

# High Desert Corridor Joint Powers Authority

February 4, 2016

Meeting Materials

## Item 3

Investment Grade Rail Ridership and Revenue Study: To fund and implement the Scope of Work for the SDG Contract

Authorize the Chairman of the HDCJPA to enter into one or multiple MOU(s) with XpressWest \$200,000, SANBAG \$200,000, CAHSRA \$250,000, and Metro, in substantially the same format and content as the MOU approved at the November 4, 2015 SANBAG meeting, with an added confidentially clause, to carry out the Scope of Work in the JPA contract with SDG, with such changes and additions that are deemed in the best interest of the HDCJPA and approved by Counsel

**COOPERATIVE AGREEMENT NO. 16-100xxxx (Metro #)**

**BY AND BETWEEN**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

**AND**

**SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**

**AND**

**HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY**

**AND**

**XPRESSWEST**

**AND**

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

**FOR**

**HIGH DESERT CORRIDOR  
INVESTMENT GRADE RIDERSHIP & REVENUE FORECAST STUDY**

**THIS COOPERATIVE AGREEMENT** (“Contract”) is made and entered into by and between the Los Angeles County Metropolitan Transportation Authority (“METRO”), whose address is 1 Gateway Plaza, Los Angeles, California 90012; the San Bernardino County Transportation Commission (“SANBAG”), whose address is 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, California 92410-1715; the High Desert Corridor (HDC) Joint Powers Authority (“JPA”) whose address is 385 N. Arrowhead Avenue, 5<sup>th</sup> Floor, San Bernardino, CA 92415-0110; XpressWest, whose address is 6720 Via Austi Pkwy, STE 200, Las Vegas, Nevada, 89119; and the California High-Speed Rail Authority (“CHSRA”) whose address is 770 L Street, Suite 1160, Sacramento, CA 95814. SANBAG, Metro, JPA, XpressWest and CHSRA are each a “Party” and are collectively referred to as the “Parties.”

**RECITALS:**

**WHEREAS**, in 2010, the County of San Bernardino, County of Los Angeles, and the cities of Adelanto, Victorville, Apple Valley, Lancaster, and Palmdale formed a Joint Powers Authority (JPA) to develop the HDC; and

**WHEREAS**, Metro has taken the lead on the development of an Environmental Impact Report for the HDC; and

**WHEREAS**, a Final Environmental Impact Report is anticipated to be completed in spring 2016; and

**WHEREAS**, section 185032 of the California Public Utilities Code provides that the CHSRA shall have exclusive authority and responsibility for planning, constructing, and operating a high-speed passenger train system in California; and

**WHEREAS**, the California Legislature and the people of California declared in the California high-speed rail bond measure, Proposition 1 A, that "It is the intent of the Legislature ... and the people of California ... to initiate construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim." (Cal. Sts. & High. Code §2704.04(a)); and

**WHEREAS**, the California high-speed train system includes a station in Palmdale at the western terminus of HDC; and

**WHEREAS**, a high-speed train link along HDC has potential to benefit ridership and revenue of the California high-speed train system;

**WHEREAS**, the next steps in development of the HDC will likely require financial support both from the public and private sectors; and

**WHEREAS**, investment grade ridership and revenue studies have been required by the Federal Railroad Administration for consideration of a Railroad Rehabilitation and Improvement Financing (RRIF) loan; and

**WHEREAS**, for private sector interests it is necessary that robust estimates are prepared of likely ridership and revenue levels and the envelope of risks associated with those forecasts; and

**WHEREAS**, the JPA has requested funding contributions from SANBAG and METRO to conduct an investment grade passenger rail ridership and revenue study; and

**WHEREAS**, the California High Speed Rail Authority and Xpress West have been requested to contribute funding to complete the study; and

**WHEREAS**, the JPA has solicited a proposal from Steer Davies Gleave to perform the investment grade passenger rail ridership and revenue study; and

**WHEREAS**, the JPA has provided justification for Steer Davies Gleave to receive a sole source contract from the JPA; and

**WHEREAS**, the Steer Davies Gleave proposal identified a not-to-exceed dollar amount to complete the scope of work of \$800,000; and

**WHEREAS**, on September 22, 2015 the JPA Board unanimously approved the sole source award to Steer Davies and Gleave to complete the investment grade passenger rail ridership and revenue study; and

**WHEREAS**, the proposed work effort is outlined in the proposal included in Attachment A and is defined as the "PROJECT"; and

**WHEREAS**, the SANBAG contribution for the study would be an amount up to but not exceeding \$300,000 and subject to the funding contributions of other parties; and

**WHEREAS**, the METRO is undertaking a traffic and revenue study on the highway portion of the HDC; and

**WHEREAS**, the XPRESSWEST contribution for the study would be an amount up to but not exceeding \$200,000 and subject to the funding contributions of other parties; and

**WHEREAS**, the CHSRA contribution for the study would be an amount up to but not exceeding \$250,000 and subject to the funding contributions of other parties and execution of a funding agreement between CHSRA and the JPA approved the California Department of General Services; and

**WHEREAS**, the SANBAG, METRO, XPRESSWEST, and any CHSRA contributions to this phase of the HDC do not obligate SANBAG, METRO, XPRESSWEST or CHSRA to the funding of subsequent phases; and

**WHEREAS**, the Parties wish to enter into this Contract to delineate roles, responsibilities, and applicable funding commitments relative to the PROJECT; and

**WHEREAS**, the PROJECT will be managed by the JPA with involvement from SANBAG, and Metro, XPRESSWEST, and CHSRA; and

**NOW, THEREFORE**, the Parties agree as follows:

**I. JPA RESPONSIBILITIES:**

- A. Designate Project Manager to represent the JPA through whom all communications between the Parties shall be channeled.
- B. Be responsible for executing a sole-source contract to Steer Davies Gleave (“CONSULTANT”) for an amount not-to-exceed \$900,000.
- C. Provide SANBAG, METRO, XPRESSWEST, and CHSRA with a proposed PROJECT schedule from the consultant to complete the PROJECT.
- D. Include SANBAG, METRO, XPRESSWEST, and CHSRA in all related meetings and communications on the PROJECT’s progress as well as to provide SANBAG, METRO, XPRESSWEST, and CHSRA with copies of the meeting minutes and action items.
- E. Undertake management, planning, outreach, analysis, and procurement work in connection with the PROJECT and to diligently undertake and oversee the tasks documented in the CONSULTANT Scope of Work. Performance of services under the CONSULTANT contract shall be subject to the technical direction of the JPA Chair, or his designee, with input and consultation from the SANBAG, METRO, XPRESSWEST, and CHSRA. Modifications to the Scope of Work or schedule shall require written approval from the SANBAG, METRO, XPRESSWEST, and CHSRA responsible staff members prior to any modification of the agreement with the CONSULTANT by the JPA.

- F. Make all PROJECT work performed by the consultants and contractors, along with associated invoices, available for review and comment by the SANBAG, METRO, XPRESSWEST, and CHSRA.
- G. Require CONSULTANT to name SANBAG, METRO, XPRESSWEST, and CHSRA as additional insureds under the commercial general liability policies.

**II. SANBAG RESPONSIBILITIES:**

- A. Designate a responsible staff member who will be SANBAG's representative attending the meetings, receive day-to-day communication and review the PROJECT documents. The responsible staff member will provide comments and any requested information or documents to the JPA and the CONSULTANT.
- B. Be responsible for payment of up to \$300,000 for SANBAG's portion of the PROJECT to the JPA based on progress invoices to be provided to SANBAG by the JPA. The SANBAG share of the cost of CONSULTANT services shall be confirmed by a letter from SANBAG's Executive Director to the JPA once the complete funding plan is known.
- C. Review and comment on all PROJECT work performed by the CONSULTANT. JPA shall transmit all review comments to SANBAG. The JPA agrees the CONSULTANT submittals may be in the form of plans, notes, estimates, analysis, reports, studies, and/or environmental documents. The JPA shall review all comments received on the PROJECT and together with SANBAG, METRO, XPRESSWEST, and CHSRA decide which comments shall be incorporated into the PROJECT documents.
- D. Provide the JPA and the CONSULTANT with applicable SANBAG data in order to support the completion of the the PROJECT.

**III. METRO RESPONSIBILITIES:**

- A. Designate a responsible staff member who will be METRO's representative attending the meetings, receive day-to-day communication and review the PROJECT documents. The responsible staff member will provide comments and any requested information or documents to the JPA and the CONSULTANT.
- B. Review and comment on all PROJECT work performed by the CONSULTANT. JPA shall transmit all review comments to METRO. The JPA agrees the CONSULTANT submittals may be in the form of plans, notes, estimates, analysis, reports, studies, and/or environmental documents. The JPA shall review all comments received on the PROJECT and together with SANBAG, METRO, XPRESSWEST, and CHSRA decide which comments shall be incorporated into the PROJECT documents.
- C. Provide the JPA and the CONSULTANT with applicable METRO data in order to support the completion of the the PROJECT.
- D. Provide the JPA with the opportunity to review and comment on all project work undertaken by the consultant to METRO in connection with the HDC traffic and revenue study on the highway portion of the HDC.
- E. Provide for a two-way exchange of data between the Metro HDC traffic and revenue data and

JPA CONSULTANT rail revenue data, conforming to the confidentiality agreement clauses in section VI.U, below.

**IV. XPRESSWEST RESPONSIBILITIES:**

- A. Designate a responsible staff member who will be XPRESSWEST's representative attending the meetings, receive day-to-day communication and review the PROJECT documents. The responsible staff member will provide comments and any requested information or documents to the JPA and CONSULTANT.
- B. Be responsible for payment of up to \$200,000 for XPRESSWEST's portion of the PROJECT to the JPA based on progress invoices to be provided to XPRESSWEST by the JPA. The XPRESSWEST share of the cost of CONSULTANT services shall be confirmed by a letter from XPRESSWEST to the JPA once the complete funding plan is known.
- C. Review and comment on all PROJECT work performed by the CONSULTANT. JPA shall transmit all review comments to XPRESSWEST. The JPA agrees the CONSULTANT submittals may be in the form of plans, notes, estimates, analysis, reports, studies, and/or environmental documents. The JPA shall review all comments received on the PROJECT and together with SANBAG, METRO, XPRESSWEST, and CHSRA decide which comments shall be incorporated into the PROJECT documents.
- D. Provide the JPA and the CONSULTANT with applicable XPRESSWEST data in order to support the completion of the the PROJECT.

**V. CHSRA RESPONSIBILITIES:**

- A. Designate a responsible staff member who will be CHSRA's representative attending the meetings, receive day-to-day communication and review the PROJECT documents. The responsible staff member will provide comments and any requested information or documents to the JPA and the CONSULTANT.
- B. Be responsible, after execution of a funding agreement between CHSRA and the JPA approved by the Department of General Services, for payment of up to \$250,000 for CHSRA's portion of the PROJECT to the JPA based on progress invoices to be provided to CHSRA by the JPA. The CHSRA share of the cost of CONSULTANT services shall be confirmed in the funding agreement between CHSRA and the JPA and shall be subject to the terms and conditions set forth in the funding agreement.
- C. Review and comment on all PROJECT work performed by the CONSULTANT. JPA shall transmit all review comments to CHSRA. The JPA agrees the CONSULTANT submittals may be in the form of plans, notes, estimates, analysis, reports, studies, and/or environmental documents. The JPA shall review all comments received on the PROJECT and together with SANBAG, METRO, XPRESSWEST, and CHSRA decide which comments shall be incorporated into the PROJECT documents.
- D. Provide the JPA and the CONSULTANT with applicable CHSRA data in order to support the completion of the the PROJECT.

**VI. MUTUAL RESPONSIBILITIES:**

- A. Parties agree that the JPA is managing the PROJECT through a sole-source procurement and oversight of the CONSULTANT to complete the PROJECT. Estimated costs of the PROJECT shall not exceed \$900,000 to complete these tasks, unless this Contract is amended as mutually agreed in writing by the parties. JPA will manage the PROJECT using JPA staff and contracted services.
- B. The scope of the PROJECT is depicted in Attachment A, which is attached to this Contract and by this reference is incorporated herein.
- C. Neither JPA, nor its officers, directors, employees or agents are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SANBAG or METRO under or in connection with any work, authority or jurisdiction delegated to SANBAG or METRO under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, SANBAG or METRO shall fully defend, indemnify and save harmless JPA its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANBAG or METRO under or in connection with any work, authority or jurisdiction delegated to SANBAG or METRO under this Contract. This provision shall survive termination of this contract.
- D. Neither METRO, nor its officers, directors, employees or agents are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SANBAG or JPA under or in connection with any work, authority or jurisdiction delegated to SANBAG or JPA under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, SANBAG or JPA shall fully defend, indemnify and save harmless SCAG its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANBAG or JPA under or in connection with any work, authority or jurisdiction delegated to SANBAG or JPA under this Contract. This provision shall survive termination of this contract.
- E. Neither SANBAG, nor its officers, directors, employees or agents are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by METRO or JPA under or in connection with any work, authority or jurisdiction delegated to METRO or JPA under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, METRO or JPA shall fully defend, indemnify and save harmless SANBAG its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by METRO or JPA under or in connection with any work, authority or jurisdiction delegated to METRO or JPA under this Contract. This provision shall survive termination of this contract.
- F. Neither XPRESSWEST, nor its officers, directors, employees or agents are responsible for any injury, damage or liability occurring or arising by reason of anything done or

omitted to be done by XPRESSWEST or JPA under or in connection with any work, authority or jurisdiction delegated to XPRESSWEST or JPA under this Contract.

- G. Neither CHSRA, nor its officers, directors, employees or agents are responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CHSRA or JPA under or in connection with any work, authority or jurisdiction delegated to CHSRA or JPA under this Contract. It is understood and agreed that, pursuant to Government Code Section 895.4, JPA shall fully defend, indemnify and save harmless CHSRA its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by JPA under or in connection with any work, authority or jurisdiction delegated to JPA under this Contract. This provision shall survive termination of this contract.
- H. The term of the Contract shall continue in full force and effect through completion and closeout of the PROJECT or on December 31, 2016, whichever is earlier in time.
- I. The Parties hereto warrant that they are duly authorized to execute this Contract on behalf of said Parties and that, by so executing this Contract, the Parties hereto are formally bound to this Contract.
- J. Except on subjects preempted by Federal law, this Contract shall be governed and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, county and federal laws and ordinances with respect to the performance under this Contract.
- K. The Parties agree that they shall maintain and make available for inspection all books, records, papers, accounting records, or other documents pertaining to the performance of the PROJECT, including but not limited to, the costs associated with the PROJECT. The Parties shall make available at their respective offices at reasonable times during the Contract term and for three years from the date of PROJECT completion, whichever is later in time. The Parties agree that all duly authorized representatives shall have access to the documents during normal business hours.
- L. If any clause or provision of this Contract is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the remainder of this Contract shall not be affected but shall remain in full force and effect.
- M. This Contract can be amended with a written amendment when agreed upon and duly authorized to be executed by all Parties.
- N. In the event of litigation arising from this Contract, each Party to this Contract shall bear its own costs, including attorney(s) fees.
- O. This Contract may be signed in counterparts, each of which shall constitute an original.
- P. Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Contract shall be in writing,



unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below.

Q. Notice given under or regarding this Contract shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Notice shall be sent to the respective Parties at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

To JPA	To SANBAG	To Metro	To XpressWest	To CHSRA
<b>385 N. Arrowhead Avenue, 5th Floor</b>	<b>1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor</b>	1 Gateway Plaza,	6720 Via Austi Pkwy, Ste. 200	700 N Alameda, Room 3-532
<b>San Bernardino, CA 92415-0120</b>	<b>San Bernardino, CA 92410-1715</b>	<b>Los Angeles, CA 90012</b>	<b>Las Vegas, NV 89119</b>	<b>Los Angeles, CA 90012</b>
<b>Attn: Laurie Hunter</b>	<b>Attn: Steve Smith</b>	<b>Attn: Isidro Panuco</b>	<b>Attn: Andrew Mack</b>	<b>Attn: Michelle Boehm</b>
	<b>Cc: Procurement Manager</b>			
<b>Phone: (626) 808-8668</b>	<b>Phone: (909) 884-8276</b>	<b>Phone: (213) xxx-xxxx</b>		<b>Phone: (213) 628-8024</b>

R. The Recitals stated above are true and correct and are incorporated by this reference into the Contract.

S. Attachment A is attached to this Contract and by this reference is incorporated herein.

T. JPA shall be the last of the parties to sign this Contract and the date that this Contract is executed by the JPA shall be the Effective Date of the Contract.

U. CONFIDENTIAL INFORMATION

1. To the extent authorized by the law, the parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other (“Confidential Information”). Each party will use reasonable efforts to prevent the disclosure of any of the other party’s Confidential Information to third parties for a period of three (3) years after the termination of this Agreement, provided that the recipient party’s obligation shall not apply to information that:

- i. is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;

- ii. is already in the recipient party's possession at the time of disclosure thereof;
  - iii. is or later becomes part of the public domain through no fault of the recipient party;
  - iv. is received from a third party having no obligations of confidentiality to the disclosing party;
  - v. is independently developed by the recipient party;
  - vi. is required to be disclosed pursuant to court order issued by a court of competent jurisdiction; or
  - vii. is required by law, including the California Public Records Act, or regulation to be disclosed.
2. In the event that information is required to be disclosed pursuant to subsection vi, above, and to the extent authorized by the law, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

----- *SIGNATURES ON THE FOLLOWING PAGE* -----

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IN WITNESS WHEREOF, the Parties have executed this Contract on the day and year written below.

<p><b>HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY</b></p> <p>By: _____ Robert A. Lovingood JPA Chairman</p> <p>Date: _____</p> <p><b>APPROVED AS TO FORM:</b></p> <p>By: _____ Carol Greene JPA Counsel</p>	<p><b>SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____ Ryan McEachron President, Board of Directors</p> <p>Date: _____</p> <p><b>APPROVED AS TO FORM:</b></p> <p>By: _____ Eileen Monaghan Teichert General Counsel</p> <p><b>CONCURRENCE:</b></p> <p>By: _____ Jeffery Hill Procurement Manager</p>
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<p><b>METRO</b></p> <p>By: _____ Mark Ridley-Thomas Chair, Board of Directors</p> <p>Date: _____</p> <p><b>APPROVED AS TO FORM:</b></p> <p>By: _____</p> <p>Chief Counsel</p>	<p><b>XPRESSWEST</b></p> <p>By: _____ Andrew Mack Chief Operating Officer</p> <p>Date: _____</p>
<p><b>CHSRA</b></p> <p>By: _____ Jeff Morales Chief Executive Officer</p> <p>Date: _____</p> <p><b>APPROVED AS TO FORM:</b></p> <p>By: _____</p> <p>Chief Counsel</p>	

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**ATTACHMENT A  
SCOPE OF WORK**

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