

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
16	06/11/18	Open	Information	06/04/18

Subject: Riverfront Streetcar Governance Documents, Informational Update

ISSUE

To provide an informational update on the various governance documents for the Downtown Riverfront Streetcar Project.

RECOMMENDED ACTION

This is an informational item, no action is being requested.

FISCAL IMPACT

This is an informational update, there is no fiscal impact.

DISCUSSION

This is an informational update on the various governance agreements required to design, build, operate and maintain the Downtown Riverfront Streetcar Project (Project). The relevant agreements will be brought back to the SacRT Board for approval at a subsequent board meeting. The specific agreements are:

1. Joint Exercise of Powers (JEP) Agreement for Riverfront Joint Powers Authority and First Amendment to JEP (SacRT is not a party to this Agreement);
2. Subrecipient and Interagency Agreement for Streetcar Funding;
3. Design, Procurement and Construction Agreement for the Streetcar Project; and
4. Operations and Maintenance Agreement for the Streetcar Project

Each agreement is described in more detail as follows:

Joint Exercise of Powers Agreement for Riverfront Joint Powers Authority

In March 2017, the City Councils of Sacramento and West Sacramento approved a Joint Exercise of Powers (JEP) Agreement. Approval of a JEP Agreement allows the City of Sacramento and the City of West Sacramento to jointly conduct planning, design, financing, regulation, permitting, environmental evaluation, public outreach, construction, set fares, secure all operating funds, ownership, operation and maintenance of the planned Project between the two cities through the establishment of a separate legal entity, the Riverfront Joint Power Authority (JPA). Approval of the JEP was necessary for the formation of the Riverfront JPA. The JPA has been formed and the JPA Board began meeting in November 2017.

Approved:

Presented:

Final 06/06/18

General Manager/CEO

Deputy General Manager/Chief Operating Officer

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The development of the governance structure for the Project takes into consideration a number of factors, including the fact that all Project assets will be jointly-owned by the City of West Sacramento and the City of Sacramento. Certain exceptions to this general rule include:

1. Rights of way for track, which each city shall continue to own within its respective jurisdiction;
2. Real property owned by a city to be used by the JPA with approval; and
3. Sacramento Regional Transit (SacRT) light rail track, stations, and traction power substations and poles that may also service the streetcar system will continue to be owned by SacRT.

As described in the draft First Amendment to Joint Exercise of Powers Agreement for the Riverfront Joint Powers Authority, the JPA Board consists of five directors and their respective alternates. Each City appoints two directors and their two alternates. If the First Amendment is approved, at least one of the City of Sacramento’s appointed directors must also serve at the same time as a member of the SacRT Board of Directors. The fifth director is appointed by the four JPA representatives.

Although SacRT is not a party to the JEP Agreement or the First Amendment, the provisions of these documents affect: (1) SacRT’s ability to influence decisions related to the Project; and (2) the risks associated with successful completion and operation of the Project. One important note regarding the JPA structure is that the assets of the JPA will be limited to the project facilities and currently the only dedicated funding sources for streetcar operations will be from fares and the Community Facilities District formed by the City of Sacramento.

All other funds for Streetcar operations will be subject to annual appropriation by the Cities and the super-majority vote set out below, as will additional construction funds. To ensure the cities meet their responsibilities with respect to the project, they are also parties in their individual capacities to the Subrecipient and Interagency Agreement and the Operations and Maintenance Agreement.

The provisions in the JEP regarding dissolution require that the cities comply with federal and state requirements regarding the disposition of project assets. The First Amendment to the JEP Agreement will insert language requiring the JPA and/or both cities to do the following:

1. Ensure that Project property is used continuously and without delay for its originally authorized purpose throughout its useful life or until disposition occurs;
2. Ensure that associated uses of Project property are transit supportive;
3. Notify the Federal Transit Administration (FTA) if the conditions contained in 1 or 2 above are not being met; and
4. Seek FTA guidance regarding the requirements of this section through FTA circulars and other writings (including FTA Circular 5010.1E and the Uniform Relocation Assistance Act).

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An affirmative vote of a majority of the JPA Board is required for most Board actions. However, the following actions require that the four affirmative votes include at least one city-appointed director from each city:

1. Approve the annual budget for the JPA;
2. Approve all amendments to the initial funding plan for the Project;
3. Approve the annual budget for the Project;
4. Approval of Project budgets for construction including establishment of limits of authority for changes orders and change order processing procedures;
5. Approve any agreement to retain the services of a consultant to oversee and advise the cities on the design and construction of the Project;
6. Obtain and secure funding from all available public and private sources including local, state, and federal government including but not limited to, bond issuances, lease purchase agreements, public grants, private contributions, and public and private loans;
7. Negotiate and enter into reimbursement agreements when monies to construct Project improvements are advanced;
8. Secure additional Project funding if needed; and
9. Issue bonds.

The following actions require four affirmative votes, including at least one city-appointed member from each city AND approval of the City Council of the City where the action is to be taken or both City Councils for system wide actions:

1. Add additional projects to the authority and purpose of the JPA provided it is within its current jurisdiction;
2. Form a special tax district under the Mello-Roos Community Facilities District Act or any other authority that may exist now or in the future;
3. Form special assessment district; and
4. Initiate an eminent domain action.

In an effort to ensure that SacRT, as the Project grantee, has an influence on key JPA Board decisions, the following processes have been established:

1. Prior to completion of the Project, any vote in favor of an amendment to or termination of the Design, Procurement, and Construction Agreement must include the affirmative vote of the SacRT Director.
2. The JPA Board may not terminate the Design, Procurement and Construction Agreement prior to completion of the design, procurement and construction services unless the JPA Board and SacRT have entered into a separate grant management agreement whereby SacRT will provide the grant management services as set forth in the Subrecipient Agreement between the cities, the JPA, and SacRT.
3. During the first five years of revenue operations, any vote in favor of an amendment to, or termination of, the Operations and Maintenance Agreement must include the affirmative vote of the SacRT Director.

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4. As defined in the Subrecipient Agreement, SacRT is the final arbiter of any compliance issue.

In general, the JPA Board sets the broad policy and has delegated authority to the JPA Executive and JPA Staff to handle day-to-day activities. An integral component of the governance of the Project will be the formation of a Streetcar Advisory Body (Advisory Body). The Advisory Body’s advice shall not impair SacRT’s rights and obligations to ensure that the Project meets all requirements of the federal grant agreement for the Project as set forth in the Subrecipient and Interagency Agreement for Streetcar Funding to be executed by the Cities and SacRT. The purpose of the Advisory Body is to serve in an advisory capacity for the Streetcar operations and maintenance. This Advisory Body will be formed to ensure that those whose investments fund the Project, such as the Sacramento business owners, will have input on the operations and maintenance of the Project.

While the JPA will retain ultimate ownership and control of the Project, the Advisory Body will provide input on the following Project services:

1. Daily operations of the streetcar system;
2. All advertising, marketing, public outreach and sponsorship opportunities for the Project;
3. Operations and maintenance of the Project infrastructure, including all cars, tracks, facilities and stops within the streetcar system;
4. Project fares and other Project income;
5. Input on the hiring of the JPA Executive and such other administrative, technical, support and operational staff as necessary to carry out the management services;
6. Right of way issues, such as lease, sublease, acquisitions and other real property necessary for the operation or maintenance of the streetcar system;
7. Contracts with public and private sector entities as may be necessary to provide the management services; and
8. Discussions regarding expansion of streetcar system, route adjustments or other changes to the streetcar system.

While the Advisory Body will provide recommendations to the JPA Board and staff, it is the JPA’s responsibility to approve any of the above recommendations prior to implementation.

The Advisory Body will elect a Chair to lead all meeting discussions and will be responsible for relaying recommendations, concerns or other issues to the JPA Board of Directors. In no instance will the Advisory Body be responsible for directing SacRT or any future agency in charge of operating or maintaining the Streetcar system.

Subrecipient and Interagency Agreement for Streetcar Funding

SacRT is the FTA and State grantee for this Project and will be responsible for ensuring all applicable grant requirements are met by SacRT, the JPA and cities. Because the Project will ultimately be owned by the cities through the JPA, it’s necessary to execute a Subrecipient and

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Interagency Agreement to set out the terms and conditions applicable to SacRT’s transfer of grant funds to the JPA, as the subgrantee, for the development of the Project.

The Subrecipient and Interagency Agreement designates the JPA as the subrecipient of federal and state grants. As a subrecipient, the JPA must comply with all terms and conditions of all Project grants, including the FTA Small Starts Grant Agreement (SSGA). SacRT will exercise oversight rights, such as to investigate or audit, with regards to the terms and conditions of all applicable grants. JPA’s failure to properly perform its obligations as the subrecipient will be considered a breach of the Subrecipient and Interagency Agreement. SacRT will promptly notify the JPA of any failure and provide an opportunity to resolve the issue. A dispute section has been established in the Subrecipient and Interagency Agreement to provide the necessary steps to resolve all disputes. Further, the JPA and the cities understand that the federal government retains a federal interest in all real property, equipment and supplies acquired or improved for use in connection with the Project until the Federal Government removes its interest.

The Subrecipient and Interagency Agreement will enable SacRT, as the FTA grantee, to draw down the SSGA funds. However, prior to drawing down any funds, SacRT must provide the JPA invoices of costs incurred. The JPA must respond within 15 working days by approving or disapproving the invoice. If there is a dispute with the invoice, SacRT may draw down funds only on the undisputed items. The agreement has a process for dispute resolution.

Design, Procurement and Construction Agreement for the Streetcar Project

The JPA, will enter into a Design, Procurement and Construction Agreement with SacRT. This Agreement appoints SacRT to provide design, construction and procurement services for the Project. SacRT agrees to perform the services in a reasonable, prudent and diligent manner consistent with good practices within the industry, as well to as comply with all FTA grant requirements.

The Design, Procurement and Construction Agreement recognizes the need for SacRT to manage the design, procurement and construction of the Project. The Design, Construction and Procurement Agreement appoints SacRT to provide technical and management services for the Project, and sets forth the responsibilities and obligations of SacRT with respect to the services provided, a Project budget, Project deliverables, schedules for both the design and construction phases of the Project and any design specifications or guidelines.

Once the Design, Procurement and Construction Agreement is executed, the JPA may not terminate it prior to the completion of design, procurement and construction services unless the JPA and SacRT have entered into a separate grant management agreement whereby SacRT will provide the grant management services and the JPA will fully cooperate with and compensate SacRT its reasonable costs for the performance of such services.

The Design, Procurement and Construction Agreement requires all agreements for services and all amendments to agreements for services to be approved by the JPA. Depending on the value of the contract or amendment, this approval would be by either the JPA Board or the JPA Executive.

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In addition, the JPA must appoint an Owner’s Representative to interact on a day-to-day basis with SacRT staff managing the design and construction of the project.

Operations and Maintenance Agreement for the Streetcar Project

Another key governance agreement necessary for this Project is the Operations and Maintenance Agreement. Due to SacRT’s extensive experience in the operations and maintenance of regional transit projects similar to this Project and the fact that the SSGA requires that operation and maintenance for the Project be conducted by an entity experienced in the operation and maintenance of rail transit projects, this agreement is necessary. The Operations and Maintenance Agreement appoints SacRT to provide operation and maintenance services for the Project. This Agreement, once executed, defines the roles, responsibilities and expectations regarding the operation and maintenance of the Project. Through this Agreement, SacRT is responsible for operating and maintaining the system, as well as compliance with all applicable federal, state and local laws and requirements. This responsibility also extends to compliance with SSGA and FTA requirements.

At this time, the Operations and Maintenance Agreement states only that SacRT must be compensated for its “commercially reasonable” costs incurred in providing services. There is no methodology for establishing the budget for services. The Operations and Maintenance Agreement calls for the parties to determine a methodology for the provision of service no later than 36 months prior to the planned commencement of revenue service and for an initial budget to be developed no later than 24 months prior to the commencement of revenue service. The intent is to provide for early identification of potential disputes regarding the costs of service before there is any disruption to service. Once the methodology is agreed upon, there will be an annual budgeting process that, hopefully, will provide sufficient advance notice to resolve future disputes and for the cities to budget for service.

There is a non-binding dispute resolution process. In addition, either party can terminate the agreement on 180 days’ advance notice if there are irreconcilable differences. However, similar to the Subrecipient and Interagency Agreement, once the SSGA and the Operations and Maintenance Agreement are executed, this agreement cannot subsequently be terminated unless a suitable replacement operator has been engaged and operations will continue seamlessly in compliance with the SSGA. Also, termination of this agreement requires that SacRT and the JPA enter into a separate grant management agreement to ensure continued SSGA and FTA compliance.

Future SacRT Board Action

The SacRT Board will be required to approve the Subrecipient and Interagency Agreement, the Design, Procurement and Construction Agreement, and the Operations and Maintenance Agreement. The Joint Exercise of Powers Agreement only required the approval of the two Cities to form the JPA. It is anticipated that these agreements will be taken to the JPA and the City Councils of the two Cities for approval during the month of June.

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As the federal grant recipient for this project, the Federal Transit Administration (FTA) will hold SacRT responsible for compliance with all Federal regulations and requirements for the design, construction and operational life of the project. The form of governance established for this project creates unique risk for SacRT in that decisions could be made by the JPA that would put SacRT out of compliance with Federal regulations. The FTA would hold SacRT responsible for remedying the compliance issue(s) with sanctions that could range from changing or redoing a specific process, for example re-bidding a specific procurement, to, in the most extreme case, withholding Federal funding. Examples of compliance issues include, not adhering to Federal procurement regulations, not complying with the ADA, not complying with Title VI, incorrectly disposing of surplus property, changes to the level of service that are inconsistent with the grant agreement, and not complying with Buy America requirements to name a few.

In drafting these agreements, the risks to SacRT were recognized and measures were taken to protect SacRT without compromising the overall approach to governance. Specifically, changes were made to the composition of the JPA Board requiring that at least one of the City of Sacramento appointees also be an SacRT Board member, votes that impact SacRT's role in the project include a supportive vote by the City of Sacramento appointee who is also an SacRT Board member, and that SacRT has oversight responsibilities over JPA compliance with the terms and conditions of the grant requirements. With respect to grant compliance issues, SacRT's contractual rights are akin to a veto power over actions or proposed actions that SacRT believes are non-compliant. If the JPA/Cities were to fail to abide by contractual obligations, the final remedy would be through litigation to enforce the contract. In this most extreme circumstance, SacRT would face additional risk in that the FTA could act against SacRT before there is legal resolution to the dispute.

Specific to the Operations and Maintenance Agreement, SacRT is presumed to be the initial operator of the system. There is an assumption that SacRT's cost to operate the streetcar system would be fully reimbursed by the JPA making it cost neutral to the larger SacRT system. The specific services to be provided and the costing of those services remain to be finalized. The JPA does have the flexibility to select an operator other than SacRT at a future date.

The Shared Track Agreement is a fifth agreement that has yet to be developed. The Shared Track Agreement addresses costs and operational details related to the use of SacRT's facilities by a third party. This would primarily cover liability, the maintenance of shared infrastructure and the cost of electricity consumed by the streetcar. It was envisioned by SacRT that this agreement would be in place prior to the operation of the Riverfront Streetcar. As an alternative, shared track provisions could be a part of the Operations and Maintenance Agreement provided SacRT is the operator of the Riverfront Streetcar system. Should the JPA choose to contract with a different operator, a separate Shared Track Agreement would need to be developed and approved at that time.

Attached for the Board's consideration are the Agreements referenced above.



With:
Title: Downtown/Riverfront
Streetcar

JOINT EXERCISE OF POWERS AGREEMENT FOR RIVERFRONT JOINT POWERS AUTHORITY

THIS JOINT EXERCISE OF POWERS AGREEMENT FOR THE RIVERFRONT JOINT POWERS AUTHORITY (“**Agreement**”) is entered into as of the 15th day of March, 2017 (“**Effective Date**”), by and among the City of West Sacramento (“**West Sacramento**”) and the City of Sacramento (“**Sacramento**”). West Sacramento and Sacramento are also each referred to herein as “**City**” and collectively as “**Cities**.”

RECITALS

- A. WHEREAS, the Cities have the common powers, under their respective sovereign and police powers, to acquire real and personal property and to plan, design, finance, construct, own, operate, and maintain roadways, interchanges, intersections, railroad crossings, and other transportation improvements including, without limitation, owning and operating a public transportation system (together with all appurtenant vehicles and equipment); and
- B. WHEREAS, the Cities have determined that, subject to certain phasing requirements, the public interest will be served by the joint exercise of these powers through this Agreement and the creation of a joint powers authority to acquire, plan, design, finance, construct, own, operate, and maintain a fixed-rail streetcar system that will operate within and between the two Cities (“**Project**”); and
- C. WHEREAS, the Cities have determined that the Project should be undertaken in order to meet transportation needs of the Cities and their respective spheres of influence, and that the Project will also have regional effects beyond those jurisdictions.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Cities agree as follows:

AGREEMENT

1. Authority and Purpose.

(a) This Agreement is made pursuant to Chapter 5 of Division 7 of Title I of the California Government Code (commencing with section 6500) (“**Joint Powers Act**”) relative to the joint exercise of powers common to the Cities and as otherwise granted by the Joint Powers Act. The purpose of this Agreement is planning, design, financing, regulation, permitting, environmental evaluation, public outreach, construction, ownership, operation and maintenance of the Project and all real and personal property related thereto, any identifiable portion of the Project and such other projects approved by a vote of the Board as required by Section 6(d)(ii) below and approved by a vote of the Cities’ respective City Councils as required by Section 6(e)(i) below.

(b) This Agreement is also made pursuant to California Government Code section 53316.2 such that revenues collected by the City of Sacramento pursuant to Streetcar Community Facilities District No. 2017-01 may be dispersed for services provided by the Authority created through this Agreement.

2. Creation of Authority and Jurisdiction. The Cities hereby create the Riverfront Joint Powers Authority (“**Authority**”), a public entity separate from each of the Cities. The jurisdiction of the Authority shall be coextensive with the boundaries of the Cities.
3. Term and Termination. This Agreement shall be effective as of the Effective Date. It shall remain in effect until terminated by mutual agreement of the Cities; provided, however, that this Agreement may not be terminated, and no City may withdraw from the Authority, until all of the following have occurred: (a) the Authority has complied with all applicable federal and state laws regarding the disposition of its assets; (b) all bonds or other instruments of indebtedness issued by the Authority, if any, have been paid in full or provisions have been made for payment in full; and (c) all outstanding obligations and liabilities of the Authority have been paid in full or provisions have been made for payment in full.
4. Powers. The Authority shall have all powers necessary or reasonable to further the purpose stated in Section 1 of this Agreement, including, but not limited to, the following:
- (a) To secure administrative office space and furnishing;
 - (b) To make and enter into contracts;
 - (c) To contract for, or employ, administrative, technical and support staff, and consultants (including a federal grants compliance consultant) and contractors of any kind;
 - (d) To acquire and maintain insurance of all types;
 - (e) To lease or sublease real property;
 - (f) To acquire, hold, or dispose of real property by negotiation, dedication, or eminent domain;
 - (g) To lease, sublease, acquire, operate, maintain and dispose of materials, supplies, and equipment of all types;
 - (h) To plan, and to conduct environmental and other analyses, and design buildings, facilities or transportation improvements of any kind;
 - (i) To construct, operate, and maintain buildings, facilities or transportation improvements of any kind;
 - (j) To accept, hold, invest (pursuant to the Joint Powers Act, including, without limitation, Section 6509.5 thereof), manage, and expend monies;
 - (k) To obtain and secure funding from all available public and private sources including local, state, and federal government, including but not limited to, bond issuances, lease purchase agreements, public grants, private contributions, public and private loans, and other funds;

(l) To form a special assessment district under any legal authority that exists now or in the future, including, without limitation, the Improvement Act of 1911 (Streets & Highways Code Section 5000 et seq.), the Municipal Improvement Act of 1913 (Streets & Highways Code Section 10000 et seq.), and the Improvement Bond Act of 1915 (Streets & Highways Code Section 8500 et seq.), and if authorized by the Cities pursuant to Section 6(e) below;

(m) To form a special tax district under the Mello-Roos Community Facilities District Act or any other authority that may exist now or in the future, and if authorized by the Cities pursuant to Section 6(e) below;

(n) To negotiate and enter into reimbursement agreements when monies to construct project improvements are advanced;

(o) To establish and collect rates, fees and charges for streetcar ridership;

(p) To issue bonds;

(q) To carry on technical and other investigations of all kinds necessary to further the purposes of this Agreement;

(r) To sue and be sued; and

(s) To exercise all powers incidental to the foregoing.

5. Duties. The Authority shall have the duty to do the following within the times specified or, if no time is specified, with a reasonable time:

(a) To retain legal counsel for all Authority business, including litigation;

(b) To evaluate the need for, and acquire and maintain if necessary, liability, errors and omissions, or other insurance; and

(c) To conduct an annual audit as required by the provisions of Section 6(f)(8).

6. Administration.

(a) Governing Board. The Authority shall be administered by a board of directors (“**Board**”) consisting of five directors and their respective alternates. Each City shall appoint two (2) directors (collectively, “**City Representatives**”) and their two (2) alternates. The fifth (5th) director shall be elected by the City Representatives. Alternates shall serve as directors in the absence of their respective directors. City Representatives and their alternates shall serve at the pleasure of the appointing City.

(b) Meetings.

(i) Regular Meetings. The Board shall by resolution establish the number of regular meetings to be held each year and the date, hour and location at which such regular meetings shall be held; provided, that the Board shall meet at least once every three months.

(ii) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*)

(iii) Conduct of Meetings. All meetings of the Board shall be held in accordance with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*)

(iv) Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, and the Cities.

(v) Quorum. Three (3) directors of the Board shall constitute a quorum for the transaction of business provided that at least one (1) City Representative from each City must be present to establish quorum.

(c) Procedures.

(i) The Board shall elect annually a chair from among its membership to preside at meetings and shall select a secretary who may, but need not, be a director. The Board may, from time to time, elect such other officers as the Board shall deem necessary or convenient to conduct the affairs of the Authority.

(ii) The Board may adopt by resolution rules of procedure, not inconsistent with the provisions of this Agreement, to govern the conduct of its meetings.

(d) Voting. With the exception of the items set forth below in Sections 6(d)(i) through (xiii) requiring approval of a Special Majority Vote (as defined below) and the items set forth below in Section 6(e) requiring the approval of the City Councils, the Board may take action by the affirmative vote of the majority of the entire Board (*i.e.* three (3) affirmative votes). For Board approval of the following identified actions, the affirmative vote of the majority of the entire Board must also include the affirmative vote of at least one City Representative of each City ("**Special Majority Vote**"):

(i) Exercise the powers of eminent domain;

(ii) Add additional projects to the authority provided it is within the jurisdiction of the Authority as set forth in Section 2;

(iii) Approve the annual budget for the Authority as set forth in Section 6(f)(iii) below;

(iv) Approve all amendments to the Funding Plan (as defined below in Section 6(f)(iv));

(v) Approve the annual budget for Streetcar, Inc. (as defined below);

(vi) Approve any amendments to, terminations of, and replacements to the Design and Construction MOU (as defined below);

(vii) Approve any amendments to, terminations of, and replacements to the Operations Agreement (as defined below);

(viii) Approve any agreement to retain the services of an independent project manager (“**Project Director**”) to oversee and advise the Cities on the design and construction of the Project and the services provided by Sacramento Regional Transit (“**RT**”) under the Design and Construction MOU;

(ix) Obtain and secure funding from all available public and private sources including local, state and federal government including, but not limited to, bond issuances, lease purchase agreements, public grants, private contributions, public private loans, and other funds;

(x) Form a special tax district under the Mello-Roos Community Facilities District Act or any other authority that may exist now or in the future;

(xi) Form special assessment district as set forth in Section 4(l) above;

(xii) Negotiate and enter into reimbursement agreements when monies to construct project improvements are advanced; and

(xiii) Issue bonds.

(e) City Council Approval. In addition to requiring the approval of the Board as set forth in Section 6(d) above, the following actions also require the approval of the City Council of each City, or in the case of Section 6(e)(iv), only the City Council of the City where the action is to be taken:

(i) Add additional projects to the authority and purpose of the Authority provided it is within the jurisdiction of the Authority as set forth in Section 2;

(ii) Form a special tax district under the Mello-Roos Community Facilities District Act or any other authority that may exist now or in the future;

(iii) Form special assessment district as set forth in Section 4(l) above; and

(iv) Initiate an eminent domain action.

(f) Fiscal Matters.

(i) Treasurer and Controller.

(1) Except as provided below in Sections 6(f)(i)(2) and (3), the Treasurer and Finance Director of City of Sacramento, are designated the Treasurer and Controller, respectively, of the Authority with the powers, duties and responsibilities in the Joint Powers Act including, without limitation, Sections 6505 and 6505.5 thereof.

(2) The Board may designate a certified public accountant as the Treasurer of the Authority with the powers, duties and responsibilities in the Joint Powers Act including, without limitation, 6505.5 thereof.

(3) Notwithstanding Sections 6(f)(i)(1) and (2) above, the Board may at any time appoint one or more of the Authority's officers or employees to either or both of the positions of Treasurer or Controller as provided in the Joint Powers Act including, without limitation, Section 6505.6 thereof.

(4) Subject to the applicable provisions of any indenture, trust agreement, or resolution providing for a trustee or other fiscal agent, and except as may otherwise be specified by resolution of the Authority, the Treasurer is hereby designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and has the powers, duties, and responsibilities of the treasurer of the Authority specified in sections 6505.5 and 6509.5 of the Act. The Treasurer shall draw checks to pay demands against the Authority when the demands have been approved by the Board.

(5) Subject to the applicable provisions of any indenture, trust agreement, or resolution providing for a trustee or other fiscal agent, and except as may otherwise be specified by resolution of the Authority, the Controller is designated as the auditor and controller of the Authority and has the powers, duties, and responsibilities of the auditor or controller of the Authority specified in sections 6505 and 6505.5 of the Act.

(6) The Board shall determine the charges to be made against the Authority for the services of the Treasurer and the Controller.

(7) The Treasurer is hereby designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and the Treasurer shall file an official bond in the amount of \$25,000 as required by section 6505.1 of the Act, except as follows: a bond is not required if the Authority does not possess or own property or funds with an aggregate value of greater than \$500 (excluding amounts held by a trustee or other fiduciary in connection with any Bonds).

(8) The Controller is hereby authorized and directed to prepare or cause to be prepared a special audit as required by section 6505 of the Act every year during the term of this Agreement unless the Board elects otherwise in accordance with the Act. The Controller is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Members. The report must describe the amount of money held by the Treasurer for the Authority, the amount of receipts since the last such report, and the amount paid out since the last report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts). The Authority shall promptly deliver copies of any report or special audit to each of the Cities.

(ii) Records. The Board shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times to the Cities and their respective representatives. The accounts shall be prepared and maintained by the Treasurer and Controller of the Authority. The Authority shall, within one hundred twenty (120) days after the close of each fiscal year, cause an independent audit of all financial activities for such fiscal year.

(iii) Budget. The Board shall adopt a budget for the Authority no later than one hundred and twenty (120) days after the first meeting of the Board and no later than June 30th of each year thereafter.

(iv) Project Funding Plan. Attached hereto as Exhibit A is the initial Funding Plan for the Project ("**Funding Plan**"). Any amendments to the Funding Plan must be approved by the Board in accordance with Section 6(d)(iv) above. Material changes to the Project Funding Plan shall be brought back to each City's City Council for review.

7. Streetcar Design and Construction. Attached hereto as Exhibit B is the proposed Memorandum of Understanding Regarding the Design, Construction and Procurement of the Streetcar Project ("**Design and Construction MOU**") to be entered into between the Authority and RT. Material changes to the Design and Construction MOU shall be brought back to each City's City Council for review.

8. Streetcar Operation. It is the desire of the Cities that a new California public benefit corporation exempt from federal and state income tax as a 501(c)(3) public charity ("**Streetcar, Inc.**") shall be formed for the purpose of managing the operation and maintenance of the Project. Attached as Exhibit C-1 are proposed Articles of Incorporation ("Articles") and Bylaws for Streetcar, Inc. Material changes to the Articles or Bylaws shall be brought back to each City's City Council for review. The management of the operation and maintenance of the Project shall be undertaken by Streetcar, Inc. under the terms and conditions of the proposed Management Services Agreement attached hereto as Exhibit C-2 ("**Management Services Agreement**") to be entered into between the Authority and Streetcar, Inc. Material changes to the Management Services Agreement shall be brought back to each City's City Council for review.

9. Exercise of Powers. The powers and duties that (a) are common to the Cities, (b) are vested in the Authority only by virtue of this Agreement, and are not independent powers and duties which arise by virtue of the Joint Powers Act, shall be exercised and carried out subject only to such restrictions upon the manner of exercising such powers or carrying out such duties as are imposed upon the City of Sacramento in the exercise of similar powers or in carrying out similar duties, as provided in Section 6509 of the Joint Powers Act.

10. Fiscal Year. The fiscal year of the Authority shall be the period from July 1st of each year to and including the following June 30th.

11. Debts, Liabilities and Obligations. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the Cities, either jointly or severally.

12. Insurance Requirements. During the entire term of this Agreement, Authority shall maintain such policies of insurance as determined by the Authority, in consultation with the Cities, to be appropriate to protect the interests of the Authority, the Cities, and the public. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the Cities. It is understood and agreed by the Authority that its liability to the Cities shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Authority in connection with this Agreement.

13. Indemnification. The Authority shall assume the defense of and indemnify and save harmless each City and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the Authority undertaken pursuant to this Agreement.

14. Liability of Board, Officers and Employees.

(a) The Directors, officers and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the Cities for any mistake of judgment or other actions made, taken or omitted by them in good faith, nor for any action made, taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Authority's funds or failure to invest the same.

(b) To the extent authorized by California law, no Director, officer or employee of the Authority shall be responsible for any action made, taken or omitted by any other Director, officer or employee. No Director, officer or employee of the Authority shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.

(c) The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority and all Directors, officers and employees of the Authority for actions taken in good faith and within the scope of his or her authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide coverage for the foregoing indemnity.

15. Liberal Construction. The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Project.

16. Disposition of Property upon Termination. In the event of termination of the Authority pursuant to Section 3 above and where there will be a successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets and liabilities of the Authority shall be transferred to the successor public entity in accordance with all applicable federal and state laws. If upon termination pursuant to Section 3 above, there is no successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets shall be returned to the Cities as follows: (a) to the Cities as agreed upon by the Cities in writing; (b) unless otherwise agreed upon by the Cities in writing, all real property and any improvements thereon shall be conveyed to the City in whose jurisdiction the real property is located, and (c) all other assets shall be divided between the Cities in proportion to their respective contributions during the term of this Agreement. If upon termination pursuant to Section 3 above there is a successor public entity which will carry on some of the functions of the Authority and assume some of the assets, the Authority's Board shall allocate the assets between the successor public entity and the Cities in accordance with the provisions set forth in subsections (a) through (c) above. Notwithstanding any other term or condition set forth in this Section 16, disposition of property of the Authority upon its termination must be done in accordance with all applicable federal and state laws.

17. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

18. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Cities. No City may assign any rights or obligations hereunder without the consent of the other Cities; provided, further, that no such assignment may be made if it would materially and adversely affect (a) the rating of bonds issued by the Cities, or (b) bondholders holding such bonds.

19. Amendments. This Agreement may be amended only by the unanimous written agreement of the Cities. So long as any bonds of the Authority are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds and the documentation relating thereto, this Agreement shall not be amended, modified or otherwise revised, changed or rescinded, if such action would (a) materially and adversely affect (1) the rating of bonds issued by the Authority, or (2) bondholders holding such bonds, or (b) limit or reduce the obligations of the Authority to make, in the aggregate, the payments under the Funding Plan which are for the benefit of the owners of the bonds.

20. Rules. The Authority may adopt, from time to time, such rules and regulations for the conduct of the Authority's affairs as the Authority deems necessary and appropriate.

21. Notices. Any notices to Cities required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

Howard Chan, City Manager
City of Sacramento
915 I Street
5th Floor
Sacramento, CA 95814

Copy to: James Sanchez, City Attorney
City of Sacramento
915 I Street
4th Floor
Sacramento, CA 95814

Martin Tuttle, City Manager
City of West Sacramento
1110 West Capitol Avenue
3rd Floor
West Sacramento, CA 95691

Copy to: Jeffrey A. Mitchell, City Attorney
City of West Sacramento
400 Capitol Mall
27th Floor
Sacramento, CA 95814

Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any City may amend its address for notice by notifying the other City pursuant to this Section.

22. Headings. The headings used in this Agreement are for convenience only and have no effect on the content, construction, or interpretation of the Agreement.

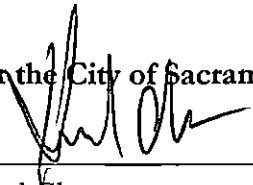
23. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

24. Administration. The Authority shall adopt a Conflict of Interest Code as required by law.

[Signature page to immediately follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers, as of the Effective Date.

For the City of Sacramento

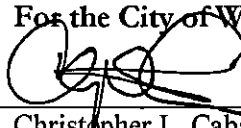


Howard Chan
City Manager

4-7-17

Date

For the City of West Sacramento



Christopher L. Cabaldon
Mayor

3.15.17

Date

Attested By: Dawn Bullwinkel

Dawn Bullwinkel
Assistant City Clerk

4-11-17

EXHIBIT A
INITIAL FUNDING PLAN

EXHIBIT B
DESIGN AND CONSTRUCTION MOU

EXHIBIT C-1
STREETCAR, INC. ARTICLES AND BYLAWS

EXHIBIT C-2
MANAGEMENT SERVICES AGREEMENT

**FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT
FOR RIVERFRONT JOINT POWERS AUTHORITY**

This First Amendment to the Joint Exercise of Powers Agreement for the Riverfront Joint Powers Authority (“**Amendment**”), is entered as of _____, 2018 (“**Effective Date**”), by and among the City of West Sacramento (“**West Sacramento**”) and the City of Sacramento (“**Sacramento**”). West Sacramento and Sacramento are also each referred to herein as “**City**” and collectively as “**Cities.**” Any capitalized terms not defined in this Amendment shall have the meaning ascribed to such capitalized term as set forth in the Joint Exercise of Powers Agreement for the Riverfront Joint Powers Authority dated March 21, 2017 (“**Agreement**”).

BACKGROUND

WHEREAS, the Cities entered into the Agreement on March 21, 2017;

WHEREAS, the Federal Transit Administration has requested certain changes to the structure of the Authority’s governance in order for the Project to be eligible for federal Small Starts Grant funding; and

WHEREAS, the Cities desire to make the changes to the Agreement as set forth in this Amendment to meet these federal requirements.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which is by all parties duly acknowledged, the parties hereto do hereby agree as follows.

1. Amendment to Section 6(a) of the Agreement. Section 6(a) of the Agreement shall be deleted and replaced in its entirety with the following language:

(a) Governing Board. The Authority shall be administered by a board of directors (“**Board**”) consisting of five directors and their respective alternates. Each City shall appoint two (2) directors (collectively, “**City Representatives**”) and their two (2) alternates. Sacramento shall ensure that at least one of its appointed directors also serves at the same time as a member of the Board of Directors of the Sacramento Regional Transit District (“**RT Director**”). The fifth (5th) director shall be appointed by the City Representatives. Alternates shall serve as directors in the absence of their respective directors. City Representatives and their alternates shall serve at the pleasure of the appointing City.

2. Amendment to Section 6(d). Current Sections 6(d)(v), 6(d)(vi) and 6(d)(vii) Voting shall be deleted and replaced in their entirety with the following language:

(v) Approve the annual budget for the Advisory Body if a budget for such organization is necessary (as defined below);

(vi) Approve any amendments to, terminations of, and replacements to the DPC Agreement (as defined below); in addition, prior to completion of the Project, any vote in favor of an amendment to or termination of the DPC Agreement must also include the affirmative vote of the RT Director;

(vii) Approve any amendments to, terminations of, and replacements to the Operations Agreement (as defined below); in addition, during the first 5 years of revenue operations of the Project, any vote in favor of an amendment to or termination of the Operations Agreement must also include the affirmative vote of the RT Director;

3. Amendment to Section 7 of the Agreement. Section 7 of the Agreement shall be deleted and replaced in its entirety with the following language:

7. Streetcar Design and Construction. Attached hereto as Exhibit B is the proposed Design, Procurement and Construction Agreement for the Streetcar Project (“DPC Agreement”) to be entered into between the Authority and Sacramento Regional Transit (“RT”). Material changes to the DPC Agreement shall be brought back to each City’s City Council for review. The Authority, or its assignee, may not terminate the DPC Agreement prior to the completion of design, procurement and construction services unless, the Authority and RT have entered into a separate grant management agreement whereby RT will provide the grant management services set forth in this Section 3 of the Subrecipient and Interagency Agreement (“Subrecipient Agreement.”) RT agrees in the Subrecipient Agreement that it will negotiate in good faith with the Authority the separate grant management agreement and to accept in the separate grant management reasonable terms and conditions.

4. Amendment to Section 8 of the Agreement. Section 8 of the Agreement shall be deleted and replaced in its entirety with the following language:

8(a) Streetcar Operation. It is the desire of the Cities to enter into an Operations and Maintenance Agreement with the RT for an initial term of the Streetcar operations and maintenance. It is

the further desire of the Cities that a new organization or entity (e.g. a policy committee of the Authority's Board or a new California public benefit corporation exempt from federal and state income tax as a 501(c)(3) public charity) ("**Advisory Body**") shall be formed to serve in an advisory capacity for the Streetcar operations and maintenance. The Cities acknowledge that the Advisory Body's advice shall not impair RT's rights and obligations to ensure that the Project meets all requirements of the federal grant agreement for the Project as set forth in the Subrecipient Agreement for Streetcar Funding to be executed by the Cities and RT. As further set forth in the Subrecipient Agreement, RT will be the final arbiter of any Compliance Issue, as defined in the Subrecipient Agreement. The Authority, or its assignee, may not terminate the Operations and Maintenance Agreement so long the Subrecipient Agreement with RT remains in effect unless, the Authority and RT have entered into a separate grant management agreement whereby RT will provide the grant management services set forth in Section 3 of the Subrecipient Agreement. RT agrees in the Subrecipient Agreement that it will negotiate in good faith with the Authority the separate grant management agreement and to accept in the separate grant management agreement reasonable terms and conditions.

(b) Exhibit C-2. Exhibit C-2 is deleted in its entirety.

5. Amendment to Section 16 of the Agreement. Section 16 of the Agreement shall be deleted and replaced in its entirety with the following language:

16. Ownership of Property and Disposition upon Termination.

(a) All newly-acquired assets will be acquired in the name of the Authority. To the extent the Cities are contributing pre-existing assets to the construction and operation of the Project, title to those assets will continue to be held by the contributing City, with an appropriate agreement executed, as needed, for use of the asset by RT or the Authority.

(b) In the event of termination of the Authority pursuant to Section 3 above and where there will be a successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets and liabilities of the Authority shall be transferred to the successor public entity in accordance with all applicable federal and state laws. If upon termination pursuant to Section 3 above, there is no successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets shall be returned to the Cities as follows: (a) to the Cities as agreed upon by the

Cities in writing; (b) unless otherwise agreed upon by the Cities in writing, all real property and any improvements thereon shall be conveyed to the City in whose jurisdiction the real property is located, and (c) all other assets shall be divided between the Cities in proportion to their respective contributions during the term of this Agreement. If upon termination pursuant to Section 3 above there is a successor public entity which will carry on some of the functions of the Authority and assume some of the assets, the Authority's Board shall allocate the assets between the successor public entity and the Cities in accordance with the provisions set forth in subsections (a) through (c) above. Notwithstanding any other term or condition set forth in this Section 16, disposition of property of the Authority upon its termination must be done in accordance with all applicable federal and state laws.

(c) As more fully set forth in the FTA Master Grant Agreement (as defined in the Subrecipient Agreement), Section 19, the Authority and the Cities understand and agree that the federal government retains a federal interest in all real property, equipment and supplies acquired or improved for use in connection with the Project until the Federal Government removes its interest. In furtherance of the foregoing, the Parties are required to: (a) ensure that Project property is used continuously and without delay for its originally authorized purpose throughout its useful life or until disposition occurs; (b) ensure that associated uses of Project property are transit supportive; (c) notify FTA if the conditions contained in (a) or (b), above, are not being met; and (d) seek FTA guidance regarding the requirements of this section through FTA circulars and other writings (including FTA Circular 5010.1E and the Uniform Relocation Assistance Act).

6. Continuing Validity. This Amendment is being executed by the Cities in compliance with Section 19 of the Agreement. Except as expressly modified pursuant to this Amendment, all other terms and conditions of the Agreement remain unchanged and in full force and effect.

7. Headings. The headings used in this Amendment are for convenience only and have no effect on the content, construction, or interpretation of the Agreement.

8. Counterparts. This Amendment may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized officers, as of the Effective Date.

For the City of Sacramento

For the City of West Sacramento

DRAFT

DRAFT

[Name]

Date

[Name]

Date

[Title]

[Title]

SUBRECIPIENT AND INTERAGENCY AGREEMENT FOR STREETCAR FUNDING

THIS SUBRECIPIENT AND INTERAGENCY AGREEMENT FOR STREETCAR FUNDING (“**Agreement**”) is made and entered into on _____, 2018 (“**Effective Date**”), by and between **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation (“**RT**”), the **CITY OF SACRAMENTO** and the **CITY OF WEST SACRAMENTO**, municipal corporations (each a “**City**” and collectively, “**Cities**”) and the **RIVERFRONT JOINT POWERS AUTHORITY**, a California joint powers authority (“**Authority**”).

RECITALS

WHEREAS, the Cities desire to jointly acquire, plan, design, finance, construct, own, operate, and maintain a fixed-rail streetcar system that will operate within and between the two Cities as described in the FTA Grant Agreement (as that term is defined in Section 2(a)(1)) (“**Project**”);

WHEREAS, the Cities formed the Authority to conduct the Project activities on their behalf;

WHEREAS, RT has experience in the management of and compliance with federal and state grants for the design, construction of fixed-rail transportation systems and desires to assist the Cities and the Authority with the Project;

WHEREAS, the Federal Transit Administration (“**FTA**”) has approved capital grant funding for the development and implementation of the Project;

WHEREAS, under Streets and Highways Code Section 2704.095, RT is eligible to claim funds for capital improvements for intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train system and its facilities and has been awarded \$25 million in Proposition 1A funds;

WHEREAS, RT, as an eligible recipient, has been awarded \$30 million for the Project under the Transit and Intercity Rail Capital Program (“**TIRCP**”);

WHEREAS, RT is a “Designated Recipient” in the Sacramento Metropolitan region for FTA grants;

WHEREAS, RT, the Cities and the Authority desire to enter into this Agreement to provide FTA, TIRCP, and Proposition 1A grant funds to the Authority as a subrecipient for the Project;

WHEREAS, RT is responsible, as the FTA and State grantee, for ensuring that all applicable grant requirements will be met by Authority under the FTA, TIRCP and Proposition 1A grants (collectively, “**Grants**”); and

WHEREAS, RT is further responsible for ensuring that FTA’s requirements will be met by the cities and the Authority, except where RT has agreed to provide grant management services as set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. **PURPOSE AND SCOPE.** The purpose of this Agreement is to set out the terms and conditions applicable to RT's transfer of grant funds to the Authority, as the subgrantee, for the development of the Project as described in grant application(s) submitted to FTA, the California State Transportation Agency ("STA"), and California Transportation Commission ("CTC") (collectively, "**Grantors**").

2. **GRANT PASS THROUGH REQUIREMENTS.**

(a) **Designation of Authority as a Subrecipient.** RT hereby designates the Authority as the subrecipient on the federal and state grants set forth below in Section 2(a)(i) through 2(a)(iii) (each a "**Subrecipient Grant**" and, collectively, the "**Subrecipient Grants**"). As a subrecipient, the Authority must comply with all terms and conditions of the Subrecipient Grants applicable to the Authority as the subrecipient and due to its ownership and operation of the Project.

(i) Federal Transit Administration 2016 Small Starts Grant Agreement ("**FTA Grant Agreement**") (a copy of which together with the FTA Master Agreement will be attached hereto as Exhibit A upon execution.) Exhibit A, the current FTA Master Agreement MA(23), is attached hereto as a placeholder and will be replaced with the FTA Grant Agreement and then-current Master Agreement upon execution)

(ii) TIRCP Program Supplement for the Project (a copy of which has been attached hereto as Exhibit B.)

(iii) Proposition 1A Program Supplement for the Project (a copy of which will be attached hereto as Exhibit C upon execution.)

(b) **Future Federal and State Grants.** Any future federal or state grants intended for use on the Project and where RT would be the principal grantee would require an amendment to this Agreement or a new subrecipient agreement between the parties. Notwithstanding the foregoing, the Cities and the Authority (acting jointly or individually) may apply directly for any future federal or state grant without the involvement of RT if the Cities or Authority so decide.

(c) **Compliance with Law.** Authority must comply with all applicable Federal, State, and local laws, codes, ordinances, regulations, orders, circulars, and directives, including, without limitation, all Federal regulatory requirements associated with the funding provided to Authority under this Agreement. These regulations, orders, circulars, and directives include, without limitation, the following: FTA Master Agreement; Master Agreement State Funded Transit Projects No. 64A0038 A01; 48 CFR Part 31, Federal Acquisition Regulations System; and 2 CFR, Chapters 1 and 2, Parts 200, 215, 220, 225, and 230, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Further, Authority must require the appropriate debarment certification form from all contractors and Authority certifies that it will not knowingly enter into any transaction with a contractor, subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State agency. If FTA, STA, or CTC any change to a Subrecipient Grant after execution, the parties agree to amend this Agreement as needed to comply with the change(s).

(d) ***Federal Lobbying Restrictions.*** Authority may not use any funds received by it under this Agreement through the FTA Grant Agreement to support activities designed to influence Congress or a Member of Congress, an employee of any federal agency, an officer or employee of Congress, an employee of a Member of Congress or a State Legislature in connection with any appropriation or legislation and must comply with the provisions of the U.S. DOT's regulations, "New Restrictions on Lobbying" at 49 C.F.R. Part 20, as modified by 31 U.S.C. Section 1352. Authority must execute the attached "Certification Regarding Lobbying" and submit a copy to RT upon execution of this Agreement.

Nothing in this Section 2 will be construed to prohibit Authority from lobbying Congress, a federal agency or the California Legislature, so long as the Authority does not use revenues received under this Agreement to do so. However, if Authority makes any contact with a federal agency, Congress, or a State Legislature with the intent to influence a decision on a federal or state action affecting RT, employing its own non-federal funds, Authority must complete the Disclosure of Lobbying Activities form, attached as Exhibit D, and submit it to RT. For the duration of this Agreement, Authority must submit the OMB Form LLL every calendar quarter in which Authority engages in lobbying activities as described in 49 C.F.R Part 20. All Disclosure forms must be forwarded from tier to tier up to RT, which will submit the forms to the FTA.

(e) ***Breach of Subrecipient Grant Obligations.*** Authority's failure to properly perform its obligations as a subrecipient under the Subrecipient Grants constitutes a material breach of this Agreement. RT will promptly notify Authority of any failure to perform and permit Authority a reasonable opportunity to cure the failure. If the parties disagree as to whether there is a material breach as claimed by RT, the parties shall handle such dispute in accordance with the provisions set forth in Section 23 (Disputes) below.

(f) ***FFATA Requirements.*** Authority must comply with the requirements of the Federal Funding Accountability and Transparency Act (FFATA), including U.S. OMB guidance, "Reporting Subaward and Executive Compensation Information," 2 C.F.R. Part 170, [75 Fed. Reg. 55670 – 55671, September 14, 2010]. Subrecipient's compliance must include the reporting, record retention, and access requirements set forth in Exhibit D, attached and incorporated by this reference.

(g) ***Oversight.*** RT may exercise against the Authority any oversight rights that the Federal or State Governments may exercise with regards to RT pursuant to the terms of the Subrecipient Grants (for purposes of illustration only, and not limiting any such rights, oversight rights shall include rights to investigate and audit), and, in addition, may exercise against the Authority any oversight rights consistent with and required by RT's obligations as the recipient of federal capital grant funds excluding right to terminate federal government assistance, which right rests with Federal Government as set forth in Section (h) immediately below.

(h) ***Right of Federal Government to Terminate.*** As more fully set forth in the Master Agreement, Section 11, the parties understand and agree that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Project in the event of failure to make reasonable progress toward implementing the Project, a determination by the Federal Government that continued federal assistance does not adequately serve the purposes of the law authorizing the assistance, or noncompliance with the terms of the FTA Grant Agreement. In the event

of termination of the federal assistance for the Project, the parties understand that the Federal Government may recover the funds that it has provided for the Project from the recipient of the funds.

(i) ***Federal Government's Retained Interest in Project Property.*** As more fully set forth in FTA Agreement, Section 19, the parties understand and agree that the Federal Government retains a federal interest in all real property, equipment and supplies acquired or improved for use in connection with the Project until the Federal Government removes its interest. In furtherance of the foregoing, the Parties are required to: (a) ensure that Project property is used continuously and without delay for its originally authorized purpose throughout its useful life or until disposition occurs; (b) ensure that associated uses of Project property are transit supportive; (c) notify FTA if the conditions contained in (a) or (b), above, are not being met; and (d) seek FTA guidance regarding the requirements of this section through FTA circulars and other writings (including FTA Circular 5010.1E and the Uniform Relocation Assistance Act). With respect to Project property, the parties acknowledge and agree that: (1) wet utilities owned and relocated by the Cities to facilitate the Project will not be considered Project property and will continue to be owned by the respective City; and (2) as a condition of RT vacating its existing encroachment area on K Street to permit use by the Project, the Project must relocate RT's existing rail service to H Street. The relocation of service is considered a relocation obligation under the Uniform Relocation Assistance Act and, consequently, the reconstructed tracks will be owned by RT and RT must be given an equivalent encroachment permit from the City of Sacramento for the tracks on H Street. Use of the H Street tracks by the Project will be subject to execution of an acceptable Shared Use Agreement with RT prior to the commencement of operations.

(j) ***Certifications.*** To the extent there is the requirement under any of the Subrecipient Grants that FTA make any certifications regarding the Project's compliance with State of California and local laws, rules or regulations, a precondition to RT making this certification to the grantor shall be Authority making the same certification to RT.

3. GRANT COMPLIANCE DURING TERM OF THE AGREEMENT. As of the Effective Date, RT and the Authority also will have entered into a Design, Procurement and Construction Agreement appointing RT to provide design, construction and procurement services for the Project on behalf of the Authority ("**Design Agreement**") and an Operations and Maintenance Agreement appointing RT to provide operations and maintenance services for the Project on behalf of the Authority ("**O&M Agreement**"). The Design Agreement and the O&M Agreement include provisions providing RT will be primarily responsible for all grant compliance obligations associated with, related to or arising out of the performance of duties by RT under the Design Agreement and the O&M Agreement. During the term of this Agreement, RT will be responsible for all asset management reporting with respect to the Project including, but not limited to, submitting a compliant Transit Asset Management Plan due to FTA in 2018 pursuant to 49 CFR 625. In the event there is any disagreement between the Authority and RT as to whether a particular course of action or conduct proposed by any party is in compliance with any federal or state grants for the Project subject to this Subrecipient Agreement, any federal laws applicable to the Project, or actions relating to the delivery of a FTA Capital Improvement Grant project or State grant requirements ("**Compliance Issue**"), the parties shall work in good faith to resolve the Compliance Issue. If, after reasonable good faith efforts to resolve the Compliance Issue have not been successful, the decision of RT as to the Compliance Issue shall be final provided, however, that if the Authority disagrees with RT's determination it may, consistent with the provisions set forth in Section 23 of this Agreement (excluding the meet and confer requirements set forth in Section 23(a) which shall not be applicable to such dispute), choose to pursue any available legal means

to settle the Dispute including the legal means set forth in Section 23(b). During the pendency of any legal action concerning such Dispute, the decision of RT as to the Compliance Issue shall remain in force unless a court makes some other determination during pendency of such action. The Authority, or its assignee, may not terminate (a) the Design Agreement prior to the completion of design, procurement and construction services being completed, or (b) the O&M Agreement so long as this Agreement remains in effect unless, in each case, the Authority and RT have entered into a separate grant management agreement whereby RT will provide the grant management services set forth in this Section 3, and Authority will fully cooperate with and compensate RT its reasonable costs for the performance of such services. In the event a grant management agreement is necessary, RT agrees it will negotiate in good faith with the Authority the separate grant management agreement and to accept in the separate grant management reasonable terms and conditions.

4. LOCAL MATCH. Authority is responsible for furnishing all local match funds (for purposes of this Agreement local match funds are funds from the City of West Sacramento, funds from the City of Sacramento and funds from the County of Sacramento at the time of this Agreement are those amounts set forth in Exhibit E). All expenditures of local match funds shall be subject to federal expenditure rules and regulations. Project costs funded by local match funds or credit for in-kind services may be considered federally funded activities for purposes of compliance with FTA requirements as set forth in the FTA Grant Agreement. In the event of a shortfall of funding for local match requirements for planning and construction of the Project, the Authority or the Cities will be solely responsible for providing the required match.

5. NO RT FUNDING OBLIGATION. This Agreement does not create any obligation for RT to be responsible for providing any separate funding for the planning, construction, rail vehicle or rolling stock acquisition, maintenance or operation of the Project other than the pass through of the Grants and previously approved agreements. Except with respect to construction or operating cost shortfalls or cost overruns that are the result of an RT default under either the Design Agreement or the O&M Agreement, the Authority and Cities are solely liable for supplying all funds to construct the Project and maintain the operations of the Project in compliance with FTA and State requirements. This obligation will lie first with the Authority and, if not satisfied by the Authority, shall be the responsibility of the Cities jointly.

6. TERM. This Agreement shall remain in effect so long as there remain outstanding obligations by RT to the Grantors under the Grants.

7. TOTAL CONSIDERATION AND PAYMENT.

(a) ***RT Direct Draw Down of Grant Funds.*** During the pendency of the Design Agreement, the terms and conditions of this Section 7(a) shall apply to the draw-down of Subrecipient Grants funds. RT will directly draw down the Subrecipient Grants funds from the sources identified in this Agreement for costs incurred under the Design Agreement. Prior to the draw-down of any funds, RT will provide invoices to Authority for costs incurred under the Design Agreement. Authority must respond within 15 working days after receipt, by: (1) approving or disapproving the items on the invoice; and (2) notifying RT, using a form provided by RT, what portion of the invoice may be paid by drawing down the Subrecipient Grants funds and what portion, if any, will be paid with local match funds. RT may draw down funds made available under this Agreement in accordance with the form submitted by Authority to RT and any remaining undisputed amount of the invoice must be paid by Authority with local funds within 45 days after receipt of the invoice. If a dispute arises concerning the amount of any invoice

issued under the Design Agreement, RT will reimburse itself under the Grants covered by this Agreement only for the undisputed portion of the invoice. The provisions of Section 1.3 of the Design Agreement shall govern handling of disputed invoice amounts. RT will reimburse itself for the disputed portion of an invoice only after the dispute has been resolved and in accordance with the resolution of that dispute.

(b) **Expense Reimbursement.** Reimbursement of Authority's expenses for the Project under any federal grant provided under this Agreement will be subject to the cost principles set forth in OMB Super Circular, 2 CFR Part 200, "Uniform Administrative Requirements, Costs Principles, And Audit Requirements For Federal Awards" as well as the applicable provisions of the grant. RT will reimburse Authority for its expenditures consistent with Subrecipient Grant requirements.

(i) **Payment of Authority Invoices.** Upon receipt of Authority's properly-documented invoice and the required Progress and Financial Status Reports, RT will draw down the Subrecipient Grants funds and pay Authority the applicable federal share of the invoice within 30 days from the date of receipt. Authority's invoice must include, at a minimum, evidence or a statement that Authority has incurred the costs set out in its invoice and has paid its local share contribution. RT reserves the right to require Authority to submit payroll records and invoices from Authority's contractor to verify that Authority has incurred the costs set out in its invoice and that the amount of the invoice does not exceed the applicable federal share of Authority's allocation of the Subrecipient Grants funds under the applicable grant. Authority may not invoice RT more frequently than once per calendar quarter. Unless otherwise agreed, payment against invoice must be delivered by first class mail through the facilities of the US Post Office, postage prepaid, addressed to the applicable party in the manner set forth in Article 16, below.

(ii) **Disputed Invoice.** If RT disputes any items on an invoice for a reasonable cause, RT may deduct that disputed item from the payment, but may not delay payment for the undisputed portions. The amounts and reasons for such deductions will be documented to Authority.

(c) **Expanded Scope of Project.** Any costs associated with expansion of the Project will be borne exclusively by the Cities and Authority.

(d) **Responsibility for Cost Overruns.** Except as may otherwise be provided in the Design Agreement or the O&M Agreement, responsibility for cost overruns will lie exclusively with first the Authority and, if not satisfied by the Authority, shall be the responsibility of the Cities jointly.

8. MAINTENANCE OF RECORDS/AUDITS. Authority must maintain books, records, documents, and other evidence directly pertinent to work under this Agreement in accordance with generally accepted accounting principles and practices. Authority must also maintain for a period of three years from the date of each grant close-out the financial information and data used by Authority in the preparation or support of the proposed or actual costs submitted for reimbursement under this Agreement. Authority agrees to permit RT, FTA, the U.S. DOT Secretary and the U.S. Comptroller General, or their duly authorized representative, to inspect all work, materials, payrolls, and other data and records and to conduct performance and/or financial audits of Authority books, records and accounts pertaining to grant expenditures.

In addition, Authority will be responsible for meeting the audit requirements of the “Single Audit Act Amendments of 1996,” 31 U.S.C. §§ 7501 *et seq.*, in accordance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” and OMB A-133 Compliance Supplement provisions for the Department of Transportation, April 1999, and any further revision or supplement thereto. Upon RT’s request, Authority must submit a copy of its audit, completed in accordance with the above-described requirements, within 30 days after completion of the audit, but no later than one year after the end of the audit period.

9. THIRD PARTY OBLIGATIONS. Authority is solely liable to third parties with whom it enters into contracts to effectuate the purposes of the Grants. Authority must pay directly such parties for all amounts due under said arrangements. Authority must ensure that all subcontracts entered into for the Project comply with the requirements of this Agreement (including FTA Circular 4220.1F, as may be amended) and that each subcontract incorporates those requirements as applicable to each tier.

10. CONTRACTS USING GRANT OR MATCHING FUNDS. Any contract or subcontract to be funded in whole or in part using funds provided under this Agreement will require the contractor and its subcontractors, if any, to do the following:

(a) Comply with applicable State and Federal law requirements that pertain to, among other things, labor standards, Non-Discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, the Drug-Free Workplace Act, and “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR, Part 200.

(b) Maintain at least the minimum State-required Workers’ Compensation Insurance for those employees who will perform the work or any part of it.

(c) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged Authority or any subcontractor in performing work associated with this Agreement or any part of it.

(d) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of three (3) years from the date of termination of this Agreement, or three years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.

(e) Permit RT and its representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

(f) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations.

11. INDEMNITY.

(a) ***Mutual Indemnity.*** Pursuant to California Government Code Section 895.4:

(i) each party as “Indemnitor,” must defend, hold harmless and indemnify the other party, as “Indemnitee,” against any claim, obligation, loss, penalty, fine, demand, damage, cost, expense or liability, including attorneys’ fees, demand for return of all or a portion of the FTA Grant funds or any withholding from or denial of any future FTA Grant funds (hereafter collectively referred to as “Claim(s)”) caused by (i) the breach by Indemnitor of any term or condition of this Agreement; and (ii) the negligent or wrongful act or omission of the Indemnitor (including, without limitation, Indemnitor’s officers, agents or employees) arising out of or resulting from Indemnitor’s performance of this Agreement. For any Claim related to any FTA action on future grant funds, the burden shall be on the Indemnitee to demonstrate, through written evidence from an authorized representative of FTA, that any damage or portion of damage was directly attributable to the Indemnitor’s breach, or negligent or wrongful act or omission; and

(ii) if a party is held liable upon any judgment for damages caused by any action giving rise to an indemnification obligation as set forth under Section 11(a)(i) and that party pays in excess of its share as determined through application of principles of comparative fault, that party is entitled to a contribution from the other party to the extent of the other party’s comparative fault.

Nothing in this Agreement shall constitute or be construed as a creation of a partnership, corporation, association for profit, or principal-agent, bailor-bailee, lessor-lessee, franchisor-franchisee, joint venture, or employer-employee relationship between the Parties to the Agreement, or any other relationship among any of the Parties, such that any one Party is liable in any manner for the obligations of any other Party. In all instances, none of RT’s directors, officers, employees, sub-contractors, agents or representatives shall be considered employees of the Authority or either City. Furthermore, none of the Authority’s or Cities’ officers, employees, subcontractors, agents, or representatives shall be considered employees of RT. RT is fully responsible for all claims, wages, commissions, compensation, losses, liabilities, benefits, taxes and withholding due, and all fees, costs, penalties and other amounts in connection with, related to, or asserted by, any of the officers, employees, sub-contractors, agents or representatives of RT.

(b) ***Duty to Defend.*** Indemnitor must, upon Indemnitee’s request, defend at its sole cost any suit asserting a Claim covered by this indemnity. The parties must cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. In addition, Indemnitor must reimburse Indemnitee for all costs, including reasonable attorney’s fees, associated with efforts to enforce this indemnification provision. In the event of a Claim where it is determined that there exists comparative fault, each party will bear its own costs, including reasonable attorney’s fees.

(c) ***Non-Exclusivity/Standard of Care.*** The foregoing right to indemnity is in addition to, and not exclusive of, any other legal, equitable or statutory right(s) of indemnification or insurance to which a party may be entitled. Nothing set forth in this Agreement establishes a standard of care for, or create any legal rights in, any person not a party to this Agreement.

12. JOINT AND SEVERAL LIABILITY OF THE CITIES. Notwithstanding anything to the contrary in the Joint Exercise of Powers Agreement for the Authority, the Cities agree that they will be jointly and severally liable to RT for the duties and obligations of the Authority under this Agreement and that the dissolution of the Authority will not affect the continuing obligations of the parties to perform the Authority’s obligations under this Agreement.

13. NOTICES. All notices and other communications under this Agreement must be in writing and will be deemed to have been duly given (A) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (B) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications must be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Article.

RT: Sacramento Regional Transit District
Attn: Grants Manager
P.O. Box 2110
Sacramento CA 95812-2110
Phone:
Fax:

Authority: Riverfront Joint Powers Authority
Phone: ()
Fax: ()

West Sacramento: City of West Sacramento
1110 West Capitol Avenue
West Sacramento, CA 95691
Phone: (916) 617-4500
Fax: (916) 372-9765

Sacramento:
Phone: ()
Fax: ()

14. INDEPENDENT CONTRACTOR. RT, Authority and the Cities are not responsible for providing workers' compensation insurance or any other protective insurance coverage based upon the relationship of employer and employee to any employee or independent contractor of any other party. Authority will act as an independent contractor. In accordance with that relationship, each party assumes all responsibility for federal and state income tax withholding, FICA, SDI, and any other deductions from income that each is properly required to make with respect to its own employees. Each party assumes all responsibility for payment of wages to its employees and for federal and state income tax withholding.

15. NONDISCRIMINATION. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 federal transit law, 49 U.S.C. § 5332, and implementing regulations; Authority will not discriminate or permit discrimination against any employee, applicant for employment, or contractor hired, or any passenger provided transit service because of race, color, religion, national origin, ancestry, sex, age, or disability.

16. **RELATIONSHIP BETWEEN THE PARTIES.** Nothing in this Agreement is intended to create, and nothing herein will be considered as creating, any partnership, joint venture, or agency relationship between RT and Authority.
17. **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and the benefits and obligations inures to the successors of the parties hereto. This Agreement may not be assigned by either party. The references herein to the Federal Transit Administration or FTA include any successor agency or department of the United States Government.
18. **MODIFICATION.** No waiver, alteration, modification, or termination of this Agreement is valid unless made in writing and signed by the authorized parties hereof.
19. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute but one and the same instrument.
20. **CAPTIONS.** The headings or captions to the Articles of this Agreement are not a part of the Agreement and have no effect upon the construction or interpretation of any part thereof.
21. **SEVERABILITY.** If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of the Agreement will remain in effect.
22. **NONWAIVER.** Waiver of any breach or default hereunder will not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
23. **DISPUTES.**
- a) ***Meet and Confer.*** In the event of any dispute, controversy, claim, or disagreement arising out of or related to this Agreement or the acts or omissions of the parties with respect to this Agreement (each, a “**Dispute**”), the parties shall, as soon as reasonably practicable after one party gives written notice of a Dispute to the other party (“**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the parties. If any Dispute is not resolved to the mutual satisfaction of the parties within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the parties in writing), the parties shall settle such Dispute as otherwise set forth in this Section 23.
 - b) ***Other Proceedings.*** In the event a Dispute is not resolved by the meet and confer provisions under Section 23(a) above, the parties may choose any other available legal means to settle the Dispute. Each party agrees that a violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other **party** to seek injunctive relief in addition to all legal remedies.

- c) **Forum for Legal Action.** Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court located in Sacramento County.
 - d) **Reimbursement during Pendency of a Dispute.** Where a dispute concerns the eligibility of Authority submitted costs for payment (“**Disputed Costs**”), RT will have no obligation to make payments on the Disputed Costs during the pendency of the dispute. RT shall continue to make payments on all non-disputed costs during the pendency of the dispute of Disputed Costs.
24. **GOVERNING LAW.** The interpretation and enforcement of the Agreement is governed by the laws of the State of California, the state in which the Agreement is signed. The parties agree to submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento, California.
25. **AUTHORITY.** Each of the signatories to this Agreement represent that he or she is authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained that no further approvals, acts or consents are required to bind such party to this Agreement.
26. **INTERPRETATION.** The parties acknowledge that this Agreement is an “arm’s length” agreement, entered into by the parties freely, without duress, coercion or any undue influence. The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No presumption will apply in favor of either party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision of this Agreement.
27. **INTEGRATION.** This Agreement embodies the entire Agreement of the parties in relation to the scope of services herein described, and no other agreement or understanding, verbal or otherwise, exists between the parties.

IN WITNESS WHEREOF, the parties entered into this Agreement on the day and year first hereinabove appearing.

**RIVERFRONT JOINT POWERS
AUTHORITY**

**SACRAMENTO REGIONAL
TRANSIT DISTRICT**

By: _____

By: _____
HENRY LI
General Manager/CEO

By: _____

Approved as to Content:

Approved as to Content:

By: _____

By: _____
Chief Financial Officer

Approved as to Form:

Approved as to Form:

BY: _____
Authority Attorney

By: _____
RT Attorney

CITY OF SACRAMENTO

By: _____

Approved as to Content:

By: _____

Approved as to Form

By: _____
City Attorney

CITY OF WEST SACRAMENTO

By: _____

Attest:

By: _____
Kryss Rankin, City Clerk

Approved as to Form

By: _____
Jeffrey Mitchell, City Attorney

EXHIBIT A
FTA GRANT AGREEMENT

EXHIBIT B

TIRCP PROGRAM SUPPLEMENT FOR PROJECT

EXHIBIT C

PROPOSITION 1A PROGRAM SUPPLEMENT FOR PROJECT

EXHIBIT D

DISCLOSURE OF LOBBYING ACTIVITIES FORM

EXHIBIT E

LOCAL MATCH FUNDS

Source	Amount (Millions)
City of West Sacramento	\$35
City of Sacramento	\$9
County of Sacramento	\$3

**THE DESIGN, PROCUREMENT AND CONSTRUCTION AGREEMENT
FOR THE STREETCAR PROJECT
BY AND BETWEEN
RIVERFRONT JOINT POWERS AUTHORITY
AND
SACRAMENTO REGIONAL TRANSIT
_____, 2018**

THIS DESIGN, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR THE STREETCAR PROJECT (“Agreement”) is entered into on _____, 2018 (“**Effective Date**”), by and between Sacramento Regional Transit (“**RT**”) and the Riverfront Joint Powers Authority, a joint power authority established by the Cities of Sacramento and West Sacramento (“**Authority**”). RT and the Authority shall each be referred to herein as a “**Party**” or collectively as “**Parties**.”

RECITALS

A. The Cities of Sacramento and West Sacramento (each a “**City**” and collectively, “**Cities**”) entered into the Joint Exercise of Powers Agreement for the Riverfront Joint Powers Authority (“**JPA Agreement**”) for the purpose, in part, to acquire, plan, design, finance, construct, operate, hold and maintain a fixed-rail streetcar system that will operate within and between the two cities (“**Project**”).

B. The Project is in the design stage and the Authority, in conjunction with the Cities, is working on securing the required funding for the Project.

C. Project funding, through the Federal Transit Administration (“**FTA**”) under a Small Starts Grant Agreement (“**SSGA**”), requires that the design and construction of the Project be conducted by an entity experienced in the design and construction of rail transit projects.

D. RT has extensive experience in the design, construction and procurement of regional transit projects similar to the Project.

E. It is the desire of the Parties that RT continue to provide design, construction and procurement services for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I

DESIGN AND CONSTRUCTION SERVICES

Section 1.1 Services. The Authority appoints RT to provide design, construction and procurement services for the Project which shall include but are not limited to the services set forth in Exhibit A (“**Services**”). RT agrees to perform the Services in a reasonable, prudent and diligent manner consistent with good practices within the industry. RT will perform the Services in accordance with the schedule attached as Exhibit B (“**Schedule**”) and the budget attached as Exhibit C (“**Budget**”). RT will have no obligation to perform Services to the extent it will incur costs in excess of \$203.5 million, unless the Budget is increased to provide compensation for such Services. Notwithstanding any other term or condition of this Agreement, the Authority shall at all times have and retain ultimate ownership and control over the Project and its management and operations.

Section 1.2 RT Contractors. In providing the Services, RT will obtain the services of numerous contractors (each an “**RT Contractor**” and collectively, “**RT Contractors**”). Any RT Invitation to Bid (“**ITB**”) or Request for Proposal (“**RFP**”) for a Contractor to provide the services set forth in Exhibit D or otherwise requested in writing by the Authority (“**Key Services**”), and any agreement awarded pursuant to an ITB or RFP for the Key Services (“**Key Agreements**”), must be approved in writing by the Authority before the ITB or RFP is advertised and before the Key Agreement is executed by RT and the RT Contractor unless such pre-approval is waived in writing by the Authority. The Authority may not condition its approval of an ITB, RFP or Key Agreement on any matter that is contrary to any term of the Subrecipient Agreement, the SSGA, or any federal or state law. Within 30 days of execution, RT shall provide the Authority with fully executed copies (including all attachments, schedules and exhibits referenced therein) of all RT Contractor agreements (“**RT Contractor Agreements**”). To the extent applicable based on the nature of the Services, RT Contractor Agreements entered into after the Effective Date must include the contract terms consistent with the provisions of this Section 1.2:

(a) Quality Control. The RT Contractor Agreement shall require that each RT Contractor is responsible for “Quality Control” with respect to the contracted Services and include RT’s standard form quality control clause that is applicable based on the nature of the RT Contractor Agreement. For purposes of the RT Contractor Agreement, Quality Control is to be performed solely by the RT Contractor and constitutes the techniques, activities, checking and verifications that sustain process and product control and measure the performance characteristics during work in-progress and final submittals.

(b) Project Accounting. Upon request by the Authority, RT Contractors shall provide copies of all Project accounting and reports to the Authority that it provides to RT under the RT Contractor Agreement. Any Project accounting or reports that RT is required to also provide to FTA under the SSGA must first be provided to the Authority with sufficient time for the Authority to review and comment.

(c) Ownership of Work. The Authority will have a beneficial ownership interest in all materials, work in progress, and finished goods produced by RT Contractor pursuant to the RT Contractor Agreement (“**Work**”), for which progress payments have been made. Such beneficial ownership must be free of all encumbrances; if not, RT may obtain a priority lien secured pursuant to appropriate sections of the Uniform Commercial Code and other applicable state laws or local ordinances to secure its title rights. Nevertheless, RT Contractor will be responsible for risk of loss for those items of Work until Final Inspection and Acceptance (as those terms are defined in the Subcontractor Agreement). RT Contractor will be prohibited from placing any mechanics liens or any other encumbrances on any completed Work consistent with all applicable laws.

(d) Performance, Payment and Service Disruption Bonds. Performance, Payment and Service Disruption Bonds (collectively, “**Bonds**”) will be required of all RT Contractors performing construction services each in an amount no less than one hundred percent (100%) of the project costs for that portion of the work performed by that RT Contractor. The Authority and the Cities shall be named as additional obligees in all Bonds and shall have all rights as obligees and may independently seek to enforce its rights as obligee of all Bonds.

(e) Permits. RT Contractor must, before beginning any Work that requires a permit or similar authorization (“**Permit**”), secure and pay for all necessary licenses, fees, bonds, charges, inspections, customs or import duties, permits, and similar authorizations from all governmental authorities required to fulfill the RT Contractor Agreement requirements and RT Contractor’s obligations. Copies of all Permits must be provided to the Authority.

(f) Modification to RT Contractor Agreements. RT will promptly notify Authority of any potential contract change orders or amendments to RT Contractor Agreements. Except in the event of an emergency where property or life are at risk, Authority must approve any alteration or modification of an RT Contractor Agreement prior to the execution by RT of the contract change order or amendment or prosecution of any changed work or services. In the event of an emergency, RT may issue a contract change order or amendment only to the extent necessary to eliminate the emergency condition and must provide notice to the Authority at the earliest opportunity. In addition, Authority must approve the termination of any Key Agreement. The Authority will be deemed to have approved a contract change order, amendment, or termination if the Authority does not affirmatively reject the proposed contract change order, amendment or termination within 14 days after receipt of notice from RT.

(g) Standard Labor Provisions. All RT Contractor Agreements for public works, as defined by applicable state or federal law, must include RT’s standard labor contract terms in force at the time the specific RT Contractor Agreement is executed and shall provide that the Authority has a right to inspect all payroll records of the RT Contractor. The standard RT labor contract terms in force as of the Effective Date are as set forth in Schedule 1.2(g).

(h) Commencement of Work. For all Key Agreements that include a project management plan, the Authority must approve in writing the RT Contractor’s project management plan before RT may issue the notice to proceed to the RT Contractor. No material change or modification may be made to any Services, Work or any project management plan without the prior written approval the Authority.

(i) Inspection and Testing of RT Contractors’ Work. In RT Contractor Agreement for manufacturing and constructions, RT must include Inspection and Testing provisions that provide the Authority’s designated representative has all the same rights and authority as RT to inspect all RT Contractor Work and to all RT Contractor inspection and testing reports. Notwithstanding the terms and conditions of this Section 1.2(i), while the Authority has the right to inspect all Work it does not have a duty to do so and RT shall remain responsible for the inspection and testing all RT Contractor Works.

(j) Final Inspection. RT must include in the final inspection provision attached hereto as Schedule 1.2(j) (“**Final Inspection**”) in all construction agreements. RT may not issue Final Acceptance (as that term is defined in the RT Contractor Agreement), without first obtaining the Authority’s written consent.

(k) Project Records. RT must include in the Project Records provision attached hereto as Schedule 1.2(k) in all construction agreements. RT must ensure that Authority obtains copies of all Project Records as that term is defined in Schedule 1.2(k).

(l) Insurance Requirements. RT will ensure that all RT Contractors will have appropriate insurance for their operations (e.g. general liability, auto, professional liability, pollution, property/builders risk). RT must require that RT Contractors include the Authority and the Cities as additional insureds, with the same rights as RT, under all insurance policies required to be maintained by RT Contractor under the RT Contractor Agreements (“**Contractor Insurance Policies**”). RT must provide the Authority copies of all certificates and endorsements of the Contractor Insurance Policies. Each Contractor Insurance Policy must include a waiver of subrogation clause and shall be endorsed to state that RT Contractor’s coverage shall not be canceled, modified, or materially changed except after thirty (30) days’ prior written notice to RT, the Authority and the Cities.

(m) RT Contractor Representations and Warranties. All representations and warranties made by RT Contractors under the RT Contractor Agreements must be made directly and jointly to RT, the Authority and the Cities. To the extent any warranty bonds are required under an RT Contractor Agreement, the bond must name the Authority and the Cities as additional obligees.

(n) RT Contractor Indemnification. The Authority and the Cities, and their elected officials, directors, officers, employees, successors and assigns, must be named as additional indemnitees under any indemnification provision required of the RT Contractors under any RT Contractor Agreement.

(o) Authority Participation in Services and Appointment of Owners’ Representative. Authority will have the right to all documentation, reports, plans, schedules, budgets prepared by RT Contractors in their providing of the Services (“**Contractor Reports**”). Authority and its designees also will have the right to attend any and all meetings between RT and the RT Contractors and RT must notify Authority, if so requested by Authority, of any meetings that are to be held between RT and any RT Contractor. To aid in the efficient prosecution of the Services, Authority must appoint an owner’s representative to provide oversight of RT’s performance of the Services (“**Owner’s Representative**”). Any desired direction or oversight of RT Contractors by the Owner’s Representative must be done in coordination with RT. The Owner’s Representative may not unilaterally direct or control any RT Contractors. Any Authority request for a modification to any RT Contractor Agreement must be directed to RT and not to the RT Contractor. The Authority must provide written documentation to RT regarding the limits of authority of the Owner’s Representative (e.g., which decisions may be made by the Owner’s Representative as opposed to the Authority’s Board).

(p) Acceptance of Contractor Reports. Any acceptance by the Authority of any Contractor Reports (whether provided by RT Contractor or RT) shall not be deemed an acceptance of any Services nor shall it serve to waive any representation, warranty or claim the Authority may have under this Agreement or any RT Contractor Agreement.

Section 1.3 Compensation. RT shall be compensated for providing the Services as set forth in the Budget. Prior to any compensation being paid to RT, RT shall submit to the Authority an invoice listing in detail all Services provided to RT and the corresponding compensation for such Services (“**Invoice**”). RT may draw down from Subrecipient Grant (as that term is defined in the Subrecipient Agreement) or the Authority shall remit payment to RT

on undisputed Invoices within forty-five (45) days after the Authority has received the Invoice unless the Authority has provided written notice to RT disputing an invoiced amount. Any retention amounts required of RT Contractors under any RT Contractor Agreement will not be released to RT Contractor except upon the written consent of the Authority; RT will provide notices to Authority regarding any request for release of retention. If Authority fails to object to the retention release within fourteen (14) calendar days, Authority will be deemed to have approved the retention release. The parties will work in good faith to resolve any disputed Invoice amounts. Any disputed Invoice amounts that cannot be resolved between the parties, shall be resolved in accordance with the provisions of Article V of this Agreement. The provisions of this Section 1.3 shall apply unless different payment terms are agreed to in writing by the Authority and RT.

Section 1.4 Legal Ownership in Project. The Parties shall execute all agreements and such other documents as are necessary to convey title to all assets acquired for the Project so that all right, title and interest in the Projects assets are ultimately held by the Authority or the Cities, as applicable, with the exception that assets currently owned by RT for its operations that will be used for the Project (including but not limited to tracks, overhead wires, traction power equipment and signaling) will continue to be owned by RT and will be the subject of a shared use agreement. In addition, RT's facilities that are relocated from K Street to H Street will be owned by RT. All other newly-acquired assets will be acquired in the name of the Authority, either through assignment of title or assignment of contracts entered into by RT under this Agreement. To the extent the Cities are contributing pre-existing assets to the construction and operation of the Project (primarily street rights of way), title to those assets will continue to be held by the contributing City, with an appropriate agreement executed, as needed, for use of the asset by RT or the Authority. Attached as Exhibit E is a schedule of assets anticipated to be obtained for the Project.

ARTICLE II

INTERGOVERNMENTAL AGREEMENT

The intent of this Agreement is to identify the Services (as defined in Section 1.1, above), that RT will directly provide or contract to provide as the recipient of the SSGA. The responsibility for these activities will be retained, to the extent specified in this Agreement and the Subrecipient Agreement, by RT as the recipient, rather than being delegated to the Authority as the subrecipient.

ARTICLE III

AUTHORITY AND RESPONSIBILITY OF THE PARTIES

Section 3.1 Compliance with Laws. In performing its obligations under this Agreement, each party must comply with federal, state and local laws, ordinances, regulations, policies and orders (collectively, "**Laws**") applicable to each party's obligations including, without limitation, ensuring its compliance with the provisions of the SSGA and all Laws applicable to the SSGA and the Project as applicable to such party. Each party shall remedy any violation of any Law which occur and for which it is responsible. Each party shall promptly

notify the other party in writing of any such material violation and such party shall transmit promptly to the other party a copy of any citation or other communication received by such party setting forth any such violation.

Section 3.2 Compliance with Obligations. RT must use commercially reasonable efforts to cause the Authority to comply with all terms and conditions contained in any contract, agreement, judicial, administrative or governmental order, law or ruling, lease, mortgage, deed of trust or other contractual or security instrument affecting the Authority in all material respects; provided, however, that, except as otherwise set forth herein, RT shall not be required to make any payment or incur any liability on account thereof. RT shall promptly notify the Authority in writing of any violation of any such instrument or agreement in any material respect.

ARTICLE IV

TERM AND TERMINATION OF AGREEMENT

Section 4.1 Term. Subject to the early termination provisions set forth in this Article IV, the term of this Agreement shall commence on the Effective Date and shall expire on the earlier to occur of (a) RT and the FTA have not entered into an SSGA within two (2) years from the Effective Date; or (b) the FTA's closeout of the SSGA ("**Term**").

Section 4.2 Termination by Agreement. The Parties may mutually agree in writing to terminate the Agreement, provided that the terms of Section 3 of the Subrecipient Agreement regarding termination of this Agreement have been satisfied. For clarification purposes, the applicable provision of Section 3 of the Subrecipient Agreement provides, "The Authority, or its assignee, may not terminate (a) the Design Agreement prior to the completion of design, procurement and construction services being completed, or (b) the O&M Agreement so long this Agreement remains in effect unless, in each case, the Authority and RT have entered into a separate grant management agreement whereby RT will provide the grant management services set forth in this Section 3 and Authority will fully cooperate with and compensate RT its reasonable costs for the performance of such services ." RT agrees that it will negotiate in good faith with the Authority the separate grant management agreement and to accept in the separate grant management reasonable terms and conditions.

Section 4.3 Termination by Default. In the event RT fails to comply with the material terms and conditions of this Agreement, or any other material breach of, or material default under this Agreement, the Authority may terminate the Agreement by providing RT with written notice of its intent to terminate this Agreement ("**Default Notice**") and the date of termination of the Agreement which must be at least thirty (30) days after the date upon which the Default Notice is received by RT ("**Termination Date**"). The Default Notice must provide an explanation of the Default. If the Default is not cured by RT prior to the Termination Date, the Agreement shall terminate provided that the terms of Section 3 of the Subrecipient Agreement regarding termination of this Agreement have been satisfied (see requirements above in Section 4.2). If, however, RT promptly and diligently, cures the Default prior to the Termination Date, then the Default Notice shall have no force or effect and the Authority shall not have the right to terminate this Agreement for the basis set forth in that particular Default Notice.

Section 4.4 Effects of Termination. Upon termination of this Agreement in accordance with the provisions of this Article IV, the following shall apply:

- (a) RT shall cease providing all Services as of the Termination Date.
- (b) RT shall immediately deliver possession to the Authority (or its designee) of all assets, books and records in its possession associated with the Project and any that are necessary to provide the Services; provided RT may keep a copy of any book or record it may need for its own business, corporate, tax or financial purpose.
- (c) If requested by the Authority, RT shall assign existing Project contracts including, without limitation, all Key Agreements to the Authority or its designee.
- (d) The Authority shall pay to RT all amounts owed to RT for Services and any other funds or expenses incurred by RT up to and including the Termination Date and reimburse RT or assume responsibility for any outstanding obligations or liabilities of RT owed to third parties as of the Termination Date as a result of providing the Services.
- (e) RT shall make itself available to assist in providing transition services at the request of the Authority for a period of three (3) months from the Termination Date (“**Transition Services**”). The Authority shall pay RT for the actual and total costs to RT in providing the Transition Services, including all administrative costs.

ARTICLE V

DISPUTE SETTLEMENT

Section 5.1 Meet and Confer. In the event of any dispute, controversy, claim, or disagreement arising out of or related to this Agreement or the acts or omissions of the parties with respect to this Agreement (each, a “**Dispute**”), the Parties shall, as soon as reasonably practicable after one Party gives written notice of a Dispute to the other Party (“**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties. If any Dispute is not resolved to the mutual satisfaction of the Parties within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall settle such Dispute as otherwise set forth in this Article V.

Section 5.2 Other Proceedings. In the event a Dispute is not resolved by the meet and confer provisions under Section 5.1 above, the Parties may choose any other available legal means to settle the Dispute. Each Party agrees that a violation or threatened violation of this Agreement may cause irreparable injury to the other Party, entitling the other Party to seek injunctive relief in addition to all legal remedies.

Section 5.3 Forum for Legal Action. Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court in Sacramento County.

ARTICLE VI

INDEMNITY

Section 6.1 Mutual Indemnity. Pursuant to California Government Code Section 895.4:

(1) each party as Indemnitor, must defend, hold harmless and indemnify the other party, as Indemnitee, against any claim, obligation, loss, penalty, fine, demand, damage, cost, expense or liability, including attorneys' fees, demand for return of all or a portion of the FTA grant funds or any withholding from or denial of any future FTA grant funds (hereafter collectively referred to as "Claim(s)") caused by (i) the breach by Indemnitor of any term or condition of this Agreement; and (ii) the negligent or wrongful act or omission of the Indemnitor (including, without limitation, Indemnitor's officers, agents or employees) arising out of or resulting from Indemnitor's performance of this Agreement. For any Claim related to any FTA action on future grant funds, the burden shall be on the Indemnitee to demonstrate, through written evidence from an authorized representative of FTA, that any damage or portion of damage was directly attributable to the Indemnitor's breach, or negligent or wrongful act or omission; and

(2) if a party is held liable upon any judgment for damages caused by any action giving rise to an indemnification obligation as set forth under Section 6.1(1) and that party pays in excess of its share as determined through application of principles of comparative fault, that party is entitled to a contribution from the other party to the extent of the other party's comparative fault.

In determining the scope of the indemnity provision above, the parties recognize that in providing the Services, RT is an independent contractor. Nothing in this Agreement shall constitute or be construed as a creation of a partnership, corporation, association for profit, or principal-agent, bailor-bailee, lessor-lessee, franchisor-franchisee, joint venture, or employer-employee relationship between the Parties to the Agreement, or any other relationship among any of the Parties, such that any one Party is liable in any manner for the obligations of any other Party. In all instances, none of RT's directors, officers, employees, sub-contractors, agents or representatives shall be considered employees of the Authority or either City. Furthermore, none of the Authority's or Cities' officers, employees, subcontractors, agents, or representatives shall be considered employees of RT. RT is fully responsible for all claims, wages, commissions, compensation, losses, liabilities, benefits, taxes and withholding due, and all fees, costs, penalties and other amounts in connection with, related to, or asserted by, any of the officers, employees, sub-contractors, agents or representatives of RT.

Section 6.2 Duty to Defend. Indemnitor must, upon Indemnitee's request, defend at its sole cost any suit asserting a Claim covered by this indemnity. The parties must cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. In addition, Indemnitor must reimburse Indemnitee for all costs, including reasonable attorney's fees, associated with efforts to enforce this indemnification provision. In the event of a Claim where it is determined that there exists comparative fault, each party will bear its own costs, including reasonable attorney's fees.

Section 6.3 Non-Exclusivity/Standard of Care. The foregoing right to indemnity is in addition to, and not exclusive of, any other legal, equitable or statutory right(s) of indemnification or insurance to which a party may be entitled. Nothing set forth in this Agreement establishes a standard of care for, or create any legal rights in, any person not a party to this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Time is of the Essence. Time is of the essence for the performance of each of the obligations under this Agreement.

Section 7.2 Third Party Beneficiaries. Each City is a third party beneficiary of this Agreement. Except as provided in the preceding sentence or to the extent a third party is expressly given rights herein, any agreement to pay an amount and any assumption of liability herein contained, expressed or implied, shall be only for the benefit of the Parties and their respective legal representatives, successors and assigns, and such agreement or assumption shall not inure to the benefit of the obligors of any indebtedness of any party whomsoever. It is the intention of the Parties that no person or entity shall be deemed a third party beneficiary of this Agreement except to the extent stated in the first sentence of this Section 7.2.

Section 7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto.

Section 7.4 Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered or three (3) business days after mailed by prepaid certified mail, return receipt requested, addressed or sent to the required party via e-mail as follows:

(a) if to Authority, to:

Name
Address
Attn: _____

(b) if to RT, to:

Name
Address
Attn: _____

or to such other address and to the attention of such other person or officer as either Party may designate by written notice pursuant to this Section.

Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

Section 7.5 Governing Law. The laws of the State of California shall govern this Agreement.

Section 7.6 Assignment. This Agreement shall not, voluntarily or by operation of law, be assigned, transferred, mortgaged, licensed, or otherwise transferred or encumbered by either of the Parties. Any assignment contrary to the provisions of this Agreement shall be deemed a material breach under the Agreement, and any assignment in violation of this provision shall be null and void.

Section 7.7 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

Section 7.8 Waiver of Breach. The failure of a Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment or that right or power for all or any other times.

Section 7.9 Attorneys' Fees; Prejudgment Interest. If the services of an attorney are required by a Party to secure the performance hereof or otherwise upon the breach or default of the other Party to this Agreement, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement or the rights and duties of any person in relation thereto, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and other expenses to resolve the dispute and to enforce the final judgment, in addition to any other relief to which such Party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

Section 7.10 Injunctive Relief. Because a Party's breach of this Agreement may cause the other Party irreparable harm for which money is inadequate compensation, the Parties agree that they will be entitled to injunctive relief to enforce this Agreement, in addition to damages and other available remedies.

Section 7.11 Force Majeure. Neither Party shall be liable nor deemed to be in default for any delay or failure of performance under this Agreement or other interruption of service or employment resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other interruptions by either Party's employees or agents or any similar or dissimilar cause beyond the reasonable control of either Party.

Section 7.12 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, such provision shall be severable from this Agreement if it is capable of being identified with and apportioned to reciprocal consideration or to the extent that it is a provision that is not essential and the absence of which would not have prevented the parties from entering into this Agreement. The unenforceability of a provision that has been

performed shall not be grounds for invalidation of this Agreement under circumstances in which the true controversy between the parties does not involve such provision.

Section 7.13 Article and Section Headings. The article and section headings contained in this Agreement are for reference purposes only and shall not effect in any way the meaning or interpretation of this Agreement.

Section 7.14 Counterparts and Approvals by the Parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same agreement. In the event this Agreement requires the written approval of both Parties including, without limitation any amendment to this Agreement or its Exhibits as set forth in Section 7.15 below, the approvals shall be effective upon the last of the Parties to provide its approval regardless of the sequence or timing of the Parties' approvals.

Section 7.15 Integration and Amendment. This Agreement, together with all Exhibits and all agreement regarding the Project reference herein, supersedes all previous contracts between the parties and constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement. No oral statement or prior written material not specifically incorporated herein shall be of any force and effect.

Section 7.16 Construction. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

Section 7.17 References. Unless otherwise specified, the references herein to "Sections" or "Articles" refer to the sections or articles in this Agreement, respectively.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

AUTHORITY:

RT:

**RIVERFRONT JOINT POWERS
AUTHORITY**

SACRAMENTO REGIONAL TRANSIT

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A

SERVICES

Existing Services

RT has commenced the following services or procurement of the following goods and services under the terms of: (1) the September 4, 2013 Memorandum of Understanding Between the Sacramento Area Council Of Governments and the City of Sacramento, the City of West Sacramento, the Sacramento Regional Transit District, and the Yolo County Transportation District for Planning the Downtown/Riverfront Transit (“Streetcar”) Project; (2) the August 15, 2015 Memorandum of Understanding for Release, Oversight, and Contract Award of The Request(s) for Proposal(s)/Qualification(s) for Advanced Design and Vehicle Procurement for the Downtown/Riverfront Streetcar Project between RT and SACOG; (3) the November 16, 2016 Interagency Project Agreement to Support Design and Engineering of the Downtown Riverfront Streetcar Project; and (4) the July 10, 2017 Interagency and Cost Reimbursement Agreement to Support Small Starts Grant Preparation, Vehicle Maintenance Facility Design, and Specialty Consultant Services for the Downtown Riverfront Streetcar Project. RT will continue providing these services and oversee the performance of these services by third party contactors or consultants, as applicable, during the term of this Agreement:

- Civil, Track and Systems Design (currently being performed by HDR, with RT oversight)
- Vehicle Maintenance Facility (proposals have been received, will be designed with RT oversight)
- Streetcar Vehicle Procurement (Proposals have been received and are being evaluated)
- Environmental Support Services
- Construction Management (Proposals have been received and are being evaluated)
- Quality Control/Support

Future Services

The following services and procurements have not yet commenced and will be performed by RT or the RT-selected contractor or consultants, as applicable during the term of this Agreement:

- Civil, Track, Systems, and Station Construction
- Vehicle Maintenance Facility Construction
- Fare Vending Machine Procurement
- Trackwork Procurement
- Non-Revenue Vehicle Procurement
- Radio System Procurement
- Safety Support during construction
- Safety Certification
- Vehicle Inspection
- Project Controls Support
- Risk Support
- Finance support
- Outreach Consultant

The following services may optionally be performed by RT or the RT-selected contractor or consultant upon issuance of a written directive from Authority to RT to perform the services or select a third party consultant to perform the services. Alternatively, Authority may directly contract for these services:

- Marketing Consultant
- Economic Consultant

EXHIBIT B

SCHEDULE

Below is an overview of the anticipated completion dates for the Project and Services. These dates are provided for reference only and are subject to adjustment. Authority consent is not needed for any adjustment in any anticipated completion date unless the delay will affect the revenue service date, as identified in the SSGA, as it may be modified during the course of performance.

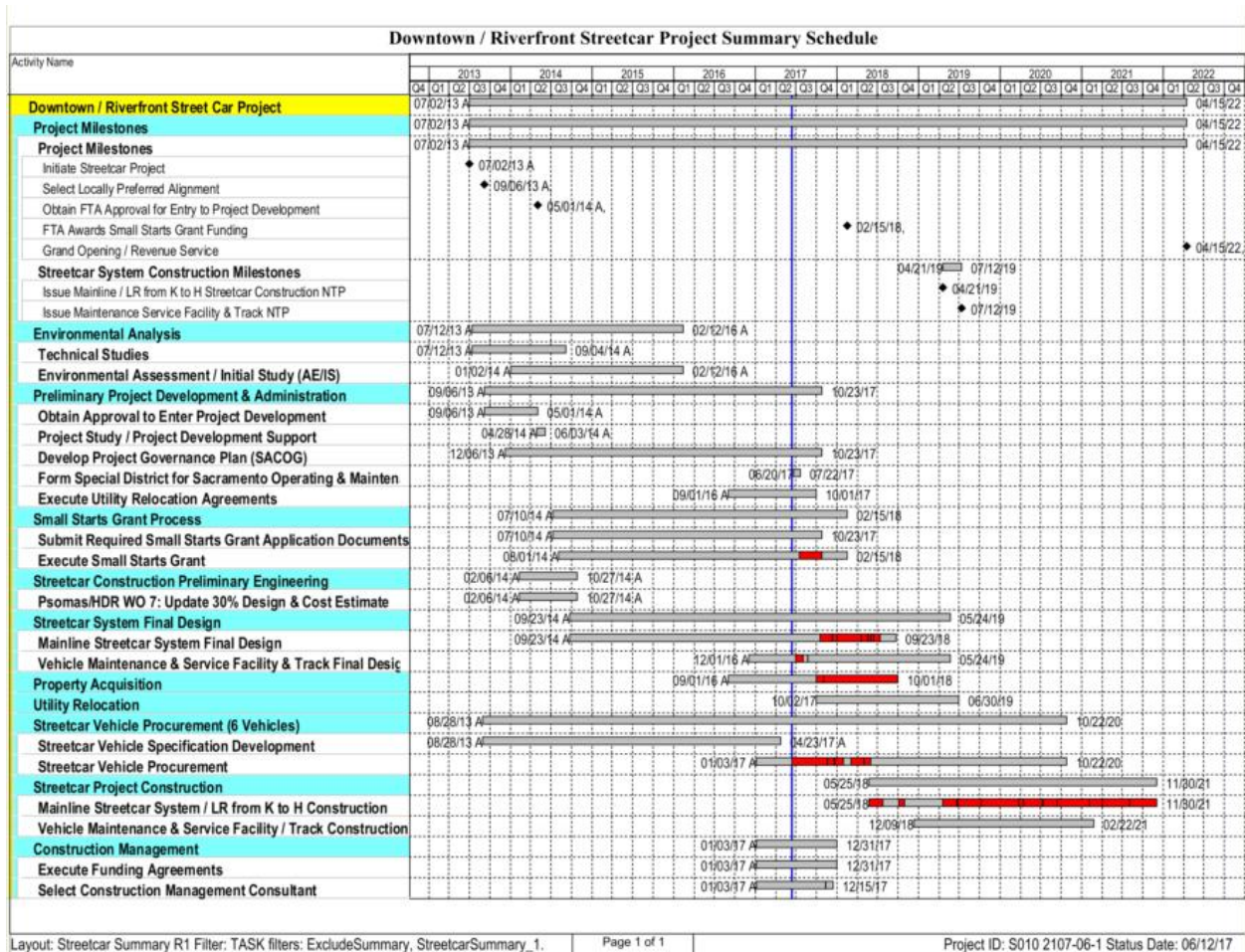


EXHIBIT C

BUDGET

The following table identifies the approximate budget for the Project. The parties anticipate that the Services being performed or to be performed by RT or the selected contractor/consultant will not exceed \$203.5 million, with the remainder of the Project budget being dedicated to Authority or other third party costs. RT may shift funds between budget line items as needed to perform the Services, but will not be reimbursed under the Subrecipient Agreement for costs in excess of \$203.5 million unless and until the Authority approves an amendment to this Budget Exhibit.

MAIN WORKSHEET-BUILD ALTERNATIVE								(Rev. 19, June, 2017)
SACOG / Regional Transit / Cities of Sacramento and West Sacramento								Today's Date 11/22/17
Downtown / Riverfront Streetcar Project								Yr of Base Year \$ 2018
Engineering								Yr of Revenue Ops 2021
	Quantity	Base Year Dollars w/o Contingency (X000)	Base Year Dollars Allocated Contingency (X000)	Base Year Dollars TOTAL (X000)	Base Year Dollars Unit Cost (X000)	Base Year Dollars Percentage of Construction Cost	Base Year Dollars Percentage of Total Project Cost	YOE Dollars Total (X000)
10 GUIDEWAY & TRACK ELEMENTS (route miles)	6.92	21,964	3,295	25,259	\$3,650	22%	13%	26,416
10.01 Guideway: At-grade exclusive right-of-way				0				0
10.02 Guideway: At-grade semi-exclusive (allows cross-traffic)				0				0
10.03 Guideway: At-grade in mixed traffic	6.77	7,416	1,112	8,528	\$1,260			8,919
10.04 Guideway: Aerial structure	0.15	578	87	665	\$4,431			695
10.05 Guideway: Built-up fill				0				0
10.06 Guideway: Underground cut & cover				0				0
10.07 Guideway: Underground tunnel				0				0
10.08 Guideway: Retained cut or fill				0				0
10.09 Track: Direct fixation				0				0
10.10 Track: Embedded		9,656	1,448	11,104				11,613
10.11 Track: Ballasted				0				0
10.12 Track: Special (switches, turnouts)		4,314	847	4,961				3,189
10.13 Track: Vibration and noise dampening				0				0
20 STATIONS, STOPS, TERMINALS, INTERMODAL (number)	28	5,660	1,132	6,792	\$243	6%	3%	7,103
20.01 At-grade station, stop, shelter, mall, terminal, platform	28	5,660	1,132	6,792	\$243			7,103
20.02 Aerial station, stop, shelter, mall, terminal, platform				0				0
20.03 Underground station, stop, shelter, mall, terminal, platform				0				0
20.04 Other stations, landings, terminals: Intermodal, ferry, trolley, etc.				0				0
20.05 Joint development				0				0
20.06 Automobile parking multi-story structure				0				0
20.07 Elevators, escalators				0				0
30 SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	6.92	9,338	1,867	11,204	\$1,619	10%	6%	11,819
30.01 Administration Building: Office, sales, storage, revenue counting				0				0
30.02 Light Maintenance Facility		6,750	1,350	8,100				8,545
30.03 Heavy Maintenance Facility				0				0
30.04 Storage or Maintenance of Way Building				0				0
30.05 Yard and Yard Track		2,500	517	3,017				3,274
40 SITEWORK & SPECIAL CONDITIONS	6.92	31,427	4,200	35,627	\$5,150	31%	18%	36,960
40.01 Demolition, Clearing, Earthwork		1,650	200	1,841				1,910
40.02 Site Utilities, Utility Relocation		5,178	1,104	6,282				6,517
40.03 Haz. mat'l, contam'd soil removal/mitigation, ground water treatments		112	20	140				145
40.04 Environmental mitigation, e.g. wetlands, historic/archeologic, parks				0				0
40.05 Site structures including retaining walls, sound walls				0				0
40.06 Pedestrian / bike access and accommodation, landscaping		855	103	958				1,025
40.07 Automobile, bus, van accessways including roads, parking lots		4,422	814	5,236				5,443
40.08 Temporary facilities and other indirect costs during construction		19,215	1,922	21,137				21,898
50 SYSTEMS	6.92	29,623	7,406	37,029	\$5,351	32%	18%	39,062
50.01 Train control and signals		5,751	1,438	7,189				7,583
50.02 Traffic signals and crossing protection		1,792	448	2,240				2,363
50.03 Traction power supply: substations		11,084	2,771	13,855				14,618
50.04 Traction power distribution: catenary and third rail		6,914	1,729	8,643				9,117
50.05 Communications		2,755	609	3,444				3,633
50.06 Fare collection system and equipment		804	201	1,005				1,060
50.07 Central Control		523	131	654				690
Construction Subtotal (10 - 50)	6.92	98,010	17,908	115,918	\$16,751	100%	50%	121,369
60 ROW, LAND, EXISTING IMPROVEMENTS	6.92	432	65	496	\$72		0%	500
60.01 Purchase or lease of real estate		432	65	496				500
60.02 Relocation of existing households and businesses				0				0
70 VEHICLES (number)	6	32,854	1,843	34,697	\$5,749		17%	34,970
70.01 Light Rail	6	32,854	1,843	34,697	\$5,749			35,308
70.02 Heavy Rail				0				0
70.03 Commuter Rail				0				0
70.04 Bus				0				0
70.05 Other				0				0
70.06 Non-revenue vehicles		225	11	236				239
70.07 Spare parts		2,276	114	2,390				2,423
80 PROFESSIONAL SERVICES (applies to Cats. 10-50)	6.92	48,807	3,096	51,903	\$6,048	36%	21%	43,073
80.01 Project Development		8,570	0	8,570				8,820
80.02 Engineering		11,430	1,143	12,573				12,940
80.03 Project Management for Design and Construction		8,690	869	9,559				9,838
80.04 Construction Administration & Management		7,130	713	7,843				8,072
80.05 Professional Liability and other Non-Construction Insurance		0	0	0				0
80.06 Legal: Permits; Review Fees by other agencies, cities, etc.		217	22	239				246
80.07 Surveys, Testing, Investigation, Inspection		2,000	200	2,200				2,264
80.08 Start up		790	79	869				894
Subtotal (10 - 80)	6.92	170,123	22,641	192,764	\$27,856		96%	199,912
90 UNALLOCATED CONTINGENCY				8,078			4%	8,386
Subtotal (10 - 90)	6.92			200,841	\$29,023		100%	208,298
100 FINANCE CHARGES							0%	0
Total Project Cost (10 - 100)	6.92			200,841	\$29,023		100%	208,298
Allocated Contingency as % of Base Yr Dollars w/o Contingency				13.31%				
Unallocated Contingency as % of Base Yr Dollars w/o Contingency				4.75%				
Total Contingency as % of Base Yr Dollars w/o Contingency				18.06%				
Unallocated Contingency as % of Subtotal (10 - 80)				4.19%				
YOE Construction Cost per Mile (X000)								\$17,539
YOE Total Project Cost per Mile Not Including Vehicles (X000)								\$25,047
YOE Total Project Cost per Mile (X000)								\$30,101

EXHIBIT D

KEY AGREEMENTS

Both the solicitation documents and resulting contracts for the following activities must be reviewed and approved by the Authority prior to advertising by RT or execution of the resulting contract, as applicable:

- Vehicle Procurement Contract
- Civil Track and Systems Construction
- Vehicle Maintenance Facility Construction
- Fare Vending Machine Procurement
- Special Trackwork
- Non-Revenue Vehicles
- Radio System
- Any other solicitation with an estimated contract value of \$100,000 or above

EXHIBIT E

PROJECT ASSET LIST WITH IDENTIFICATION OF OWNERSHIP

ASSETS BY SCC

- 1. SCC 10 – Embedded Track / Special Trackwork**
- 2. SCC 20 – Station Amenities**
- 3. SCC 30 – Vehicle Maintenance Facility (VMF)**
- 4. SCC 30 – Yard and Yard Track**
- 5. SCC 50 – Train Control / Signals / Crossing Protection**
- 6. SCC 50 – Substations**
- 7. SCC 50 – Communications Equipment**
- 8. SCC 50 – Fare Vending Machines / Equipment**
- 9. SCC 60 – Right of Way**
- 10. SCC 70 – Vehicles / Spare Parts**

SCHEDULE 1.2

RT CONTRACTOR AGREEMENT TERMS AND CONDITIONS

Capitalized terms used but not defined in this Schedule 1.2 shall have such meaning as set forth in the Agreement to which this Schedule 1.2 is attached.

Schedule 1.2(g). Prevailing Wage

A. Hours of Labor/Overtime.

Eight hours labor constitutes a legal day's work. Contractor will forfeit, as a penalty to RT, \$25 for each worker employed in the performance of the work by Contractor or any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any 1 calendar day and 40 hours in any 1 calendar week, unless compensation for all hours worked in excess of 8 hours per day and 40 hours per week is paid at not less than 1 ½ times the basic rate of pay. (Labor Code Sections 1810-1815 and Title 8, California Code of Regulations, Sections 16000-16403). If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, the higher overtime rate must be paid as required under the implementing regulations. (Title 8, California Code of Regulations, Sections 16100(b)(8) and 16200(a)(3)).

B. Prevailing Wage Rates.

Contractor and its subcontractors must pay not less than the prevailing wage to all workers. (Labor Code Sections 1771 and 1774 and Title 8, California Code of Regulations, Section 16100(c)). No person, including Contractor and its subcontractors at any tier, may take or receive any portion of a workers' wage or accept a fee in connection with a public works project as proscribed under Labor Code Sections 1778 and 1779.

Copies of the prevailing rate of per diem wages for each craft, classification or type of worker needed to perform the work are on file at RT's office at 2811 "O" Street, Sacramento, CA 95816. A copy will be made available to any interested Bidder upon request (Labor Code Section 1773.2). Changes in general prevailing wage determinations must apply to the Project when issued by the Director of Industrial Relations at least 10 days prior to the date of issuance of the Notice of Invitation to Bid for this Work. (Labor Code Section 1773.6 and Title 8, California Code of Regulations, Section 16204).

Contractor must post a copy of the prevailing rate of per diem wages at each Project site. (Labor Code Section 1773.2).

Pursuant to Labor Code Section 1740, for federally-funded contracts, wage rates are subject to modification to comply with revisions in the federal minimum wage schedule.

RT will not recognize any claim for additional compensation due to the payment by Contractor of any wage rate in excess of the prevailing wage rates applicable to this Contract. The

possibility of wage increases is one of the elements to be considered by Contractor in determining its Bid.

Pursuant to Labor Section 1775, Contractor will forfeit to RT a penalty in an amount up to \$200, as determined by the Labor Commissioner, for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under this Contract by him/her or by any subcontractor under him/her.

C. Payroll Records.

Contractor is solely responsible for compliance with the payroll recordation requirements set out in Labor Code Section 1776. Contractor and its subcontractors at any tier must keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by it in connection with this Contract. (Labor Code Section 1812). Additional provisions and requirements pertaining to payroll record administration follow:

Each week, Contractor and all subcontractors must submit electronic certified payroll records to the DIR in accordance with Section 3.5.1 and Section 6.8.5. Payroll records must be submitted on forms approved by the DIR that contain not less than the requirements set out in Labor Code Section 1776 and 29 C.F.R. Sec. 5.5(a)(3)(i) (Title 8, California Code of Regulations, Section 16401). Unless another verification form is required by the DIR, each payroll record must be verified using the verification form set out in the regulations implementing Labor Code Section 1776. (See Title 8, California Code of Regulations, Section 16401). Contractor is responsible for submission of copies of payroll records of all subcontractors.

Upon reasonable written or oral notice, RT representatives must be permitted to inspect the original payroll records of Contractor and its subcontractors at any tier. (Title 8, California Code of Regulations, Section 16400(e)). Payroll records include all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidence that reflects job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works Project. (Title 8, California Code of Regulations, Section 16000).

The penalties specified in Labor Code Section 1776(g) for noncompliance with the provisions of said Section 1776 will be withheld from progress payments due or that may become due to Contractor if the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations requests RT to withhold such penalties. Specifically, RT will withhold \$100 per day if Contractor does not comply with a request to produce payroll records within 10 days. This is not a “retention,” but a permanent deduction as a penalty.

Contractor and each subcontractor must preserve its payroll records for a period of 3 years from the date of completion of the contract or the written acceptance of the work by RT, whichever is later.

D. Employment of Apprentices.

Contractor is solely responsible for compliance with the apprenticeship requirements set out in Labor Code Section 1777.5. Contractor may not refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex or age of such employee, except as provided in Labor Code Section 3077. (Labor Code Sections 1777.5, 1777.6 and 1777.7; Title 8, California Code of Regulations, Section 200 et seq.). To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, Contractor or subcontractor should, where questions exist, contact the California Apprenticeship Council prior to commencement of work on this Contract.

E. Enforcement of Prevailing Wage Requirements.

If this Contract provides for the maintenance of a public work within the meaning of Labor Code Section 1771, it is subject to the prevailing wage requirements contained in that Section. Contractor must comply with all prevailing wage requirements for public works contracts (Labor Code Section 1770 et seq.) notwithstanding that this Contract may not otherwise be subject to all such requirements. RT may enforce the prevailing wage requirement in the manner provided in the above Labor Code provisions.

F. Workers' Compensation.

Pursuant to Labor Code Section 1860, Contractor must secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code Section 3700. Prior to the commencement of work, Contractor must sign and file with RT, Director of Civil and Track Design a certification in the following form as set forth in Labor Code Section 1861:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

This certification is hereby incorporated in the Contract and execution of the Contract by Contractor will constitute the signing and filing of said certificate.

G. Subcontracts.

Contractor must insert in all of its subcontracts the clauses set forth in this Section 6.8, “Labor Provisions” and also a clause requiring its subcontractors to include these clauses in any lower-tier subcontracts. Contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Schedule 1.2(g) “Labor Provisions.”

Schedule 1.2(j). Final Inspection

When Contractor considers that all of the Work, or any discrete portion of the Work, covered under this Contract is nearing final completion, Contractor must so inform RT and the Authority in writing and request a punchlist. If RT and the Authority concur that all of the Work, or any discrete portion of the Work is nearing completion, RT will, within 30 days after the request, prepare a punchlist identifying all non-conformities or incomplete items. If RT or the Authority does not believe that the Work, or any discrete portion thereof is nearing completion, RT or the Authority may reject the request for a punchlist. The punchlist is intended to aid Contractor in completion of the Work, but is not an exhaustive list of all non-conformities or incomplete items and does not waive RT's or the Authority's right to later assert that additional Work is required. Contractor must correct or replace unsatisfactory, incomplete or unacceptable Work and complete such Work within 30 days. For items of Work not completed by Contractor within 30 days, RT may proceed to have the items corrected or completed using RT or third-party forces. The costs of such corrections will be deducted from compensation due Contractor.

Title to such rejected Work and risk of loss will remain with Contractor, and Contractor must correct all defects or damage at its sole cost and expense.

Final Acceptance of all of the will occur after successful completion of all testing and punchlist items and the correction of a defects and damaged Work, and RT's determination and the Authority's concurrence that the Work conforms to the Contract requirements. RT will inform Contractor of such acceptance of the Work by RT and the Authority by issuing a Letter of Final Acceptance. After RT has finally accepted the Work, Contractor will be relieved of the duty of maintaining and protecting the accepted Work. Such Final Acceptance of the Work will not relieve Contractor from responsibility for errors, improper fabrication, non-conformance to a Contract requirement, latent defects, or for deficiencies within Contractor's control. Unless otherwise stipulated, all warranties begin with the date of Final Acceptance. Coincident with such Final Acceptance, RT will record a Notice of Completion.

Schedule 1.2(k). Project Records

Contractor must maintain comprehensive records and documentation relating to this Project. The records must include, but are not limited to, Contract Documents, Drawings, Technical Specifications, Addenda, Working and Shop Drawings and submittals, including review comments from RT; training records (if applicable); Contract Change Orders and claims (including all related communications and dispute resolution proceedings); Project Schedule and updates; Requests for Information; Quality Records and audits; communications; minutes from meetings; insurance policies and correspondence; safety, injury, damage, and incident reports; Hazardous Materials manifests; As-Built Plans with all accompanying documentation (showing all changes); cost and pricing data, reflecting all costs incurred in performing the Project; and copies of all warranties for products incorporated into the Project (collectively, "**Project Records**"). All Project Records or copies thereof (excepting cost and pricing data) must be kept at the Project site.

Prior to Final Acceptance, Contractor must provide RT and the Authority with a full set (excluding cost and pricing data) of the Project Records in hard-copy format. In addition, Contractor must provide RT and the Authority with electronic copies, in their native file format, of all Project Records stored electronically by Contractor.

Contractor must maintain a complete set of records relating to this Contract for a period of 7 years from final payment for this Work. All cost and price records must be complete and in sufficient detail to allow for future audits.

**THE OPERATIONS AND MAINTENANCE AGREEMENT
FOR THE STREETCAR PROJECT
BY AND BETWEEN
RIVERFRONT JOINT POWERS AUTHORITY
AND
SACRAMENTO REGIONAL TRANSIT
_____, 2018**

THIS OPERATIONS AND MAINTENANCE AGREEMENT FOR THE STREETCAR PROJECT (“Agreement”) is entered into effective as of this ___ day of _____, 2018 (“**Effective Date**”), by and between Sacramento Regional Transit (“**RT**”) and the Riverfront Joint Powers Authority, a joint power authority established by the Cities of Sacramento and West Sacramento (“**Authority**”). RT and the Authority shall each be referred to herein as a “**Party**” or collectively as “**Parties**.”

RECITALS

WHEREAS, the City of Sacramento and the City of West Sacramento (each a “**City**” and collectively, “**Cities**”) entered into the Joint Exercise of Powers Agreement for the Riverfront Joint Powers Authority (“**JPA Agreement**”) for the purpose, in part, to acquire, plan, design, finance, construct, operate, hold and maintain a fixed-rail streetcar system that will operate within and between the two cities (“**Project**”);

WHEREAS, the Project is in the initial stages of design and the Authority, in conjunction with the Cities, is working on securing the required funding for the Project;

WHEREAS, RT has extensive experience in the operations and maintenance of regional transit projects similar to the Project;

WHEREAS, it is the expectation of the Authority that the Project will be operational and public ridership on the streetcars will begin in [2022];

WHEREAS, Project funding through the Federal Transit Administration (“**FTA**”) under a Small Starts Grant Agreement (“**SSGA**”) requires that operation and maintenance for the Project be conducted by an entity experienced in the operation and maintenance of rail transit projects; and

WHEREAS, it is the desire of the Parties that RT provide certain operation and maintenance services for the Project as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I

OPERATIONS AND MAINTENANCE SERVICES

Section 1.1 Appointment. The Authority hereby appoints RT to provide operation and maintenance services for the Project. Exhibit A identifies the Parties’ understanding of the activities and services that need to be provided for operation of the Project. Not later than thirty-six (36) months prior to the planned commencement of revenue service (“**Budget Methodology Due Date**”), RT will provide the Authority with its proposed methodology for developing an annual budget and RT’s proposed methodology for payment of the Services (as defined below) to RT by the Authority (collectively, “**Budget Methodologies**”). Not later than twenty-four (24)

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months prior to the planned commencement of revenue service (“**Initial Budget Due Date**”), the Parties will complete development of a detailed agreement to define the roles, responsibilities and expectations regarding the operation and maintenance of the Project and the annual budget for the first twelve months of the Services (“**Initial Budget**”). In the event the parties cannot reach agreement on a Budget Methodology or the Initial Budget within sixty (60) days of the Budget Methodology Due Date or the Initial Budget Due Date, respectively, either party may seek to resolve the impasse through non-binding arbitration under the procedures set forth in Exhibit B. In developing the budget and methodology for payment, unbudgeted cost overruns that are not caused by failure of RT or its contractors to diligently perform the Services will be the responsibility of the Authority and, if not satisfied by the Authority, will be the responsibility of the Cities jointly, as specified in the Subrecipient and Interagency Agreement for Streetcar Funding (“**Subrecipient Agreement**”). Those activities and responsibilities ultimately assigned to RT which initially shall include, at a minimum, all services listed on Exhibit A except customer service and marketing, and shall not include the setting of fares which shall remain the responsibility of the Authority with oversight by RT, will be referred to in this Agreement as the “**Services**”. Notwithstanding any other term or condition of this Agreement, the Authority shall at all times have and retain ultimate ownership and control over the Project and its management and operations.

Section 1.2 Acceptance. RT hereby accepts the appointment and agrees to perform the Services in a reasonable, prudent and diligent manner consistent with good practices within the industry. The Authority shall reimburse RT for its commercially reasonable costs in providing the Services pursuant to terms and conditions established under Section 1.1, consistent with the SSGA and all other Laws (as that term is defined below). If RT determines, based on upon the adopted Authority budget, that insufficient funding is available for the performance of all Services for the upcoming fiscal year, the Parties will engage in the meet and confer process set out in Section 5.1 to resolve any disagreement between the Parties. If any invoice submitted by RT consistent with the adopted annual budget remains unpaid due to unavailability of funds, and not due to a legitimate dispute regarding costs, after compliance with the process set out in Section 5.1, RT may unilaterally reduce Services as needed to match the available funds and proceed toward a termination for default.

Section 1.3 Legal Ownership in Project. The Parties shall execute all agreements and such other documents as is necessary to convey title to all assets acquired for the Project so that all right, title and interest in the Project assets are ultimately held by the Authority or the Cities, as applicable. All newly-acquired assets will be acquired in the name of the Authority. To the extent the Cities are contributing pre-existing assets to the construction and operation of the Project, title to those assets will continue to be held by the contributing City, with an appropriate agreement executed, as needed, for use of the asset by RT or the Authority.

ARTICLE II

INDEPENDENT CONTRACTOR STATUS

RT will act as an independent contractor in performing this Agreement. Nothing in this Agreement shall constitute or be construed as a creation of a partnership, corporation, association for profit, or principal-agent, bailor-bailee, lessor-lessee, franchisor-franchisee, joint venture, or

employer-employee relationship between the Parties to the Agreement, or any other relationship among the Parties, such that any one Party is liable in any manner for the obligations of the other Party. In all instances, none of RT's officers, employees, sub-contractors, agents or representatives shall be considered employees of the Authority or either City. Furthermore, none of the Authority's or either Cities' officers, employees, subcontractors, agents, or representatives shall be considered employees of RT. RT is fully responsible for all claims, wages, commissions, compensation, losses, liabilities, benefits, taxes and withholding due, and all fees, costs, penalties and other amounts in connection with, related to, or asserted by, any of the officers, employees, sub-contractors, agents or representatives of RT.

ARTICLE III

AUTHORITY AND RESPONSIBILITY OF RT

Section 3.1 Compliance with Laws. RT must comply with federal, state and local laws, ordinances, regulations, policies and orders (collectively, "**Laws**") relative to the providing of the Services and the operation and maintenance of the Project including, without limitation, ensuring all Services comply with the provision of the SSGA and all Laws applicable to the SSGA and the Project. RT shall remedy any violation of any Law which occur and for which it is responsible. RT shall promptly notify the Authority in writing of any such material violation and RT shall transmit promptly to the Authority a copy of any citation or other communication received by RT setting forth any such violation.

Section 3.2 Compliance with Obligations. RT must use commercially reasonable efforts to cause the Authority to comply with all terms and conditions contained in any contract, agreement, judicial, administrative or governmental order, law or ruling, lease, mortgage, deed of trust or other contractual or security instrument affecting the Authority in all material respects; provided, however, that, except as otherwise set forth herein, RT shall not be required to make any payment or incur any liability on account thereof. RT shall promptly notify the Authority in writing of any violation of any such instrument or agreement in any material respect.

ARTICLE IV

TERM AND TERMINATION OF AGREEMENT

Section 4.1 Term. The term of this Agreement shall commence on the Effective Date and shall expire on the earliest to occur of (a) RT and the FTA have not entered into an SSGA within two (2) years from the Effective Date; or (b) the Agreement is terminated as provided in Sections 4.2, 4.3 or 4.4 ("**Term**"); provided that in all cases of termination under Sections 4.2, 4.3 or 4.4, prior to the effective date of the termination (1) RT determines, in the scope of its role of ensuring grant compliance under the Subrecipient Agreement, that a suitable replacement operator has been engaged and operations will continue seamlessly in compliance with the SSGA; and (2) the terms of Section 3 of the Subrecipient Agreement requiring that RT and the Authority enter into a separate grant management agreement have been satisfied. No termination of this Agreement will be effective or valid until RT has made the determination set forth above in subsection (b)(1) of this Section 4.1, which determination may not be unreasonably withheld, conditioned, or delayed.

Section 4.2 Termination by Agreement. The Parties may mutually agree in writing to terminate the Agreement

Section 4.3 Termination by Default. In the event RT fails to comply with the material terms and conditions of this Agreement, or any other material breach of, or material default under, this Agreement, the Authority may terminate the Agreement by providing RT with written notice of its intent to terminate this Agreement (“**Default Notice**”) and the date of termination of the Agreement which must be at least thirty (30) days after the date upon which the Default Notice is received by RT (“**Termination Date**”). The Default Notice must provide an explanation of the Default. If the Default is not cured by RT prior to the Termination Date, the Agreement shall terminate. If, however, RT promptly and diligently, cures the Default prior to the Termination Date, then the Default Notice shall have no force or effect and the Authority shall not have the right to terminate this Agreement for the basis set forth in that particular Default Notice.

Section 4.4 Termination Without Cause. Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement by providing the other Party no less than one hundred eighty (180) days’ prior written notice of such termination (“**No Cause Termination Notice**”). The No Cause Termination Notice must include the date the Agreement terminates and RT is to cease providing all Services (“**Termination Date.**”)

Section 4.5 Effects of Termination. Upon termination of this Agreement in accordance with the provisions of this Article IV, the following shall apply:

- (a) RT shall cease providing all Services as of the Termination Date.
- (b) RT shall immediately deliver possession to the Authority (or its designee) of all assets, books and records in its possession associated with the Project and any that are necessary to provide the Services.
- (c) If requested by the Authority, RT shall assign existing Project contracts to the Authority or its designee.
- (d) The Authority shall pay to RT all amounts owed to RT for Services and any other funds or expenses incurred by RT up to and including the Termination Date and reimburse RT or assume responsibility for any outstanding obligations or liabilities of RT owed to third parties as of the Termination Date as a result of providing the Services.
- (e) RT shall make itself available to assist in providing transition services at the request of the Authority for a period of three (3) months from the Termination Date (“**Transition Services**”). The Authority shall pay RT for the actual and total costs to RT in providing the Transition Services, including all administrative costs.

ARTICLE V

DISPUTE SETTLEMENT

Section 5.1 Meet and Confer. In the event of any dispute, controversy, claim, or disagreement arising out of or related to this Agreement or the acts or omissions of the parties with respect to this Agreement (each, a “**Dispute**”), the Parties shall, as soon as reasonably practicable after one Party gives written notice of a Dispute to the other Party (“**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties. If any Dispute is not resolved to the mutual satisfaction of the Parties within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall settle such Dispute as otherwise set forth in this Article V. Note the requirement to meet and confer as set forth in this Section 5.1 shall not apply to non-binding arbitration between the parties for budget-purposes initiated under the terms set forth in Section 1.1 above.

Section 5.2 Other Proceedings. In the event a Dispute is not resolved by the meet and confer provisions under Section 5.1 above, the Parties may choose any other available legal means to settle the Dispute. Each Party agrees that a violation or threatened violation of this Agreement may cause irreparable injury to the other Party, entitling the other Party to seek injunctive relief in addition to all legal remedies.

Section 5.3 Forum for Legal Action. Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court in Sacramento County.

ARTICLE VI

INDEMNITY

Section 6.1 Mutual Indemnity. Pursuant to California Government Code Section 895.4:

(1) each party as Indemnitor, must defend, hold harmless and indemnify the other party, as Indemnitee, against any claim, obligation, loss, penalty, fine, demand, damage, cost, expense or liability, including attorneys’ fees, demand for return of all or a portion of the FTA grant funds or any withholding from or denial of any future FTA grant funds (hereafter collectively referred to as “Claim(s)”) caused by (i) the breach by Indemnitor of any term or condition of this Agreement; and (ii) the negligent or wrongful act or omission of the Indemnitor (including, without limitation, Indemnitor’s officers, agents or employees) arising out of or resulting from Indemnitor’s performance of this Agreement. For any Claim related to any FTA action on future grant funds, the burden shall be on the Indemnitee to demonstrate, through written evidence from an authorized representative of FTA, that any damage or portion of damage was directly attributable to the Indemnitor’s breach, or negligent or wrongful act or omission; and

(2) if a party is held liable upon any judgment for damages caused by any action giving rise to an indemnification obligation as set forth under Section 6.1(1) and that party pays in

excess of its share as determined through application of principles of comparative fault, that party is entitled to a contribution from the other party to the extent of the other party's comparative fault.

In determining the scope of the indemnity provision above, the parties recognize that in providing the Services, RT is an independent contractor. Nothing in this Agreement shall constitute or be construed as a creation of a partnership, corporation, association for profit, or principal-agent, bailor-bailee, lessor-lessee, franchisor-franchisee, joint venture, or employer-employee relationship between the Parties to the Agreement, or any other relationship among any of the Parties, such that any one Party is liable in any manner for the obligations of any other Party. In all instances, none of RT's directors, officers, employees, sub-contractors, agents or representatives shall be considered employees of the Authority or either City. Furthermore, none of the Authority's or Cities' officers, employees, subcontractors, agents, or representatives shall be considered employees of RT. RT is fully responsible for all claims, wages, commissions, compensation, losses, liabilities, benefits, taxes and withholding due, and all fees, costs, penalties and other amounts in connection with, related to, or asserted by, any of the officers, employees, sub-contractors, agents or representatives of RT.

Section 6.2 Duty to Defend. Indemnitor must, upon Indemnitee's request, defend at its sole cost any suit asserting a Claim covered by this indemnity. The parties must cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. In addition, Indemnitor must reimburse Indemnitee for all costs, including reasonable attorney's fees, associated with efforts to enforce this indemnification provision. In the event of a Claim where it is determined that there exists comparative fault, each party will bear its own costs, including reasonable attorney's fees.

Section 6.3 Non-Exclusivity/Standard of Care. The foregoing right to indemnity is in addition to, and not exclusive of, any other legal, equitable or statutory right(s) of indemnification or insurance to which a party may be entitled. Nothing set forth in this Agreement establishes a standard of care for, or create any legal rights in, any person not a party to this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Time is of the Essence. Time is of the essence for the performance of each of the obligations under this Agreement.

Section 7.2 Third Party Beneficiaries. Each City is a third party beneficiary of this Agreement. Except as provided in the preceding sentence or to the extent a third party is expressly given rights herein, any agreement to pay an amount and any assumption of liability herein contained, expressed or implied, shall be only for the benefit of the Parties and their respective legal representatives, successors and assigns, and such agreement or assumption shall not inure to the benefit of the obligors of any indebtedness of any party whomsoever. It is the intention of the Parties that no person or entity shall be deemed a third party beneficiary of this Agreement except to the extent stated in the first sentence of this Section 7.2.

Section 7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto.

Section 7.4 Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered or three (3) business days after mailed by prepaid certified mail, return receipt requested, addressed as follows:

(a) if to Authority, to:

Name
Address
Attn: _____

(b) if to RT, to:

Name
Address
Attn: _____

or to such other address and to the attention of such other person or officer as either Party may designate by written notice pursuant to this Section.

Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

Section 7.5 Governing Law. The laws of the State of California shall govern this Agreement.

Section 7.6 Assignment. This Agreement shall not, voluntarily or by operation of law, be assigned, transferred, mortgaged, licensed, or otherwise transferred or encumbered by either of the Parties. Any assignment contrary to the provisions of this Agreement shall be deemed a material breach under the Agreement, and any assignment in violation of this provision shall be null and void.

Section 7.7 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

Section 7.8 Waiver of Breach. The failure of a Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment or that right or power for all or any other times.

Section 7.9 Attorneys' Fees; Prejudgment Interest. If the services of an attorney are required by a Party to secure the performance hereof or otherwise upon the breach or default of the other Party to this Agreement, or if any judicial remedy or arbitration is necessary to

enforce or interpret any provision of this Agreement or the rights and duties of any person in relation thereto, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and other expenses to resolve the dispute and to enforce the final judgment, in addition to any other relief to which such Party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

Section 7.10 Injunctive Relief. Because a Party's breach of this Agreement may cause the other Party irreparable harm for which money is inadequate compensation, the Parties agree that they will be entitled to injunctive relief to enforce this Agreement, in addition to damages and other available remedies.

Section 7.11 Force Majeure. Neither Party shall be liable nor deemed to be in default for any delay or failure of performance under this Agreement or other interruption of service or employment resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other interruptions by either Party's employees or agents or any similar or dissimilar cause beyond the reasonable control of either Party.

Section 7.12 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, such provision shall be severable from this Agreement if it is capable of being identified with and apportioned to reciprocal consideration or to the extent that it is a provision that is not essential and the absence of which would not have prevented the parties from entering into this Agreement. The unenforceability of a provision that has been performed shall not be grounds for invalidation of this Agreement under circumstances in which the true controversy between the parties does not involve such provision.

Section 7.13 Article and Section Headings. The article and section headings contained in this Agreement are for reference purposes only and shall not effect in any way the meaning or interpretation of this Agreement.

Section 7.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same agreement.

Section 7.15 Integration and Amendment. This Agreement supersedes all previous contracts between the parties and constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement. No oral statement or prior written material not specifically incorporated herein shall be of any force and effect. This Agreement may not be amended except by a writing duly executed by all of the Parties to this Agreement.

Section 7.16 Construction. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

Section 7.17 References. Unless otherwise specified, the references herein to “Sections” or “Articles” refer to the sections or articles in this Agreement, respectively.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

AUTHORITY:

RT:

**RIVERFRONT JOINT POWERS
AUTHORITY**

SACRAMENTO REGIONAL TRANSIT

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A

OPERATION AND MAINTENANCE SERVICES

The following is a list of main operations and maintenance services for the Project.

Operations, Supervision and Administration

- Operator Staffing
- Operator Check-in, Fitness-for-Duty Checks
- Operator Administration & Scheduling
- Streetcar Personnel (O&M) Payroll
- Office Management
- Operations Supervision
- Control: Traction Power Control
- Control: Train Movement & Direction
- Scheduling and Run Cuts
- Special Events & Charter Service Approval
- Special Events & Charter Service Operation
- Recruitment and Training - Operations
- Rules Development
- Procedures Development
- Rules and Procedures Compliance Checks
- Track Access
- Track Access Utility Markouts/Permitting Coordination
- Track Access Training
- Research & Analysis, Special Surveys and Analyses, etc.
- Ride Checks, Passenger Counts, & Other Operating Measures
- National Transit Database Reporting
- Service Quality and Reporting, Service Planning
- Asset Management and Reporting

Maintenance

- Maintenance Staffing
- Track and Track Switch Inspection and Preventive Maintenance
- Track and Track Switch Repairs
- Signals/Traffic: Streetcar-Specific in Right-of-Way
- Signals/Traffic: Transmission to City Box
- Signals/Traffic: City Signals
- Signals/Traffic: Streetcar-Specific Signals
- Signals/Traffic: Streetcar-Specific, Right-of-Way, and Bike Signs
- Signals/Traffic: Streetcar Sensors & Transmission, Detection/Priority Equipment
- Signals/Traffic: Carborne Sensors, Transmission Signal Devices
- Utility Entrances, Enforcement of Maintenance Standards for Manholes Etc.
- Pavement in Right-of-Way

- Right-of-Way Maintenance: Signs and Pavement Markings Inspection & Maintenance
- Right-of-Way Maintenance: Streetcar Wayfinding Signs and Maes
- Right-of-Way Cleaning: Street sweeping
- Right-of-Way Cleaning: Switches and Drains
- Right-of-Way Cleaning: Emergency
- Right-of-Way Cleaning: Special Events Trash & Cleanup
- Right-of-Way Towing: Disabled and Double-Parked Autos
- Right-of-Way Towing: Disabled Streetcars
- Station, Shelter, and Stop Cleaning
- Station, Shelter, and Stop Repairs
- Substations Testing and Preventive Maintenance
- Substations Repair OCS/Contact Visual Inspection
- OCS/Contact Repair and Hands-On Inspection
- OCS/Contact Poles
- OCS/Contact Span/Contact, Hardware, Insulators
- OCS/Contact Third-Party Fixation, Building Tieoffs
- Radio System Provision
- Radio System Maintenance
- Fare Equipment Provision
- Fare Equipment Supplies
- Fare Equipment Maintenance
- Fare System Back-Office (Computer System)
- Fare Revenue Handling & Accountill9
- Streetcar Vehicle Preventive Maintenance
- Streetcar Vehicle Corrective Maintenance
- Streetcar Vehicle Routine Cleaning
- Streetcar Vehicle Heavy Cleaning
- Maintenance Control, Scheduling, Records
- Tools Calibration & Testing
- Parts and Inventory
- Maintenance Rules Development
- Maintenance Procedures Development
- Recruitment and Training - Maintenance
- Rules and Procedures Compliance Checks
- Vehicle Maintenance Facility Building maintenance

Security

- Security Certification
- Security Overall Responsibility/Plan Signatories
- Security Data, Reporting, and Tracking
- Security & Emergency Preparedness Plan
- Emergency/First Response
- Security within Right-of-Way
- Security at Vehicle/Maintenance Facility

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- On-Vehicle Security
- In-Station/Stop Security
- Crowd Control
- Detours & Traffic Control
- Fare Enforcement
- Training for Security Personnel
- Training for Other First Responders
- Training for Non-Security Personnel
- TSA, DHS, Federal Interaction
- Internal Security Audits

Safety

- Safety Certification
- Safety Overall Responsibility/Plan Signatory(ies)
- Safety Data Reporting and Tracking
- System Safety Program Plan
- Internal Safety Audits
- Hazard Management
- Accident Investigation
- Corrective Action Plans
- City Employee and Contractor Safety Oversight
- Change Management (Configuration management and ongoing safety certification)
- Drills and Exercises
- Training for Safety Personnel
- Training for Non-Safety Personnel

Customer Service and Marketing

- Marketing
- Public Relations
- Community Outreach & Campaigns
- Special Interest Groups & Committees
- Safety and Security Point of Contact for Customer Use
- Lost & Found
- Customer Service & Information
- Publications, Schedules, Notices, etc.
- Electronic & Social Media Communications, Website
- Advertising and Advertising Contractor Management (in vehicles, in stations)

EXHIBIT B

ARBITRATION PROVISIONS

In the event the parties cannot agree on the Budget Methodologies or the Initial Budget and either party seeks non-binding arbitration under the terms set forth in Section 1.1 of the Agreement to which this Exhibit B is attached, the following non-binding arbitration procedures shall apply:

- (a) Arbitration may be initiated by either party making a written demand for arbitration on the other party. There shall be one arbitrator. If the parties shall fail to select a mutually acceptable arbitrator within ten (10) days after the demand for arbitration is received, then the parties stipulate to arbitration before a single arbitrator, and selected in the manner prescribed by the arbitrating body. The arbitrator must have at least ten (10) years' experience managing, operating or constructing federal transit projects including development and oversight of transit project budgeting. Except as may otherwise be set forth in this Exhibit B, the arbitration shall be administered in accordance with the Streamlined Rules of Judicial Arbitration and Mediation Service ("JAMS").
- (b) The parties shall share all costs of arbitration.
- (c) When necessary, the arbitrator shall apply the substantive law of the State of California. The parties shall exchange all budget documentation including all back-up documentation and budget detail such party relied upon in developing its Budget Methodologies or Initial Budget, as applicable. No other discovery will be available to the parties.
- (d) Arbitration shall take place in either Sacramento or West Sacramento as the parties shall agree. If the parties cannot agree on a location, the parties shall flip a coin with the winner deciding the location within one of these two jurisdictions. As soon as is reasonably practicable but in no event more than thirty (30) days after an arbitrator has been selected, the arbitrator shall conduct a one-day hearing with respect to the matter to be resolved. As soon as is reasonably practicable thereafter but in no event more than thirty (30) days after the arbitration hearing, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the parties. The judgment of the arbitration tribunal will be accompanied by a written statement of the basis for such judgment. The decision of the arbitrator shall **not** be binding on the parties.