

AGREEMENT

**OF SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, OMNITRANS
AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

**FOR OPERATIONS, MAINTENANCE OF EQUIPMENT, MAINTENANCE OF WAY
AND DISPATCHING FOR THE**

REDLANDS PASSENGER RAIL SERVICE, aka ARROW

17-1001641

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This Agreement (the “Contract” or “Agreement”), dated as of [REDACTED], 2018 , is entered into by and amongst the San Bernardino County Transportation Authority (“SBCTA”), a public entity organized under the laws of the State of California, Omnitrans, a joint powers authority organized under the laws of the State of California, and the Southern California Regional Rail Authority (“SCRRA”), a joint powers authority organized under the laws of the State of California (each a “Party” and collectively, the “Parties”).

1. RECITALS

WHEREAS, SBCTA is the transportation commission, transportation authority and transportation planning agency for the County of San Bernardino, California, with the power to contract for the Services described in this Agreement, and owns approximately nine miles of railroad track and right of way between the San Bernardino Transit Center and the City of Redlands, which constitutes approximately a nine mile extension of the San Gabriel Subdivision known as the “Redlands Passenger Rail Service Area,” (“RPRS Area” or “RPRSA”) and certain other assets collectively defined in 1.46 as the “Service Property,”

WHEREAS, SBCTA has funded and has contracted for capital improvements to the RPRS Area and the Service Property that are necessary for revenue passenger rail service to be provided from approximately Milepost 57.42 in the City of San Bernardino to Milepost 66.32

in the City of Redlands on the San Gabriel Subdivision (“Commuter Service”) and non-revenue Equipment positioning moves from Milepost 56.52 to Milepost 57.42 in the City of San Bernardino;

WHEREAS, SBCTA has funded and has contracted for the procurement of Redlands Passenger Rail Trains that are necessary for the operations of the Commuter Service;

WHEREAS, Omnitrans is a joint powers authority that provides transit services via buses and paratransit vehicles in the San Bernardino Valley of San Bernardino County, where the RPRS Area is located;

WHEREAS, provision of bus, paratransit and rail passenger service by one transit agency will result in better coordinated transit schedules, fare collection, and customer services, and more efficient and effective management than having such services provided by multiple transit agencies;

WHEREAS, SBCTA desires to designate Omnitrans or its successors as the entity responsible for arranging the performance, regulatory compliance and management of the Maintenance of Equipment and Rail Operations Services for the provision of passenger service over the RPRS Area,

WHEREAS, Omnitrans warrants and represents that it has the necessary professional capabilities, qualifications, experience, expertise, and financial resources to provide or arrange for the provision of the necessary tools, materials, and sufficient Qualified personnel, not provided by SBCTA or SCRRA, to perform the Omnitrans Services in an efficient, professional, and timely manner in accordance with the terms and conditions of this Agreement,

WHEREAS, SCRRA is a joint powers authority that provides commuter rail services in Los Angeles, Orange, Riverside, San Bernardino, Ventura, and San Diego Counties pursuant to a Joint Exercise of Powers Agreement among the Los Angeles County Metropolitan Transportation Authority (as successor to the Los Angeles County Transportation Commission), the Orange County Transportation Authority, the Riverside County Transportation Commission, SBCTA (as successor to the San Bernardino Associated Governments), and the Ventura County Transportation Commission and a shared use agreement between the SCRRA and the North County Transit District;

WHEREAS, SBCTA desires to designate SCRRA as the entity responsible for arranging the performance, regulatory compliance, and management of the Maintenance of Way and

Dispatching Services (collectively, the "SCRRA Services") for the provision of commuter service over the San Gabriel Subdivision, including the RPRSA,

WHEREAS, SCRRA or its successors, warrants and represents that it has the necessary professional capabilities, qualifications, experience, expertise, and financial resources to provide or arrange for the provision of the necessary tools, materials, and sufficient Qualified personnel, not provided by SBCTA or Omnitrans, to perform the SCRRA Services in an efficient, professional, and timely manner in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, for the consideration hereinafter stated, the Parties agree to the following terms and conditions.

2. Definitions

- 2.1 Approved Budget** means the annual budgets of Omnitrans and SCRRA approved by SBCTA pursuant to Sections 4.2 and 4.3 of this Agreement. The first Approved Budget is that budget approved by SBCTA by July 1, 2018.
- 2.2 Authorized Representative** means the authorized representative of Omnitrans, SBCTA and SCRRA, respectively, as designated in Section 5.31.2 of this Agreement, and any designee of such person, as indicated in writing by the applicable Authorized Representative.
- 2.3 Beneficial Occupancy Date** means that date the track, signal system, including PTC systems and grade crossing warning systems have successfully been tested and placed into service, and all test documentation has been received and filed by the SCRRA. Beneficial Occupancy also means all systems have been inspected by Omnitrans and SCRRA system owners or designated contract personnel and they are in agreement that these systems are ready for normal operations and all parties may begin using the track, signals, bridges, stations and track road bed in the RPRS Area.
- 2.4 Completed Regulatory Submissions Date** means that date all regulatory filings required per 49 CFR Parts 200-300 for Omnitrans' operation of the RPRS are submitted to the FRA. Unless otherwise agreed to by the parties, this date is no later than 180 calendar days before the start of revenue service.

- 2.5 Contractor** means an independent corporation or entity that agrees to provide services related to this Agreement and to furnish a certain number or quantity of goods, material, Equipment, personnel, and/or services that meet or exceed stated requirements or specifications, at a mutually agreed upon price and within a specified timeframe to another independent entity such as SCRRA, SBCTA or Omnitrans.
- 2.6 Construction Contractors** mean the entities with which SBCTA contracts for construction or improvement of the track, other infrastructure, stations, equipment maintenance facility and structures for the RPRP.
- 2.7 Controllable Item** means an item of any value with a manufacturer's serial number, which must be marked in a manner that allows the item to be tracked, assigned and controlled, and includes (but is not limited to) computer hardware or software, office equipment and communications equipment.
- 2.8 Covered Employee** means an employee of Omnitrans, SCRRA, or a Contractor who is covered by or subject to any term or terms of a collectively bargained agreement between Omnitrans, SCRRA, or a Contractor, on the one hand, and any group of its employees or that group's duly designated representative, on the other hand.
- 2.9 CPUC** means the California Public Utilities Commission.
- 2.10 Days** mean calendar days, unless specifically stated otherwise.
- 2.11 Diesel Multiple Unit ("DMU")** means the technology of self-propelled passenger vehicles to be initially used on the RPRS.
- 2.12 DMU Contractor** means Stadler US, Inc., the manufacturer of the DMU vehicles to be initially used on the RPRS as the RPRT.
- 2.13 Direct Costs** means costs as defined in 4.1.1 of this Agreement. These costs are determined by the Rail Operations Services Contractor and the ROW Contractor, and will not be known until a later date.
- 2.14 Dispatch Contractor** means the person, corporation, or other entity that contracts with SBCTA to provide Dispatching Services over the RPRS Area.
- 2.15 Dispatching Services** means the transmission or delivery of orders affecting train movements and the supervision of train movements.
- 2.16 RPRT Delivery Date** means the date on which the first RPRT shall be delivered to SBCTA.

- 2.17 Effective Date** means the date that all Parties have signed this Agreement, or, if not signed on the same date, the date of signing by the last Party to sign the Agreement
- 2.18 Equipment** means the specialized tools used to provide the Redlands Passenger Rail Service, including Rolling Stock.
- 2.19 esri** means the corporation that has, by separate agreement, agreed to fund the design, operation and maintenance of the station located at New York Street (at or near MP 65.40).
- 2.20 Fiscal Year** is the fiscal year used by SBCTA, which is July 1 through June 30.
- 2.21 FRA** means Federal Railroad Administration, or such agency designated as successor to FRA's powers and duties. The roles and responsibilities of each party regarding FRA regulations are found in Exhibit 7.
- 2.22 FTA** means Federal Transit Administration, or such agency designated as successor to FTA's powers and duties.
- 2.23 General Code of Operating Rules (GCOR)** means the current edition of the standard railroad operating rule book, as used by SCRRA.
- 2.24 Host Railroad** means the Southern California Regional Rail Authority (SCRRA), or any successor(s), that is responsible for compliance with Federal Railroad Administration (FRA) regulations with exclusive control of railroad operations.
- 2.25 Hours of Service Employees** means: employees who are engaged in or connected with the movement of any train, including conductors, assistant conductors, switch tenders, engineers, assistant engineers, student engineers, Class 4 Engineers, heavy equipment operators, and other employees who move trains or engines, operate switches or provide hand signals for, or otherwise directly assist in the movement of trains or engines, including supervisors when performing crew member duties; employees who dispatch, report, transmit, receive, or deliver train orders by telegraph, telephone, radio, or any other electrical or mechanical device; and, employees who are engaged in installing, repairing, or maintaining signal systems.
- 2.26 Inland Empire Maintenance Facility ("IEMF")** means the lead from the RPRS Area into the stub-ended railcar storage and maintenance facility owned by SBCTA and located at 958 West 3rd Street, San Bernardino, CA 92410, the tracks and inspection pits within the IEMF, and all associated structures, facilities, and other rail assets.

Omnitrans will operate and maintain the IEMF, which is a component of the Service Property.

- 2.27 Maintenance of Equipment (“MOE”) Contractor** means that Contractor that has contracted with Omnitrans to maintain the RPRT used on the RPRS.
- 2.28 Maintenance of Way (“MOW”) Contractor** means the Qualified person, corporation, or other entity that contracts with SCRRA retained to provide the services described in Section 2.13.
- 2.29 Management Services** means the management, administrative, marketing, finance, procurement, IT and other similar services to be provided by SBCTA, Omnitrans and SCRRA staff as part of providing the Omnitrans Services and SCRRA Services, respectively.
- 2.30 Modified Services** means any additional Services or changes to existing Services of the kind currently provided at the time of the change, on existing routes, including reduced levels or frequencies of existing Services.
- 2.31 Omnitrans** is the public transit agency serving the San Bernardino Valley. All references in this Agreement to Omnitrans shall also mean any successor to Omnitrans.
- 2.32 Omnitrans Contractor** means a party or parties who perform a specific part of the Services to be provided by Omnitrans, pursuant to an agreement with Omnitrans.
- 2.33 Operations Contractor Start Date** means the start date for the Contractor that will operate the trains in the RPRS.
- 2.34 Omnitrans Services** means the performance, regulatory compliance and management of the Maintenance of Equipment and Rail Operations Services for the provision of RPRS on the RPRT.
- 2.35 Positive Train Control (PTC)** means an advanced system designed to automatically stop a train before certain accidents occur. In particular, PTC is designed to prevent:
- Train-to-train collisions;
 - Over speed derailments;
 - Incursion into an established work zone; and
 - Movement through a main line switch in the improper position.
 - Other functions are applicable within the requirements as specific conditions warrant.

- 2.36 Pre-Revenue Service** means the operation of trains for PTC and signal system testing, crew qualification and equipment commissioning/ safety certification. The Pre-Revenue Service is divided into two phases: 1) Testing, training and safety certification: and 2) Simulated service.
- 2.37 Qualified** means that a person, contractor or entity has satisfied the training requirements for a position and possesses the background, skills, and experience necessary to fulfill the duties of a job included in the provision of services.
- 2.38 Rail Operations Services** means the provision of Qualified train and engine crews for the operation and maintenance of Redlands Passenger Rail Trains.
- 2.39 Rail Operations Services Contractor (“ROSC”)** means the Contractor retained by Omnitrans to operate the RPRS.
- 2.40 Redlands Passenger Rail Project (“RPRP”)** means the development and construction of the infrastructure required to provide the RPRS over the Service Property, and all related or ancillary functions that are part of the provision of the RPRS.
- 2.41 Redlands Passenger Rail Service (“RPRS”)** means the operation of Redlands Passenger Rail Trains over the RPRS Area by Omnitrans or the Rail Operations Services Contractor.
- 2.42 Redlands Passenger Rail Trains (“RPRT”)** means the DMUs or other passenger rail vehicles used in the RPRS.
- 2.43 Redlands Passenger Rail Services Area (“RPRSA”)** means the 8.9-mile rail corridor extending from MP 57.42 at the San Bernardino Transit Center to MP 66.32 at the University of Redlands, as shown on **EXHIBIT 1**. The RPRSA is funded via a separate account from the remainder of the San Gabriel Subdivision owned by SBCTA.
- 2.44 Revenue Service Start Date** means the date that operation of the RPRS with paying passengers on board the trains shall commence, which, as of the Effective Date, the Parties anticipate will be no earlier than January 1, 2021.
- 2.45 Right of Way means** the SBCTA real property [\[this needs further revision\]](#) that includes the RPRSA. The Right of Way varies in width along the corridor.
- 2.46 Right of Way Contractor** means the Qualified person, corporation or other entity that contracts with SBCTA to provide maintenance services related to the right of way

owned by SBCTA that is more than 20 feet from the track centerline and outside the track and structures used for operation of the RPRS.

- 2.47 Rolling Stock** means the DMUs, RPRTs, and other passenger rail technology used to provide the Redlands Passenger Rail Service, whether for revenue or maintenance purposes.
- 2.48 San Gabriel Subdivision** means the track and Right of Way owned by SBCTA in San Bernardino County and by Los Angeles MTA in Los Angeles County, as defined in the current SCRRA Timetable.
- 2.49 SBCTA means** the San Bernardino County Transportation Authority, which owns of the San Gabriel Sub from MP 34 to MP 66.57, the RPRTs, and the IEMF. All references in this Agreement to SBCTA shall also mean any successor to SBCTA.
- 2.50 SBCTA Protected Materials** means all documents and materials prepared or developed by Omnitrans or SCRRA and their Contractors, pursuant to this Contract, that address the performance of the Services or changes thereto.
- 2.51 SBCTA Property** means the property described in Section 5.5.1.1.
- 2.52 SCRRA Redlands Service** means revenue and non-revenue passenger train operated by SCRRA over the RPRSA.
- 2.53 SCRRA Services** means the performance, regulatory compliance, and management of the Maintenance of Way and Dispatching Services for the provision of the RPRS over the San Gabriel Subdivision, including the RPRSA.
- 2.54 Service Plan** means the annual plans developed by Omnitrans and SCRRA that describe the Services each will provide in the next Fiscal Year and that form the basis of the respective Approved Budgets for Omnitrans and SCRRA.
- 2.55 Service Property** means the combination of real property, existing and future rail assets, structures, and other facilities (including Stations) that are located on or adjacent to the RPRS Area, including the IEMF, that are to be used by Omnitrans or SCRRA in providing or arranging for the provision of the Services under this Agreement, all as described more fully in **Exhibit 2**. The Service Property does not include any structures, land or other facilities owned or controlled by SBCTA and located on or adjacent to such property that Omnitrans or SCRRA does not require to

provide the Services. The Service Property may be expanded to include additional rail lines or facilities by mutual written agreement of the Parties.

2.56 Services means the Omnitrans Services and SCRRA Services, collectively.

2.57 Signal means systems and equipment placed along the Right-of-Way to provide safe and efficient movement of trains, as well as equipment placed at grade crossing to provide warning of approaching trains to pedestrians and highway motor vehicles.

2.58 Stations means the passenger rail stations developed or to be developed by SBCTA or by the communities where such passenger rail stations are located to support the RPRS, including: the San Bernardino Transit Center (599 W. Rialto Avenue); the Tippecanoe Avenue Station (south of Orange Show Road, adjacent to the Mission Zanja Channel); the New York Street Station (north of the intersection of Redlands Boulevard and New York Street, adjacent to the esri campus); Downtown Redlands Station (north of the historic Redlands Santa Fe Depot, between Eureka and Orange Streets); the University Station (at the south end of the University of Redlands campus near North University Street); and such future stations as SBCTA may designate.

2.59 Successor Contractor means the contractor(s) selected to provide the Services upon expiration or termination of this Contract.

2.61 TCU means Train Control Unit

2.62 Tenant Railroad means BNSF Railway Company (BNSF) or its successors, Omnitrans, or any other railroad operating trains on the Service Property that is authorized by SCRRA to operate over the San Gabriel Subdivision. GCOR qualified operating staff members from Tenant Railroads may access the right-of-way without prior permission or obtaining a right of entry in the performance of their duties.

2.63 Third-Party Contractor means any Contractor that provides, under separate contract with SBCTA, services other than the Services specified under this Agreement, and includes the Construction Contractor, the Right of Way Contractor, the DMU Contractor and all contractors under SBCTA Policy 31602, Rail Property Policy.

3. Services Provided

3.1 Construction of Contract

Except where expressly indicated otherwise, all Omnitrans Services required to be performed under this Agreement may be performed by Omnitrans using its own labor forces or through such Omnitrans Contractors that are engaged by Omnitrans pursuant to the terms of this Agreement, and all SCRRA Services required to be performed under this Agreement may be performed by SCRRA using its own labor forces or through such SCRRA Contractors that are engaged by SCRRA pursuant to the terms of this Agreement.

3.2 General Management

3.2.1 Omnitrans Services

3.2.1.1 Omnitrans agrees that it will provide or arrange for the provision of the Omnitrans Services on the terms and conditions described in this Agreement. Omnitrans shall make available a staff of Qualified management personnel who shall arrange for and manage the provision of the Omnitrans Services using good business practices in a manner that is consistent with the Parties' objective of providing high quality and safe service to the public, and consistent with the best interests of the Redlands Passenger Rail Project, the RPRS, SBCTA, SCRRA, and Omnitrans.

3.2.1.2 The management team employed by Omnitrans to the RPRS shall have experience and knowledge in the area of railroad passenger operations and shall have authority to make decisions concerning the daily operations and management of the Omnitrans Services consistent with this Agreement. Omnitrans shall administer and manage all functions involved in providing the Omnitrans Services as set forth and described more fully in this Agreement in a manner which is consistent with the goal of providing safe and well-maintained facilities and on-time train operations, and will be in compliance with all applicable local, state, and federal requirements.

3.2.1.3 All personnel employed or provided by Omnitrans involved in any aspect of providing the Omnitrans Services shall be employees or Contractors of Omnitrans, and not of SBCTA or SCRRA. Omnitrans shall ensure that all such personnel are fully trained and Qualified to perform the Omnitrans Services prior to starting work on the Redlands Passenger Rail Project and/or RRPS and shall be subject to the direction, supervision, and control of Omnitrans, and not of SBCTA or SCRRA.

3.2.1.4 RPRS Rail Director

Omnitrans will provide or arrange for provision of the Services under the direction of a full time RPRS Rail Director, who will have overall responsibility for all aspects of the Omnitrans Services, and whose office must be located within San Bernardino County. The RPRS Rail Director selected shall: (i) possess a Bachelor's degree from a four-year college or university in transportation, business, planning or a related field; (ii) have a minimum of 5 to 7 years of increasingly responsible middle to upper management experience in the FRA regulated railroad transportation industry, with a strong preference for passenger operations; (iii) have an understanding of FRA regulations and reporting requirements; and, (iv) have knowledge of the General Code of Operating Rules ("GCOR").

3.2.1.5 Reserved

3.2.1.6 Omnitrans shall ensure that as of the RPRT Delivery Date, it will have retained a Contractor that will provide at least 2 engineers who are qualified in accordance with 49 CFR parts 240 and 242.

3.2.1.7 Notwithstanding any other provision of this Agreement, Omnitrans shall have the right to contract with a single Contractor to provide both the Rail Operations Services and the MOE Services.

3.2.2 SCRRA Services

3.2.2.1 SCRRA agrees that it will provide or arrange for the provision of the SCRRA Services on the terms and conditions described in this Agreement. SCRRA shall make available a staff of Qualified

management personnel who shall arrange for and manage the provision of the SCRRA Services using good business practices in a manner that is consistent with all Parties' objective of providing high quality and safe service to the public, and consistent with the best interests of the Redlands Passenger Rail Project, the RPRS, SBCTA, Omnitrans and SCRRA.

3.2.2.2 The management team assigned by SCRRA to the RPRS shall have experience and knowledge in the area of railroad operations, dispatching, and right-of-way maintenance, and shall have authority to make decisions concerning the daily provision and management of the SCRRA Services consistent with this Agreement. SCRRA shall administer and manage all functions involved in providing the SCRRA Services as set forth and described more fully in this Agreement in a manner which is consistent with the goal of providing safe and well-maintained facilities and on-time train operations, and will be in compliance with all applicable local, state, and federal requirements.

3.2.2.3 All personnel employed or provided by SCRRA involved in any aspect of providing the SCRRA Services shall be employees or Contractors of SCRRA, and not of SBCTA or Omnitrans. SCRRA shall ensure that all such personnel are fully trained and Qualified to perform the SCRRA Services prior to starting work on the Redlands Passenger Rail Project and shall be subject to the direction, supervision, and control of SCRRA, and not of SBCTA or Omnitrans.

3.2.2.4 SCRRA, as host railroad, shall perform efficiency testing of operating crews on the RPRSA, both ROSC and SCRRA. SCRRA shall timely confer with Omnitrans on a testing plan in order to ensure compliance with FRA requirements, and shall perform joint testing with Omnitrans, as may be required by FRA, or agreed upon by SCRRA and Omnitrans.

3.2.3 Milestones

Upon execution of this Agreement, the Parties shall establish a schedule for completion of the tasks required to successfully reach the projected Revenue Service Commencement Date. The schedule shall take into account and/or establish milestones for: notification to Omnitrans of the projected RPRT Delivery Date; the Completed Regulatory Submissions Date; the Operations Contractor Start Date; and the Revenue Service Start Date. The Parties may amend such schedule of milestones upon mutual agreement of the Parties, and any such modification shall not require the concurrence of the SBCTA Board but may be agreed upon by the SBCTA Executive Director.

3.3 Regulatory Responsibilities of Omnitrans

3.3.1 Omnitrans shall be responsible for complying with all applicable federal, state and local regulations that relate to the Omnitrans Services, as well as any modifications to existing regulations as may occur during the term (including any renewal term) of this Agreement. During the term of this Agreement, Omnitrans shall develop and implement the following in coordination, where appropriate, with SCRRRA:

- 3.3.1.1 Omnitrans, in coordination with, where appropriate, the DMU Contractor, the OmniTrans Rail Operation Services Contractor and SCRRRA shall develop and adopt RPRS Operating Policies and Procedures, which shall comply with all applicable rules, regulations, and orders of the FRA, and the current GCOR; the current SCRRRA San Gabriel Subdivision timetable and include at a minimum:
- a. Air brake and train handling rules;
 - b. Flag protection procedures;
 - c. Good faith challenge procedures set forth in 49 CFR 218.97;
 - d. Radio communications plans, which shall designate the location of radio base stations, wayside stations, and the appropriate radio channels in the timetables and special instructions developed for the RPRS Area;
 - e. Uses of personal and railroad-supplied electronics; and

- f. Fatigue management and electronic record keeping sufficient to demonstrate compliance with all Hours of Service requirements;
- 3.3.1.2 Background Check Policy, which shall comply with all aspects of 49 CFR part 40, and all other applicable rules, regulations or orders of the FRA;
- 3.3.1.3 Operational Testing and Inspection Program, which shall be a written program of operational testing and inspection that specifically includes testing on the electronic devices policies and procedures;
- 3.3.1.4 Training Program, which shall comply with all applicable rules, regulations, or orders of the FRA, and include at a minimum:
 - a. The instruction, training, and examination of all Omnitrans and Omnitrans Contractor personnel engaged in providing the Services on the Redlands Passenger Rail Operating Policies and Procedures;
 - b. Hours of Service requirements, fatigue management, and electronic recordkeeping;
- 3.3.1.5 Certification Program for certifying the qualifications of locomotive engineers and conductors, which shall comply with the requirements of 49 CFR parts 240 and 242, respectively;
- 3.3.1.6 Drug and Alcohol Program, which shall comply with all applicable rules, regulations, and orders of the FRA training program, including 49 CFR part 219, and which includes at a minimum:
 - a. Training in recognizing signs and symptoms of alcohol and drug influence, intoxication, and misuse for all supervisors responsible for Hours of Service employees;
 - b. Educational materials sufficient to explain the requirements of 49 CFR part 219 and Omnitrans' policies with respect to meeting them;
 - c. The availability of post-accident testing kits;
 - d. Policies for the identification of troubled employees;

- e. Policies relating to the prevention of the use of drugs and alcohol;
 - f. Random drug and alcohol testing plan, including procedures and notification to Hours of Service employees of their rights and obligations thereunder;
 - g. Sufficient Qualified personnel and support systems to carry out the selection and testing requirements of 49 CFR part 219;
- 3.3.1.7 Accident/Incident Reporting Procedures, which shall comply with the requirements of 49 CFR part 225, and which include all required forms;
- 3.3.1.8 Noise Monitoring and Audiometric Testing Program, which shall comply with the requirements of 49 CFR part 227;
- 3.3.1.9 Maintenance and Preventative Maintenance Plan, which shall include a detailed scope of work, performance standards, and procedures and reporting formats for the maintenance of RPRT:
- a. Daily turnaround servicing including cleaning, inspection, testing, and minor repairs to ensure compliance with applicable law and regulations prior to dispatching trains for revenue service, including train control systems, wheels, trucks, brake shoes, running gear, engine fluids, doors, lighting, communications, HVAC control, and accessibility ramps and accommodations;
 - b. State of Good Repair (“SOGR”) Plan in accordance with applicable FTA guidance and regulations described in 3.4.1.10, below;
- 3.3.1.10 Passenger Train Emergency Preparedness Plan, which shall comply with the requirements of 49 CFR parts 239 and 270;
- 3.3.1.11 System Safety Program Plan (SSPP), which shall be based on the American Public Transportation Association (APTA) “Manual for the Development of System Safety Plans for Commuter Railroads” (APTA, May 15, 2006) and “Rail Transit SMS Implementation Guide” which is Appendix A to “Safety Management System Manual – Public

Passenger Transportation Systems" (APTA, March 2016), and all applicable guidance or regulations issued by the FRA including 49 CFR part 270:

3.3.1.12 Training, Qualification and Certification of Safety Related Railroad Employees Program, which shall comply with the requirements of 49 CFR part 243;

3.3.1.13 Policies and procedures to address the following:

- a. Providing, maintaining and testing on-board communications equipment (49 CFR part 220);
- b. Maintaining hours of service records (49 CFR part 228);

3.3.1.14 Omnitrans has in place Procurement Policies and Procedures for the procurement of tools, materials, and services, including the hiring of Omnitrans Contractors to provide any portion of the Services for which Omnitrans is responsible under this Agreement, and which shall comply with all applicable rules, regulations, and orders of the FTA.

3.3.2 Omnitrans and its approved Contractors shall develop and complete the above-referenced regulatory compliance documents. Not later than three hundred sixty-five (365) Days prior to the Revenue Service Start Date, except as otherwise agreed to, Omnitrans shall make such documents available to SCRRA for review. SCRRA shall have the opportunity, but not the obligation, to review the regulatory compliance documents prepared by Omnitrans. Should SCRRA have any comments regarding the regulatory compliance documents, SCRRA must provide its comments to Omnitrans within thirty (30) Days of the date Omnitrans notifies SCRRA of their availability for review. Omnitrans may request that SCRRA promptly confer with respect to any items to which SCRRA objects. Omnitrans will consider comments received from SCRRA, but shall not be obligated to make changes to the regulatory compliance documents based on SCRRA's review.

3.3.3 Following SCRRA's opportunity for review, Omnitrans shall submit for FRA approval, where required, the Redlands Passenger Rail Operating Policies and Procedures, Drug and Alcohol Program, Accident/Incident Reporting Procedures, Fatigue Management Plans, Emergency Preparedness Plan, and

Certification Programs not later than one hundred eighty (180) days prior to the Revenue Service Start Date.

- 3.3.4 Omnitrans shall provide or arrange for the provision of all pre-revenue service testing prior to the Revenue Service Start Date.
- 3.3.5 The Parties recognize that, prior to SBCTA's adoption of an Approved Budget, Omnitrans will incur costs to develop the regulatory compliance documents, to conduct Contractor procurements, to retain certain Contractors and to prepare for commencement of the Services. SBCTA shall reimburse Omnitrans for such costs pursuant to Section 4.5.1.

3.4 Regulatory Responsibilities of SCRRRA

3.4.1 SCRRRA shall be responsible for complying with all applicable federal, state and local regulations that relate to the funding and provision of SCRRRA Services, as well as any modifications to existing regulations as may occur during the term (including any renewal term) of this Agreement. During the term of this Agreement, SCRRRA shall develop and implement the following in coordination, where appropriate, with Omnitrans, the DMU Contractor, and the Omnitrans Rail Operations Services Contractor:

- 3.4.1.1 SCRRRA shall develop, to the extent that the following regulatory compliance practices and documents do not already exist as part of SCRRRA's ongoing operations, and implement policies which shall comply with all applicable rules, regulations, and orders of the FRA, and the current GCOR, and include at a minimum:
 - a. Flag protection procedures;
 - b. Good faith challenge procedures set forth in 49 CFR 218.97;
 - c. Uses of personal and railroad-supplied electronics; and
 - d. Fatigue management and electronic record keeping sufficient to demonstrate compliance with all Hours of Service requirements;
- 3.4.1.2 Background Check Policy, which shall comply with all aspects of 49 CFR part 40, and all other applicable rules, regulations or orders of the FRA;

- 3.4.1.3 Training Program, which shall comply with all applicable rules, regulations, or orders of the FRA, and include at a minimum:
- a. The instruction, training, and examination of all SCRRA and Contractor personnel engaged in providing the SCRRA Services on the RPRS Operating Policies and Procedures;
 - b. Hours of Service requirements, fatigue management, and electronic recordkeeping;
- 3.4.1.4 Drug and Alcohol Program, which shall comply with all applicable rules, regulations, and orders of the FRA training program, including 49 CFR part 219, and which includes at a minimum:
- a. Training in recognizing the signs and symptoms of alcohol and drug influence, intoxication, and misuse for all supervisors responsible for Hours of Service employees;
 - b. Educational materials sufficient to explain the requirements of 49 CFR part 219 and SCRRA's policies with respect to meeting them;
 - c. The availability of post-accident testing kits;
 - d. Policies for the identification of troubled employees;
 - e. Policies relating to the prevention of the use of drugs and alcohol;
 - f. Random drug and alcohol testing plan, including procedures and notification to Hours of Service employees of their rights and obligations thereunder;
 - g. Sufficient Qualified personnel and support systems to carry out the selection and testing requirements of 49 CFR part 219;
- 3.4.1.5 Accident/Incident Reporting Procedures, which shall comply with the requirements of 49 CFR part 225, and which include all required forms;
- 3.4.1.6 Noise Monitoring and Audiometric Testing Program, which shall comply with the requirements of 49 CFR part 227;

- 3.4.1.7 Maintenance and Preventative Maintenance Plan, which shall include a detailed scope of work, performance standards, and procedures and reporting formats for the maintenance of the right-of-way;
- 3.4.1.8 Passenger Train Emergency Preparedness Plan, which shall comply with the requirements of 49 CFR parts 239 and 270 (to be prepared in conjunction with Omnitrans);
- 3.4.1.9 Procurement Policies and Procedures for the procurement of tools, materials, and services, including the hiring of Contractors to provide any portion of the Services for which SCRRA is responsible under this Agreement, and which shall comply with all applicable rules, regulations, or orders of the FRA;
- 3.4.1.10 Compliance and Coordination Plan for FTA Reporting Requirements, which shall coordinate SCRRA's asset management program (as appropriate for the Services) and System Safety Program Plan elements with FTA system safety rules as may be required as a condition of FTA funding to SBCTA, including (a) FTA regulations at 49 CFR parts 625 and 630, (b) regulations to be promulgated at 49 CFR part 673, which are pending as of the date of this Agreement, and (c) future FTA regulations;
- 3.4.1.11 Policies and procedures to address the following:
- a. Maintenance, inspection, testing, and repair of track and supporting structures in accordance with 49 CFR part 213;
 - b. Maintenance of track structure, track geometry and roadbed, and conducting track inspections as outlined in Federal Railroad Administration Track Safety program (49 CFR part 214);
 - c. On-track safety program (49 CFR part 214);
 - d. Compliance with and communication of all FRA special notices and emergency orders with respect to track inspections (49 CFR part 216);
 - e. Providing, maintaining and testing communications equipment (49 CFR part 220);

- f. Maintaining hours of service records (49 CFR part 228);
- g. Reporting signal failures as required by FRA (49 CFR part 233);
- h. Maintaining, inspecting, testing and repairing highway-rail grade crossings; reporting failures as required by FRA (49 CFR part 234);
- i. Maintaining, inspecting, testing and repairing signal or train control systems in accordance with 49 CFR part 236; develop and submit a modification to the existing SCRRA PTC Implementation Plan (49 CFR § 236.1011) for the extension of the San Gabriel Subdivision to include the RPRSA, excluding onboard RPRT PTC Equipment.

3.4.2 SCRRA and its approved Contractors shall develop and complete the above-referenced regulatory compliance documents. Not later than three hundred sixty-five (365) Days prior to the Revenue Service Start Date, except as otherwise agreed to, SCRRA shall make such documents available to Omnitrans for review. Omnitrans shall have the opportunity, but not the obligation, to review the regulatory compliance documents prepared by SCRRA. Should Omnitrans have any comments regarding the regulatory compliance documents, Omnitrans must provide its comments to SCRRA within thirty (30) Days of the date SCRRA notifies Omnitrans of their availability for review. SCRRA may request that Omnitrans promptly confer with respect to any items to which Omnitrans objects. SCRRA will consider comments received from Omnitrans, but shall not be obligated to make changes to the regulatory compliance documents based on Omnitrans' review.

3.4.3 Following Omnitrans' opportunity for review, SCRRA shall submit for FRA approval, where required, the above-referenced regulatory compliance documents not later than one hundred eighty (180) Days prior to the Revenue Service Start Date.

3.4.4 SCRRA shall provide or arrange for the provision of all pre-revenue service testing not later than ninety (90) Days prior to the Revenue Service Start Date.

3.4.5 The Parties recognize that prior to SBCTA's adoption of an Approved Budget, SCRRA may incur costs to develop the regulatory compliance documents, to

conduct Contractor procurements, to retain certain Contractors and to prepare for commencement of the SCRRA Services. SBCTA shall reimburse SCRRA for such costs pursuant to Section 4.5.2, below.

3.5 Regulatory Responsibilities of SBCTA

- 3.5.1 SBCTA has delegated its responsibilities as a track owner under 49 CFR part 213 to SCRRA;
- 3.5.2 SBCTA shall complete, in coordination with Omnitrans, a Compliance and Coordination Plan for FTA Reporting Requirements, which shall coordinate Omnitrans' asset management program (including, but not limited to, the Maintenance and Preventative Maintenance Plan) and SSPP elements with FTA system safety rules as may be required as a condition of FTA funding to SBCTA, including: (a) FTA regulations at 49 CFR parts 625 and 630, (b) regulations to be promulgated at 49 CFR part 673, which are pending as of the date of this Agreement, and (c) future FTA regulations.

3.6 Rail Operations

- 3.6.1 Operations
 - 3.6.1.1 During the term of the Contract, Omnitrans, using its own personnel (subject to the limitation set forth in Section 3.2.1.4, above) or through its Contractors, shall manage, operate, maintain and provide Qualified staff for the Services and shall execute its responsibilities under this Contract consistent with standards of safety, efficiency and reliability generally recognized as being employed by professionals in the same discipline in the United States, and in accordance with all applicable laws and regulations, and with the Redlands Passenger Rail Operating Policies and Procedures.
 - 3.6.1.2 Intentionally omitted.
 - 3.6.1.3 Omnitrans shall operate or arrange for the operation of the Redlands Passenger Rail Trains pursuant to schedules identified in the Service

Plan. Omnitrans shall not be responsible for schedule delays resulting from SCRRA's Dispatching Services, or any other SCRRA Services.

3.6.1.4 SCRRA reserves the right and ability to request its MOW Contractor to move track and signal maintenance Equipment for non-revenue generating purposes on lines or facilities included in the Service Property, as part of the provision of MOW services, provided that SCRRA shall ensure that the MOW Contractor does not interfere with the safe and efficient operation of the Services by Omnitrans. SCRRA shall coordinate all such activities with Omnitrans.

3.6.1.5 Omnitrans specifically acknowledges and agrees that Tenant Railroads (both freight and passenger) may be permitted to conduct operations on the RPRS Area during the term of this Agreement, and that Omnitrans will cooperate fully with such Tenant Railroads in developing and implementing operating schedules and protocols that will permit safe and reliable operations by all parties. SBCTA, as the party granting right to such Tenant Railroads, shall require that such Tenant Railroads cooperate with Omnitrans and SCRRA, and that any operating schedules and protocols shall not interfere with safe and efficient operations of the Services by Omnitrans, or the timely operation of the RPRS.

3.6.2 Right-of Way. SCRRA shall hire a Qualified MOW Contractor or extend the scope of SCRRA's existing MOW Contractor and SBCTA shall hire a Qualified Right of Way Contractor that together shall be responsible for ensuring that the track and the corridor over which the Redlands Passenger Rail Trains are operated are maintained in good and safe condition and repair, and in such a manner as to minimize, to the extent possible, wear and tear on the Redlands Passenger Rail Trains and any associated Rolling Stock, and in a manner that complies with all applicable federal, state and local laws and regulations, and in such a manner as to prevent safety hazards or accidents, or delay of the RPRS.

3.6.3 RPRT. SBCTA will procure the initial RPRTs required for the operation of the RPRS and will lease such RPRTs to Omnitrans in accordance with a RPRT

Lease Agreement, as may be amended from time to time; the RPRT Lease Agreement has not been executed as of the execution of this Agreement, but will be attached hereto as **Exhibit 3** upon its execution. The RPRT Lease Agreement shall be in the form attached to this Agreement. The term of the RPRT Lease Agreement shall commence on the RPRT Delivery Date and the term of the Lease shall be co-extensive with the term of this Contract, including all renewals hereof. The RPRTs provided to Omnitrans shall comply with all requirements of 49 CFR part 238 at the time of delivery. Following acceptance of the RPRTs, as detailed below, and except for any warranty obligations of the DMU Contractor, Omnitrans shall thereafter be responsible for ensuring ongoing regulatory compliance, for maintenance of the RPRT as described in Section 3.7, below, and for making all modifications required by law or regulation as they may be from time to time amended, the costs of which will be paid by SBCTA as Direct Costs.

3.6.3.1 At the time of delivery of the RPRTs to be used in the RPRS, SBCTA shall arrange for the DMU Contractor to provide to Omnitrans a checklist of tasks required to be completed with respect to each RPRT vehicle prior to final acceptance of the RPRT by SBCTA, and Omnitrans and SBCTA shall complete the process of testing the Equipment and certifying that it is acceptable for use in the RPRS. Such testing shall be performed by Qualified personnel of the ROSC and of SBCTA's [engineering Contractor](#) in a timely manner in order to allow for the commencement of operations on the Revenue Service Start Date, provided that Omnitrans shall not be responsible for any delays to the commencement of operations resulting from defects in the RPRTs or failure of the RPRTs to meet the testing and certification requirements. The foregoing testing and acceptance procedures exclude testing and acceptance of the on board PTC system. The on board PTC system will be tested by SCRRA to ensure proper operation and function of the on board PTC for its intended purpose. The RPRTs shall not be deemed accepted by Omnitrans until completion of the testing and certification process, and SBCTA shall work with its DMU Contractor and SCRRA to

resolve identified issues related to the RPRTs, including PTC functions.

3.6.4 Distribution of Public Information

Omnitrans or its Contractor will distribute on-board notices and will make announcements to passengers informing them of matters related to the Redlands Passenger Rail Project. Upon request from SBCTA, Omnitrans shall arrange for distribution of any notices provided by SBCTA.

3.7 Maintenance of Equipment (MOE)

- 3.7.1 Omnitrans shall provide or arrange for the provision of sufficient Qualified personnel to provide MOE Services for the Redlands Passenger Rail Trains and associated Equipment at the Inland Empire Maintenance Facility in accordance with the Maintenance and Preventative Maintenance Plan. The plan shall comply with FTA and APTA guidelines, and manufacturer recommended practices. In performing or arranging for the performance of these Services, Omnitrans will comply with and ensure its Contractors comply with all applicable rules, regulations, or orders of the FRA and generally accepted industry standards. Omnitrans shall ensure that all maintenance of the RPRTs is conducted in a manner that is consistent with and within time frames required to preserve the manufacturers' warranties on the said RPRTs.
- 3.7.2 Omnitrans shall direct the MOE Contractor to coordinate with the SCRRA PTC staff with respect to Positive Train Control (PTC) to ensure that any PTC Equipment on board the Redlands Passenger Rail Trains is properly maintained and continues to function as necessary in coordination with the remainder of the SCRRA PTC system.
- 3.7.2.1 The DMU Contractor will coordinate with SCRRA's PTC contractor to install and test all necessary PTC equipment on the vehicles before such DMU is shipped from the manufacturing facility.
- 3.7.2.2 Omnitrans MOE Contractor shall be responsible for the removal and replacement of a malfunctioning TCU. The MOE Contractor shall not attempt to make repairs or modifications to the SCRRA supplied PTC equipment.

- 3.7.3 Omnitrans, via its Rail Operations Services Contractor, shall coordinate with SCRRRA staff and contractors for the development of software and procurement of hardware for the PTC systems onboard RPRTs.
- 3.7.4 Omnitrans shall maintain all records and reports concerning inspection, maintenance, and cleaning of the Redlands Passenger Rail Trains as required by FRA regulations, for a period of three years following the expiration of this Contract, and will provide copies of all such records and reports to FRA in accordance with applicable regulations and to SBCTA upon SBCTA's request.

3.8 IEMF and Station Maintenance and Security

- 3.8.1 Omnitrans will be responsible for maintenance of the structure, facilities and Equipment used and/or located at the IEMF, and for providing security at the IEMF. However, the Maintenance of Way Contractor shall be responsible for maintenance of tracks and track-related infrastructure (including, but not limited to, Signals and Signal Equipment).

3.8.2 Maintenance of Stations

- 3.8.2.1 It is the Parties' intent that the following will be responsible for maintenance (including, without limitation, cleaning, trash removal, landscaping, painting and up-keep) of the identified Station:

- a) San Bernardino Transit Center: Omnitrans
- b) Tippecanoe Street: City of San Bernardino
- c) New York Street: esri
- d) Downtown Redlands SCRRRA platform: City of Redlands
- e) Downtown Redlands RPRP platform: City of Redlands
- f) University Station Platforms: City of Redlands
- g) University Station (outside of the platforms): University of Redlands

- 3.8.2.2 Station maintenance shall not extend to the maintenance of ticket vending machines, passenger information phone, LED video information monitors, public address/changeable message sign

equipment, or equipment on the railroad operator side of any communications shelter building or area.

3.8.3 Security at Stations

It is the Parties' intent that the responsibility for Station security, including maintenance of the CCTV and CIS systems will be as follows:

a) Maintenance of the CCTV and CIS systems will be the responsibility of Omnitrans.

b) San Bernardino Transit Center: Omnitrans will be responsible for security and will monitor CCTV for the facility; the San Bernardino Police Department and SCRRA will have access via internet to the camera feed. Omnitrans will provide the primary feed to the CIS signs, with SCRRA having the ability to display messages related to passenger safety and train operations on the signs.

c) Tippecanoe Street: Omnitrans will be responsible for security and will monitor CCTV for the facility; the San Bernardino Police Department and SCRRA will have access via internet to the camera feed. Omnitrans will provide the primary feed to the CIS signs, with SCRRA having the ability to display messages related to passenger safety and train operations on the signs.

d) New York Street: esri will have primary responsibility for security. Omnitrans will monitor CCTV for the facility; esri, the Redlands Police Department, and SCRRA will have access via internet to the camera feed. Omnitrans will provide the primary feed to the CIS signs, with SCRRA having the ability to display messages related to passenger safety and train operations on the signs

e) Downtown Redlands SCRRA platform: Omnitrans will be responsible for security and will monitor CCTV for the facility; the Redlands Police Department and SCRRA will have access via internet to the camera feed. Omnitrans will provide the primary feed to the CIS signs, with SCRRA having the ability to display messages related to passenger safety and train operations on the signs

f) Downtown Redlands RPRP platform: Property One will have primary responsibility for security. Omnitrans will monitor CCTV for the facility; the

Redlands Police Department and SCRRA will have access via internet to the camera feed. Omnitrans will provide the primary feed to the CIS signs, with SCRRA having the ability to display messages related to passenger safety and train operations on the signs

g) University Station: University of Redlands will have primary responsibility for security. Omnitrans will monitor CCTV for the facility; the Redlands Police Department, University of Redlands Police Department, and SCRRA will have access via internet to the camera feed. Omnitrans will provide the primary feed to the CIS signs, with SCRRA having the ability to display messages related to passenger safety and train operations on the signs

[Omnitrans' obligation to provide security is limited to monitoring CCTV only, which is limited to observation and reporting, and does not include response to incidents.](#)

[SBCTA and Omnitrans will enter into future agreements to provide funding for Omnitrans to contract with the San Bernardino County Sheriff for law enforcement services.](#)

3.9 Materials Management

3.9.1 Omnitrans and SCRRA will each provide or arrange for the provision of adequate materials, parts, and tools inventory to support their respective Services. Omnitrans and SCRRA will each develop or arrange for the development of a property management system to track and maintain Controllable Items for which they are responsible. Omnitrans and SCRRA and their respective Contractor(s) shall keep records of the cost of materials, parts, and tools they are required to purchase in order to perform the Services under this Contract. All materials, parts, and tools purchased by Omnitrans or SCRRA pursuant to this Contract for the provision of the Services shall be used solely for the purpose of providing the Services, and shall be the property of SBCTA, as described more fully in Section 5.5.1.1. Upon termination of the Agreement, all such materials, parts, and tools, excluding any items which have reached the end of their useful life and have been discarded or otherwise disposed of in accordance with applicable policies and procedures, shall be

returned to SBCTA in the same condition as at the time of purchase, reasonable wear and tear excepted.

In the event that the procurement of any revenue or non-revenue vehicles for use in the RPRS includes an option to procure spare parts of such vehicles, SBCTA may assign such option rights to Omnitrans for the procurement of such spare parts. If Omnitrans determines it is in the best interests of the RPRS, Omnitrans will exercise such options and such materials, parts and tools subject to the terms of Section 5.5. Notwithstanding the foregoing, if non-revenue vehicles for use as part of the Omnitrans Services are included in an Approved Budget, Omnitrans may purchase and hold such vehicles under its own name during the term of this Contract.

- 3.9.2 In making purchasing decisions, Omnitrans, SCRRA, and their Contractors shall purchase, where prudent and cost-effective, from local vendors, but shall in all circumstances take into account and give full consideration to factors including, but not limited to, price, delivery schedule, and freight charges, and to applicable local, state and federal regulations. The Parties recognize that current FTA regulations prohibit local geographic preferences for purchases. Purchases made by Omnitrans, SCRRA, or their respective Contractors in order to perform the Services under this Contract shall be made in compliance with FTA-compliant procurement policies and procedures.

3.10 Tickets and Fares

It is the intent of the parties that the fare structure shall be seamless to the riders. All fare management functions such as fare policy, fare technology, fare media, revenue collection, administrative costs, mobile app and inspection are subject to future agreement [between Omnitrans and SCRRA](#).

3.11 Public Information Responsibilities

Omnitrans will assume all responsibility for marketing the public use of the Redlands Passenger Rail Service through advertisements or other promotions; provided, however, that SBCTA will cooperate with Omnitrans and shall provide such information as Omnitrans requests to transmit to the public, including information concerning any disruptions and resulting delays due to emergencies. Omnitrans will investigate passenger complaints and will prepare responses to such complaints, and will provide

copies thereof to SBCTA when requested. Upon request from SBCTA, Omnitrans will install SBCTA-approved promotional materials or public information notices on the Equipment used in the RPRS.

3.12 Coordination with Omnitrans Bus Services

Omnitrans shall make all reasonable efforts to facilitate connections between the Redlands Passenger Rail system and Omnitrans' existing bus transit network within San Bernardino County.

3.13 Clearing of Wrecks

SCRRA will clear, or will arrange for clearing, wrecks which occur on the RPRSA. SCRRA and Omnitrans shall ~~identify segregate~~ their costs of providing such assistance and provide them to SBCTA for SBCTA's efforts to obtain reimbursement from the Tenant Railroad for such expenses. The respective rights and obligations of the Tenant Railroad and SBCTA shall be governed by the terms and conditions of agreements, if any, between SBCTA and that railroad. For any Tenant Railroad agreement that involves use of the Service Property entered into or amended following the Effective Date, SCRRA shall require the Tenant Railroad to provide for indemnification of SBCTA and Omnitrans, and shall include SBCTA and Omnitrans as an additional insured under such Tenant Railroad agreement, to the extent the same is provided to SCRRA. As used in this section, the term Tenant Railroad does not include Omnitrans.

3.14 Dispatching

3.14.1 Services to be Provided

- 3.14.1.1 SCRRA shall provide the dispatching services as an extension of its existing dispatching operations, and will not add staff positions or new dispatching desks solely for the purpose of providing the Services required by this Agreement.
- 3.14.1.2 SCRRA shall dispatch the operation of Tenant Railroads pursuant to schedules identified in the Service Plan and in accordance with dispatching protocols to be agreed upon by the Parties prior to the Revenue Service Start Date, and in such a manner as to avoid

delays to the RPRS and to permit safe and reliable operations by all parties.

3.14.1.3 SCRRA shall provide daily dispatching reports, containing all information as reasonably requested by Omnitrans, to Omnitrans senior staff and the Rail Operations Services Contractor in a format to be agreed upon by SCRRA and Omnitrans 90 Days prior to the Revenue Service Start Date, or other date which is mutually agreed upon, but in any event, prior to the Revenue Service Start Date.

3.14.2 Right of Way Contractor. SBCTA may hire a Qualified Right of Way Contractor to manage its Right of Way outside of 20 feet from centerline of track, that together with SCRRA shall be responsible for ensuring that the track and the RPRSA corridor are maintained in good and safe condition and repair, and in such a manner as to minimize, to the extent possible, wear and tear on the Passenger Rail Trains and any associated Rolling Stock, in a manner that complies with all applicable federal, state and local laws and regulations, and in such a manner as to prevent safety hazards or accidents, or delay of the RPRS.

3.14.3 Distribution of Public Information

Upon request from SBCTA or Omnitrans, SCRRA shall arrange for distribution of mutually acceptable notices related to the RPRS provided by SBCTA or Omnitrans.

3.15 Maintenance of Way

3.15.1 SCRRA shall be responsible for controlling access and maintaining the right of way, including but not limited to track and Signals, bridges, and track road bed, on the RPRSA, during the term of this Agreement, to SCRRA standards (which meet or exceed the requirements of the FRA regulations). Requests for right of way entry shall be reviewed by SCRRA to ensure the requested activity does not interfere with safe and reliable operations on the RPRSA. SCRRA will coordinate with Omnitrans to schedule planned service outages and MOW work windows to allow sufficient time for bus bridges to be arranged and the

public to be notified. Such planned service outages and work windows shall be scheduled, to the extent possible, to avoid interruption of RPRS.

3.15.2 Intentionally omitted

3.15.3 Intentionally omitted

3.15.4 SCRRRA shall provide or arrange for the provision of sufficient Qualified personnel to provide Maintenance of Way (MOW) Services in accordance with this Agreement. In performing or arranging for the performance of these Services, SCRRRA will comply with and will ensure its Contractors comply with all applicable rules, regulations, or orders of the FRA and generally accepted industry standards. SCRRRA shall ensure that all maintenance of the right-of-way is conducted in a manner that is consistent with, and within time frames required to comply with SCRRRA standards and all applicable regulations and industry standards and to minimize delays to the RPRS.

3.15.5 Intentionally omitted.

3.15.6 If SCRRRA track or signal maintenance Equipment located on Service Property is interfering with the provision of the RPRS, SCRRRA shall, upon request of Omnitrans, move such Equipment. In providing the MOW Services, SCRRRA shall minimize its interference with the safe and efficient operation of the RPRS by the ROSC.

3.15.7 SCRRRA shall maintain all records and reports concerning inspection and maintenance of the Service Property in compliance with, and as required by FRA regulations for the period specified under each 49 CFR part 234, 236, etc. specific test requirement, and will provide copies of all such records and reports to FRA in accordance with applicable regulations and to SBCTA upon SBCTA's request.

3.15.8 SCRRRA will develop fenced material and equipment storage areas along the right of way as necessary to support the MOW and Signal functions. The location of the storage areas shall be approved by SBCTA, and such approval shall not be unreasonably withheld. SCRRRA may also, in support of major capital projects (e.g. replacement of rail) temporarily store materials along the right of way.

- 3.15.9 The Parties agree that SCRRRA, as part of its safety responsibilities for the RPRSA, will control access to the Right of Way via its right of entry permitting process and attempt to ensure all insurance and liability requirements are met before a contractor enters the property. SCRRRA will provide right of way protection services (flagging) to Omnitrans and SBCTA contractors at cost. Omnitrans and SBCTA may also qualify staff as SCRRRA Roadway Worker Protection/Employee in Charge and use such staff once qualified.
- 3.15.10 SCRRRA Services do not include maintenance of Stations, as more fully set forth in 3.82.

3.16 On Board and Wayside PTC.

- 3.16.1 SCRRRA shall develop, in coordination with Omnitrans, PTC implementation and operation procedures to minimize delays of the RPRS due to PTC. Omnitrans shall have the right to request PTC reports to determine if delays of RPRS are caused by PTC. SCRRRA shall timely provide such reports on request by Omnitrans.
- 3.16.2 SCRRRA will maintain Wayside PTC Equipment with signal and communication enclosures upon successful completion of in-service testing and inspections and document submission. SCRRRA shall ensure that timely maintenance and troubleshooting of the Wayside PTC Equipment is provided, and shall make diligent effort to minimize delays to the RPRS by reason of failure of Wayside PTC Equipment.
- 3.16.3 Omnitrans specifically acknowledges that SCRRRA Contractors will maintain the operation of PTC during the term of this Contract and Omnitrans will make all reasonable efforts to cooperate with such contractors in the implementation of that technology in the tracks, Equipment and facilities used in the RPRS.
- 3.16.4 SCRRRA shall provide any training needed to assist Omnitrans in complying with its obligations related to implementation and utilization of PTC.

3.17 Standard of Performance; Cooperation Between Omnitrans and SCRRRA

- 3.17.1 Omnitrans and SCRRRA each warrants and represents that they have the necessary professional capabilities, qualifications, experience, expertise, and

financial resources to provide or arrange for the provision of the necessary tools, materials, and sufficient Qualified personnel to perform their respective Services in an efficient, professional, and timely manner.

- 3.17.2 Omnitrans and SCRRA shall each perform, and shall require their Contractors to perform, their respective Services in accordance with the requirements of this Contract and all applicable federal, state and local laws and regulations, including but not limited to all applicable safety laws, standards, codes, rules and regulations as may be amended from time to time, consistent with the standards of safety, efficiency and reliability, and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience, and knowledge in performing services of a similar nature.
- 3.17.3 Each Party shall promptly notify the others of all errors, inconsistencies, omissions, and/or non-conformities (collectively "Errors") in this Contract that it discovers. In instances where Errors are discovered by Omnitrans or SCRRA, except in the case of emergencies or the need to take immediate action, the relevant Party shall obtain specific instructions in writing from SBCTA before proceeding with the provision of Services affected by such Errors. In instances where Errors are discovered by SBCTA, SBCTA shall not reduce or withhold any payment to Omnitrans or SCRRA for the provision of Services affected by such Errors without providing instructions in writing to the affected Party. Omissions or incorrect descriptions of any Services that are manifestly necessary to carry out the intent of this Contract, or that are customarily performed, shall not relieve the Parties from performing or paying for such Services, and such Services shall be performed as if fully and correctly set forth in this Contract.
- 3.17.4 SCRRA will use industry best practices and good judgment when prioritizing trains in order for both Parties to maximize on time performance.
- 3.17.5 Intentionally omitted
- 3.17.6 To help ensure compliance with the standards of performance and requirements in this Contract, Omnitrans and SCRRA shall cooperatively

develop any additional policies or procedures as may be required or beneficial for the safe and successful operation of the RPRS.

3.17.7 Intentionally omitted

3.17.8 To assist Omnitrans with management of the Omnitrans Services, and to ensure safe operation of the RPRS, SCRRA shall provide Omnitrans designated personnel (i) access to two (2) "look ahead" screens for the San Gabriel Subdivision of SCRRA, and (ii) access to "Industry Safe" Safety Management Software [\(or any similar replacement software\)](#) portals for oversight and reporting.

Omnitrans shall comply with all confidentiality and other requirements of SCRRA in accessing or using such software. SBCTA shall reimburse SCRRA for any costs associated with providing Omnitrans the right to use and access the above listed software systems, as included in the Approved Budget.

3.17.9 For compliance purposes, SCRRA shall provide timely access to the Omnitrans Authorized Representative of "head in video recordings" from any Metrolink Commuter Rail Service trains operating on the RPRSA. Such access shall be in accordance with all applicable laws and SCRRA policies.

3.18 Relationship to Other Contractors

3.18.1 Regular Communication

3.18.1.1 Omnitrans and its Contractors shall communicate with the MOW Contractor, Right of Way Contractor, Dispatch Contractor, SCRRA, and SBCTA regularly and as required to ensure the ability of each Contractor to deliver the services required by their respective Contracts. Omnitrans shall be knowledgeable of the MOW Contractors', Right of Way Contractors' and Dispatch Contractor's requirements to meet service demands and shall make reasonable efforts to advise such Contractors of any operating anomaly or Rolling Stock or Equipment deficiency of which Omnitrans is aware that may affect the RPRS. SBCTA and SCRRA shall require their Contractors operate in a consistent manner. Omnitrans shall communicate identified issues raised with SBCTA or SCRRA Contractors to the SBCTA and SCRRA Authorized Representatives,

and the Parties shall agree upon any actions necessary for correction by the applicable Party's Contractors. SBCTA or SCRRA, as applicable, shall ensure that any agreed upon corrections are made by its Contractors.

3.18.1.2 SCRRA and its Contractors shall communicate with the MOE Contractor, the Right of Way Contractor, the Rail Operations Services Contractor, Omnitrans and SBCTA regularly and as required to ensure the ability of each Contractor to deliver the services required by their respective contracts. SCRRA shall be knowledgeable of the MOE Contractor's, the Right of Way Contractor's, and the Rail Operations Services Contractor's requirements to meet service demands and shall make reasonable efforts to advise such Contractors of any operating anomaly or right-of-way deficiency that may affect the service. SBCTA and Omnitrans shall require their Contractors to take on reciprocal obligations. SCRRA shall communicate identified issues raised with SBCTA or Omnitrans Contractors to the SBCTA and Omnitrans Authorized Representatives, and the Parties shall agree upon any actions necessary for correction by the applicable Party's Contractors. SBCTA or Omnitrans, as applicable, shall ensure that any agreed upon corrections are made by its Contractors.

3.18.1.3 Notwithstanding the provisions above, any written contracts made with Contractors of a Party shall include a copy to the Authorized Representative of that Party to ensure the ability of each Party to manage its respective Contractors and Services.

3.18.2 Coordination of Efforts

3.18.2.1 SBCTA shall require the Right of Way Contractor, SCRRA dispatchers, any other employees, and any Third-Party Contractors to work with Omnitrans and SCRRA to establish procedures for effective and efficient cooperation between and among them for the benefit of the Redlands Passenger Rail Project and the RPRS.

- 3.18.2.2 SCRRRA shall require the MOW Contractor, Dispatch Contractor, and any other SCRRRA Contractors to work with SBCTA and Omnitrans to establish procedures for effective and efficient cooperation between and among them for the benefit of the RPRP and the RPRS.
- 3.18.2.3 Omnitrans shall require the MOE Contractor, Rail Operations Services Contractor, and any other Omnitrans Contractors to work with SCRRRA and SBCTA to establish procedures for effective and efficient cooperation between and among them for the benefit of the RPRP and the RPRS.
- 3.18.2.4 Notwithstanding the provisions above, any written contacts regarding the Services made between or amongst Contractors of the Parties shall include a copy to the Authorized Representatives of the relevant Parties to ensure the ability of each Party to manage its respective Contractors and Services.

3.18.3 Safety Coordination. Omnitrans and SCRRRA shall comply with all applicable safety laws, standards, codes, rules, and regulations. Omnitrans and SCRRRA shall cooperate and coordinate with Tenant Railroads, the Dispatch Contractor, the MOW Contractor, the Right of Way Contractor and any Third-Party Contractors on safety matters. Omnitrans and SCRRRA shall promptly comply with any specific safety instructions or directions given by any duly authorized regulatory agency.

3.18.4 Provision of Facilities for Omnitrans. SBCTA shall provide a space for Omnitrans to use for provision of the Omnitrans Services at an SBCTA facility that is mutually agreeable to the Parties.

3.19 Hiring of Personnel to Provide the Services

3.19.1 Hiring Practices. Omnitrans and SCRRRA shall rely upon their own employees or contract with Contractors who shall provide labor, administrative, professional, and supervisory personnel required to provide their respective Services. Pursuant to Section 3.2.1.5 above, and except as provided therein, Omnitrans may contract with third parties to provide any of the Omnitrans

Services. SCRRA may contract with third parties to provide any of the SCRRA services.

3.19.2 Personnel Qualifications

3.19.2.1 All Omnitrans and SCRRA personnel and Contractors who are engaged in the provision of the Services shall be Qualified and able to perform the tasks included in the position for which the individual is hired.

3.19.2.2 Omnitrans and SCRRA, will each establish criteria and prescribe qualifications that will be used in determining the qualifications for hiring new employees for the Redlands Passenger Rail Project and RPRS, and will require their respective Contractors to use such criteria and qualifications in their hiring practices. Disqualification for employment, or a permanent bar from employment, on another commuter rail system, whether operated by an SCRRA or Omnitrans Contractor or not, or from operation of intercity passenger rail service by a host railroad on that railroad's lines, may disqualify an applicant from employment in the RPRS, if the prospective employer determines that the basis for disqualification or debarment is sufficient to warrant disqualification from employment on the RPRS. Omnitrans and SCRRA, and their Contractors, shall require criminal background checks in accordance with their respective Background Check Policies and will not hire or employ any person in the RPRS if such person has a disqualifying criminal history pursuant to those Policies. Omnitrans and SCRRA shall ensure that all personnel hired by them or their respective Contractors will have taken and passed all required training courses appropriate for the craft prior to being engaged in the provision of the Services.

3.19.3 Employee Compensation

3.19.3.1 Omnitrans and SCRRA will each be solely responsible for determination of and payment of the wages and benefits and other terms and conditions of employment of their respective employees;

provided, however, that Omnitrans and SCRRA shall comply with any applicable mandatory state or federal prevailing wage rate, safety and wage-hour laws. Omnitrans and SCRRA shall take steps to ensure that their respective Contractors similarly comply.

- 3.19.3.2 Omnitrans and SCRRA shall comply with all applicable laws, regulations, rules, and procedures respecting employer's liability, compensation for workers' job-related injuries, unemployment insurance, and other forms of social security or railroad retirement, and also with respect to any other required withholding from the wages of employees.

3.19.4 Availability of Employee Records

- 3.19.4.1 Within five (5) business days of a request by a Party, Omnitrans or SCRRA, whichever is the Party subject to the request, shall grant access to and permit the copying of: the records of any employee regarding drug and alcohol testing, efficiency testing, discipline, competency test, qualifications, training, locomotive engineer certification, motor vehicle operator license records, and criminal violations, provided that the requested records must directly relate to the performance of any safety sensitive aspect of the Omnitrans Services or SCRRA Services, as applicable, by such employee. Neither Omnitrans nor SCRRA shall be required to disclose any records if doing so would violate or potentially violate applicable law, as determined in the sole but reasonable judgment of the Party to whom the request for disclosure is made. Any information received pursuant to this subsection shall be accorded the confidentiality required by law. All records must be made available in San Bernardino County for inspection in either hard copy or electronic format.

3.20 Contractors

- 3.20.1 Omnitrans and SCRRA shall follow their adopted FTA-compliant procurement policies and procedures in undertaking procurements subject to reimbursement by SBCTA under this Contract. Omnitrans and SCRRA shall each bear their

own costs of any procurement undertaken pursuant to policies and procedures rejected by the State of California or the FTA.

3.20.2 Each agreement with a Contractor entered into after the Effective Date shall require the Contractor to be bound by and comply with the applicable terms and conditions of this Contract, as well as any other obligations that Omnitrans or SCRRA, respectively, may require, and shall provide that the other Parties to this Contract are indemnified parties and additional insureds under such Contractor agreements, and third-party beneficiaries as relates to the indemnification and insurance provisions. Copies of all contracts between Omnitrans or SCRRA and their respective Contractors shall be provided to the other Parties to this Contract promptly after execution of such contracts. Omnitrans shall remain solely responsible for any work for which it employs a Contractor, and neither SBCTA nor SCRRA shall have any obligation to such Contractors whatsoever. SCRRA shall remain solely responsible for any SCRRA Services for which it employs a Contractor, and neither SBCTA nor Omnitrans shall have any obligation to such Contractors whatsoever. All employees of Omnitrans Contractors and SCRRA Contractors shall be Qualified for the jobs those individuals perform. Any such employee of an Omnitrans Contractor or SCRRA Contractor who is not Qualified shall be removed from the Redlands Passenger Rail Project Services.

3.20.3 Should SBCTA be dissatisfied with a Contractor's performance as a result of the Contractor's failure to comply with its contractual requirements, SBCTA shall so notify Omnitrans or SCRRA, as appropriate, and the Parties shall discuss remedies to the situation. Following these discussions, should the situation fail to be resolved to the reasonable satisfaction of SBCTA, SBCTA shall notify the applicable Party, in writing, to provide a written remedial action plan within thirty (30) days unless the involved Parties agree in writing to a different remedial action.

3.21 Reports

3.21.1 General

Omnitrans and SCRRRA shall provide the other Parties the reports identified in **Exhibit 4** at the times listed therein. In addition, Omnitrans and SCRRRA shall each submit to SBCTA copies of any reports they are required to file with any federal, state or local governmental agency that pertain to the RPRP or RPRS. When requested by another Party, Omnitrans or SCRRRA, as applicable, shall provide information regarding their respective Services that the requesting Party reasonably requires for reports it is required to submit to any federal, state or local governmental agency.

3.21.2 Notification Requirement. Upon receipt of a request, Omnitrans or SCRRRA shall in a timely manner provide to the requesting Party copies of any citations or complaints issued by an enforcement or regulatory body involving the Services or the Service Property. Omnitrans or SCRRRA, as applicable, will advise the other Parties of the disposition of such citations or complaints. Omnitrans and SCRRRA agree to keep full and accurate records required herein, and to provide the other Parties at their request with such other reports or information as will fulfill the purpose described in the previous sentence.

3.21.3 Non-Disclosure of Reports. All reports prepared pursuant to this Contract shall be the property of the preparing Party, and except as required by applicable law, no Party shall release or disclose any of the contents of a report provided by another Party without the prior written approval of the preparing Party. In the case of any disclosure required by law, a Party shall notify, in writing, the preparing Party in advance of such disclosure.

3.22 Drug and Alcohol Testing

3.22.1 Omnitrans and SCRRRA shall each maintain and comply with, and ensure their respective Contractors comply with, an FRA-approved Drug and Alcohol Testing program for all Hours of Service Employees throughout the term of this Contract. These programs will cover pre-employment testing, random drug and alcohol testing, and post-accident testing. Omnitrans and SCRRRA shall each require their respective Contractors to use an FRA-compliant program to cover reasonable cause testing, reasonable suspicion testing, follow-up testing, and a voluntary referral program. Omnitrans and SCRRRA shall each ensure any

changes to their Drug and Alcohol testing program are submitted to the FRA prior to implementing any such changes with respect to the Services, and shall require the same of their respective Contractors.

3.23 Relationship with Other Carriers

- 3.23.1 Omnitrans and SCRRA expressly acknowledge that agreements exist between SBCTA and BNSF Railway Company (formerly the Atchison, Topeka and Santa Fe Railway Company) governing lines included in the Service Property. Should questions arise regarding the interpretation of any agreements with BNSF Railway Company or other Third-Party Railroads, those questions shall be resolved by SBCTA at its sole discretion. SBCTA agrees that it will consult with Omnitrans and SCRRA prior to making any changes to any provision of such agreements which affect Omnitrans and SCRRA's provision of their Services, and shall not make any changes that impact the ability of Omnitrans or SCRRA to safely and efficiently provide those Services.
- 3.23.2 Omnitrans further expressly understands that this Contract does not grant it the exclusive right to operate passenger rail service or to engage in the activities required for performance of the Services on the RPRSA. Omnitrans further expressly acknowledges that SCRRA may operate commuter rail service on the RPRSA and that SBCTA may at its sole discretion enter into a future access agreement with Third-Party Railroads for the provision of additional passenger rail service, provided that SBCTA shall ensure that such other uses do not interfere with the safe and efficient operation of the Omnitrans and SCRRA Services. Prior to granting such rights, SBCTA shall confer with Omnitrans and SCRRA. Omnitrans and SCRRA agree to cooperate with such Third-Party Railroads. SBCTA shall ensure that appropriate Dispatch Services are provided to accommodate all uses on the RPRSA.

3.24 Accounting Standards

Omnitrans and SCRRA shall maintain the books and records related to their respective Services in accordance with Generally Accepted Accounting Principles.

3.25 Response to Request for Assurances

SBCTA may at its sole discretion and at any time during the term of this Contract request Omnitrans to ask the MOE Services or Rail Operations Services Contractor to

provide SBCTA with evidence of the Contractor's continuing financial ability to undertake and fulfill its contractual obligations. If, at the time of such request, the applicable Contractor has an "Investment Grade" or better rating from any major rating agency (i.e., Moody's Investor Services, Standard & Poor's, or Fitch's), it shall be deemed to have the necessary financial ability and need not provide any further evidence. If, at the time of such request, the particular Contractor does not have such an "Investment Grade" or better rating, it shall provide evidence of continuing financial ability, which SBCTA may submit to an independent, outside certified public accountant or such other qualified professional with expertise in analyzing financial statements of participants in the rail passenger and/or rail transit industries (either referred to as a "Rail Industry Financial Professional") for a determination as to the particular Contractor's financial ability to undertake and fulfill its contractual obligations. Areas to be examined may include, but are not limited to, internal liquidity and financial risk. If the Rail Industry Financial Professional determines that a particular Contractor does not have such requisite financial ability, that Contractor will respond promptly to such determination. If after review of the Contractor's response, SBCTA concludes that the Contractor has not provided sufficient evidence of such requisite financial ability, SBCTA may, at its sole discretion, require Omnitrans to terminate the Contract with that Contractor, for convenience or cause, as determined appropriate by Omnitrans, consistent with the terms of the applicable Contract.

4. Costs, Budgeting and Compensation

4.1 Costs

4.1.1 It is the desire of SBCTA and SCRRA to account for the costs associated with the RPRSA independently of expenses for SBCTA's share of the existing Metrolink operation. It is also the desire of SBCTA to individually account for the costs of RPRSA incurred by SCRRA and Omnitrans separately.

The cost components for Omnitrans, in general, consist of ROSC cost associated with RPRS operations, operation of the vehicle maintenance facility, maintenance of the RPRT, Management Services, insurance premiums, and the self-insured retention as described in more detail in Section 4.1.2.

The cost components for SCRRRA, in general, consist of dispatching, MOW, and costs specific to Metrolink operations as described in more detail in Section 4.1.3.

4.1.2 Omnitrans Direct Costs

The ROSC will be responsible for the provision of the operation and maintenance of the RPRT and RPRS. The contract will be competitively procured and all costs associated with the contractor's performance will be included in the Omnitrans direct costs. The ROSC will be selected in the future. Once the contract has been approved, it will be included in this agreement as a component of Exhibit 5.

4.1.2.1 For the purpose of ensuring that the Parties are able to submit any reports required by applicable local, state and federal regulators, Omnitrans and all its Contractors shall preserve a record of all Direct Costs incurred directly by Omnitrans and its Contractors in providing or arranging for the provision of the Services, including the actual cost paid by Omnitrans to its Contractors, as described in **Exhibit 5**. The Direct Costs record has not been prepared as of the execution of this Agreement, but will be attached hereto as Exhibit 5 upon its completion. Such Direct Costs shall include all costs of complying with the terms of this Contract. Direct costs and allocated costs under this Agreement shall be tracked by Omnitrans under a dedicated budget section. Allocations of General and Administrative overhead shall include the costs for Omnitrans staff efforts including risk management (including, but not limited to, self-insured retention for Arrow policy), planning, finance, and administration.

4.1.2.2 Direct Costs shall include the actual hourly rate plus expenses incurred, by job category, for all Covered Employee labor hours

4.1.2.3 Direct Costs shall include the Employees' actual salary plus expenses for all exempt Omnitrans or Contractor employee labor required for provision of the Services.

- 4.1.2.4 Non-labor costs attributed to provision of the Services under this Contract shall reflect the actual cost paid by Omnitrans.
- 4.1.2.5 Employee benefit and injury costs as further described in **Exhibit 6** shall be recorded as Direct Costs and shall be applied as the audited indirect rate over appropriate employee labor costs.
- 4.1.2.6 Direct Costs shall include all costs incurred by Omnitrans in providing bus bridges and for public outreach during RPRS operation interruptions and outages for any cause, other than an Excluded Loss (as defined in the indemnification provisions) caused by Omnitrans.

4.1.3 SCRRRA Direct Costs

- 4.1.3.1 For the purpose of ensuring that the Parties are able to submit any reports required by applicable local, state and federal regulators, SCRRRA and all of its Contractors shall preserve a record of all Direct Costs incurred directly by SCRRRA and its Contractors in providing or arranging for the provision of the Services, including the actual cost paid by SCRRRA to its respective Contractors, as described in **Exhibit 5**. The Direct Costs report has not been prepared as of the execution of this Agreement, but will be attached hereto as Exhibit 5 upon its completion. Such Direct Costs shall include all costs of complying with the terms of this Contract. Direct costs and allocated costs under this Agreement shall be tracked by SCRRRA under a dedicated Maintenance of Way project. Allocations of General and Administrative overhead and collector pool Maintenance of Way costs shall be consistent with SCRRRA's track mile allocation methodology and with allocations to other SCRRRA line segments. General and Administrative overhead and collector pool Maintenance of Way costs shall include the costs for SCRRRA staff efforts including risk management, PTC, MOW, signals and supervision, capital maintenance and planning and finance and administration.

- 4.1.3.2 Direct Costs shall include the actual hourly rate plus expenses incurred for fringe benefits, paid time off accruals and allocated General and Administrative overhead if applicable, by job category, for all SCRRA and Contractor Covered Employee labor hours.
- 4.1.3.3 Direct Costs shall include the Employees' actual salary plus expenses incurred for fringe benefits, paid time off accruals and allocated General and Administrative overhead if applicable, for all exempt SCRRA or Contractor employee labor required for provision of the Services.
- 4.1.3.4 Non-labor costs attributed to provision of the Services under this Contract shall reflect the actual cost paid by SCRRA and shall include General and Administrative overhead and collector pool Maintenance of Way allocations.
- 4.1.3.5 Employee benefit and injury costs as further described in **Exhibit 6** shall be recorded as Direct Costs and shall be included in audited fringe benefit rates over appropriate employee labor costs.
- 4.1.3.6 Dispatching per train mile cost
SBCTA shall pay to SCRRA a dispatching fee per train mile for the dispatching of the RPRS. The current dispatching rate is \$1.06 per train mile, as of April 1, 2018. The rate is indexed annually every April 1 in accordance with the Association of American Railroad All-Inclusive Index Less Fuel for the West.

4.2 Annual Budget Process – Omnitrans

4.2.1 Preparation of a Service Plan

In accordance with Section 3, SBCTA shall be responsible for funding the cost of Omnitrans' provision of the Services. It is the intent of the Parties that SBCTA shall fully fund all costs of providing the Services other than costs which are offset by revenue generated from operation of the Services and collected by Omnitrans. Prior to January 31 of each year during the term of the Contract, Omnitrans will prepare and submit to SBCTA a Service Plan

developed in coordination with SCRRA for the next Fiscal Year that shall describe the Services Omnitrans will provide in the next Fiscal Year, and will form the basis for the Approved Budget. Omnitrans shall submit a final budget by May 1 of each year during the term of the Contract. SBCTA reserves the right to exclude from the Service Plan any aspect of RPRS that may have been included in the Service Plan in prior years, provided that such exclusion does not impact Omnitrans' ability to safely and efficiently provide the Services.

4.2.2 Preparation of Proposed Budget

4.2.2.1 As part of the process of developing SBCTA's funding for Omnitrans, Omnitrans shall prepare for SBCTA a proposed budget, in a format to be determined by SBCTA, for provision of the Services described in the Service Plan for the next Fiscal Year. The proposed budget shall reflect actual operations and levels of Services being provided during the then current Fiscal Year, except as modified by the Service Plan for the coming Fiscal Year. The proposed budget shall:

- a. Be consistent with the Service Plan;
- b. Be based upon the actual or projected labor rates for the applicable Fiscal Year;
- c. Be based upon actual or projected annual salaries for exempt employees;
- d. Be based upon actual costs payable to Omnitrans Contractors for the applicable Fiscal Year;
- e. Include projected employee benefit and injury costs;
- f. List all positions, both exempt and covered, whose time will be chargeable directly during the coming Fiscal Year;
- g. Specify Direct Costs, General and Administrative (G&A) Costs and Management Fee projected for the next Fiscal Year;
- h. Account for fares if credited against costs;

- i. Provide an estimate of expected retroactive wage increases, if any;
- j. Specify the assumptions used in developing the proposed budget;
- k. Include major procurements required to complete the Omnitrans Services, including costs for software and hardware programs, non-revenue vehicles, and other similar items.

4.2.2.2 The proposed budget shall not include the Direct Costs Omnitrans may incur in clearing wrecks, operating special trains, assisting Third Parties who are permitted access to the Service Property, or any extra work determined by SBCTA to be outside regular operations. [Such extra work or costs shall be separately funded by SBCTA.](#)

4.2.3 Controllable Items

As it prepares and submits the proposed budget, Omnitrans shall submit to SBCTA a detailed backup itemizing each Controllable Item contained in the proposed budget.

4.2.4 SBCTA Review of Proposed Budget

As part of the process for determining SBCTA's annual funding for Omnitrans, fifteen (15) days after Omnitrans submits its proposed budget for each year, SBCTA staff will present to Omnitrans its comments on the proposed budget and all other proposals Omnitrans has provided pursuant to Section 4.2.2 – 4.2.3, above; SBCTA's comments will specify the item(s), if any, to which SBCTA objects, and the basis for each objection. SBCTA and Omnitrans shall promptly negotiate with respect to any items to which SBCTA objects and shall endeavor in good faith to complete the negotiation process within forty-five (45) days. If the Parties are unable to complete negotiations within this timeframe, the matter shall be referred to Expedited Dispute Resolution as provided in 4.4 of this Contract. SBCTA staff will review the proposed budget as part of the process for determining SBCTA's total annual funding for Omnitrans and will identify the funds needed for the RPRS separately [from the remainder of the](#)

[annual Omnitrans funding budget](#) in the annual allocation request submitted to the SBCTA Board.

4.2.5 Budget Amendment for Added Services or Funding Shortfalls

4.2.5.1 Upon receipt of a written request from SBCTA to perform or arrange for the performance of added tasks (other than those described in Section 4.2.5.24, below) not included in the Approved Budget in effect at the time, Omnitrans shall, within five (5) business days, prepare and submit a cost estimate for performing the work. The Parties shall agree upon written amendments to the Approved Budget to reflect those changes, and shall commence with the added work within a time frame to be agreed to by the Parties. Any such additional allocation of funds and budget amendment shall be subject to authorization by the SBCTA Board, which may at its sole discretion delegate authority to the Executive Director to approve defined fund allocations and/or budget amendments.

4.2.5.2 Procedures for Changes in Services or Service Levels

a. General

Substantial changes in Service Levels requiring additional allocation of funds by SBCTA shall be coordinated with SBCTA a minimum of three (3) months in advance of starting the FTA Title VI process so that ongoing funding availability may be determined and presented to the SBCTA Board for approval in a timely manner.

b. SBCTA may request at any time, upon reasonable notice, that Omnitrans provide or arrange for the provision of Modified Services over the RPRS Area. Should there be additional cost associated with the requested Modified Services, SBCTA agrees to identify available funding either through an additional allocation of funds, as approved by the SBCTA Board, or by use of available surplus funds already allocated.

4.2.5.3 In the case of any funding shortfall resulting from incorrect assumptions made in the budgeting process or from increased costs

of operating the Services due to other factors, the Parties shall meet and confer to discuss any needed amendments to the then-current Annual Budget.

4.3 Annual Budget Process – SCRRA

4.3.1 Preparation of a Service Plan

Prior to January 31 of each year during the term of the Contract, SCRRA will prepare and submit to SBCTA a preliminary Service Plan developed in coordination with Omnitrans for the next Fiscal Year that shall describe the Services SCRRA will provide in the next Fiscal Year, which will form the basis for the Approved Budget. SCRRA shall submit a final budget by May 1 of each year during the term of the Contract. SBCTA reserves the right to exclude from the Service Plan any aspect of RPRS that may have been included in the Service Plan in prior years.

4.3.2. Preparation of Proposed Annual Budget for Non-Capital Expense

4.3.2.1 SCRRA shall prepare for SBCTA a proposed budget, in a format proposed by SBCTA and approved by SCRRA, for provision of the SCRRA Services described in the Service Plan for the next Fiscal Year not later than May 1 of the previous fiscal year. The proposed budget shall reflect actual operations and levels of Services being provided during the then current Fiscal Year, except as modified by the Service Plan for the coming Fiscal Year. The proposed budget shall:

- a. Be consistent with the Service Plan;
- b. Be based upon the actual or projected labor rates for the applicable Fiscal Year;
- c. Be based upon actual or projected annual salaries for exempt employees;
- d. Be based upon actual or projected costs payable to SCRRA Contractors for the applicable Fiscal Year;

- e. Include projected employee benefit and injury costs;
- f. Specify Direct Costs and General and Administrative (G&A) Costs projected for the next Fiscal Year;
- g. Provide an estimate of expected retroactive wage increases, if any;
- h. Not include any charges for the operation of SCRRA trains east of the San Bernardino Transit Center. Such trains are considered part of the SCRRA San Bernardino Line service, the funding of which is subject to that certain Joint Powers Authority (JPA) agreement which details the relationships amongst the five SCRRA member agencies; and
- i. Specify the assumptions used in developing the proposed budget.

4.3.3 Controllable Items

As it prepares and submits the proposed budget, SCRRA shall submit to SBCTA a detailed backup itemizing each Controllable Item with an expected acquisition value over \$5,000 contained in the proposed budget.

4.3.4 Capital Expenditures

SBCTA and SCRRA will jointly develop an annual, five (5) year, ten (10) year and twenty (20) year Capital Maintenance Program to ensure the Service Property remains in a state of good repair. SBCTA shall provide funding for the Capital Maintenance Program for the RPRS separately from the Capital Maintenance Program for the SCRRA San Gabriel subdivision on an annual basis.

4.3.5 SBCTA Review of Proposed Non-Capital and Capital Budgets

As part of the process for determining SBCTA's annual funding for SCRRA, fifteen (15) days after SCRRA submits its proposed budget for each year SBCTA shall present to SCRRA comments on the proposed budget and all other proposals SCRRA has provided pursuant to Section 4.3.1 – 4.3.4, above, which will specify the item(s), if any, to which SBCTA objects, and the basis for each objection. SBCTA and SCRRA shall promptly negotiate with respect to

any items to which SBCTA objects and shall endeavor in good faith to complete the negotiation process within forty-five (45) days. If the Parties are unable to complete negotiations within this timeframe, the matter shall be referred to Expedited Dispute Resolution as provided in 4.4 of this Contract. SBCTA shall review the proposed budget as part of the process for determining SBCTA's total annual funding for SCRRRA and will identify the funds needed for the RPRS separately in the annual allocation request submitted to the SBCTA Board.

4.3.6 Budget Amendment for Added Services

Upon receipt of a written request from SBCTA to perform or arrange for the performance of added tasks (other than those described in Section 4.3.7, below) not included in the Approved Budget in effect at the time, SCRRRA shall, within forty-five (45) business days, prepare and submit a cost estimate for performing the work. The Parties shall agree upon written amendments to the Approved Budget to reflect those changes, and shall commence with the added work within a time frame to be agreed to by the Parties. Any such additional allocation of funds and budget amendment shall be subject to authorization by the SBCTA Board, which may at its sole discretion delegate authority to the Executive Director to approve defined fund allocations and/or budget amendments.

4.3.7 Procedures for Changes in Services or Service Levels

4.3.7.1 General: Substantial changes in Service Levels requiring additional allocation of funds by SBCTA shall be coordinated with SBCTA a minimum of three (3) months in advance of starting the FTA Title VI process so that ongoing funding availability may be determined and presented to the SBCTA Board for approval in a timely manner.

4.3.7.2 SBCTA may request at any time, upon reasonable notice, that SCRRRA provide or arrange for the provision of Modified Services over the RPRSA. Should there be additional costs associated with the Modified Services, SBCTA agrees to identify available funding either through an additional allocation of funds, as approved by the

SBCTA Board, or by use of available surplus funds already allocated.

4.4 Expedited Dispute Resolution for Budget Matters

If the Parties are unable to agree upon a proposed budget or revisions to an Approved Budget, SBCTA's Director of Transit and Rail Programs will meet with Omnitrans' Rail Director or SCRRA's [Deputy Chief Operating Officer], as appropriate, and attempt to resolve the dispute. If those two individuals cannot resolve the matter, the dispute shall be referred to the Chief Executive Officer/Executive Director of the two Parties. If those two are unable to reach agreement on the disputed matter and either Party requests use of the Expedited Dispute Resolution ("EDR") process, the procedure set forth in Section 5.18.1, shall apply; provided, however, if the SBCTA Board determines it does not have available funds to meet the budget for RPRS that is approved in accordance with that procedure, then the Arbiter shall have no authority to require SBCTA's approval of the budget, and Omnitrans or SCRRA, as applicable, shall be entitled, within the constraints of applicable law and regulations, to reduce the level of their respective Services consistent with budget availability.

4.5 Payment

4.5.1 To Omnitrans

SBCTA shall reimburse Omnitrans for the actual costs incurred by Omnitrans, with payment to be made within thirty (30) days of receipt of an invoice from Omnitrans, in a form reasonably acceptable to SBCTA, until the Approved Budget takes effect.

4.5.1.1 Once SBCTA has adopted an Approved Budget, SBCTA shall pay Omnitrans for its performance of the Services in accordance with established practices for annual funding of Omnitrans. Generally, such payment will be made as follows:

- a. On an annual basis, SBCTA shall deposit in an account designated by Omnitrans the full amount included in the

Approved Budget for the Services. Deposits shall be made within 30 days of the budget being adopted by SBCTA.

- b. Deposits of additional funds pursuant to a budget amendment made pursuant to 4.2.5. shall be made within 30 days of SBCTA's approval of the budget amendment.

4.5.2 To SCRRA

SCRRA shall submit an invoice one month prior to the beginning of each calendar quarter for the budgeted operating costs (as described in Section 4.1.1.6) billable to SBCTA. SCRRA shall invoice for capital project costs separately after costs have been incurred. SBCTA shall pay any undisputed portion of such invoice within thirty (30) days of receipt of such invoice. In the event of a dispute over any portion of the invoice, SBCTA shall pay the undisputed amount and any dispute shall be submitted to dispute resolution in accordance with Section 4.16.1.

4.6 Annual Comparison of Actual Costs and Revenues to Budget

Within 30 days of their respective Boards' approval of the Comprehensive Annual Financial Report (CAFR), Omnitrans and SCRRA shall each provide to SBCTA an accounting showing actual costs and revenues. To the extent the accounting reflects that Omnitrans and/or SCRRA was under budget (i.e., net expenditures are less than what was budgeted), that amount will be credited to SBCTA's funding to Omnitrans or SCRRA, as is appropriate, for the next fiscal year. To the extent the accounting reflects that Omnitrans or SCRRA was over budget (i.e., net expenditures exceed the budgeted amount), SBCTA will, within thirty (30) days of SBCTA Board Approval, reimburse Omnitrans or SCRRA, as appropriate, for that amount.

5 General Conditions *Under Review by Legal of all Parties*

5.1 Term; Period of Performance

The Contract term will commence on the Effective Date and will continue in force for a period of five (5) years. Upon expiration thereof, the Contract will continue in force

thereafter for successive terms of five (5) years each, unless notice of termination is provided as follows: Any Party may notify the others in writing of its intent to terminate this Contract not later than one (1) year prior to the expiration of the then-current term, in which case the Contract shall terminate at the end of the then-current term.

5.2 Access to Equipment and Property

5.2.1. General

At no cost to Omnitrans, SCRRA, or their Contractors, SBCTA shall provide, and shall allow Omnitrans, SCRRA, and their Contractors the necessary access to the portions of the Service Property, Equipment, and machinery necessary for and to be used in the provision of the Services. SBCTA hereby grants Omnitrans, SCRRA, and their Contractors the right to enter upon and utilize the foregoing for the purpose of performance of Omnitrans' and SCRRA's obligations under this Contract. Properly qualified staff may enter the Service Property without a right of entry permit in the course of their duties.

5.2.2 Changes to Service Property

Neither Omnitrans, SCRRA nor their Contractors shall make any material changes to the Service Property, Rolling Stock or Equipment to be used in providing the Services without SBCTA's prior written approval, unless an emergency exists or there is a change in regulatory requirements.

5.2.3 SBCTA Access

SBCTA and/or its designees will have access at all times to any SBCTA real or personal property, provided that in exercising such access rights, SBCTA complies with all SCRRA safety requirements and shall not unreasonably interfere with the safe and efficient performance of the Services. Properly qualified SBCTA Transit and Rail staff may enter the Service Property without a right of entry permit in the course of their duties.

5.2.4 Omnitrans Access

Omnitrans and/or its designees will have access at all times to any SBCTA real or personal property, provided that in exercising such access rights, Omnitrans complies with all SCRRA safety requirements and shall not unreasonably

interfere with the safe and efficient performance of the Services. Properly qualified Omnitrans Rail staff may enter the Service Property without a right of entry permit in the course of their duties.

5.3 Changes in RPRTs Provided

SBCTA has the right to request Omnitrans to make specific improvements or additions to, or to change entirely the leased RPRTs, and Omnitrans shall make every reasonable effort to implement operations using such different RPRTs as soon as possible; provided, however, that no such change shall have any adverse effect on Omnitrans' ability to provide or arrange for the provision of the Services in accordance with Omnitrans' obligations under this Contract within the Approved Budget.

5.4 SBCTA's Right to Information

SBCTA shall have the right to obtain from Omnitrans and SCRRA any information related to the Services or the Service Property that Omnitrans or SCRRA possess and is legally permitted to provide to SBCTA, which Omnitrans or SCRRA shall provide within ten (10) Days of SBCTA's request; provided, however, that if Omnitrans or SCRRA reasonably requires additional time beyond ten (10) Days, it shall notify SBCTA and shall provide the information within the stated additional time. Omnitrans and SCRRA shall not be required to provide information that is subject to attorney-client privilege.

5.5 Rights in Property

All property including but not limited to parts, materials, supplies, non-revenue vehicles and other Equipment purchased by Omnitrans or SCRRA under this agreement and intended solely for the use of and solely paid for by SBCTA, shall be hereafter referred to as "SBCTA Property". Title to SBCTA Property shall pass to and vest in SBCTA upon the later of purchase or payment for such property by SBCTA. Omnitrans and SCRRA shall keep a record of the acquisition and use of such SBCTA Property. Title to SBCTA Property shall not be affected by its incorporation into or attachment to any property not owned by SBCTA, nor shall SBCTA Property become a fixture or lose its identity as personal property by being attached to any real property subject to the terms of any other agreement in place pertaining to such property.

5.5.1. Neither Omnitrans nor SCRRA shall cause or permit the attachment of any lien to any SBCTA Property, the Service Property or any Rolling Stock or other Equipment or materials provided by SBCTA for use in the provision of the Services. In the event that any action or inaction on the part of Omnitrans or SCRRA causes such a lien to be placed, Omnitrans or SCRRA shall:

- a. Immediately notify SBCTA of the lien; and
- b. Within five (5) days of its receipt of notice that the lien has been placed take all action required to cause discharge of any such lien.

5.5.1.1 The title transferred to SBCTA as described in subsection 5.5.1.1 above shall, in each case, be good, and free and clear from any and all security interests, liens, and/or other encumbrances. Neither Omnitrans nor SCRRA shall pledge or otherwise encumber the items in any manner that would result in any lien, security interest, charge, and/or claim upon or against said items.

5.5.1.2 Upon SBCTA's request, Omnitrans or SCRRA shall promptly execute, acknowledge, and deliver to SBCTA proper bills of sale or other written instruments of title for the SBCTA Property in a form as required by SBCTA; said instruments shall convey to SBCTA title to the SBCTA Property free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances imposed by Omnitrans or SCRRA.

5.5.1.3 SBCTA Property shall be used only for performing these Services, unless otherwise provided in this Contract or approved by SBCTA.

5.5.2 Property Administration

Omnitrans and SCRRA shall use, maintain, repair, protect, and preserve SBCTA Property in accordance with sound business practices.

5.5.3 Contractors

Omnitrans and SCRRA shall include in all contracts with their Contractors the above provisions of this Section 5.5 with respect to any property purchased by the Contractor for SBCTA.

5.5.4 Transfer of all SBCTA purchased Property upon Termination

Upon termination of this Contract, Omnitrans and SCRRA shall transfer all SBCTA Property and any RPRTs or other Equipment or materials provided to Omnitrans or SCRRA for use in providing the Services to SBCTA, or at SBCTA's sole discretion to an SBCTA Successor Contractor or other Contractor, in the same condition as when it was acquired, reasonable wear and tear excepted. The foregoing shall not apply to any items which have reached the end of their useful life and have been discarded or otherwise disposed of in accordance with generally applicable policies and procedures.

5.6 Other Contracting Rights

SBCTA reserves the right to remove from Omnitrans or SCRRA any portion of the Services which have not been performed to SBCTA's satisfaction, provided SBCTA provides written notice of the deficiencies and the Party to which the notice is provided has been provided sixty (60) Days to correct the situation. SBCTA may, at its sole discretion, augment or supplant the services that are not within the scope of this Contract with its own forces or forces of another Contractor or agency upon written notice to Omnitrans or SCRRA. Omnitrans and SCRRA shall cooperate fully with SBCTA's staff or Contractors that may be providing such services. Any employee or Contractor of such person, corporation or other entity shall be permitted to perform the contracted functions at any location on the Service Property; provided, however, that no such employee or Contractor shall unreasonably interfere with Omnitrans' and SCRRA's provision of the Services.

5.7 Rights in Technical Data

5.7.1 All SBCTA Protected Materials paid for by SBCTA and that address the performance of the Services or changes thereto shall be the sole property of SBCTA. Upon request of SBCTA, originals of such documents and materials, to the extent such originals are in Omnitrans' or SCRRA's possession at the time of such request, shall be delivered to SBCTA upon completion of the work or termination of the Services. Omnitrans and SCRRA shall be permitted to retain and use copies of such items; however, publication of the material is subject to the written approval of SBCTA.

5.7.2 No SBCTA Protected Materials are to be released by Omnitrans or SCRRA to any other person or agency except as necessary for the performance of the Services or as required by law, regulation, or order including, without limitation, the Public Records Act. Notwithstanding the foregoing, Omnitrans and SCRRA may disclose SBCTA Protected Materials to auditors, members of Congress, to the United States Department of Transportation, to the Surface Transportation Board, or the National Transportation Safety Board, upon receipt of a written request therefore. Any SBCTA Protected Materials, thus disclosed shall be clearly marked on each page as the property of SBCTA, or shall be provided in an envelope or binder clearly marked as the property of SBCTA.

5.8 Advertising

During the term of this Contract, only Omnitrans may use or authorize the use of the interior and exterior of Redlands Passenger Rail Trains for the display of any written or printed advertising, promotional material, or public information notices. Omnitrans shall apply, in its sole discretion, its adopted policies in making determinations related to any such display. Any revenues from such advertisements shall be for the account of Omnitrans and shall be used to offset the costs associated with the provision of the Services. Omnitrans shall provide SBCTA with an annual accounting of such revenues, which shall be used in the preparation of the Approved Budget, and SBCTA shall reduce the amount it is required to pay to Omnitrans in the Approved Budget by the amount Omnitrans has received.

5.9 Labor Protection

5.9.1 Section 13(c) Compliance

Omnitrans and SCRRA will require their Contractors to be legally and financially responsible for any claims or obligations imposed by Section 13(c) of the Federal Transit Act (49 U.S.C. §5333(b)) arising in connection with the provision of Services pursuant to this Contract. Omnitrans and SCRRA shall require their Contractors to defend, indemnify and hold SBCTA harmless for any 13(c) claims or obligations described in this subsection, including but not limited to the termination of this Contract for cause by SBCTA.

5.9.2 Other Labor Protection Obligations

Omnitrans shall ensure that the contracts with its Contractors require the Contractors to assume the cost of any labor protection obligations triggered by such contracts, and by any changes in applicable local, state, or federal ordinances or legislation which affect the Services provided under such contracts. As between SBCTA and Omnitrans, Omnitrans will assume the cost of any labor protection obligations triggered by any agreements between Omnitrans and its employees and by any changes in applicable local, state, or federal ordinances or legislation which affect the Redlands Passenger Rail Project and/or the RPRS and Omnitrans' obligations to its employees who are providing the Services. As between SBCTA and SCRRA, SCRRA will assume the cost of any labor protection obligations triggered by any agreements between SCRRA and its employees.

5.10 [RESERVED]

5.11 Limitations on Covenants Not to Compete

Omnitrans and SCRRA each confirm, and shall require their respective Contractors to confirm, that they have no existing employment agreements that contain covenants not to compete, or that if they have such covenants in their employment agreements, either the covenants are within the scope of one of the California statutorily recognized exceptions, or the covenants clearly state that they are void and unenforceable in California.

- 5.11.1 Omnitrans and SCRRA agree that they and their respective Contractors shall not enter into any employment agreements that contain covenants not to compete, unless such covenants are within the scope of a California statutorily recognized exception that allows the covenant, or clearly states the covenants are void and unenforceable in California or the employee is not in California. Violation of this Section shall be considered a material breach of this Contract and shall entitle SBCTA to take any and all measures and seek any and all remedies provided by this Contract and as authorized by law and equity.

5.12 Access to Service Property by Third Parties

5.12.1 General

SBCTA shall have the right, to permit Third-Party Contractors to enter upon the Service Property subject to compliance with all applicable operating and safety rules and in accordance with SBCTA's Rail Property Policy #31603, and SCRRRA right of entry and safety requirements as noted in Section 3.15.9, and provided that such access shall not interfere with the safe and efficient operation of the Services by Omnitrans and SCRRRA. Before any such Third-Party Contractor is allowed access to the tracks or property adjacent to the tracks that are outside of any yard limits on the Service Property, SBCTA will require that Third-Party Contractor to execute a permit in accordance with SBCTA's policies to enter upon the property and to secure railroad protective liability insurance, naming SBCTA, Omnitrans, SCRRRA, Omnitrans Contractors, SCRRRA Contractors, and any other railroad or Contractor which operates or performs services on that portion of the Service Property, as additional insureds under the policy, as well as such other insurance as determined by SBCTA. The Third-Party Contractor shall provide original counterparts of all policies to the additional insureds. Any such insurance shall remain in effect for one year following completion of the work requiring access to the Service Property.

5.12.2 Notification

When SBCTA allows a Third-Party Contractor to have access to a portion of the Service Property as described in this subsection, SBCTA shall notify Omnitrans and SCRRRA promptly of the scope, purpose, and duration of that Third-Party Contractor's access in advance of the date the Third-Party Contractor is authorized to begin any such work. The Third-Party Contractor shall be required to cooperate with Omnitrans and SCRRRA to ensure that its access to the Service Property shall not interfere with the safe and efficient operation of the Services by Omnitrans and SCRRRA.

5.12.3 Encroachments

All utility crossings, construction, or encroachments upon the Service Property by or for third parties must be approved by SBCTA, SCRRRA, or the Right of

Way Contractor, and shall be coordinated with Omnitrans and SCRRA. Approval by SCRRA of all construction standards, forms, plans, utility crossings, and encroachments shall be a condition precedent to any authorization by SBCTA for work by a third party to proceed. No work or encroachment that interferes with the safe and efficient operation of the Services shall be permitted. Forms and standards may receive a one-time approval until revised. SBCTA reserves the exclusive right to charge a rental or occupancy fee for any such access.

5.13 Inspection and Audit

Omnitrans and SCRRA shall each maintain a complete set of records relating to this Contract in accordance with Generally Accepted Accounting Principles, including but not limited to, all documentation required by FTA and FRA and a complete listing of all Property leased or purchased by Omnitrans, SCRRA and/or their respective Contractors with funds provided by SBCTA to Omnitrans and SCRRA for the Services.

- 5.13.1 SBCTA may, at any time during which records, accounts, work, materials and financial books are maintained in accordance with Section 5.13.3, below, and at its own cost, conduct or have conducted an inspection or audit of any aspect of Omnitrans' or SCRRA's performance of its duties and obligations under this Contract. Upon reasonable notice, Omnitrans and SCRRA shall permit auditors or any other duly authorized agent of SBCTA, the U.S. Department of Transportation (including the FRA and/or the FTA), and the Comptroller General of the U.S. to inspect, examine, and audit all records, accounts, work, financial books, and materials then in Omnitrans' or SCRRA's possession relating to Omnitrans' or SCRRA's performance under this Contract. SBCTA shall also have the right to reproduce any such books, records, and accounts. Copies of all audits and inspections of Omnitrans' or SCRRA's respective performance of its duties and obligations undertaken by or on behalf of SBCTA shall be promptly provided to SBCTA upon request.
- 5.13.2 Intentionally omitted
- 5.13.3 All such books, records, accounts and documents shall be maintained and be accessible to SBCTA for three (3) years after completion or termination of this

Contract or such period of time as may be required by applicable FRA and FTA regulations, whichever is longer. Notwithstanding the foregoing, in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Omnitrans and SCRRA agree to maintain their respective records until SBCTA, the FTA Administrator, or the Comptroller General, or any of their duly authorized representatives, have disposed of such litigation, appeals, claims, or exceptions related thereto. For purposes of audit, the date of completion of the Contract shall be the date of SBCTA's payment for Omnitrans' or SCRRA's final billing (so noted on the invoice), whichever is later, under this Contract.

5.13.4 Except for pre-existing contracts, contracts with Contractors shall include the above provisions with respect to audits. The term "subcontract" for purposes of Federal audit requirements excludes (1) purchase orders not exceeding \$10,000, and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

5.13.5 Any payment by SBCTA shall be subject to a reasonable audit, in accordance with Generally Accepted Auditing Standards, and evaluation of operations, performance, and costs. The scope of such audit and evaluation may be either financial or operational, or both, and may include, in addition to costs and wages reimbursed by SBCTA, Omnitrans' or SCRRA's, as applicable, controls, practices, and procedures and their effect upon the performance of the Services provided or arranged to be provided by Omnitrans or SCRRA. Upon completion of the audit, the applicable Parties shall meet and confer about the results. In the event of any dispute about the results of the audit, SBCTA shall cause its Director of Transit and Rail Programs to meet with Omnitrans' Rail Director or SCRRA's [TITLE], as applicable, and attempt to resolve the dispute. If those two persons cannot resolve the matter, the dispute shall be referred to the applicable Parties' Chief Executive Officer/Executive Director. If those two Officers cannot resolve the dispute, it shall be handled in accordance with Section 5.18.1. Upon completion of the audit and the resolution of any disputes that may arise as a result of the audit, any adjustments required to make any reconciliation required shall be paid or credited, as the case may be, in accordance with the provisions of Section 4.5 of this Contract.

5.14 Emergencies; Force Majeure

5.14.1 Force Majeure

Each Party shall be excused from performance of any of its obligations where such nonperformance is caused by any event beyond the non-performing Party's control which shall include without limitation, any order, rule, or regulation of any federal, state, or local government body, agent, or instrumentality that mandates cessation or interruption of service or that prevents a Party from fulfilling its obligations under this Contract, Acts of God or the public enemy, wars, terrorism, civil disturbances, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, work stoppages or accidents, that disrupt RPRS provided that the Party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, or remove such event in the shortest practical time. The Parties shall cooperate fully with one another and with any other Contractors, and shall use their reasonable best efforts to assist in (where appropriate or where requested) the repair, restoration, or replacement of any property which is necessary for the provision of Services in accordance with then-established train schedules and shall resume normal operations and performance of its other obligations hereunder as soon as reasonably possible.

5.14.2 Operation by Others

If Omnitrans or SCRRRA is excused from performing its obligations under this Contract for any of the Force Majeure reasons listed above, and such an interruption in the Services continues for five (5) Days per Force Majeure occurrence, SBCTA may provide notice to the excused Party of its intent to begin providing the Services with a Third-Party Contractor without liability to the excused Party, but only for the period during which the excused Party is unable to provide the Services. The excused Party shall cooperate with SBCTA and SBCTA's Contractor to effect a seamless transition in such cases.

5.15 Indemnity and Liability

5.15.1 Arrow Passenger Rail Service. For the purposes of the indemnification and insurance provisions only, "Arrow Passenger Rail Service" shall mean the railroad passenger services to be operated by Omnitrans, through the Rail Operations Services Contractor, including maintenance of the RPRT by Omnitrans, through the MOE Contractor, and to be dispatched by SCRRA or the Dispatch Contractor, and all related or ancillary functions that are part of the provision of those services including, but not limited to, MOW services, whether provided by any of the Parties or one of their contractors. Notwithstanding the foregoing, Arrow Passenger Rail Service shall not include Metrolink passenger rail service, even when operating on the tracks shared with Arrow Passenger Rail Service between San Bernardino and Redlands.

5.15.2 For the purposes of the indemnification and insurance provisions only, "Loss(es)" shall mean injuries, damages, losses, claims, demands, penalties, fines or causes of action, of any type or character, whether direct or indirect.

5.15.3 For the purposes of the indemnification and insurance provisions only, "Excluded Loss(es)" shall mean any Losses arising from any act or omission by any Party hereto, or its Contractors, which constitutes fraud, malice, oppression, willful misconduct or any other exclusion from coverage under a standard railroad liability policy, or any Loss to the extent a Contractor of any of the Parties is liable.

5.15.4 Omnitrans shall carry a railroad liability policy covering the Arrow Passenger Rail Service, and shall include SBCTA and SCRRA as additional insureds (the "Arrow Policy"). The policy limit shall be not less than \$350M, with a minimum \$2M self-insured retention. Omnitrans shall keep SBCTA fully informed as to the status of any Arrow claim by providing monthly reports detailing all expenditures of self-insured retention. The Arrow Policy requirements are further detailed in the insurance provisions below. Notwithstanding Omnitrans' indemnification

obligations set forth below, and except for Excluded Losses, SBCTA shall be responsible for the cost of all Losses within the Arrow Policy deductible or self-insured retention, which shall be treated as Omnitrans direct costs, and ~~funded~~reimbursed by SBCTA, pursuant to Section 4.1.2.

- 5.15.5 Except for Excluded Losses, Omnitrans shall indemnify, defend and hold harmless SCRRA and SBCTA and their officers, agents and Contractors from all Losses which (i) arise out of the Arrow Passenger Rail Service and which involve a RPRT, other Omnitrans Rolling Stock or Equipment (and not an SCRRA passenger rail train Rolling Stock or Equipment), or (ii) are premised on an injury to or death of an Omnitrans employee or an employee of an Omnitrans contractor
- 5.15.6 If liability for Losses arising under Section 5.15.5 above exceeds the Arrow Policy limit, and is not an Excluded Loss or a Loss for which a Contractor of any of the Parties is otherwise liable, SBCTA shall be responsible for the costs in excess of the Arrow Policy limit.
- 5.15.7 The Parties acknowledge that as part of its usual operations SCRRA maintains a railroad liability policy covering SCRRA passenger rail trains and other SCRRA Rolling Stock and Equipment. Except for Excluded Losses, SCRRA shall indemnify, defend and hold harmless Omnitrans and SBCTA and their officers, agents and Contractors from all Losses which (i) arise out of an incident involving an SCRRA passenger rail train or other SCRRA Rolling Stock or Equipment (and not a RPRT, Omnitrans Rolling Stock or Equipment), or (ii) are premised on an injury to or death of an SCRRA employee or an employee of an SCRRA contractor.
- 5.15.8 Except for Excluded Losses, SBCTA shall indemnify, defend and hold harmless Omnitrans and SCRRA and their officers, agents and Contractors from all Losses which are premised on an injury to or death of a SBCTA employee.
- 5.15.9 This Agreement does not provide for liability for Losses which involve any person(s) at a passenger rail station or the parking areas, walkways and other ancillary areas associated with a station in the RPRSA, which shall

be addressed by separate agreements pertaining to each station's operation, maintenance and security.

5.15.10 If a claim involves the Rolling Stock or Equipment of more than one of the Parties, in such case, and except for any Excluded Losses (i) each Party shall be responsible for its own Losses and any Losses claimed by or on behalf of its own passengers, invitees, officers, employees, Contractors and agents, and (ii) as to any Losses claimed by or on behalf of unaffiliated third parties, liability shall be allocated equally amongst the Parties whose Rolling Stock or Equipment was involved.

5.15.11 The indemnifying Party shall meet its obligations using legal counsel reasonably acceptable to the other Party(ies). Legal counsel representing the indemnifying Party shall not be deemed unacceptable if the indemnity provided is complete and without reservation and there is no conflict precluding joint or collective representation.

5.15.12 Nothing herein shall be deemed to supersede any agreements between any of the Parties and BNSF, or make a Party who is not a party to such an agreement liable for any indemnification or contribution obligations under such an agreement with BNSF.

5.15.13 As used in these indemnification provisions, as applies to Omnitrans, the term Rolling Stock and Equipment includes the RPRT; as applies to SCRRRA, the term Rolling Stock and Equipment includes the SCRRRA passenger rail trains.

5.15.14 Notwithstanding the foregoing, in the event that a Party is also a party to another more specific agreement which governs the allocation of responsibility for Losses associated with a particular activity or property (such as a Station Operation and Maintenance Agreement), the Parties shall take all actions reasonably necessary to allocate Losses accordance with that other agreement.

5.15.15 Environmental Indemnification. The term "**Pre-Existing Indemnified Environmental Claims**" means any environmental conditions or environmental impairment which existed in or on the Service Property as of the RPRT Delivery

Date, or which arise due to events from any cause that occurred prior to the RPRT Delivery Date. SBCTA agrees to indemnify, defend and hold Omnitrans and SCRRA harmless from and against any claims, causes of action, damages, fines or penalties arising with respect to Pre-Existing Indemnified Environmental Claims and with respect to any environmental conditions or environmental impairment of the Service Property that arise after the RPRT Delivery Date that are not caused by the negligence or willful misconduct of SCRRA or Omnitrans.

Sudden and accidental spills resulting in an environmental condition or impairment from a Loss arising under 5.15 or 5.17 shall fall under the indemnification obligations set forth in said provisions. In all other cases, Omnitrans agrees to indemnify, defend, and hold SBCTA and SCRRA harmless from and against any claims, causes of action, damages, fines or penalties with respect to any environmental conditions or environmental impairment to the extent due to the negligence or willful misconduct of Omnitrans or any Omnitrans Contractor. SCRRA agrees to indemnify, defend, and hold SBCTA and Omnitrans harmless from and against any claims, causes of action, damages, fines or penalties with respect to any environmental conditions or environmental impairment to the extent due to the negligence or willful misconduct of SCRRA or any SCRRA Contractor.

5.16 Insurance

5.16.1 Prior to commencing the Services, at all times during the performance of the Services and for such additional periods as required herein, Omnitrans and SCRRA, respectively, shall, at their sole expense, procure and maintain insurance coverage with the following minimum requirements.

5.16.1.1 Railroad Liability Insurance

Omnitrans shall procure railroad liability insurance for the RPRS/Arrow Service, which shall cover Omnitrans, SCRRA and SBCTA. This and Commercial General Liability Insurance (Section 5.16.4) are referred to collectively as "Arrow Insurance." All three parties shall be named insureds, with Omnitrans primary.

Commented [1]: Multiple comments regarding insurance provisions still under review.

- a. The Policy must include per occurrence limit of liability equal to at least the greater of \$350,000,000 or the then current liability cap on personal injury and damage claims resulting from passenger rail accidents provided by 49 U.S.C. § 28103.
- b. Omnitrans shall procure and maintain an amount of such insurance equal to or exceeding such adjustment within thirty (30) Days of such notice's issuance; provided in no event shall Omnitrans maintain railroad operations liability insurance in an amount less than \$300 million.
- c. Such insurance shall cover liability for damage to property and injury to or death of persons arising out of the Redlands Passenger Rail Project, the Services or the RPRS, with no contribution from any insurance carried by SBCTA. Such insurance shall contain no exclusions or restrictions with respect to contractual liability or work within any particular distance (e.g., 50 feet) of a railroad.
- d. Such insurance shall include Punitive Damages coverage, or Omnitrans shall procure a separate policy for Punitive Damages coverage.
- e. Such insurance shall cover liability due to instances arising out of acts of terrorism, and/or Omnitrans shall procure Terrorism Risk Insurance Act (TRIA) coverage.
- f. Omnitrans may, with the written approval of SBCTA, assign to an Omnitrans or SCRRRA Contractor the obligation to obtain and maintain this insurance.

5.16.1.2 Professional Liability

This policy shall only be required for Management Services contracted for by Omnitrans or SCRRRA, respectively, unless SBCTA agrees that such coverage is not required for the particular service or contract. The policy must include the following:

- a. \$1,000,000 per claim limits
- b. \$3,000,000 in the aggregate for all claims

If Coverage is on a claims-made basis:

- a. Policy shall contain a retroactive date for coverage of prior acts, which date shall be prior to the date Omnitrans and SCRRA begin to perform their respective Services under this Contract.
- b. Omnitrans and SCRRA shall secure and maintain "tail" coverage for a minimum of (3) years after the applicable contract's expiration or termination.

5.16.1.3 Worker's Compensation and Employer's Liability

The policies must include the following, and are only intended to be applicable to Omnitrans' and SCRRA's respective employees:

- a. Coverage A. Statutory Benefits
- b. Coverage B. Employer's Liability
- c. Bodily Injury by accident - \$1,000,000 per accident
- d. Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee
- e. Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees above. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Services by Omnitrans, SCRRA, or any Omnitrans or SCRRA Contractor of any tier. All Omnitrans and SCRRA Contractors of any tier performing any portion of the Services shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of Omnitrans or SCRRA, as applicable, and all parties named as Indemnitees above. SBCTA, Omnitrans and SCRRA must be certificate holders and must be provided at least 30 days advance notice of cancellation, unless the cancellation is for non-payment, then at least 10 days advance notice of cancellation shall be provided. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

5.16.1.4 Commercial General Liability Insurance

This policy shall be required only to the extent any Party or Contractor is not covered by railroad liability insurance. The policy must include the following:

- a. \$2,000,000 per occurrence limit for Property Damage or Bodily Injury;
- b. \$1,000,000 per occurrence limit for Personal Injury and Advertising injury;
- c. \$6,000,000 of General Aggregate for property damage or bodily injury, and personal injury and advertising injury;
- d. \$2,000,000 of aggregate limit for Products/Completed Operations Coverage. Omnitrans shall maintain products and completed operations coverage for 10 years following the acceptance of Services or until all applicable statutes of limitations expire, whichever length of time is longer. Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- e. As to Omnitrans and SBCTA only, an endorsement stating that any aggregate limits apply on a "per project" and on a "per location" basis, the project name must be indicated under "Description of Operations and Locations."
- f. The policy shall be endorsed to provide: "This insurance will be primary and noncontributory with any other insurance of the additional insureds."
- g. All commercial general liability insurance policies shall also include premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage; severability of interests (full separation of insureds); contractual liability coverage (including coverage to the maximum extent possible for the indemnifications contained in this Contract); broad form property damage coverage (including completed operations); and a duty to defend in addition to (without reducing) the limits of the policy(ies). All Omnitrans and SCRRRA Contractors of any tier performing any portion of the

Services shall also obtain and maintain the commercial general liability insurance coverage with limits not less than:

- h. Each occurrence limit: \$1,000,000
- i. General aggregate limit: \$2,000,000
- j. Personal injury and advertising limit \$1,000,000
- k. Products-completed operations aggregate limit \$2,000,000
- l. All Omnitrans and SCRRRA Contractors' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

5.16.1.6 Commercial Auto Insurance

This policy shall be required only to the extent any vehicle used for the Services is not covered by railroad liability insurance. The policy must include the following:

- a. Auto Liability limits of not less than \$4,000,000 each accident, unless SBCTA agrees that a lower limit is acceptable for the particular Services.
- b. Combined Bodily Injury and Property Damage Liability insurance
- c. Coverage must include owned autos, hired and non-owned autos
- d. The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. Omnitrans and SCRRRA waive all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance required herein. All Omnitrans and SCRRRA Contractors of any tier performing any portion of the Services shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with the same waiver of subrogation in favor of all parties named below as Additional Insureds and Omnitrans or SCRRRA, as applicable.

5.16.1.7 Property Insurance

SBCTA will maintain for the duration of this Contract property insurance covering the real and personal property of SBCTA associated with RPRP, the Services and RPRS, including, but not limited to, railroad Rolling Stock and equipment, track, roadbed, buildings, facilities, and all equipment and materials against all risks of physical damage usually covered in a railroad property insurance policy, including but not limited to collision, derailment, upset, and overturn.

5.16.2 General Provisions

5.16.2.1 Qualifications of Insurance Carriers

All policies shall be written by insurance carriers with a current A.M. Best rating of A-VIII or better.

5.16.2.2 Additional Insurance Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall name all three Parties as additional Insureds, and the Parties' officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of Omnitrans or SCRRA under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.

5.16.2.3 Proof of Coverage

Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including certificates of insurance and the required endorsements, shall be provided to SBCTA's Risk Manager prior to SBCTA's execution of the Contract or prior to commencing any Services, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly

authorized representative of each insurer; show compliance with the insurance requirements set forth in this subparagraph; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Transit Director's name on the face of the certificate.

5.16.2.4 Deductibles; [Loss Fund](#)

For the Railroad Liability Insurance and Commercial General Liability Insurance, Omnitrans shall pay all deductibles and self-insured retentions, unless the claim arises from the willful misconduct of SCRRA, an SCRRA Contractor, SBCTA, or an SBCTA Contractor, in which case SCRRA or SBCTA, whichever is appropriate, shall pay any deductible or retention.

Omnitrans payments of self-insured retentions or deductibles under the Railroad Liability Insurance shall be paid from the self-insured retention loss fund to be funded by SBCTA prior to commencement of Revenue Service Start Date ("Loss Fund"). SBCTA shall deposit with Omnitrans, in a lump sum, the full amount of the self-insured retention. This sum shall be maintained by Omnitrans in a separate Loss Fund account, and used only for the purpose of paying claims within the Arrow Policy self-insured retention. SBCTA shall, upon request, replenish the Loss Fund so that the minimum amount in the Loss Fund shall not be less than _____.

For all other insurance, regardless of the allowance of exclusions or deductibles by SBCTA, Omnitrans and SCRRA, as applicable, shall be responsible for any deductible amount under any policy procured by such party.

All deductibles and self-insured retentions will be in amounts acceptable to SBCTA's Risk Manager. Omnitrans and SCRRA will advise SBCTA in writing as to the amounts of any deductible or self-insured retention, or as to any increase in any insurance deductible or self-insured retention under any insurance required above.

Except for the railroad liability policy, which will have a \$2,000,000 self-insured retention, per industry standards (“Railroad Liability SIR”), there will be no deductibles in excess of \$5,000,000 per occurrence, loss or claim under the insurance required of Omnitrans, SCRRA, or any Contractors. As relates to all other policies, SBCTA will have the right, but not the obligation, to pay any deductible or self-insured retention due under any insurance policy. If SBCTA pays any sums due under any insurance required above, except as applies to the Railroad Liability SIR, SBCTA may withhold said sums from any amounts due Omnitrans or SCRRA, respectively. The policies shall not provide that any deductible, self-insured retention or other payment required under the policy can be paid only by the named insured, and not by an additional insured.

5.16.2.5 Omnitrans', SCRRA's, and their Contractors' Insurance will be Primary. All policies required to be maintained by Omnitrans, SCRRA, or any Omnitrans or SCRRA Contractor, with the exception of Professional Liability and Worker's Compensation, shall be endorsed to be primary coverage, and any coverage carried by any of the Additional Insureds named herein shall be excess and non-contributory. Further, none of Omnitrans', SCRRA's, Omnitrans Contractors' or SCRRA's Contractors' pollution, railroad liability, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

5.16.2.6 Waiver of Subrogation Rights

To the fullest extent permitted by law, Omnitrans and SCRRA hereby waive all rights of recovery under subrogation against the Additional Insureds named herein. To the fullest extent permitted by law, Omnitrans and SCRRA shall require similar written express waivers and insurance clauses from each of its Contractors of every tier. Omnitrans and SCRRA shall require all of the policies and coverages required in this section to waive all rights of subrogation against the Additional Insureds. Such insurance and coverages

provided shall not prohibit Omnitrans nor SCRRA from waiving the right of subrogation prior to a loss or claim.

5.16.2.7 Cancellation

If any insurance company elects to cancel or non-renew coverage for any reason, the Party being canceled or non-renewed will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, the Party holding the policy will provide SBCTA ten (10) days prior written notice. In any event, the Party policyholder will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which the Party receives promptly after receiving it by submitting it to SBCTA at procurement@gosbcta.com to the attention of SBCTA's Risk Manager, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

5.16.2.8 Enforcement

SBCTA may take any steps as are necessary to assure Omnitrans' and SCRRA's compliance with their insurance obligations as identified within this Section. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event Omnitrans or SCRRA fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to Omnitrans or SCRRA, as appropriate, or withhold such expense from amounts owed Omnitrans or SCRRA, or terminate this Contract. The insurance required or provided shall in no way limit or relieve Omnitrans or SCRRA of their duties and responsibilities under the Contract, including but not limited to the obligation to indemnify, defend and hold harmless the Indemnitees named above. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Omnitrans or SCRRA for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions available to it under any other provision of the Contract

or law. Nothing contained herein shall relieve Omnitrans, SCRRA, or any Omnitrans or SCRRA Contractor of any tier of their obligations to exercise due care in the performance of their duties in connection with the Services and to complete the Services in strict compliance with the Contract.

5.16.2.9 No Waiver

Failure of SBCTA to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date.

5.16.2.10 Contractor Insurance

Insurance required of Omnitrans and SCRRA shall also be provided by Omnitrans and SCRRA Contractors, or by Omnitrans or SCRRA on behalf of their respective Contractors to cover their Services performed under this Contract. Omnitrans and SCRRA may reduce the amounts of insurance limits provided by their Contractors to be proportionate to the amount of each Contractor's contract and the level of liability exposure for the specific type of work performed by the Contractor. Omnitrans and SCRRA shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to Contractor. With SBCTA's prior written consent, Omnitrans and SCRRA may assign to their respective Contractors the obligations to obtain and maintain specific insurance policies required under this Agreement, provided that Omnitrans and SCRRA shall also require those Contractors to have such policies of insurance endorsed to name Omnitrans, SCRRA, SBCTA and the Indemnitees as additional insureds.

5.16.2.11 Higher Limits

If Omnitrans or SCRRA maintain higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained.

5.16.2.12 Special Risks or Circumstances

SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, provided that such changes are covered in the Approved Budget or any amendment thereto.

5.17 Claims Handling and Defense

Omnitrans and SCRRA shall each establish a process for handling, investigating and payment of all claims that arise out of the operation of their respective Services provided under this Contract. All Parties shall cooperate with one another in providing information in their possession or control that may be required in administration of the claims process. Neither Omnitrans nor SCRRA shall pay a claim arising out of the Services or the operation of the RPRP that exceeds \$ [REDACTED] without securing the approval for such payment from SBCTA.

5.18 Dispute Resolution

5.18.1 Expedited Dispute Resolution for Budget Matters or Disputed Invoices.

5.18.1.1 Following an attempt to resolve the budget matter in accordance with 4.4 of this Contract, the Party referring the matter for EDR shall provide written notice by overnight delivery and e-mail to the other. The written notice shall specify the items in the proposed budget which the requesting Party asserts that the Parties have not reached and cannot reach agreement. The other Party shall respond within three (3) business days with any additional issues upon which it asserts the Parties have not reached agreement.

5.18.1.2 The Parties shall refer the matter for resolution to an individual knowledgeable in the field of passenger railroad operations, including the costs associated with such operations (the "Arbiter"). The Arbiter shall be selected as follows: The Party making the referral request shall identify one candidate to act as Arbiter within three (3) business days of submitting the referral. The other Party shall, within three (3) business days of its receipt of that designation, either (a) accept the proposed candidate; or (b) designate one (1) candidate to serve as Arbiter. If neither of the two candidates thus

designated are acceptable to both Parties, then the two candidates proposed shall confer and designate an Arbiter, who may be one of the two candidates previously identified or any other individual who is knowledgeable in the field of passenger railroad operations, including the costs associated with such operations.

5.18.1.3 Within five (5) business days of selection of the Arbiter, the Parties shall submit to the Arbiter written support for their position on all issues identified by both Parties in accordance with sub-section 5.18.1.1, above. The Parties shall also provide the Arbiter with a description of the items in the budget upon which they have reached agreement.

5.18.1.4 The Parties shall meet with the Arbiter within five (5) business days of that submission to address any questions the Arbiter may have with respect to the issues. If the Arbiter requires additional information or meeting(s) following that meeting, the Parties shall promptly submit such additional information and attend such meetings.

5.18.1.5 The Arbiter shall provide the Parties a written decision concerning all issues identified by the Parties within seven (7) Days of submission of the last information the Arbiter has requested pursuant to 5.18.1.4, above.

5.18.1.6 With respect to disputes over invoices or payments due under this Contract, SBCTA shall pay any undisputed amounts within the time frame agreed upon in the Contract, withholding only the disputed amounts.

5.18.2 In the event of any other dispute relating to this Contract except for disputes arising under Section 5.15, and unless otherwise specified in this Contract, the Parties will first attempt to resolve the dispute by discussion between SBCTA's Director of Transit and Rail Programs, Omnitrans' Rail Director, and/or SCRRA's [Director of Operations], or, in the case of disputes over the results of an audit, through discussions as described in Section 5.13.5. However, if the Parties are unable to resolve such a dispute through such discussion, the issue

shall be determined by mediation in San Bernardino County, California, before one arbitrator. The mediation shall be administered by JAMS unless otherwise agreed by the Parties.

5.18.3 Except as provided specifically in other sections of this Contract, while any dispute resolution process is proceeding, the business, the operations to be conducted, physical plant to be used, and compensation for Services under this Contract, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy.

5.18.4 Cost of Dispute Resolution

Each Party shall bear its own costs and expenses incurred in connection with dispute resolution.

5.18.5 Disputes Relating to the Obligations in Section 5.15. Disputes arising under Section 5.15 with respect to the Parties' indemnification obligations, shall be resolved by a court of competent jurisdiction.

5.19 Termination

5.19.1 Termination for Cause by SBCTA. SBCTA may, at its sole discretion, terminate this Contract, in whole or in part, upon the occurrence of a material breach of this Contract, which actions shall include but are not limited to, the following:

5.19.1.1 Refusal or failure by Omnitrans or SCRRA to perform any of their Services under this Contract, following the provision of written notice by SBCTA regarding such failure and a reasonable opportunity to cure, which is not excused by any other provisions of this Contract, and which refusal or failure disrupts the Redlands Passenger Rail Project or the RPRS;

5.19.1.2 Omnitrans' or SCRRA's insolvency or inability to meet its obligations, or the filing of an involuntary petition in bankruptcy against Omnitrans or SCRRA which is not stayed or lifted within forty-five (45) Days, or the adjudication that Omnitrans or SCRRA is bankrupt, or Omnitrans or SCRRA making a voluntary assignment

for the benefit of creditors, filing a petition for an arrangement, composition or compromise with its creditors under any applicable laws, or having a trustee, receiver, or other officer appointed to take charge of its assets;

- 5.19.1.3 Omnitrans' or SCRRA's failure, or the failure of an Omnitrans or SCRRA Contractor, after notice from SBCTA and a reasonable opportunity to cure, to comply with a valid and applicable law, ordinance, rule, regulation or order of any legal authority that has a material impact on Omnitrans' or SCRRA's ability or fitness to carry out its obligations to provide the Services under this Contract;
- 5.19.1.4 The violation by Omnitrans, SCRRA, or an Omnitrans or SCRRA Contractor of the limitations set forth in Section 5.11 on covenants not to compete in their employment agreements, following notice from SBCTA and reasonable opportunity to cure such violation;
- 5.19.1.5 Determination by SBCTA that continued provision of Services by Omnitrans or SCRRA shall result in imminent danger to the public health or safety. SBCTA may make such a determination only if SBCTA has ordered Omnitrans or SCRRA to correct, cure or otherwise cease providing all or a portion of their respective Services under this Contract for public health or safety reasons and Omnitrans or SCRRA has been unable within fifteen (15) Days of such order to remedy the cause for the order when the cause was a factor within Omnitrans' or SCRRA's respective control;
- 5.19.1.6 Failure to discharge any lien placed on SBCTA's Property as a result of the action or inaction of Omnitrans or SCRRA within the time specified in Section 5.5.1;
- 5.19.1.7 Failure by Omnitrans or SCRRA to obtain and maintain, or to cause an Omnitrans or SCRRA Contractor to obtain and maintain, at all times the insurance coverages and amounts, in accordance with the terms of this Agreement, following notice from SBCTA and a reasonable opportunity to cure.

- 5.19.2 Termination for Cause by Omnitrans or SCRRA. Omnitrans or SCRRA may, in its sole discretion, terminate this Contract upon the occurrence of a material breach of this Contract by SBCTA, which breach SBCTA fails to cure upon reasonable notice. The failure of SBCTA to enforce the terms of this Contract as applies to the Omnitrans Services or the SCRRA Services shall constitute a material breach by SBCTA.
- 5.19.3 Termination for Convenience. Any Party may terminate this Agreement for convenience at any time by giving the other Parties a minimum of sixty (60) Days' written notice of the terminating Party's election to terminate. Upon receipt of such notice, the other Parties shall immediately take action not to incur any additional obligation, cost or expense, except as may be necessary to provide the Services and reasonably necessary to terminate its activities.
- 5.19.4 Termination Procedure. Upon the occurrence of one of the events described in this Section 5.19, the Party electing to terminate the Contract shall notify the other Parties in writing of its election to terminate and the basis for that action, if any. The termination shall be effective on the date specified in the notice, except that a termination for cause shall not become effective if the defaulting Party shall have taken action to substantially remedy the default within a reasonable time. Notwithstanding the foregoing: the terminating Party may at its option elect to extend the notice period for the effective date of a termination for cause or for convenience by any Party for up to eighteen (18) months from the date of the notice to ensure that the RPRS will continue uninterrupted at the conclusion of the notice period; provided, however, that if Omnitrans or SCRRA terminates for cause for non-payment, SBCTA will have the opportunity to cure the default by making payment in full within thirty (30) days, and if SBCTA does not so cure, the termination for cause will be effective on the date specified by Omnitrans or SCRRA.
- 5.19.5 Rights and Obligations upon Termination
- 5.19.5.1 Upon termination for cause, SBCTA shall have the right to arrange for provision of the Services by other Contractors. Omnitrans and SCRRA shall reasonably cooperate with SBCTA and SBCTA's Contractors to effect a seamless transition in such cases.

- 5.19.5.2 Upon the effective date of the notice of termination for cause or convenience, Omnitrans and SCRRA shall: (a) immediately discontinue all Services affected (unless the notice directs otherwise), and (b) deliver to SBCTA all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by Omnitrans, SCRRA, or any of their Contractors in performing this Contract, whether completed or in process.
- 5.19.5.3 Omnitrans and SCRRA shall bear any actual direct costs incurred by them that is attributable to termination for cause by SBCTA, which is to be accounted for separately and paid for out of RPRP funds.
- 5.19.5.4 SBCTA will bear any actual direct cost incurred by either it or the terminating Party that is attributable to termination for cause by the terminating Party.
- 5.19.5.5 SBCTA will pay the following termination costs to Omnitrans and SCRRA:
- a. Reasonable cost of settling and paying claims arising out of the termination of Services under subcontracts or purchase orders, including lost profit, unearned anticipatory profit or consequential damage, ~~except for any labor protection claims by employees of Omnitrans, SCRRA, or their Contractors;~~
 - b. Reasonable costs which are incurred pursuant to the performance of any specific written instructions received from SBCTA concerning such termination;
 - c. Other reasonable costs incidental to such termination of Services.
- 5.19.5.6 No payment will be made for lost profit, unearned anticipatory profit, or consequential damages by SCRRA or Omnitrans.
- 5.19.5.7 If, after the notice of termination for failure to fulfill Contract obligations, the Arbiter determines that Omnitrans or SCRRA did not

so fail, the termination shall be deemed to have been effected for the convenience of SBCTA, SCRRA or Omnitrans pursuant to Section 5.19.3 of this Contract.

- 5.19.5.8 No termination of this Contract shall in any way diminish or otherwise affect SBCTA's obligation to pay for any Services rendered, or to fulfill any other obligations incurred prior to the effective date of the termination. The rights and remedies of the Parties provided in this section are in addition to any other rights and remedies provided by law or under this Contract.
- 5.19.5.9 Upon completing this Contract or at such earlier dates as may be fixed by SBCTA: (a) Omnitrans and SCRRA each shall prepare and submit a final inventory list of all SBCTA Property which includes the property's description, location and condition; (b) Omnitrans and SCRRA each shall prepare for shipment, and deliver F.O.B. destination, SBCTA Property as may be directed or authorized by SBCTA; and (c) Omnitrans and SCRRA shall cooperate with SBCTA and SBCTA's Contractors to effect a seamless transition to any succeeding Contractors.

5.20 Use of SBCTA, Arrow or RPRP Logos

The Parties acknowledge and agree that Omnitrans is responsible for developing the marketing, including developing any branding programs and materials, for the RPRS. Omnitrans has previously agreed to use of the term "Arrow" as the doing business designation of the RPRS, and SBCTA specifically consents to the use of the name "Arrow" and the materials prepared by SBCTA personnel and consultants in marketing the RPRS under that name Omnitrans may use the RPRS logo or name: (a) on its website; (b) on goods and other tangible items; (c) on promotional material and literature; (c) for promotion of the RPRS; (d) in combination with the Omnitrans logo; (e) as may be required by law; (f) in any submission to any governmental body (e.g., legislative, judicial, regulatory, executive); or (g) when such use is for Omnitrans to identify entities or properties for which Omnitrans is providing services related to commuter rail operations, and on copies thereof. Upon request of SBCTA, originals of such documents and materials, to the extent such copies are in Omnitrans' possession

at the time of such request, shall be delivered to SBCTA upon completion of the work or termination of the Services.

5.21 Use of SBCTA Name

SBCTA shall review all SBCTA-related material proposed for use by Omnitrans or SCRRA for advertising or public relations purposes (other than as may be permitted under Section 5.20, above) prior to publication. Neither Omnitrans nor SCRRA shall allow SBCTA-related material to be published in advertisements and public relations programs prior to receiving SBCTA's written approval. Omnitrans and SCRRA shall ensure that all published information is factual and that it does not, in any way, imply that SBCTA endorses Omnitrans', SCRRA's, or any of their Contractors' firm, service and/or product(s).

5.22 Governing Law

The validity of this Contract and of any of its terms and provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the state of California. Venue shall be in San Bernardino County.

5.23 Compliance with Rules and Regulations

5.23.1 General

Omnitrans and SCRRA shall be responsible for their compliance with the provisions, and successor provisions, of all applicable regulations of FRA, FTA, CPUC and other entities with regulatory authority over the rail industry as well as other applicable federal, state and local laws regarding the provision of the Omnitrans Services or SCRRA Services as they apply to the matters that are within the scope of this Contract. Unless SBCTA has withheld from Omnitrans and/or SCRRA, as applicable, the funding specifically requested to remedy a violation or other authority to remedy it, Omnitrans/SCRRA, as applicable, shall also indemnify, protect and defend and hold SBCTA and its officers, directors, agents and employees harmless from all fines, penalties or other costs imposed under such laws and regulations regarding, respectively, Omnitrans' or SCRRA's, or their respective Contractors' provision of the Services.

5.23.2 Changes in Law

If any changes are made to the law affecting the Services as described in this Contract during the term (including options if exercised) and such changes have an impact on Omnitrans' or SCRRRA's cost to provide the Services, the applicable budget shall be amended pursuant to Sections 4.2.5 and 4.3.6, as applicable.

5.23.3 Notice of Regulatory Violations

With respect to the Services, Omnitrans and SCRRRA, respectively, shall inform SBCTA of violations of any applicable federal, state or local laws or regulations within 24 hours of the earlier of receipt by Omnitrans/SCRRRA, as applicable, of actual notice or of its or any of its employees' or Contractors' awareness of such a violation. This notification shall be for SBCTA's monitoring of Omnitrans' and SCRRRA's respective performance under this Contract, and does not relieve Omnitrans, SCRRRA, or their respective Contractors from any obligation to report and/or remedy a violation pursuant to federal, state, or local laws or regulations.

5.23.4 Omnitrans and SCRRRA each warrant that no person or agent has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or agent. A breach or violation of this warranty shall be considered a breach of this Contract giving rise to the remedies described in Section 5.19.1, entitled "Termination for Cause by SBCTA." In addition to any rights and remedies otherwise provided for in the Contract or by law, SBCTA may deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

5.23.4.1 "Bona fide agent," as used in this Section, means an established commercial or selling entity that is maintained by Omnitrans or SCRRRA for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain SBCTA Contract(s) nor holds itself out as being able to obtain any SBCTA Contract(s) through improper influence.

5.23.4.2 "Bona fide employee," as used in this Section, means a person who is employed by Omnitrans or SCRRRA and subject to

Omnitrans/SCRRA's respective supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain SBCTA Contract(s) nor holds himself or herself out as being able to obtain any SBCTA Contract(s) through improper influence.

- 5.23.4.3 "Contingent fee," as used in this Section, means any commission, percentage, or other sum that is payable only upon success in securing an SBCTA Contract.

5.24 Compliance with Lobbying Policies / Ethics

In fulfilling their obligations under this Contract, Omnitrans and SCRRA shall comply with all applicable federal, state and local statutes, ordinances, regulations and policies relating to lobbying, ethics and contracting.

5.25 Public Records Act

- 5.25.1 All materials of any kind, in any format, that are submitted by or on behalf of Omnitrans or SCRRA to SBCTA may be considered public records that are disclosable pursuant to the California Public Records Act ("PRA") (Cal. Gov. Code Sections 6250 et seq.), including without limitation the content of any document submitted to SBCTA in relation to this Contract, but excluding any non-disclosable employee records which Omnitrans or SCRRA may be requested to disclose pursuant to 3.19.4 of this Contract (hereafter "Records"). SBCTA will endeavor to inform Omnitrans and SCRRA, as may be applicable, of any request by a third party for the disclosure of any Records.
- 5.25.2 If Omnitrans or SCRRA believes any Records it is submitting or causing to be submitted to SBCTA contain trade secrets or other proprietary information that are exempt from disclosure under the PRA and Omnitrans/SCRRA desires that

such Records be withheld from any disclosure to third parties, then Omnitrans/SCRRA, as applicable, must clearly label each page of such Records as "TRADE SECRET," "PROPRIETARY" or "CONFIDENTIAL" at the time of submission. If the proposed exempt material is less than an entire page, Omnitrans/SCRRA shall in addition identify the specific portion of the page that it desires to designate as a trade secret or otherwise proprietary.

5.25.3 Under no circumstances will SBCTA be liable for the disclosure to a third party of any Records, whether or not such Records are labeled "TRADE SECRET," "PROPRIETARY" or "CONFIDENTIAL." Omnitrans and SCRRA each agree they will not make a claim, sue, or maintain any legal action against SBCTA, its member agencies, or their directors, officers, employees, or agents in connection with the disclosure of, or withholding from disclosure of, Records submitted by or on behalf of Omnitrans or SCRRA.

5.25.4 If Omnitrans or SCRRA requests that SBCTA withhold from disclosure any Records identified as "TRADE SECRET," "PROPRIETARY" or "CONFIDENTIAL," SBCTA shall comply with such request, except as may be otherwise required by PRA. Omnitrans and SCRRA agree that they shall assume all responsibility for any challenges resulting from the non-disclosure, and shall defend, indemnify and hold harmless SBCTA, its member agencies, and their directors, officers, employees or agents, from and against all claims, suits and liability (including attorneys' fees that may be awarded to the complaining party), relating to the withholding of Omnitrans'/SCRRA's respective Records.

5.26 Prohibited Interests

The Parties agree that, for the term of this Contract, no member, officer, or employee of any Party, or of another local public body during his/her employment and for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract, or to any benefit arising thereof.

5.27 Whistleblower Requirements

Neither Omnitrans nor SCRRA shall adopt, and will ensure that their respective Contractors do not adopt, any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a federal, State or local regulation; nor shall Omnitrans, SCRRA, or their respective Contractors retaliate against an employee for taking such actions.

5.28 Severability

In the event that any term, covenant, condition, or provision of this Contract or the application thereof to any person or circumstance is found to be invalid or unenforceable in any respect, the remainder of this Contract shall nevertheless be binding with the same effect as if the invalid or unenforceable provision were originally deleted. However, this Section shall not apply where the term, covenant, condition, or provision or part thereof that is declared invalid or unenforceable is so fundamental to the Contract that the remainder of the Contract, standing alone, does not represent a meeting of the minds of the Parties, or substantially alters the rights or obligations of either party under the Contract.

5.29 Waiver

None of the provisions of this Contract shall be considered waived by a Party unless such waiver is reduced to writing and signed by the Party to be charged. No such waiver shall be construed as a modification of any of the provisions of this Contract or as a waiver of any past or future default or breach hereof, except as expressly stated in the waiver. The failure of a Party to insist at any time upon the strict observance of any of the provisions of this Contract, or to exercise any right or remedy in this Contract, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof.

5.30 Entire Contract

This Contract, and any attachments, exhibits, or other documents incorporated herein by inclusion or by reference, embody the entire agreement between SBCTA, Omnitrans, and SCRRA related to the Services. No oral statement or prior written matter will have any force or effect. The Parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Contract. This Contract shall not be modified except in writing signed by all Parties.

5.31 Notices, Contact Information and Delegation of Authority

5.31.1 Notices and Contact Information

Any notice legally required to be given by one Party to another under this Contract shall be in writing, dated, and signed by the Party giving such notice or by a duly authorized representative of such party. Any notice shall not be effective, for any purpose whatever, unless it is transmitted by the legally required method (if any), or by United States Postal Service Registered Mail, or by a bonded and guaranteed courier/delivery service or by e-mail. All notices to the Parties (other than e-mails) will be enclosed in a sealed envelope and transmitted to the respective contact persons and addresses below:

SBCTA	SCRRA	Omnitrans
Name	Name	Name
Title	Title	Title
Address	Address	Address
Phone	Phone	Phone
Fax	Fax	Fax

5.31.2 Delegation of Authority. Unless stated otherwise specifically in this Contract, all actions to be taken by SBCTA may be taken by the SBCTA Project Manager. Unless stated otherwise specifically in this Contract, all actions to be taken by Omnitrans may be taken by the Omnitrans Rail Director. Unless stated otherwise specifically in this Contract, all actions to be taken by SCRRA may be taken by the SCRRA [Chief Operating Officer]. A Party may substitute a representative of equal or higher rank to fulfill any obligation of a representative of that Party recited in this Contract.

5.32 Transition Process

5.32.1 SBCTA may be required to conduct a solicitation process prior to the expiration or termination of this Contract in order to select a Contractor with which SBCTA will enter into a new contract ("Successor Contractor") to provide the Services upon expiration or termination of this Contract. Omnitrans and/or SCRRA may be Successor Contractors. SBCTA requires that Omnitrans and SCRRA provide to prospective proposers all information necessary to prepare technical and cost proposals in response to SBCTA's solicitation; provided however that neither Omnitrans nor SCRRA shall be required to provide proprietary cost information to prospective proposers unless SBCTA is otherwise required to make such information available to the public under this Contract. Omnitrans and SCRRA shall reasonably cooperate with SBCTA and prospective Successor Contractors that are participating in the solicitation process.

5.32.2 Document Review
Omnitrans and SCRRA shall make available to prospective Successor Contractors for review at a mutually acceptable location(s) copies of any and all documents and records related to Omnitrans' and SCRRA's respective provision of Services as SBCTA shall request. Issues regarding confidential or proprietary information shall be addressed as specified in Sections 5.7 and

5.25, as applicable. Prospective Successor Contractors shall have access to the Service Property and Equipment during the solicitation process for the purpose of inspection so as to understand, without limitation, the operations and conditions. SBCTA shall schedule and conduct site visits by prospective Successor Contractors. Omnitrans and SCRRA shall fully cooperate with SBCTA during such site visits and, to the extent permitted by law, shall make available any personnel and records that would otherwise be made available to SBCTA under this Contract as SBCTA requests. Omnitrans and SCRRA shall permit prospective Successor Contractors to question their respective personnel and Contractors regarding any and all aspects of the Services, and to examine such requested records. Any such access shall be scheduled in such a manner so as not to interfere with the safe and efficient operation of the Services by Omnitrans and SCRRA. SBCTA shall reimburse Omnitrans and SCRRA for their reasonable costs related to compliance with the requirements of this section.

5.32.3 Transition Plan

The following obligations apply in the event that Omnitrans and/or SCRRA are not selected as a Successor Contractor:

5.32.3.1 Successor Contractor Access

Omnitrans and SCRRA shall provide the Successor Contractor full and complete access to the Service Property and Equipment in accordance with this Contract. Access will commence up to eight (8) months prior to the expiration or termination of this Contract in conjunction with the Successor Contractor's mobilization period. Throughout this period, the Successor Contractor may have one or more representatives on site until the expiration or termination of this Contract, provided that such representatives shall not interfere with the safe and efficient provision of the Services by Omnitrans and SCRRA.

5.32.3.2 Employment of Existing Personnel

Omnitrans and SCRRA shall each provide a list, and resumés, if available, of their then-current personnel who are primarily or exclusively engaged in providing the Services to SBCTA and the Successor Contractor at least six (6) months prior to the expiration or termination of this Contract. Omnitrans and SCRRA shall allow the Successor Contractor to interview the aforementioned Omnitrans/SCRRA personnel for employment purposes in a way and at times that are consistent with the schedule and the needs of the ongoing Redlands Passenger Rail Project and that avoids interference with Omnitrans' and SCRRA's operational responsibilities. Omnitrans and SCRRA agree that a Successor Contractor has the right to offer employment to any Omnitrans or SCRRA personnel that are on the list prior to the expiration or termination of this Contract.

5.32.3.3 Contractors

Omnitrans and SCRRA agree that a Successor Contractor may negotiate at any time with Omnitrans/SCRRA Contractors providing Services under this Contract.

5.32.4 Turnover Requirements

5.32.4.1 Records, Manuals, Reports, and Databases. A minimum of six (6) months prior to the expiration of this Contract, or in the event of Termination pursuant to Section 5.19. within thirty (30) Days of receipt of SBCTA's notice of intent to terminate this Contract, Omnitrans and SCRRA shall provide to SBCTA a complete and accurate inventory of all relevant and material documents (in SBCTA's [reasonable](#) opinion) related to the Redlands Passenger Rail Project, including but not limited to records, reports, databases, and manuals.

5.32.4.2 Property, Revenue Vehicles, Non-revenue Vehicles, Tools, Equipment, Office Equipment and Supplies. A minimum of six (6) months prior to the expiration of this Contract, or in the event of

Termination pursuant to Section 5.19 within thirty (30) Days of receipt of SBCTA's notice of intent to terminate this Contract, Omnitrans and SCRRRA shall provide to SBCTA a complete and accurate inventory of all property associated with their respective Services, including but not limited to, Revenue Vehicles, non-revenue vehicles, tools, Equipment, support property such as office equipment, software, and supplies that were provided or paid for substantially by SBCTA prior to implementation of the Services or through allocation of funding to the Services after implementation, and related to the Redlands Passenger Rail Project, excluding any items which have reached the end of their useful life and have been discarded or otherwise disposed of ("Property"), in accordance with Omnitrans/SCRRRA's respective policies and procedures described in the State of Good Repair Plan. Immediately upon expiration or termination of this Contract, Omnitrans and SCRRRA shall relinquish to SBCTA all such Property. All Property shall be in good working condition, reasonable wear and tear excepted.

5.32.4.3 Permits

Any and all existing permits held by Omnitrans and SCRRRA and required for providing the Services shall, to the extent permitted by applicable laws or regulations and not prejudicial to the ongoing operations of the holder, be transferred to the Successor Contractor(s) as of the date the Successor Contractor(s) begins providing Services.

5.32.4.4 Contract Close-out Requirements

SBCTA may conduct inspections and/or audits as necessary to determine the status of the requirements for close-out of this Contract. Within thirty (30) Days of such inspection or audit, SBCTA will deliver to Omnitrans/SCRRRA a list of items where deficiencies

were found ("Punch List"). Omnitrans/SCRRA shall correct such deficiencies within thirty (30) Days of receipt of the Punch List. SBCTA may exercise any rights or remedies available under this Contract, if it is determined by SBCTA that Omnitrans/SCRRA has not complied with the provisions of this Section.

5.33 Assignment

Except as expressly provided for in this Contract, no Party shall assign its rights and/or obligations under this Contract to any third party without the prior written approval of the other Parties, which approval any non-[assigningrequesting](#) Party may withhold in its sole discretion.

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IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed as of the date first shown above and effective on the Effective Date.

OMNITRANS

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

_____, Board President

Alan D. Wapner, Board President

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Omnitrans Legal Counsel

Julianna K. Tillquist, Assistant General
Counsel

SCRRA

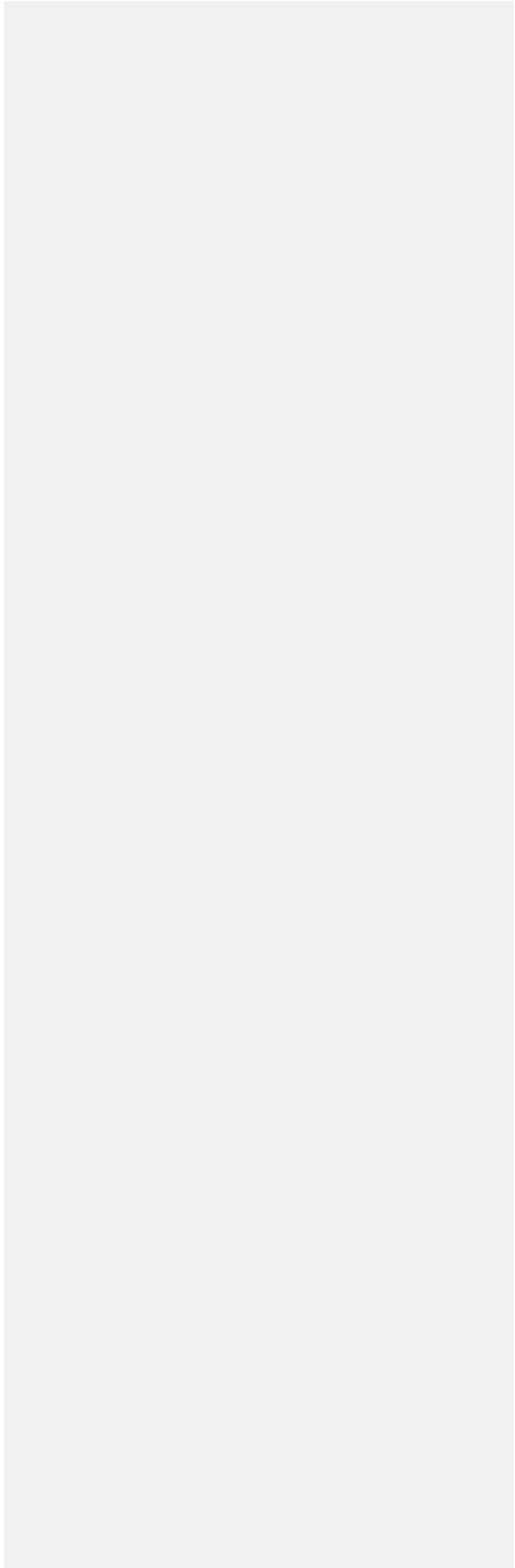
Arthur T. Leahy, Chief Executive Officer

APPROVED AS TO FORM:

Don O. Del Rio, General Counsel

Exhibit 1 Redlands Passenger Rail Service Area (RPRSA)

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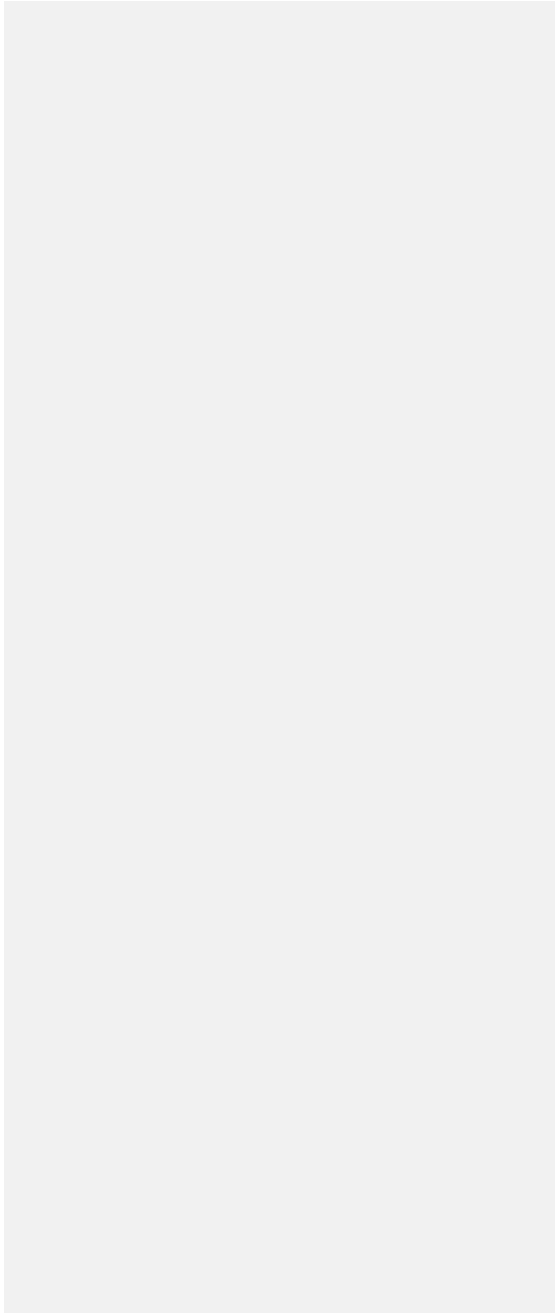




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Exhibit 2 Service Property

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REDLANDS RIGHT OF WAY MAP MP 56.54 to MP 59.75



LEGEND			
	SAN BERNARDINO POLICE AND FIRE DEPT.		STATION NAME
	REDLANDS POLICE AND FIRE DEPT.		HAZ-MAT UNLOADING SITE
	BRIDGE		NEW MILEPOST
	OTHER ACCESS POINTS		GRADE CROSSING ACCESS POINTS

REDLANDS RIGHT OF WAY MAP MP 62.75 to MP 66.57



Exhibit 3 Equipment Lease

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Exhibit 3
Redlands Passenger Rail Trains
EQUIPMENT LEASE

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Equipment Schedule

Equipment Description: FLIRT 3 SBCX 120

Equipment Description: FLIRT 3 SBCX 121

Equipment Description: FLIRT 3 SBCX 122

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Exhibit 4 Reports

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Exhibit 4 Reports

Omnitrans to SCRRA

None identified at this time awaiting input from the parties

Omnitrans to SBCTA

None identified at this time awaiting input from the parties

SCRRA to Omnitrans

Daily Operating Report

Monthly Operating Summary

Current SCRRA Timetable and Special Instructions

General Track Bulletins

General Orders

No others identified at this time awaiting input from the parties

SCRRA to SBCTA

None identified at this time awaiting input from the parties

SBCTA to Omnitrans

None identified at this time awaiting input from the parties

SBCTA to SCRRA

None identified at this time awaiting input from the parties

Exhibit 5 Direct Costs

SCRRRA

None identified at this time awaiting input from the parties

Omnitrans

The data will be provided after the awarding of the Rail Operations Services Contract

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Exhibit 6 Employee Injury and Accident Costs

SCRRRA

None identified at this time awaiting input from the parties

Omnitrans

The data will be provided after the awarding of the Rail Operations Services Contract

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Exhibit 7 Regulatory Roles and Responsibilities per FRA letter



U.S. Department
of Transportation

Region VII

801 I Street, Suite 466
Sacramento, California 95814-255

**Federal Railroad
Administration**

Ms. Carrie Schindler
Director of Transit and Rail Programs
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

Dear Ms. Schindler

Subject: Redlands Passenger Rail Project FRA Regulatory Oversight

Thank you for your request for guidance on how the Federal Railroad Administration (FRA) may regulate the proposed passenger service between the San Bernardino Transit Center (SBTC) and the University of Redlands (UOR).

There are two separate services being proposed, and FRA will treat these services independently. One proposed service is an extension of the current Southern California Regional Rail Authority (SCRRA- Metrolink) San Bernardino Line commuter service in the Redlands Subdivision for up to 2 daily roundtrip trains from SBTC to Downtown Redlands. For this service, FRA will continue to treat SCRRA-Metrolink as FRA's point of contact. The other proposed service will run on the same track, but will feature the operation of Diesel Multiple Unit (DMU) passenger rail vehicles for approximately 9 miles between SBTC and UOR. For this Redlands DMU service, FRA will establish a unique reporting code and will generally treat OmniTrans as FRA's point of contact.

Based on SANBAG's June 24, 2016, "Redlands Passenger Rail Project FRA Regulatory Oversight" document, FRA has the following understanding of the proposed services and management structure. The San Bernardino Associated Governments (SANBAG), consisting of the San Bernardino County Transportation Commission, San Bernardino County Transportation Authority, San Bernardino County

Congestion Management Agency, and Service Authority for Freeway Emergencies, is responsible for infrastructure improvements. The SANBAG Board is comprised of the five-county Board of Supervisors and elected officials from the twenty-four incorporated cities within the County.

SANBAG allocates federal, state and local transportation funds and is the lead agency for the implementation of the County's transportation projects. SANBAG's Rail and Transit Division is responsible for the capital delivery, including planning, design, and construction of passenger rail projects in the County. SANBAG owns the existing railroad right-of-way to be utilized by the project, and is funding the development of passenger rail service along track owned by the San Bernardino County Transportation Commission.

SANBAG currently contracts with the SCRRA-Metrolink for required inspections, maintenance, and traffic control (train dispatching) for the railroad right-of-way over which rail service currently runs and intends to contract with SCRRA-Metrolink for the future maintenance-of-way and dispatching services to the UOR. SCRRA-Metrolink is a joint powers authority (JPA) comprised of and governed by its member agencies: Los Angeles County Metropolitan Transportation Authority, Orange County

Transportation Authority, Riverside County Transportation Commission, Ventura County Transportation Commission, and SANBAG. Each member agency has proportional representation by their elected officials on SCRRA-Metrolink's Board of Directors. SANBAG has assigned responsibility for its track to SCRRA-Metrolink and SCRRA-Metrolink performs the regulatory duties of a track owner on SANBAG's behalf. SCRRA-Metrolink currently produces the necessary operating documents, dispatches traffic, and performs the required regulatory inspections and maintenance on the SANBAG-owned track, including over the Redlands Subdivision from MP 0.0 to MP 4.0, where there is currently limited freight service (BNSF). SCRRA-Metrolink contracts with a third-party operator to provide crews to operate existing SCRRA-Metrolink services over SANBAG-owned tracks. The proposed SCRRA-Metrolink extension will include SCRRA-Metrolink crews operating SCRRA-Metrolink commuter trains from the SBTC (MP 0.9) to the Downtown Redlands Station (MP 8.8).

SCRRA-Metrolink will dispatch and maintain the entire Redlands Subdivision (MP 0.0 to MP 9.8).

OmniTrans, the fixed-route bus transit and paratransit agency in the San Bernardino Valley area, is a JPA formed and authorized by the County of San Bernardino and fifteen signatory cities within the County. The five San Bernardino County Supervisors and an elected representative from each member city comprise a governing Board of Directors. OmniTrans intends to provide DMU passenger service along the Redlands Subdivision from the SBTC at MP 0.9 to the UOR at MP 9.8. OmniTrans will be responsible for maintaining the DMUs. Through a cooperative agreement with SANBAG, OmniTrans will own and maintain the rolling stock, procure and manage operations and maintenance contractor(s) for the service. OmniTrans and other public/private partnerships will maintain and operate the stations. SCRRA-Metrolink will perform all train dispatching, railroad operating procedures, inspections, reporting and maintenance of way and signals for the corridor. OmniTrans and SCRRA-Metrolink will jointly develop an operating plan. BNSF will continue to provide freight service on the route.

As discussed above, SANBAG has assigned all track, signal, and dispatching responsibilities to SCRRA-Metrolink, and is in the process of extending those responsibilities to SCRRA-Metrolink for the new Redlands DMU service. SANBAG has assigned its operating and mechanical responsibilities to OmniTrans. All of the entities described (SANBAG, SCRRA-Metrolink, OmniTrans, and operations and maintenance contractors) bear responsibility for the passenger services being contemplated. Generally, OmniTrans and SCRRA-Metrolink will serve as FRA's points of contact for these services, given these entities' involvement in the operations.

We appreciate your cooperation in this dialogue. Should you have any questions, please do not hesitate to contact myself at 916-498-6547 or james.jordan@dot.gov ; or Mr. Michael Lange Passenger Rail Safety Specialist, at (909) 224-7726 or michael.lange@dot.gov.

Sincerely,

Digitally signed by
james.jordan@dot.gov
DN:
cn=james.jordan@dot.gov
Date: 2016.07.19 13:26:38
-07'00'

James Jordan
Regional Administrator

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This message is not binding, but merely advisory in nature. This email does not require you to perform any action and is merely an attempt to provide guidance. This response is not an appealable decision, order, or enforcement notice. If you would like a formal response from FRA, you must provide such a request in writing, made to the attention of the Chief Counsel at:

U.S. Department of
Transportation Federal
Railroad Administration Office
of Chief Counsel
1200 New Jersey Avenue,
SE Washington, DC 20590

Enclosures: June 24, 2016, "Redlands Passenger Rail Project FRA Regulatory Oversight"

Document cc: Justin Fornelli, Chief of Transit and Rail Programs, SANBAG

Danny Knotte, FRA Passenger Rail Staff Director

Victoria Chittim, FRA Trial Attorney

Michael Lange, FRA Passenger Rail Specialist

Mark Adamczak, FRA Region 7, Deputy Administrator

Governments

E. SANBAG

Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor ■ San Bernardino, CA 92410-1715
Phone: (909) 884-8276 ■ Fax: (909) 885-4407 ■ Web: www.sanbag.ca.gov

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

To: Mike Lange, FRA Passenger Rail Safety Specialist
From: Justin Fomelli, PE - Chief of Transit and Rail Programs **F"**
Date:
Subject June 24, 2016
:
AMENDED - Redlands Passenger Rail
Project FRA Regulatory Oversight

This memo describes the proposed operating and maintenance arrangements for the provision of new passenger services on trackage owned by the San Bernardino County Transportation Commission (SANBAG) known as the Redlands Subdivision.

PROJECT OVERVIEW

The *Redlands Passenger Rail Project (RPRP)* is the implementation of a nine-mile passenger service between the San Bernardino Transit Center (SBTC) and the University of Redlands (UOR). The project has three primary elements:

1. Infrastructure improvements on the existing Redlands Subdivision from SBTC (MP 0.9) to the UOR (MP 9.8). The line is currently un-signaled and maintained only to minimum FRA requirements (Excepted Track) in order to accommodate infrequent low-volume freight traffic from MP 0.9 to MP 3.9. The remainder of the Redlands Subdivision from MP 4.0 to MP 9.8 is currently out of service. The RPRP will upgrade the track to FRA Class 5 standards and install CTC and PTC signal systems for safe passenger operations.
2. Extension of up to two-daily roundtrip Metrolink San Bernardino Line commuter trains from the SBTC (MP 0.9) to Downtown Redlands (MP 8.8) in the weekday peak. In order to operate Metrolink's conventional Locomotive Hauled Coach (LHC) equipment to Redlands, **RPRP** railroad infrastructure and passenger vehicles must meet FRA's standards and requirements for operating on the

conventional railroad system of the U.S., known as the "general system".

3. Operation of **RPRP** Diesel Multiple Unit (DMU) passenger rail transit service between the SBTC (MP 0.9) and UOR (MP 9.8). The service is planned to operate on 30-minute headways during weekday peak hours and 60-minute headways during the off-peak hours. On weekends and holidays a 60-minute headway service is planned. The DMUs will be stored overnight and maintained at the Inland Empire Maintenance Facility (**IEMF**) located at MP 0.0.

Each of the individual above elements is the responsibility of a different lead agency, each with a separate role in the project, as follows:

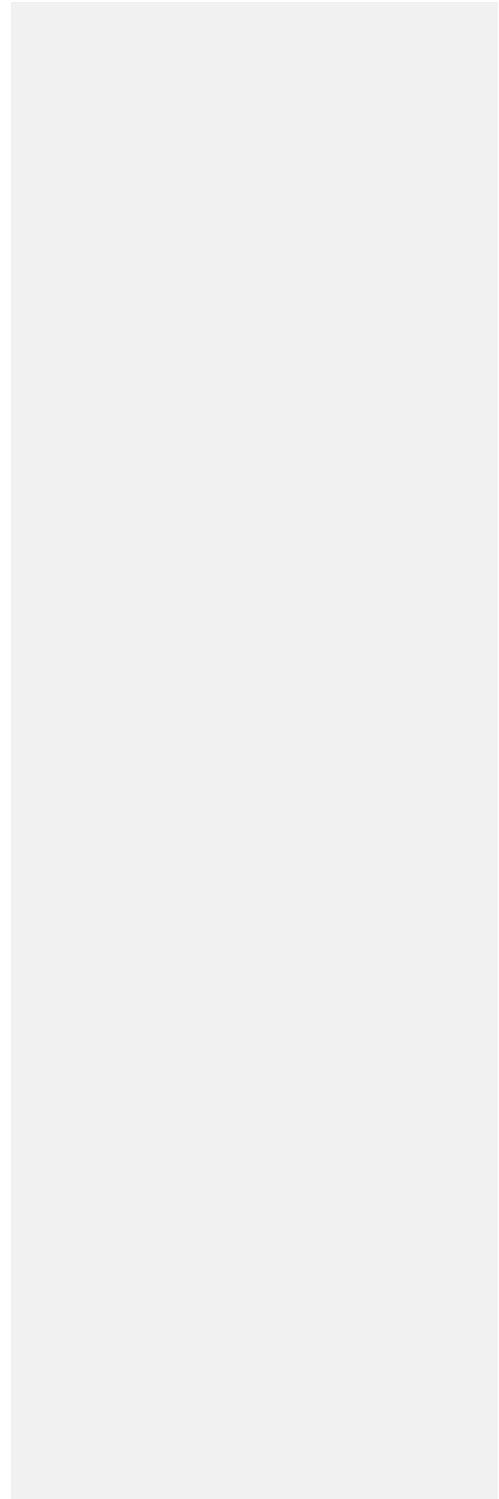
Cities of: Adelanto, Barstow, Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Montclair Needles, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Twentynine Palms, Upland, Victorville, Yucaipa
Towns of: Apple Valley, Yucca Valley County of San Bernardino

SANBAG agency is responsible for the first element of infrastructure improvements. SANBAG is a governmental entity, which Board is comprised of the five County Board of Supervisors and elected officials from the twenty-four incorporated cities within the county. The agency is also responsible for cooperative regional planning and implementing multi-modal transportation countywide. In this role SANBAG allocates federal, state and local transportation funds and is the lead agency for the implementation of the County's transportation projects, including the RPRP. SANBAG's Rail and Transit Division is responsible for the capital delivery, including planning, design, and construction of passenger rail projects in the County. SANBAG is also the owner of the existing railroad right-of-way to be utilized by the RPRP. SANBAG currently contracts with the Southern California Regional Rail Authority (SCRRA) for required inspections, maintenance and traffic control (train dispatching) for all of SANBAG's current operating railroad right-of-way and will contract with SCRRA for the future maintenance-of-way and dispatching services to the UOR.

The second element is to be led by SCRRA, commonly known as "Metrolink" for the commuter rail service it operates throughout the region. The agency is a joint powers authority (JPA) comprised of and governed by its member agencies: Los Angeles County Metropolitan Transportation Authority (MTA), Orange County Transportation Authority (OCTA), Riverside County Transportation Commission (RCTC), Ventura County Transportation Commission (VCTC), and SANBAG. Each member agency has proportional representation by their elected officials on SCRRA's Board of Directors. SCRRA serves as the railroad-of-record for tracks owned by SANBAG and the other member agencies and performs the regulatory duties of a track owner on behalf of each. In this role SCRRA currently produces the necessary operating documents, dispatches traffic, and performs the required regulatory inspections and maintenance on the SANBAG owned track, including over the Redlands Subdivision from MP 0.0 to MP 4.0, where there is currently limited freight service. SCRRA contracts with a third-party operator to provide qualified crews to operate existing Metrolink services over SANBAG owned tracks. SCRRA contractors also maintain the track and signaling systems for the tracks that passenger service is provided on. Under an agreement between SANBAG and SCRRA currently being negotiated, SCRRA crews will operate Metrolink's LHC commuter trains from the San Bernardino Transit Center (MP 0.9) to the Downtown Redlands Station (MP 8.8). As part of this agreement SCRRA will dispatch and maintain the entire Redlands Subdivision (MP 0.0 to MP 9.8), acting as the host railroad-of-record to the FRA for the Redlands Subdivision.

The third element is being led by OmniTrans, the fixed-route bus transit and paratransit agency in the San Bernardino Valley area. OmniTrans is also a JPA, formed and authorized by the County of San Bernardino and fifteen signatory cities within the county. The five San Bernardino County Supervisors and an elected representative from each member city comprise a governing Board of Directors. OmniTrans will be the provider of the DMU passenger transit service along the Redlands Subdivision from the SBTC at MP 0.9 to the UOR at MP 9.8. OmniTrans will be responsible for maintaining the DMUs at the IEMF located at MP 0.0. Through a cooperative agreement with SANBAG, OmniTrans will own and maintain the rolling stock, procure and manage a qualified O&M contractor for the DMU service. In addition, OmniTrans and other public/private partnerships will maintain and operate the RPRP stations. SCRRA will continue to be the railroad-of-record for the Redlands Subdivision and will perform all federally-regulated functions and obligations of a host railroad including, but not limited to: train dispatching, railroad operating procedures, inspections, reporting and maintenance of way and signals. OmniTrans and SCRRA will jointly develop an operating plan for the RPRP that

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coordinates the two services to serve the public efficiently. OmniTrans will be a tenant railroad operating and maintaining the DMUs and SCRRA will be the host railroad for the operation. (BNSF will continue to provide freight service on the route.)

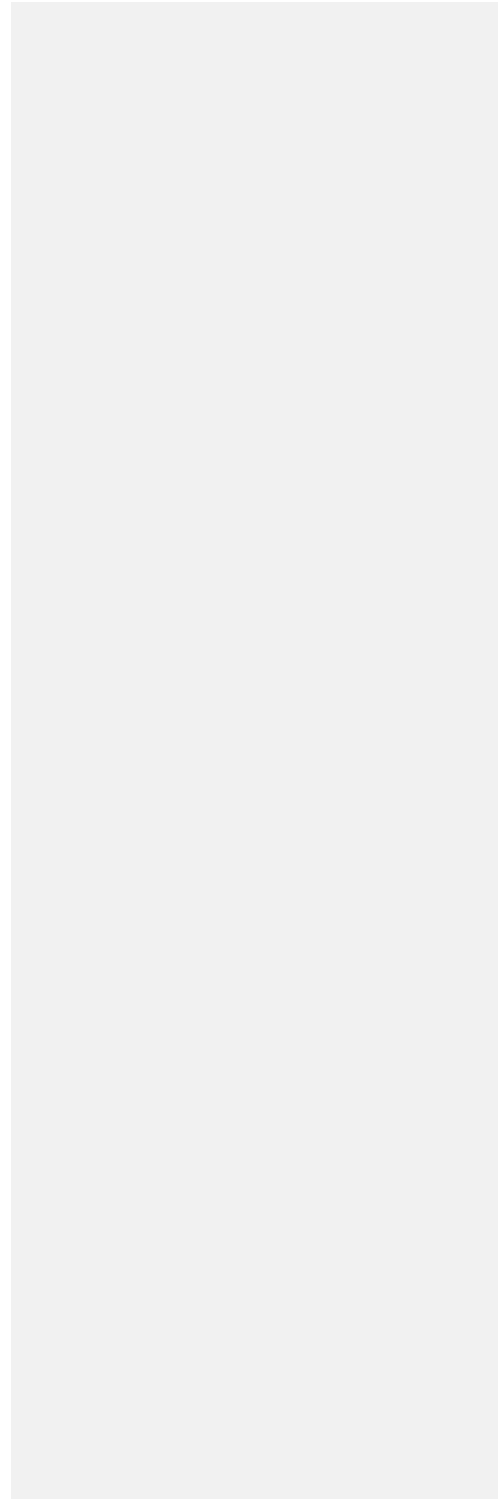
Exhibit A depicts the expected roles and responsibilities of each agency as the project is implemented and then enters operation.

Exhibit B includes a Redlands Subdivision track chart depicting the limits of project elements and the operational limits of BNSF freight service.

Exhibit C depicts the proposed oversight flow chart for the agencies involved in providing passenger rail service along the Redlands Subdivision.

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2. Exhibit A

Agency Roles & Responsibilities

Infrastructure Improvements to the Redlands Subdivision (Development of the RPRP System, MP 0.9 to MP 10.0)				
Item	Regulatory Requirement	Responsibility of:		
		SCRRA	OmniTrans	SANBAG
ADA Station Facilities	49 CFR Part 37			X
Grade Crossings/Quiet Zones	49 CFR Part 222			X ¹
Collision Hazard Analysis	Hazards ID & Mitigation			X

Railroad of Record/Track Owner Responsibilities (MP 0.0 – MP 9.8) Extension of Metrolink Service to Downtown Redlands (MP 0.9 – MP 8.8)				
Item	Regulatory Requirement	Responsibility of:		
		SCRRA	OmniTrans	SANBAG
Background Checks for Covered Employees	49 CFR Part 40	X		
New Locomotive Identification Tags	49 CFR Part 210	X		
Track Owner Assignment of Track Responsibility	49 CFR Part 213			X ²
Track Safety Standards	49 CFR Part 213	X		
On-Track Safety	49 CFR Part 214	X		
Operating Rules, Timetable & Special Instructions	49 CFR Part 217	X		
Written Program of instruction, training & examination on Operating Rules	49 CFR Part 217 49 CFR Part 218	X		
Yard Limits & Good Faith Challenges to Roadway Worker On-Track Safety	49 CFR Part 218	X		

¹ SANBAG will be assisting the cities with the implementation of quiet zones as a mitigation measure identified in the final Environmental Document

² SANBAG has assigned and will further assign the agency's responsibilities as track owner to SCRRA.

Control of Alcohol and Drug use	49 CFR Part 219	X		
Radio Rules	49 CFR Part 220	X		
Submission by Railroad for approval by FRA of marking devices	49 CFR Part 221 Appendix A	X		
Accident/incident reporting requirements (requirements detailed throughout Part 225)	49 CFR Part 225	X		

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Railroad of Record/Track Owner Responsibilities (MP 0.0 – MP 9.8)

Extension of Metrolink Service to Downtown Redlands (MP 0.9 – MP 8.8), continued

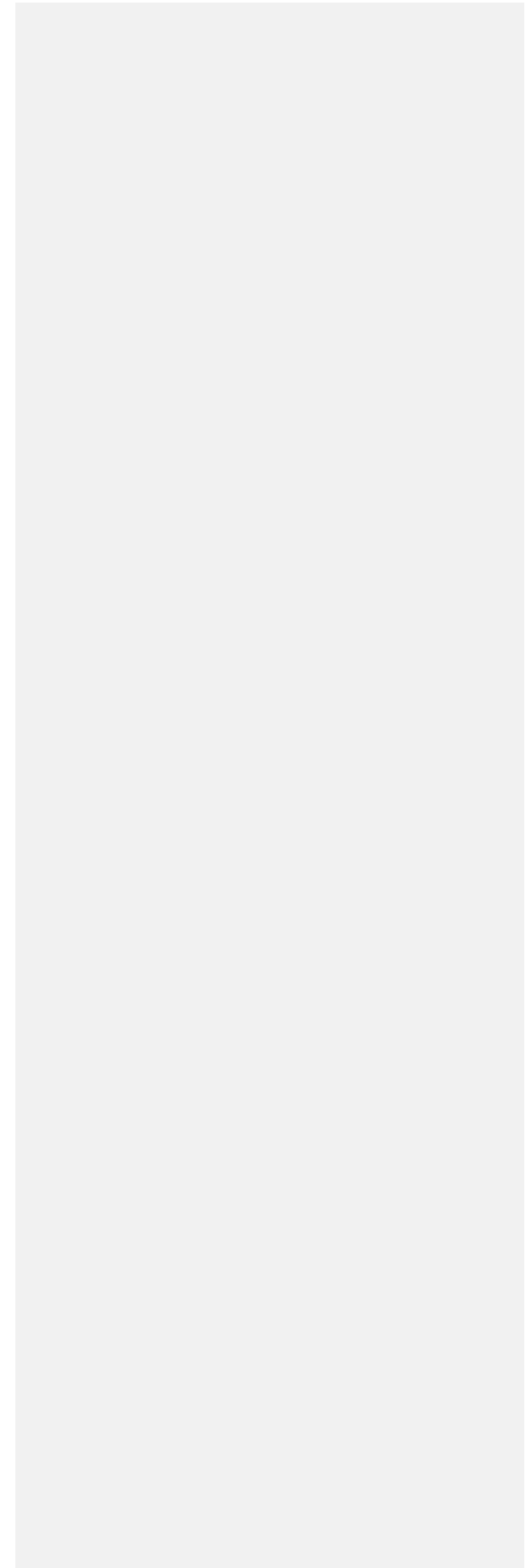
Item	Regulatory Requirement	Responsibility of:		
		SCRRRA	OmniTrans	SANBAG
Develop & implement a noise monitoring program	49 CFR Part 227	X		
Maintain record of covered-service employees' Hours of Service	49 CFR Part 228	X		
Locomotive Safety Standards	49 CFR Part 229	X		
Passenger Car Safety Appliances (wide vestibules)	49 CFR Part 231	X		
Signal System Reporting	49 CFR Part 233	X		
Highway Grade Xing malfunction recordkeeping	49 CFR Part 234	X		
Rules, standards, and instructions governing the installation, inspection, maintenance, and repair of signal and train control systems, devices and appliances	49 CFR Part 236	X		
Bridge Inspection	49 CFR Part 237	X		
Passenger equipment safety standards	49 CFR Part 238	X		
Passenger train emergency preparedness	49 CFR Part 239	X		
Qualification and certification of locomotive engineers	49 CFR Part 240	X		
Qualification and certification of conductors	49 CFR Part 242	X		
Training, qualification, and oversight for safety-related railroad employees	49 CFR Part 243 (NPRM)	X		
System safety program	49 CFR Part 270 (NPRM)	X		

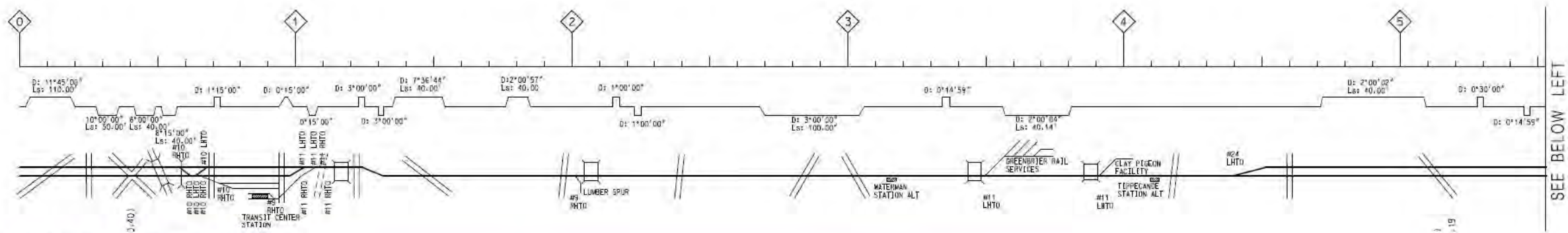
Part 238 Compliant DMU Transit Service (MP 0.9 – MP 9.8)

Item	Regulatory Requirement	Responsibility of:		
		SCRRA	OmniTrans	SANBAG
Background Checks for Covered Employees	49 CFR Part 40.25		X	
New Locomotive Identification Tags	49 CFR Part 210.27(d)		X	
Written Program of instruction, training and examination on Operating Rules	49 CFR Parts 217 & 218		X	
Control of Alcohol and Drug use	49 CFR Part 219		X	
Submission by Railroad for approval by FRA of marking devices	49 CFR Part 221 Appendix A		X	
Accident/incident reporting requirements (requirements detailed throughout Part 225)	49 CFR Part 225		X	
Maintain record of covered-service employees' Hours of Service	49 CFR Part 228		X	
Locomotive Safety Standards	49 CFR Part 229		X	
Passenger Car Safety Appliances (wide vestibules)	49 CFR Part 231		X	
Passenger equipment safety standards	49 CFR Part 238		X	
Passenger train emergency preparedness	49 CFR Part 239		X	
Qualification and certification of locomotive engineers	49 CFR Part 240		X	
Qualification and certification of conductors	49 CFR Part 242		X	
Training, qualification, and oversight for safety-related railroad employees	49 CFR Part 243 (NPRM)		X	
System safety program	49 CFR Part 270 (NPRM)		X	
Station Maintenance			X	

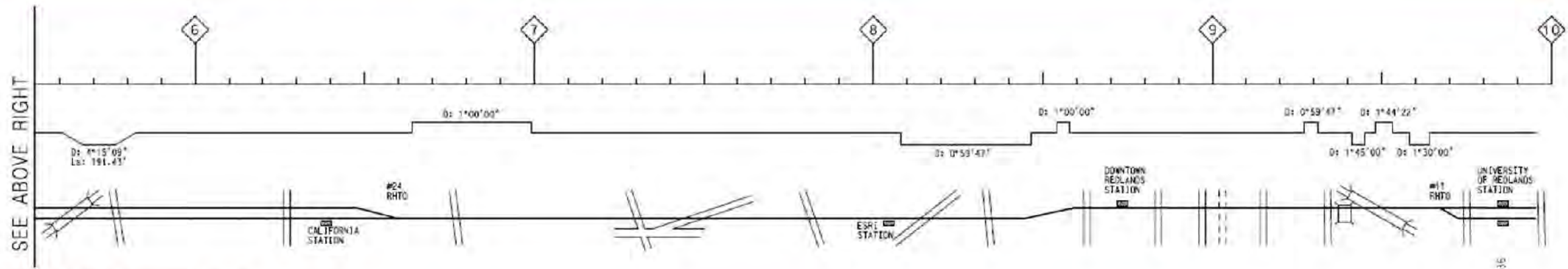
Redlands Passenger Rail Project (RPRP) Areas of Responsibilities

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- BNSF Freight Tenant Carrier to SCRRRA
- Metrolink LHC Passenger Service
- Metrolink Maintenance of Way
- Metrolink Dispatching – Host Railroad for Regulatory Compliance
- ARROW Service (OmniTrans as a tenant carrier to SCRRRA)
- Redlands Passenger Rail Project Infrastructure Improvements = Track, Structures, Signaling, PTC and Stations (SBCTA)



- Metrolink LHC Passenger Service
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