

TAP© VENDING MACHINE AGREEMENT

This **TAP VENDING MACHINE (TVM) AGREEMENT** (“**Agreement**”) is entered into as of September 7, 2021 (the “**Effective Date**”), by and between the Los Angeles County Metropolitan Transportation Authority, a California county transportation authority existing under the authority of §§ 130050.2 *et seq.* of the California Public Utilities Code (“**LACMTA**”), and CITY OF REDONDO BEACH, a Chartered Municipal Corporation (“**Agency**”). LACMTA and Agency are sometimes hereinafter referred to individually as “**Party**” or collectively as “**Parties**”.

RECITALS

A. The TAP Program (“**TAP**”) is a regional smart-card program developed as a cooperative effort amongst participating public transit operators (“**TAP Participants**”) in Los Angeles County providing for the electronic payment of inter-and intra- fares via the use of TAP devices on such TAP Participants’ universal fare system (UFS) fareboxes, driver control unit light validators (DCU/LVs) and bus mobile validators (BMVs) and other fare validators installed on TAP Participants’ transit fleet (e.g., bus, rail, among other transit vehicles);

B. The LACMTA Board took action on May 28, 1997 to facilitate the establishment a universal fare system, enabling TAP Participants to share a common fare media for use amongst public transit patrons riding on TAP Participants’ transit fleet;

C. LACMTA and TAP Participants recognize that employing a seamless fare media for transit payment among TAP Participants has a beneficial impact on the customers served, and on the ability of TAP Participants to improve service;

D. As such, TAP Participants (including LACMTA) have created a TAP Operating Group (“**TOG**”), comprised of one primary representative and one alternate from each TAP Participant, and a set of committees (e.g., TOG Business Rules Working Group, TOG Marketing and Communications Committee, among others) to work towards, among other things, unifying fare media into the TAP program, simplifying marketing messaging, and establishing regional rules;

E. The rules for participation in TAP are outlined in the TAP Regional Operating Rules (as amended from time to time, the “**TAP Regional Operating Rules**”) incorporated by this reference, which, among other things, set forth the process for reconciling TAP revenues, including the monthly clearing and settlement process by which TAP Participants receive fare revenue or make payments in connection with the sale of regional or their own fare products on TAP (the “**Positions and Settlement Process**”);

F. Amendments to the TAP Regional Operating Rules must be approved by majority ruling of TAP Participants’ General Managers, with concurrence of the LACMTA CEO;

G. Agency and LACMTA have entered into that certain Cooperative TAP Participant Agreement dated October 21, 2014 (as amended from time to time, the “**Cooperative TAP Participant Agreement**”) incorporated by this reference, which, among other things, establishes the

respective roles and responsibilities of the parties in connection with Agency's participation in the TAP System;

H. In order to process TAP card transactions, Agency will use the number of TAP Vending Machines described in Section 1 (Grant of Permission) of this Agreement, to be installed by LACMTA pursuant to the terms of this Agreement. The "**TAP Vending Machine**" or "**TVM**" consists of and is defined hereunder to include the TAP Vending Machine itself and all associated hardware and software, program documentation and any program updates supplied by LACMTA necessary to process TAP card transactions. If multiple TVMs are installed hereunder, all references herein to "TAP Vending Machine" or "TVM," whether in singular or plural, shall include all such TVMs.

I. LACMTA desires to supply, install, operate and maintain the TVM on the terms and conditions contained in this Agreement, which, among other things, establish the respective roles and responsibilities of the Parties in connection with Agency's use of the TVM in connection with its participation in the TAP System;

NOW, THEREFORE, in consideration of the above Recitals, and the agreements, representations, warranties, covenants, and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, LACMTA and Agency, intending to be legally bound hereby, agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals to this Agreement are incorporated herein by this reference.

2. GRANT OF PERMISSION.

a. Subject to the terms and conditions contained herein, LACMTA hereby grants to Agency and Agency hereby accepts a non-exclusive, non-transferable, revocable right to use one (1) TVM supplied by LACMTA for the sole purpose of processing TAP card transactions in accordance with the TAP Regional Operating Rules, the Cooperative TAP Participation Agreement, and this Agreement.

b. Subject to the terms and conditions contained herein, Agency hereby grants to LACMTA a non-exclusive license in, on, over, under, across, and along the real property of Agency identified on Attachment II hereto (the "**Licensed Property**"), together with rights of access and entry onto the Licensed Property as necessary or convenient for the use of the Licensed Property, for purposes of installing, accessing, operating, maintaining, supporting, and removing the TVM and any usual, necessary, and related appurtenances thereto as further described herein (the "**Purpose**"). In connection with this grant of license, LACMTA, its affiliates and employees, sublicensees and each of their officers, directors, agents, customers, visitors, invitees, licensees and contractors (collectively, "**LACMTA's Parties**") subject to the provisions hereof, may have reasonable rights of entry and access onto the Licensed Property and adjoining real property of Agency if necessary for the use of the Licensed Property. The Licensed Property shall only be

used for the Purpose and for such lawful purposes as may be directly incidental thereto. The term of this License shall continue during the term of this Agreement.

3. TERM. The term (“**Term**”) of this Agreement shall commence on the Effective Date and shall continue for five (5) years thereafter, unless earlier terminated by either Party pursuant to Section 11 of this Agreement. The Parties may elect in writing to extend the Term of this Agreement for successive one (1) year periods at any time prior to the expiration of the then-current Term.

4. PROHIBITED ACTIVITIES. Agency shall not and to the extent that it is within Agency’s control shall not permit third parties to:

- a. Copy, reproduce, tamper with, remove, relocate, alter, or otherwise modify the TVM;
- b. Sell, license, sublicense, disclose, distribute or otherwise transfer the TVM to any third party;
- c. Remove or modify any program markings or any notice of LACMTA’s proprietary rights;
- d. Alter, modify, or change the TVM;
- e. Decode, reverse engineer or disassemble the TVM;
- f. Disclose performance results of the TVM to public entities without the consent of the LACMTA;
- g. Use or permit the use of the TVM for illegal purposes; or
- h. Relocate the TVM without written permission from LACMTA. If the Agency chooses to relocate the TVM, at least three (3) months advance written notice to LACMTA is required and Agency agrees to cover the costs.

5. AGENCY RESPONSIBILITIES. Agency agrees to the following in its use of the TVM. Where indicated that Agency or LACMTA may perform a specific responsibility, the agreement among the Parties with respect to such responsibility is indicated in Attachment III (Chart of Responsibilities):

- a. Agency shall pay the operational costs including fees for utility provided power and communication services directly to the applicable service provider. Additionally, Agency shall pay annually, the Maintenance Cost Per TVM and Revenue Servicing Cost Per TVM assessed for each TVM for Agency’s use, as set forth on Attachment I, with cost increases of a certain percentage value annually shown on Attachment I;
- b. The Agency will only permit the TVM to be used in the manner for which it was intended, and in accordance with the TAP Regional Operating Rules, the Cooperative TAP

Participation Agreement, and the terms of this Agreement. Additionally, to the extent that it is within Agency's control Agency shall ensure that third parties treat the TVM with a level of care appropriate to equipment of its type.

c. Agency shall provide space for each TVM to be installed with a minimum 6 inches of clearance from the back, 60 inches of clearance forward of the front, and 6 inches to either side of each TVM. In the event two TVMs are located side-by-side, the minimum separation shall be 12 inches (minimum 48 inches on center spacing between TVMs).

d. Agency shall maintain, whether constructed by Agency or by LACMTA or LACMTA's contractor, minimum 8-inch thick concrete slab, the top of which shall be even with surrounding finish surface, for anchoring and securing each TVM.

e. Agency shall maintain, whether constructed by Agency or by LACMTA or LACMTA's contractor, conduits for power and communication, including intermediate pull boxes between location of each TVM and power panel and communications room/enclosure, respectively to provide a pathway for wiring and cabling to support operation of the TVM.

f. Agency shall provide separate 120 VAC 20 Amp circuit at power panel to power for each TVM. Agency shall maintain, whether constructed by Agency or by LACMTA or LACMTA's contractor, a power circuit running between location of each TVM and the power panel, and cabinet grounding at each TVM location. Agency shall maintain, whether constructed by Agency or by LACMTA or LACMTA's contractor, any necessary improvements to the power panel to provide separate circuits for each TVM. Agency shall be responsible for monthly power usage fees.

g. Agency shall maintain, whether constructed by Agency or by LACMTA or LACMTA's contractor, a covering for each TVM with at least 84 inches of overhead clearance for the TVM.

h. Agency shall provide secure data communications for each TVM where the data rate shall be DSL line or better and the IP address shall be static and accessible through the web. As an alternative, LACMTA can provide the hardware for wireless communication but the Agency shall be responsible for monthly fees.

i. Agency shall provide one TI data lines for a LACMTA supplied and installed video camera. If Agency supplies and installs the video camera, the minimum specifications shall be a high-resolution color IP camera 720P H.264 or better. Remote tilt, pan, and zoom desirable. The camera shall be pointed towards the front of the TVM at a distance no greater than 100 feet and at a height no less than 9 feet. Remote tilt, pan, and zoom functionality is desirable. The video data feed shall be accessible through the web. If Agency supplies and installs the video camera, Agency shall ensure that LACMTA has access to the video data feed throughout the term of this Agreement.

j. Agency shall establish agreements, MOU's, and/or obtain permits with all third parties, including necessary utilities and government agencies with jurisdiction, in event the TVM or infrastructure for same is to be located on property not owned by the Agency, in order to obtain all necessary rights for the TVM to be installed, accessed, operated, and maintained, and supported on,

and removed from, such property in accordance with this Agreement. All such agreements and MOU's shall at a minimum provide for access by the LACMTA's Parties as is described in Section 1 of this Agreement and shall be subject to prior review and approval by LACMTA.

6. LACMTA RESPONSIBILITIES. LACMTA's responsibilities under this Agreement are as follows. Where indicated that Agency or LACMTA may perform a specific responsibility, the agreement among the Parties with respect to such responsibility is indicated in Attachment III (Chart of Responsibilities):

a. LACMTA will install the TVM and, unless the Agency elects to supply and install the video camera, video camera to monitor the front of the TVM, and will also provide the basic initial equipment installation service at no cost to the Agency. Basic initial equipment installation service includes creation of a minimum 8-inch thick concrete slab, the top of which shall be even with surrounding finish surface, for anchoring and securing; installation of conduits for power and communications to support installation of the TVM and CCTV camera; and installation of a canopy to cover the TVM, collectively known as supporting infrastructure. If the Agency chooses to construct the supporting infrastructure, doing so will be at the Agency's sole cost and the Agency agrees to construct same in accordance with the Metro Rail Design Criteria (MRDC) requirements specific to TVM installation and which shall be provided by LACMTA to Agency. LACMTA will be responsible for physically installing and testing the TVM and video cameras after construction of the ticketing area and supporting infrastructure is complete.

b. LACMTA will set up each TVM to accept cash, credit or debit and tokens in order to purchase EZ Transit Pass and TAP Stored Value that are valid for travel on the Agency's services along with Metro passes that are valid for travel on LACMTA's services.

c. LACMTA will perform preventive and corrective maintenance on the TVM in exchange for Agency's payment of Maintenance Cost Per TVM and Revenue Servicing Cost Per TVM as per Attachment I on an annual basis. Preventive maintenance will consist of monthly scheduled procedures to ensure the TVM are operating at optimal levels. Corrective maintenance consists of TVM repairs within 8 hours of system detection or notification by Agency. Corrective maintenance for TVM in Santa Clarita will not exceed 24 hours of system detection or notification by the Agency.

d. LACMTA will perform 24/7 operational monitoring at Metro's Bus Operations Center. LACMTA will also perform 24/7 maintenance monitoring performed at the LACMTA's contractor's facility in Norwalk, California.

e. LACMTA will be responsible for remedying damage to the TVM due to vandalism.

7. NO IMPLIED WARRANTY. The TVMs are provided to Agency on an "as-is" basis. LACMTA makes no representations or warranties that the TVM will perform as indicated or that the TVM will be suitable for the purposes for which it (they) is (are) permitted to be used under this Agreement. LACMTA does not guarantee that the TVM will perform error-free or uninterrupted or that LACMTA will correct all program errors. Except for warranties expressly set

forth in this Agreement, all warranties, express or implied, including but not limited to the implied warranties of merchantability and of fitness for a particular purpose, are expressly waived.

8. TITLE/NO ENCUMBRANCE. LACMTA shall, at all times, retain title, ownership and intellectual property rights to the TVM. No title to the TVM is transferred hereunder to Agency. Agency shall not permit any claim, levy, lien or legal process to be issued against the TVM.

9. INSPECTION/AUDIT BY LACMTA. LACMTA, or its agent, shall have the right at any time to inspect or perform audits of the TVM to ensure that Agency's, and/or its agent's, use thereof complies with the terms of this Agreement. Such inspections or audits shall be conducted during normal business hours. Agency and its agents shall cooperate with LACMTA in any inspection or audit, and shall provide LACMTA with all records reasonably related to Agency's and its agents' use of the TVM.

10. SURRENDER OF TVM. Agency agrees that on termination of this Agreement or at the request of LACMTA for surrender of the TVM, Agency shall have no rights to use the TVM, and at such time, (a) LACMTA may disable the TVM to prevent Agency from continued use of the TVM and (b) LACMTA shall remove the TVM from Agency's property. In connection with such removal, LACMTA shall be responsible for completing the following, and all costs associated with the same: Remove the TVM; pull back the wiring and cable inside the conduit and plug the conduit ends flush with the finished surface; and cut off anchors and patch holes to be even with the finished surface. All other infrastructure improvements associated with installation of the TVM shall be left in place by LACMTA. All other work associated with restoring the Agency's property to its condition prior to installation of the TVM and all costs associated with the same shall be Agency's responsibility.

11. TERMINATION. This Agreement shall terminate as between the Parties upon the occurrence of any of the following:

a. At any time after one (1) year and six (6) months following the Effective Date, thirty (30) days after written notice from a Party that such Party intends to terminate this Agreement, without cause;

b. Thirty (30) days after written notice from LACMTA that LACMTA intends to terminate this Agreement because of expiration or termination of LACMTA's underlying agreement for maintenance of its TVMs;

c. Thirty (30) days after written notice from a Party that such Party intends to terminate this Agreement because of a breach of the Agreement by the Party receiving the notice if such breach is not cured within said thirty (30) day period; provided, however, that, in the event that the breach is of a nature which cannot reasonably be cured within thirty (30) days, the Agreement shall not terminate so long as the breaching Party has commenced to cure the breach within the thirty (30) day period and diligently prosecutes the completion of the cure to conclusion thereafter; or,

d. The bankruptcy or insolvency of a Party or the commencement of proceedings of any kind by or against a Party under the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act.

e. Upon termination of the Cooperative TAP Participant Agreement, this Agreement will terminate concurrently.

12. INSURANCE. Agency shall, at Agency's own expense, maintain property, liability, and fire insurance and such other insurance as necessary for Agency's protection of their equipment and the area in which the TVM is located. Failure to carry such insurance shall not relieve Agency of liability as provided in this Agreement.

13. INDEMNIFICATION. Agency shall indemnify, defend (with counsel acceptable to LACMTA) and hold harmless LACMTA and its subsidiaries and their respective officers, agents, contractors, employees, and directors (collectively, "**LACMTA Parties**") harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any legal fees and any claims for damages of any nature whatsoever arising out of Agency's or any of its officer's, agent's, contractor's, employee's, or director's actions pursuant to this Agreement, use of the TVM, and/or participation in the TAP System, except to the extent caused by LACMTA's negligence or recklessness in the performance of its duties under this Agreement or that of LACMTA's contractors performing services required to be performed by LACMTA under this Agreement. Without limiting the foregoing, the Agency will be responsible for any claims or grievances from Agency's unions or represented employees regarding work performed by LACMTA Parties on the Licensed Property. Under no circumstances shall LACMTA be liable for special, incidental, exemplary or consequential damages suffered by Agency, including, but not limited to loss of projects, anticipated revenue, interest, or other such claims arising from any causes whatsoever, whether or not such loss or damage is based on contract, warranty, tort (including negligence), indemnity or otherwise.

14. MISCELLANEOUS.

a. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within the State of California.

b. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been delivered, if hand delivered or deposited with a reputable overnight courier (such as Federal Express, UPS, DHL, or similar courier), postage prepaid, return receipt required, or three business days after deposit into U. S. Mail, certified or registered, postage prepaid and return receipt requested, or upon sending via email, and shall be addressed as follows, unless otherwise notified in writing of change of address:

If to Agency: City of Redondo Beach
Redondo Beach City Hall
415 Diamond Street
ATTN: Transit Manager
Telephone: 310-318-0610
Email: joyce.rooney@redondo.org

If to LACMTA: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, Mail Stop 99-04-03
Los Angeles, CA 90012
ATTN: David Sutton, Executive Officer, TAP
Telephone: (213) 922-5633
Email: SuttonD@metro.net

c. Time of Essence. Time is of the essence of this Agreement and each and every term and provision hereof.

d. No Assignment. Agency shall not assign this Agreement, or any part thereof, without prior approval of the LACMTA Chief Executive Officer or his/her designee, and any assignment without said consent shall be void and unenforceable.

e. Successors and Assigns. This Agreement shall inure solely to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns (Agency's assigns, as approved by pursuant to Subsection 13e of this Agreement).

f. Entire Agreement. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes (along with all documents incorporated by reference herein) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. To the extent that there is any conflict or inconsistency between the terms and conditions of a document incorporated by reference herein and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control for purposes of the subject matter of this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

g. Modification. The Agreement shall not be amended, except in writing signed by authorized representatives of each of the Parties.

h. Further Assurances. Subject to agreement by the Parties of the terms thereof, the Parties each agrees to execute any and all other documents and to take any further actions reasonably necessary to consummate the transactions reasonably contemplated hereby.

i. Remedies. The obligations and duties of the Parties hereunder, including their representations, warranties, covenants and agreements, may be enforced by any and all available remedies, including without limitation, specific performance, injunction, damages and declaratory relief.

j. Non-waiver of Rights. No failure or delay of a Party in the exercise of any right given to such Party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right has expired, nor shall any single or partial exercise of any right preclude other or further exercise thereof or of any other right.

k. Construction. Headings at the beginning of each paragraph or subparagraph are solely for the convenience of the Parties and not a part of this Agreement. Except as otherwise provided in this Agreement, all attachments referred to herein are attached hereto and are incorporated herein by this reference. Any reference to a Section herein includes all subsections thereof. This Agreement shall not be construed as if it had been prepared by only one Party, but rather as if all Parties had prepared the same.

l. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed severed from this Agreement, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable provision had never been part of this Agreement.

m. Several Liability. The Parties acknowledge and agree that this Agreement is not an agreement pursuant to or subject to Government Code Section 895 et seq., and that (a) City shall have liability hereunder only for those obligations of City and shall have no liability with respect to LACMTA's responsibilities in connection with the TVM Facilities and (b) LACMTA shall have liability hereunder only for the obligations of LACMTA, and shall have no liability with respect to City's responsibilities hereunder.

n. Authority to Execute. The individuals signing this Agreement and the Parties represent and warrant that they have full and complete authority and authorization to execute and effectuate this Agreement and to take or cause to be taken all acts contemplated by this Agreement. Each Party agrees to hold the other Party harmless for any costs or consequences of the absence of actual authority to execute.

o. Relationship. Neither Party, in the performance of its obligations described in this Agreement, is not a contractor nor an agent, partner or employee of the other Party. Each Party attests to no organizational or personal conflicts of interest and agrees to notify the other Party immediately in the event that a conflict, or the appearance thereof, arises. Neither Party shall represent itself as an agent, partner, employee of the other Party and shall have no powers to bind such other Party in contract or otherwise.

p. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect. Additionally, this Agreement may be executed in counterparts which, when taken together, shall form the entire Agreement of the Parties.

[Signatures on Next Page]

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

LACMTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a California county transportation authority existing under the authority of §§ 130050.2 *et seq.* of the California Public Utilities Code

By: _____
STEPHANIE N. WIGGINS
Chief Executive Officer

APPROVED AS TO FORM:

RODRIGO CASTRO-SILVA
County Counsel

By:  7/26/2021
Deputy

AGENCY:

CITY OF REDONDO BEACH

By: _____
WILLIAM C. BRAND
Mayor

Date:

APPROVED AS TO FORM:

By: _____
MICHAEL W. WEBB
City Attorney

Date:

ATTEST:

By: _____
ELEANOR MANZANO
City Clerk

Date:

Attachment I

Annual TVM Maintenance and Revenue Servicing Cost Estimate

Year (Fiscal)	Maintenance Cost Per TVM ¹	Revenue Servicing Cost Per TVM ²	Total
2019	\$7,210.41	\$2,343.86	\$9,554.27
2020	\$7,444.73	\$2,390.74	\$9,835.47
2021	\$7,686.66	\$2,438.55	\$10,125.21
2022	\$7,936.48	\$2,487.32	\$10,423.80
2023	\$8,194.41	\$2,537.07	\$10,731.48
2024	\$8,460.75	\$2,587.81	\$11,048.56
2025	\$8,735.74 ³	\$2,639.57	\$11,375.31

¹ Cost increase of 3.2% annually until 2024

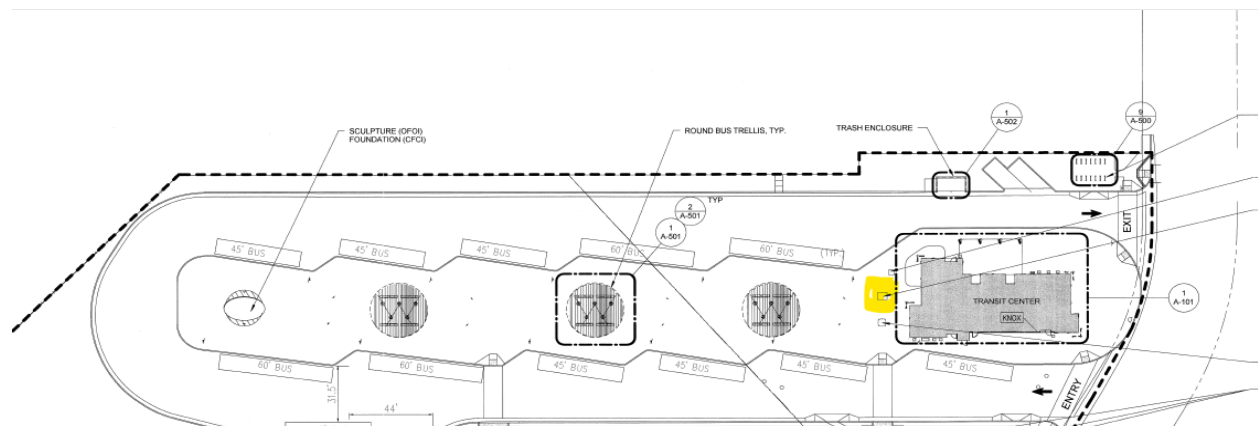
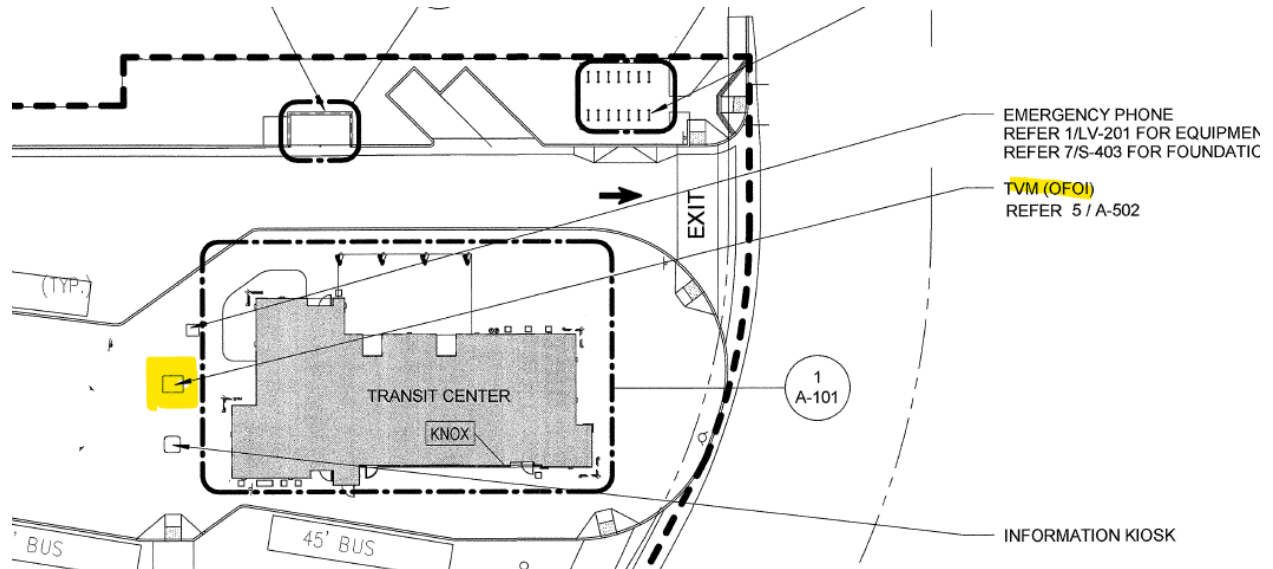
² Cost increase of 2% annually

³ FY 2025 cost increase of 3.25% is an estimate only, actual maintenance cost may be higher or lower based on final negotiations between Metro and Contractor for a renewed Support Services Agreement

Attachment II

Licensed Property

Redondo Beach Transit Center
1521 Kingsdale Avenue, Redondo Beach



Attachment III

Chart of Responsibilities

Item	Activity	Responsible Party	Who Pays
1	Identify location and provide space for TVM(s)	Agency	N/A
2	Determination of site work required to provide required supporting infrastructure at desired TVM location	Metro	Metro
3	Develop Metro task order for portion of required infrastructure work to be performed by Metro contractor	Metro	Metro
4	Civil work including trenching, construction of concrete pad, and installation of power and communications conduits for TVM(s).	Agency	Agency
5	Provide dedicated 120 VAC - 20-amp circuit for each TVM	Agency	Agency
6	Power service - monthly usage fees	Agency	Agency
7	Communications service for TVM - DSL or better	Agency	Agency
8	Communications service for CCTV - (1) T1 lines	Agency	Agency
9	Communications service (TVM and CCTV) - monthly usage fees	Agency	Agency
10	Deliver and install canopy	Agency	Agency
11	Deliver, install and test TVM	Metro	Metro
12	Deliver, install and test camera (to view front of TVM)	Metro	Metro
13	TVM preventative and corrective maintenance, and revenue servicing costs	Metro	Agency
14	Vandalism	Metro	Metro
15	Maintain concrete slab and power and comms conduit runs for TVM(s)	Agency	Agency
16	Maintain canopy/covering for TVM	Agency	Agency
17	Operational monitoring of TVM	Metro	Metro