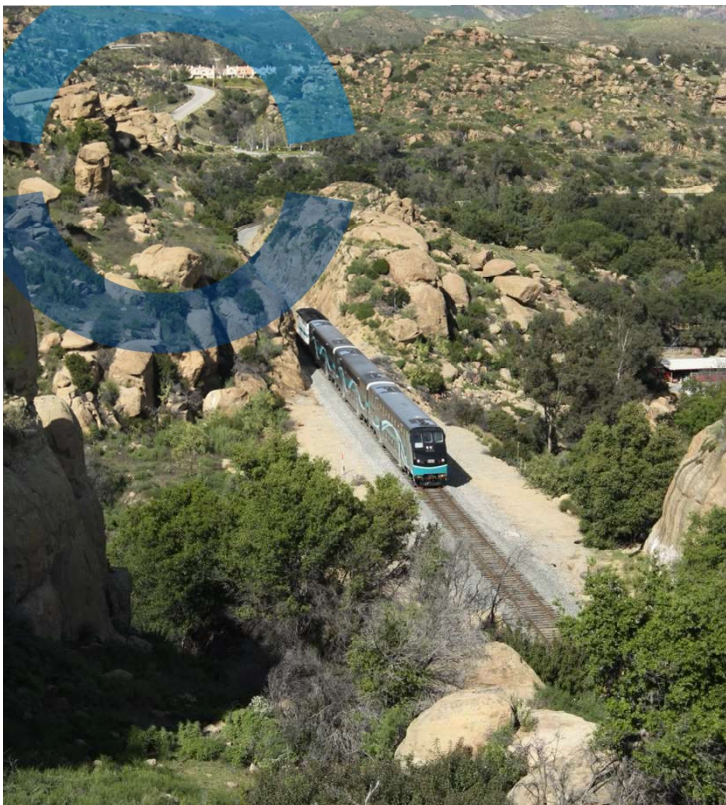
IEOC Line Incidents

- Total Right-of-Way Enforcement Activities: FY22 vs FY23



Decrease of 42% trespassing arrests in FY 2023 compared to FY 2022.





End of PowerPoint



Thank
you.

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2023 Potential Rider Study

Summary of Findings

Member Agency CEOs

June 16, 2023



Attachment: Attachment F - Potential Rider Study Summary of Results (10641 : Dedicated Law Enforcement for Metrolink Service)

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?



Methodology



Online survey
Potential Riders
3,392 responses



Predictive Statistics
Perceptions
Attitudes
Values



Market Segmentation
K-Means Clustering
Potential for Ridership



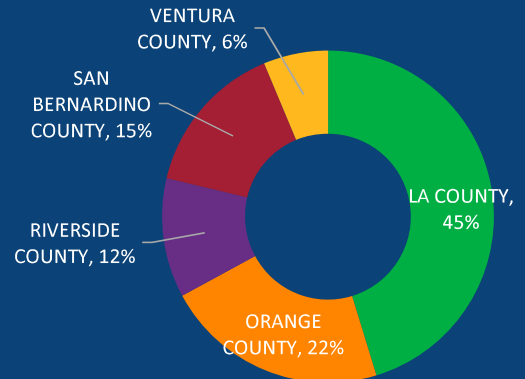
Focus Groups
Deep Dive Analysis
35 participants

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Online Survey

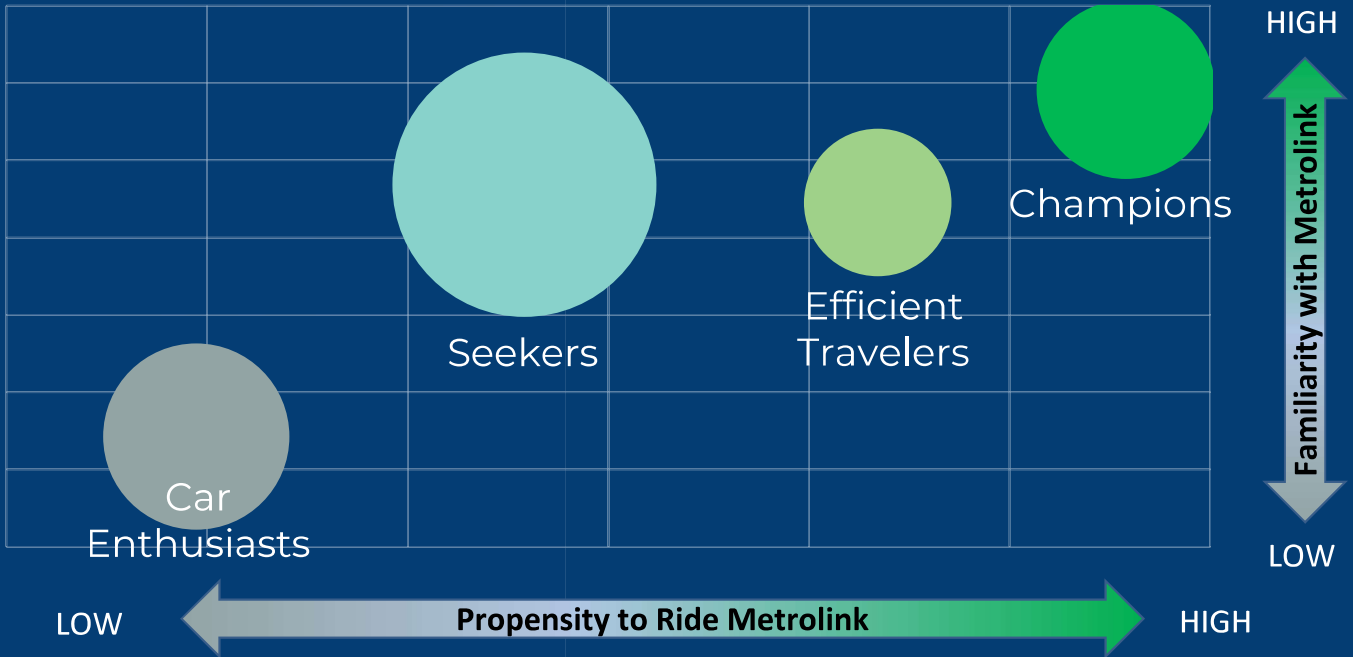
- January 17 – February 11, 2023
- Covered entire service area
- Target population near Metrolink stations
- Non-riders, trial riders, lapsed riders
- Received 3,392 completed surveys

RESPONDENTS BY COUNTY



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POTENTIAL RIDERSHIP SEGMENTS



2023 Potential Rider Study

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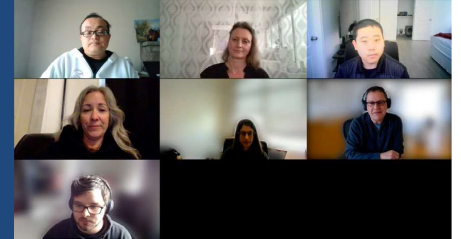
Attachment: Attachment F - Potential Rider Study Summary of Results (10641 : Dedicated Law Enforcement for Metrolink Service)

Focus Group Study

Group 1



Group 3



Five focus groups with potential riders were conducted to learn more about preferences and barriers to ridership.

Group 2



Group 4



Group 5



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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.

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Takeaway: Security Concerns

Crime is the main factor that keeps me from using the train.

Riders are less concerned by who is operating the service and more concerned with their experience within the transit network.

I love the service, but have recently stopped using it for my safety concerns.

Women and families with children are most likely to cite concerns about safety.

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.

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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.

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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.

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Takeaway: Reliability

Unfortunately, the Metrolink trains in my area are not a reliable form of transportation. They are often late due to problems along the line.

Just one in four non-riders think Metrolink trains are reliable enough to get them to work on-time.

The times we have taken the train we have had delays.

Anxiety around becoming stranded if a bus or train was missed was expressed overwhelmingly by all audience segments.

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.

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Takeaway: Affordability

Cheaper ticket price and discount for disabled passengers.

The perceived cost of a Metrolink ride includes parking and first/last mile costs.

Free or reduced price bus ride to train station

Many potential riders are unaware of available fare discounts and free transfers.

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?

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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

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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

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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

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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.

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Thank you.

Additional Information

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

Acronym List

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
S RTP	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 21 st 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

TRANSIT COMMITTEE ATTENDANCE RECORD – 2024

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Eunice Ulloa City of Chino		X	X	X	X							
Ray Marquez City of Chino Hills		X	X	X	X							
Frank Navarro City of Colton		X	X	X								
Aquanetta Warren City of Fontana		X	X	X	X							
Larry McCallon City of Highland		X	X	X	X							
John Dutrey City of Montclair		X	X	X	X							
Alan Wapner City of Ontario				X	X							
L. Dennis Michael City of Rancho Cucamonga				X								
Sylvia Robles City of Grand Terrace				X	X	X		X	X	X	X	X
Bobby Duncan City of Yucaipa		X	X	X	X							
Rick Denison Town of Yucca Valley		X	X	X	X							
Dawn Rowe Board of Supervisors		X		X								
Joe Baca, Jr. Board of Supervisors		X	X	X	X							

Communication: Attendance (Additional Information)

X = Member attended meeting Empty box = Member did not attend meeting
 Crossed out box = Not a member at the time Shaded box=The Transit Committee did not meet



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