



Oversight Procedure 39 – Review of Third-Party Agreements for Major Capital Projects

1.0 PURPOSE

The purpose of this Federal Transit Administration (FTA) Oversight Procedure (OP) is to assist the Project Management Oversight Contractor (PMOC) in identifying third-party agreements and determining which third-party agreements should be considered “critical” as a project advances through the project development process. This OP applies to Major Capital Projects and other projects as designated by the FTA. Further, this OP describes the role of the Project Sponsor, the PMOC, and FTA in the review process, and offers risk-mitigating strategies throughout the project life cycle based on best practices and lessons learned.

2.0 BACKGROUND

Failure to timely execute critical third-party agreements is highly likely to cause changes neither contemplated nor incorporated in the project’s baseline scope, budget, and schedule. This lack of executed agreements may slow the progress of design, impede the start or progress of project construction, delay start-up, or interrupt operations. Whether a third-party agreement is considered “critical” depends on a variety of factors including the type of project; the legal authority of the project sponsor; the intended project delivery method; the project schedule and where the project is in the project development process; and the decision(s) to be made by the FTA and the project sponsor. Many agreements are considered critical before grant/loan award and must generally be executed prior to receiving a grant/loan. Other agreements may not be considered critical at the grant/loan approval phase and may be executed later, such as prior to the start of service operations.

Verifying the execution of critical third-party agreements is an important part of the readiness review and is included in the PMOC’s report that becomes part of FTA decision making process for project advancement.

3.0 OBJECTIVES AND ORGANIZATION OF THE OP

The main objectives of the OP are:

1. Define third-party agreements.
2. Provide a summary of historical risks due to third-party agreements.
3. Describe the governing rules and guidance.
4. Define the review process.
5. Describe the review methodology during the project life cycle.
6. Define the PMOC’s role.

7. Define the FTA's role.
8. Define the Project Sponsor's role.
9. Describe criteria for identifying critical third-party agreements.
10. Address third-party agreements with regard to project delivery methods.

This OP is intended for use by PMOCs and their FTA counterparts in identifying those third-party agreements that are necessary for a project's development and operation, and which of those agreements will be considered "critical" at a specified time in the project development process. This document is not intended as a substitute for FTA Circulars, other related OPs, or other guidance addressing third-party agreements such as FTA's *Construction Project Management Handbook* and *Project and Construction Management Guidelines*. This procedure is intended to complement other relevant FTA publications and provide additional explanation, clarity, lessons learned, and best practices.

This OP provides guidance to the PMOC related to its review of third-party agreements, primarily in the context of various readiness reviews, or in response to other FTA requests. The body of the OP is supplemented by the following appendices: Appendix A and Appendix B to this document, respectively, list the expected Acceptable Quality Level and a typical table of contents for the PMOC report. Appendix C summarizes key steps in the methodology for review of third-party agreements during the project life cycle. Appendix D offers additional methodology for determining what constitutes a critical agreement. Appendix E lists typical third-party risks, however, the appendix is not a comprehensive representation of all potential risks and not all third-party agreements are seen as risky. Each project is, of course, unique and will experience risks unique to its environment. Appendix F offers a tabulation of typical agreements by mode and category. The purpose of these appendices is to provide references that may help readers to identify potential third-party risks on their projects. A list of acronyms is provided as Appendix G.

Clarification or information on this or other FTA guidance and OPs should be requested from the local FTA regional office and/or headquarters.

4.0 THIRD-PARTY AGREEMENTS REVIEW

The following sections address the key elements to be considered in reviewing third-party agreements.

4.1 Definitions

The term *third-party agreement* refers to those agreements entered into by the Project Sponsor with a party other than FTA and that are necessary to facilitate the financing, design, permitting, construction, and operation and maintenance of a federally funded capital transit project. This definition does not generally apply to agreements made between the Project Sponsor and primary service providers such as consultants or contractors performing project work directly for the Project Sponsor. Statutory and regulatory requirements and permits are not generally called third-party agreements; however, in many cases, permitting for construction and operations requires prior agreement with the permitting third parties.

A *critical third-party agreement* is one which has been identified by the FTA in collaboration with the Project Sponsor and any other project participant, as required before Construction – including a Letter of No Prejudice (LONP) – or Operations can begin, the absence of which may significantly change the cost, scope and schedule.

A *non-critical third-party agreement* is one that would not result in a scope increase, cost overrun, and/or schedule delay beyond the magnitude already contemplated by project management plan and sub plans.

Executed means completing all necessary steps for the agreement to legally be in effect.

Final determination as to whether an agreement is critical or non-critical is made by FTA in consultation with the PMOC and the Project Sponsor.

4.2 Risks Due to Third-Party Agreements

FTA provides grant funding to Project Sponsors to construct major capital projects under various discretionary and formula programs. FTA has observed that since the passage of the Urban Mass Transportation Act of 1964, projects funded by FTA and its predecessor, the Urban Mass Transportation Administration, occasionally experience significant delays or substantial increases in project cost as a result of the Project Sponsor's failure to timely obtain critical third-party agreements. As a result, FTA included the following requirements in its Capital Investment Grants (CIG) Program Final Interim Policy Guidance issued in June 2016:

To complete the Engineering phase, Project Sponsors must complete sufficient engineering and design to develop a firm and reliable cost, scope, and schedule for the project, obtain all non-CIG funding commitments, **complete all critical third-party agreements**, and meet other FTA readiness requirements related to technical capacity, staffing, and oversight to be eligible for a construction grant/loan agreement.

The requirement to address critical third-party agreements also applies to other federally funded programs, e.g., Transportation Infrastructure Finance and Innovation Act (TIFIA), Transportation Investment Generating Economic Recovery (TIGER), State of Good Repair (SGR) Formula Grants /Urbanized Area Formula Grants, Hurricane Sandy, and others as they are initiated.

Risks related to third-party agreements can be amongst the highest risks to project scope, cost, and schedule. A review of risk registers for more than a dozen projects across the nation and representing different modes reveals that while third-party risks may cause unexpected direct costs, the indirect costs associated with potential schedule delays threaten to increase costs substantially more.

4.3 Governing Rules

Chapter 53 of Title 49 United States Code (U.S.C.), Sec. 5327 as amended by the Fixing America's Surface Transportation (FAST) Act and the Moving Ahead for Progress in the 21st Century (MAP-21) Act, provides the statutory basis for federal assistance to public

transportation projects, including provisions to improve the development and delivery of capital projects.

To receive federal financial assistance for a major capital project for public transportation under Chapter 53 of Title 49 of the U.S.C. or any other provision of federal law, a recipient must prepare a Project Management Plan (PMP) that in turn is approved by FTA, and carry out the project in accordance with the PMP. The PMP is designed to guide and enhance the recipient's planning and implementation efforts and to assist FTA's review of the grant/loan application efforts. The organization section of the PMP addresses the structure for leadership and support of third-party agreements; the schedule and costs related to the agreements are treated in corresponding sections.

The Project Management Oversight (PMO) Rule (49 CFR 633) applies to recipients of federal financial assistance who are undertaking a major capital project. A *major capital project* is one that:

- Involves the construction of a new fixed guideway or extension of an existing fixed guideway,
- Involves the rehabilitation or modernization of an existing fixed guideway with a total project cost in excess of \$100 million, or
- The Administrator determines is a major capital project because the PMO program will benefit specifically the Agency or the recipient.

The rule describes a two-part program for major capital projects receiving assistance from the agency. First, the rule discusses project management oversight, designed primarily to aid FTA in its role of ensuring successful implementation of federally funded projects. Second, the rule discusses the PMP.

FTA provides OPs to guide its PMOCs in performing oversight of major capital projects. While task orders and work orders provide specific direction to the PMOCs on the products and services required from them, the OPs provide general guidance and ensure consistency in performing oversight. There are OPs that provide instructions on reviewing the PMP, on performing readiness reviews, and on reviewing LONP requests, among others, which provide guidance associated with third-party agreements.

Several publications provided by the FTA's Office of Capital Project Management augment FTA's OPs and contain guidance and/or best practices for managing major capital projects. These include the *Project and Construction Management Guidelines*, the *Construction Project Management Handbook*, the PMO Lessons Learned Program, papers, and presentations from FTA-sponsored workshops.

The *Project and Construction Management Guidelines* dated March 2016 (revised August 2016) discuss "Negotiation of Third-Party Agreements" in section 4.6. The Guidelines document also provides among its appendices a checklist, as well as an appendix on utility relocation agreements.

The *Construction Project Management Handbook* dated February 2016 (revised August 2016) states that the project manager, with technical support as necessary, will play a significant role in communication and negotiation with utilities and impacted third parties. Utility relocation and third-party coordination are critical parts of the construction of a project. Early and continuing coordination with the affected utilities and third parties is critical to keeping a project on schedule and budget. Utilities and third parties often need extensive lead time to reasonably schedule their work and obtain materials necessary for relocation of their facilities. Sections 5 and 6 of the Handbook provide guidance during design and construction, respectively, and Section 9 includes discussion on developing third-party agreements.

There is also a Lessons Learned publication on the FTA website entitled “Mitigating Problems of Third Party Coordination” dated 2011. An additional Lessons Learned document is being compiled that will contain case studies on third-party agreements.

Moreover, a number of FTA-sponsored workshops address lessons learned and provide information regarding third-party agreements. These include Capital Project Management and CIG workshops.

4.4 Third-Party Agreement Considerations during the Project Life Cycle

The main purpose of this OP is to address what constitutes a critical third-party agreement that must be executed prior to the FTA or the Project Sponsor taking a particular action, such as execution of the federal grant/loan agreement or at other critical project phases before the start of beginning revenue service. To this end, there is a need to proactively identify the critical agreements and to minimize or eliminate the impact of these agreements early in the project life cycle. In this section, lessons from the experiences of Project Sponsors and case studies are used to present methodologies for proactive identification, review, or minimization of third-party impacts during each project cycle. Appendix C summarizes key review methodology steps during the project life cycle.

- **Planning/ Locally Preferred Alternative (LPA) Phase** – This phase is the most critical phase of the project life cycle for identifying and efficiently mitigating the impacts of third-party agreements. Many requirements are imposed on the project without thorough evaluation of impacts on cost and schedule during the planning and environmental phase. Specifically, alternative designs are evaluated before an LPA is selected. It is important for the Project Sponsor to establish a clear screening process to identify, eliminate, or reduce conflicts between the design alternatives and railroads, major utilities or utility corridors, university property (specifically sensitive research labs), historic bridges, or airports, and also alternatives that require use of public right of way (ROW) or private real estate not owned by the Project Sponsor. Once the LPA is selected, the opportunities for minimizing these conflicts or impacts will be more limited. The Project Sponsor should conduct active outreach to identify all potentially affected utility providers. With respect to utilities, the Project Sponsor should:

- Determine those utilities having authority to be in the ROW with a franchise agreement. In many such cases, utilities are required to relocate at their own cost when required by the ROW owner. The careful review of the franchise agreement will reveal important information regarding responsibilities of the parties.
- Evaluate likely construction-related impacts to the public and private overhead and underground utility plants. Consider alternatives to locations where major high voltage lines or pipelines are present.
- Consider the cost and schedule-related impacts and risks of utility relocation, including design work, in preliminary cost and schedule calculations.
- Consider alternatives that avoid significant utility impacts when selecting the LPA.
- Meet with public and private utility providers to identify any overhead and underground utility plants located in or adjacent to the corridor or station and facility areas, including those that cross the corridor. Discuss alternatives that are being considered. Identify major or significant manholes, duct banks, switching stations, substations, and major utility customers who may have unique or critical service requirements.
- Be aware of the possibility of highly sensitive underground utility lines serving government installations such as police and fire stations, federal courthouses, and other law enforcement agencies. These lines may not be publicly documented.
- Continue the assembly of utility information with system maps.
- Determine the nature of property rights held by each utility.
- Develop preliminary ROW acquisition plans for affected utilities.
- Look for opportunities to avoid utility impacts by careful selection of alignments, facilities, and station locations.
- Develop initial parametric cost estimates for utility-related work including utility investigations, utility design, and utility relocation. Consider impacts to parallel and crossing utilities.
- Following selection of the LPA, increase attention to utilities in the selected corridor.
- Develop a detailed plan for utility identification and utility design coordination in the following design phase.

- Develop Master Utility Agreements and tracking matrices and continue discussions with utility providers.
- Initiate Project Sponsor risk workshops to develop initial risk register.

For design alternatives that require occupying an operating railroad corridor, crossing railroads, and/or interconnecting with operating railroads, the Project Sponsor should, in general, use approaches equivalent to those listed above for utilities, in particular once an LPA has been chosen. Additional important Project Sponsor considerations should include:

- Determine the need for railroad-provided access and protection for design consultants and construction contractors working for the Project Sponsor, and account for all railroad force account costs and project scheduling impacts including required track outages and track foul time.
 - Develop a memorandum/agreement with the railroad that includes the scope of railroad-performed construction work and the scope of work performed by the Project Sponsor's contractor for all facilities under the railroad's jurisdiction.
 - Include in the memorandum/agreement with the railroad the scope, schedule, and cost of the railroad's review and approval of designs, construction staging plans, and the Project Sponsor's contractor submittals for all work under their jurisdiction.
 - Identify the need for special railroad required insurance.
 - Identify appropriate resources for appraising and acquiring railroad-owned real estate. Because railroads are often not subject to eminent domain, acquiring railroad-owned real estate can be troublesome. Moreover, the appraisal of railroad-owned real estate is a specialized practice and should only be undertaken by those with appropriate experience.
- Project Design/Environmental Phase – This phase includes early design work and the completion of the environmental review. To complete this phase, the Project Sponsor must complete the environmental process and reach at least 30 percent design level of completion. The Project Sponsor must identify all anticipated third-party agreements and designate those considered to be critical third-party agreements based on the criteria described later in this OP. With this level of design development, the third-party and utility impacts should be identified and conceptual relocation plans developed. Project Sponsor staff with appropriate experience and adequate capacity and capability must be assigned for management of and liaison with third parties. Through discussions with third parties, design alternatives should be developed to minimize cost and schedule impacts. The outcome of these discussions should be adequately documented through meeting minutes and/or memoranda of understanding. Tracking or action item lists should be used to advance agreements

between parties. This type of documentation will pave the way for execution of agreements and avoid last-minute negotiations. The extent of work for or by third parties should be carefully evaluated as to the impacts on the cost and the critical path of the schedule. The agreements should be identified and tracked on the schedule and in the risk register with specific ownership, timing, and mitigation measures for reaching final agreement or specific Road Maps for receiving required permits. The Project Sponsor should continue with internal risk management and refreshing the risk register, and must develop a Risk and Contingency Management Plan (RCMP).

- Project Design Phase (From 30% to 60%) – This step provides the Project Sponsor an opportunity to bring agreements to closure, and perform additional engineering work if necessary. For Core Capacity and New Starts projects in the Capital Investment Grants program, this is called the Engineering Phase of the process. FTA may require that a risk workshop be conducted in the early stages of this phase. Project Sponsor’s third-party liaisons along with their counterparts should be invited to the risk workshop to weigh in on the cost and schedule impacts and potential mitigation strategies, and to take ownership in resolving the issues. The assigned risk owners must carry out the mitigation strategies. FTA may also require a specific workshop dedicated to third-party issues when the project has a significant number of third parties with complex issues. The outcome of the third-party workshop should be presented in the general risk workshop and incorporated in the overall RCMP by the Project Sponsor. The Project Sponsor must identify the critical third-party agreements based on the criteria described later in this guideline. The Project Sponsor should meet with FTA and the PMOC early to review and reach consensus on those agreements that will be considered “critical” and the timing of their execution.
- Prior to Grant Agreement – All critical third-party agreements that were deemed necessary prior to award of a grant/loan agreement must be executed at this stage. The review at this level should focus on the details of each agreement, an evaluation of satisfactory continuing control, and the commitments made with respect to the proposed scope, cost, and schedule. Prior to grant/loan execution, FTA, or as directed the PMOC, will need to review the critical third-party agreements and verify that the agreed-upon provisions do not introduce additional scope, cost, or schedule impacts and can be accommodated within the submitted grant/loan budget and schedule. The Project Sponsor should continue to update the list of third-party agreements and the RCMP as necessary.
- Prior to Construction – Certain agreements are required before construction (including construction performed in advance of a grant award under a LONP) or before the issuance of encroachment permits. Successful implementation of the agreements yields timely issuance of the required permits. The Project Sponsor should continue to update the list of third-party agreements and the RCMP as necessary.

- Prior to Revenue Service – Once construction is completed, the start of operation requires occupancy permits and/or safety certifications. The maintenance of the system may require agreements with partner agencies and/or owners of the ROW, such as railroads, in which the system is operating. These agreements may be deemed critical and FTA may require them to be executed prior to the execution of a grant/loan agreement; For such agreements, there may be a later need to update the agreements based on changes during construction. The Project Sponsor should continue to update its list of third-party agreements and the RCMP as necessary.

4.5 Roles and Responsibilities

The roles and responsibilities outlined in this section are primarily focused on determining whether an agreement is critical.

4.5.1 PMOC's Role

PMOCs are under contract by FTA to provide oversight for major capital projects. PMOC responsibility includes, but is not limited to, the oversight of a project to:

1. Determine if the project scope is adequately defined and if the project is on schedule, within budget, and proceeding in conformance with the Project Sponsor's approved plans, specifications, and grant/loan agreements.
2. Ensure that a project is being implemented efficiently, effectively, and safely.
3. Determine whether the Project Sponsor organization demonstrates the required management capacity and capability.

The above objectives involve review of third-party agreements.

The PMOC, in providing its assessment of a project's readiness to advance to the next phase of project development or other FTA action, shall consider the status of those third-party agreements that have been designated as critical for the particular action. For any third-party agreement that is designated as critical, and has not been or is unlikely to be executed prior to the anticipated date for the FTA's action, the PMOC shall assess what actions the Project Sponsor has taken to address the lack of an executed agreement(s) and the associated impacts to the project's scope, cost, and budget.

The PMOC's review of third-party agreements is guided by this OP and OPs concerning project management, project characterization, risk, and project readiness. The review starts with verifying that the individual agreements and the management of them are addressed in the PMP as per OP 20. Continued review of the Sponsor's progress related to completing the agreements is addressed in OP 25. The majority of third-party agreements fall under the Requirements Risk category as described in OP 40. The specific readiness concerns are addressed per OPs 51, 52, 53, 54 and 56. In addition, for the general scope review (OP 32), the Project Sponsor's definition of the project scope through review of drawings, specifications, narratives and plans for project delivery requires review of the related third-party agreements.

The PMOC should develop an opinion regarding which third-party agreements are considered “critical” and that becomes the focus of the requirements set forth in this procedure; this opinion should be reported as indicated in Appendix B. Appendix D presents methodology for such determinations.

4.5.2 FTA Regional Office

The ten FTA regional offices work with local transit officials in developing and processing grant applications. Besides being the direct contact with major capital project sponsors, the regional office is charged with managing the activities of the PMOC on project specific task orders. Regional engineers or transportation specialists are assigned to direct the technical effort being performed under the PMO contract and monitor the progress and quality of the PMOC’s performance. This includes assuring the PMOC is tracking and reporting the Project Sponsor’s efforts in identifying, scoping, and scheduling the negotiation of third-party agreements. The regional office also schedules and leads the quarterly progress review meetings with the Project Sponsors that review project progress, including the status of third-party agreements. For CIG projects, the regional engineer coordinates with the FTA headquarters engineer and the FTA Office of Planning and Environment (TPE) team leader to have the critical agreements formally identified and reviewed by the regional attorney of the FTA Office of Chief Counsel (TCC) to assure the legal sufficiency with respect to FTA requirements. Technical sufficiency of the critical third-party agreements is determined by the regional project manager in coordination with the headquarters counterpart in the FTA Office of Capital Project Management (TPM). For non-CIG projects, the regional engineer works directly with TCC.

4.5.3 FTA Headquarters Office

Regarding third-party agreements for CIG projects, the headquarters engineer, in coordination with the regional engineer and the Office of Planning and Environmental team leader, forms part of the FTA project team that works on the project. The team works to ensure that the critical third-party agreements are identified, that progress toward execution is reviewed as part of the PMOC’s recurring oversight, and that the status of agreements is addressed as part of scope, schedule, cost, and risk reviews and as part of the readiness reviews. The project team monitors progress in developing and executing the critical agreements through monthly calls and use of a tracking tools. Tools for tracking the progress of the agreements include the Road Map as well as established checklists, notably for Entry into Engineering, Full Funding Grant Agreement (FFGA) execution, and Letters of No Prejudice (LONP). FTA ultimately determines which third-party agreements will be designated as critical.

4.5.4 Project Sponsor’s Role

The PMOC should examine whether the Project Sponsor is undertaking appropriate activities to:

1. Assign competent leads and appropriate staff with the experience, capabilities, and adequate capacity to effectively manage third-party agreements.

2. Work with jurisdictional partners, utilities, regulatory agencies, operating railroads, and major institutions during the environmental review process and the development phase to:
 - Screen for and determine the presence of all overhead and underground utilities and critical third parties (airports and railroads, etc.) that may be affected by and/or require relocation as a result of each alignment alternative under consideration. Assess the construction impacts and cost and schedule implications of utility and critical third-party relocations as part of selecting the locally preferred alternative.
 - Identify the third-party agreements that will be necessary to implement the project and those it considers to be critical for project advancement or prior to a specific event or activity.
 - Identify the parties to the agreements, the scope, the parties' respective rights and obligations, timing, and approval requirements for the agreements.
 - With particular attention to utility agreements and other critical third-party agreements affecting right of way and real property, determine the type of property interest held by the other party, e.g., fee ownership, permanent or temporary easement, license, franchise, or other (or none).
 - Determine the cost and schedule for obtaining the agreement and for executing any work under the agreement.
 - Identify and separate out any concurrent non-project activity (CNPA) requirements from the project to minimize risks to the project.
 - Determine how long the other party will require to process and execute the agreement.
 - Conduct partnering sessions at all levels starting early in the project development process. Use tracking matrices and action item lists to measure progress, road maps for agreements leading to permits, and institute a formal comments resolution process that including resolution matrices.
3. Begin immediately to develop a framework, term sheet, or outline for each agreement with the assistance of local legal counsel and the other party with focus on FTA requirements, including Buy America and Satisfactory Continuing Control.
4. Incorporate the agreement(s) into a matrix or other mechanism to allow tracking the progress of the agreement(s).
5. Determine a "need by" date and incorporate the agreement(s), predecessor and successor activities, and schedule information as an activity in the Master Project Schedule. In assessing schedule implications of third-party agreements, consider review and approval requirements, including potential governing board of director's actions (and timing) and possible FTA reviews.

6. Determine which construction or design contracts will be influenced by each agreement and provide the details to the manager(s) of those activities.
7. If warranted, conduct a risk workshop at each phase of the project, and ensure that critical agreements are tracked on the risk register. Develop an RCMP prior to the FTA sponsor workshop.

4.6 Types of Third-Party Agreements that May be Critical

Critical agreements are those that, if not executed at the appropriate time, could cause scope increases, cost overruns, and schedule delays not contemplated in the project baseline budget and schedule, slow the progress of design, impede the start or progress of project construction, prevent the start of operations, or interrupt operations once the service has begun. Appendix D offers a methodology for determining what constitutes a critical third-party agreement. Such agreements typically relate to funding and financing, permitting, regulatory compliance, utilities, real estate, railroads, safety and security, other agencies and/or jurisdictions, and the operations and maintenance of the project as follows:

1. Funding and Financing

For CIG projects, FTA requires the Project Sponsor to have a fiscally sound budget that is approved in the Metropolitan Planning Organization's (MPO) Transportation Improvement Program (TIP) at time of Entry into Project Development and to have all non-FTA funding identified prior to Entry into Engineering, through authorization or agreement prior to execution of federal grant agreement. For example, funding from local partners is documented in inter-local agreements. This criterion also applies to funding of operations and maintenance, which should be documented in the Project Sponsor's finance plan.

For CIG projects, the PMOC is not to opine specifically on funding and financing matters as that is the role of Financial Management Oversight Contractors hired by FTA. Rather, the PMOC should discuss and track with FTA and the Project Sponsor the status of major third-party funding/financing agreements to determine what impact delays on reaching those agreements might have on the overall project cost, schedule, and risk.

2. Permitting

For a major transit project, there are numerous permits that are required prior to either the start of construction or commencement of operations. The Project Sponsor or the construction contractor needs to obtain these permits before start of construction. Any delays due to third-party permits not being issued can have a significant impact on the project schedule and cost due to extended overhead and other related claims by the contractor if the requirements for obtaining the permits is out of the contractor's control. Third-party agreements that assign responsibility for obtaining permits may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement. With respect to construction contracts, particularly the use of alternate delivery methods such as design-build, responsibility and timing for

obtaining permits and approvals must be clearly described in the Request for Proposal documents and incorporated in the final construction contract.

3. Agreement for Work To Be Done by Others

Work by others includes utility relocations and other work that will need to be done by another entity to enable construction and operations to continue unimpeded. This could include owner-furnished facilities to be supplied or erected by another entity for use by the construction contractor, or equipment procured by third parties. Third-party agreements for work by others may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement.

4. Right of Way (ROW) and Railroads

Construction contractors require a right of entry to perform work on property or ROW not owned by the Project Sponsor. Third-party agreements for ROW may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement. Agreements with freight railroads where transit construction will take place in or adjacent to the railroad's operating corridor are particularly critical, both from the standpoint of timing and for the safety of workers.

It is important to highlight that railroad properties are a prime example of ROW deemed critical since there is no eminent domain over railroads and negotiations can be lengthy and costly.

5. Regulatory Compliance

Once construction begins, regulatory compliance measures are typically required by both the Project Sponsor and construction contractors. Compliance measures include adherence to environmental mitigation measures and civil rights requirements, some of which may require prior agreements with third parties. These agreements can involve mitigation measures dictated in environmental clearance documents, and permits from environmental, resource, regulatory and safety oversight agencies. Third-party agreements regarding regulatory compliance may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement.

6. Safety and Security

Federal and state oversight agency rules and regulations govern construction and operations of many transportation projects. Preliminary agreements with these agencies on safety and security requirements may be critical to uninterrupted construction and operations. Third-party agreements related to safety and security may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement.

7. Operations and Maintenance

Once construction is completed, the start of operation requires occupancy permits and/or safety certifications. The maintenance of the system may require agreements with

partner agencies and/or owners of the ROW, such as railroads, in which the system is operating. Third-party agreements related to operations and maintenance may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement.

8. Interlocal/Interagency Agreements

These types of agreements may provide funding for the project and describe easements or other access agreements. Examples include: agreements with institutions that are affected by the construction of the project and need to allow construction on their ROW; agreements between the entity constructing the project versus a separate entity that might be operating the project; agreements to provide in-kind contributions such as a station at an airport or a land donation; or agreements on other multi-modal arrangements. Third-party agreements related to interlocal/interagency entities may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement.

9. Governance

Agreements regarding governance, which describe ownership and the way the team will be organized, the management of the project and operation, especially when multiple entities need to come together to form a consortium to build a project are very critical. FTA may typically require that the governance agreements be signed very early in the project development process. These agreements may be deemed critical and required to be in place prior to a specific federal action such as execution of the federal grant/loan agreement.

4.7 Third-Party Agreements and Project Delivery

Key considerations regarding the selection and implementation of project delivery methods include whether a third-party risk is transferrable to the contractor, and the potential impact of the risk to scope, budget, and schedule. Generally, third-party risks are not transferrable to the contractor, and the less time allowed in the early phases for completing the required third-party agreements prior to solicitation and award of the project delivery contracts, the greater the risk to the project's scope, cost, and schedule due to an agreement not being executed in time for award of a contract or for the contract to proceed unimpeded as specified in a contract document.

The significance of third-party agreements with respect to a Project Sponsor's selected project delivery method is related to the care with which the Project Sponsor describes the implications of each agreement on the individual contracts and how risk is allocated and managed between the Project Sponsor and the contractors with respect to each relevant agreement.

1. Design-Bid-Build

The typical design-bid-build project provides the Project Sponsor and its design team significant time during the design phase to identify and negotiate all required agreements with third parties. The implications of each agreement with respect to the construction

contract(s) to be awarded can then be incorporated by the design team or procurement specialist into the contract documents.

2. Design-Build

The risk related to third-party agreements for projects using the design-build (D-B) delivery method is higher than for comparable projects delivered using either the design-bid-build or the construction manager/general contractor (CM/GC) method. This is a result of two factors: first, a D-B contract is typically advertised at a much earlier point in the project life cycle when project definition is less well developed and fewer agreements have been executed; second, the D-B proposers will rely on the Project Sponsor's description of the obligations that have been or are likely to be imposed by third-parties in developing its approach, schedule and price for the work. Any inaccuracies in the characterization of the third-party agreements that affect the D-B scope, schedule, or cost are likely to result in a Change Order. To the extent that the Project Sponsor attempts to shift the risk associated with third-party agreements to the D-B contractor, a substantial risk premium is likely to be included in pricing.

3. Construction Management/General Contractor (CM/GC)

Of all delivery methods currently in use on transit projects, the CM/GC delivery method, because of its somewhat longer design phase, may provide the greatest opportunity to complete third-party agreements prior to the start of construction. The method also offers the greatest flexibility because of the collaboration between the Project Sponsor, designer, and the CM/GC contractor, in dealing equitably with the implications of incomplete agreements.

4. Other Delivery Methods

There are a number of delivery methods such as Design-Build-Operate-Maintain (DBOM), Design-Build-Finance (DBF), and Public Private Partnerships (P3) that involve a private sector contractor or consortium providing financing, funding and/or operations and maintenance. The criticality of agreements with third parties depends on what rights and responsibilities are being delegated to the contractor and those that are being retained by the Project Sponsor. The critical agreements are those that would not allow the project, as planned, to be constructed or operated as intended.

5.0 REFERENCES

The following are the principal, but by no means the only, references to federal legislation, codification, regulation, and guidance the PMOC should review to develop a solid understanding as related to the Project Sponsor's project work under review for this OP:

5.1 United States Code

- FTA enabling statutes, 49 U.S.C. Chapter 53, Section 5327

5.2 Regulations

- Project Management Oversight, 49 Code of Federal Regulations (C.F.R.) Part 633

- Major Capital Investment Projects, 49 C.F.R. Part 611
- Joint FTA/Federal Highway Administration (FHWA) regulations, Metropolitan Planning, 23 C.F.R. Part 450
- Joint FTA/FHWA regulations, Environmental Impact and Related Procedures, 23 C.F.R. Part 771
- U.S. Department of Transportation (DOT) regulation, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 C.F.R. Part 24
- Other federal requirements

5.3 FTA Master Agreement

5.4 FTA Circulars

- C4220.1F, Third Party Contracting Guidance
- C5010.E1E, Award Management Requirements
- C4710.1, Americans with Disabilities Act (ADA)
- FTA Guidance on the Application of 49 U.S.C. 5324(c) – Railroad Right-of-Way Acquisition (April 30, 2009)

5.5 Guidance

- Reporting Instructions for the Section 5309 New Starts, Small Starts and Core Capacity Criteria
- Interim Guidance on Design-Build
- Project and Construction Management Guidelines
- Construction Project Management Handbook
- CIG Final Interim Policy Guidance dated June 2016
- PMOC Lessons Learned Publication “Mitigating Problem of Third Party Coordination”

6.0 PROJECT SPONSOR’S SUBMITTALS

In advance of performing the review, the PMOC should obtain and study the following project documents, which depend on the stage of the development for each project:

1. Draft and final environmental documents and third-party comments and resolutions
2. The Record of Decision (ROD) or Finding of No Significant Impact (FONSI) and Required Mitigations
3. Scope, budget, and schedule
4. PMP

5. Plans and basis of design
6. Value engineering and constructability review reports
7. RCMP
8. List of required third-party agreements, including a description of the subject matter of each agreement, the timing for its execution, and the consequences of the failure to have it executed by the time needed.
9. Third-party and utility agreements tracking matrices
10. List of required permits
11. Memorandum of Understanding with third parties
12. Letters of commitment from third parties
13. Third-party agreement documents in draft
14. Project Delivery Plan

More comprehensive detail on required documents is available in FTA's OPs 20, 51, 52, 53, 54, and 56.

The PMOC reviews the status, progress, and risks related to third-party agreements relative to the Oversight Framework for the type of grant.

6.1 Scope / Project Definition

- Final environmental documents and National Environmental Policy Act (NEPA) determination and required mitigations
- Basis of design reports, design criteria reports
- Engineering project plans, drawings, design criteria, standards and specifications
- Value Engineering and Constructability Review Report
- Master Permitting Plan and Schedule
- Geotechnical Baseline Report
- Passenger level boarding design documents
- Vehicle design documentation

6.2 Project Management Plan and Sub-Plans Completed Including but not limited to:

- Signed agreements, memoranda, or letters of commitment with railroads, utilities, other third parties
- Risk assessment and register, and RCMP
- Project delivery plan, contract packaging plan, procurement policies and procedures
- Project Sponsor Management Capacity and Capability Evaluation

- Project Delivery Plan
- List of required permits
- Update of Real Estate Acquisition Management Plan (RAMP) as needed

6.3 Schedule

- Project schedule in original and Standard Cost Category (SCC) format; schedule narrative describing critical path, expected durations, and logic
- Cost
- Summary of operations and maintenance (O&M) cost assumptions/productivities
- Capital cost estimate in original and SCC format
- Before-and-After Study documentation regarding project cost and schedule (if study is required)

6.4 FFGA/ Small Starts Grant Agreement (SSGA)/Single Year Grant Agreement (SYGA)

6.5 Base documents and attachments on Scope of Project, Project Description, Baseline Cost Estimate, Project Budget, Baseline Project Schedule

7.0 SCOPE OF WORK

Except for the FFGA/SSGA/SYGA attachments, all of the Project Sponsor submittals noted in Section 6.0 should have been reviewed by the PMOC prior to final preparation of the grant/loan, and any deficiencies found as a result of those reviews should have been reconciled with and corrected by the Project Sponsor. The scope of this procedure is to confirm that all of the documentation and analysis regarding third-party agreements remain satisfactory and that there is consistency between the project documents and the third-party agreements and the project scope, budget and schedule. It is the responsibility of the PMOC to notify FTA of any deficiencies prior to the preparation of this OP report.

Appendix A lists the expected Acceptable Quality Level and Appendix B provides a sample table of contents for the PMOC report.

7.1 Qualifications of Reviewers

- Reviewer must have prior experience in managing similar projects involving third parties.
- To the extent possible, the reviewers should be the same individuals that performed the prior review of the project documents, and should be regular participants in project reviews.

7.2 Review Effort consisting of the following:

Referring to the most current versions of the Project Sponsor submittals, the PMOC shall update previous reviews of third-party agreements, if applicable. Note that FTA ultimately determines which third-party agreements will be designated as critical.

The deficiencies found as a result of those reviews should be reconciled and discussed with the Project Sponsor prior to preparation of the report.

Prior to the Project Sponsor's formal request to FTA for grant/loan agreement, the PMOC should complete its review and submit to FTA a report stating whether the sponsor meets the requirements. The statement of compliance should be included in the executive summary as described below.

The PMOC report shall (see Appendix B for sample table of contents):

- Integrate the findings and recommendations of the reviews above.
- Tabulate all identified third-party agreements required in a separate appendix.
- Include an executive summary in three pages or fewer that includes the following:
 - PMP review findings.
 - Management Capacity and Capability Review findings.
 - Methodology for designation of third-party agreements as "Critical".
 - Synthesis of findings on each significant third-party agreement with discussion on:
 - Scope
 - Schedule
 - Cost estimate
 - Satisfactory continuing control (may require coordination with FTA legal office)
 - Safety and security
 - Project Risk and Contingency Review
 - Professional opinion regarding the sufficiency of the third-party agreements and the ability of the project sponsor to manage them.
 - Conclusion with statement (if warranted) that the project meets the OP requirements based on the PMOC's determination that scope, budget, schedule, and safety and security impacts due to third-party agreements have been generally accounted for in the Sponsor's proposed baseline cost estimate and baseline schedule; and that the level of cost/schedule contingency accounts for the risk exposure.

8.0 REPORT, PRESENTATION, RECONCILIATION

The PMOC shall provide FTA with a written report limited to 20 pages that summarizes its findings, analysis, recommendations, professional opinions, and a description of the review activities undertaken. After FTA approval, the PMOC should share the report with the Project Sponsor. In the event that differences of opinion exist between the PMOC and the Project Sponsor regarding the PMOC's findings, FTA may direct the PMOC to reconcile with the

Project Sponsor and provide FTA with an updated report or addendum covering the agreed-upon modifications by the Project Sponsor and PMOC.

The report formatting requirements of OP 01 apply. When necessary, PMOC shall perform data analysis and develop data models that meet FTA requirements using Microsoft Office products such as Excel and Word and use FTA-templates when provided. The PMOC may add other software as required, but the PMOC shall make all documentation and report data available to FTA.



Oversight Procedure 39 –Review of Third-Party Agreements for Capital Projects
List of Appendices

Appendix A	Acceptable Quality Level
Appendix B	Sample Table of Contents for PMOC OP 39 Report
Appendix C	Review Methodology during Project Life Cycle
Appendix D	Criticality Determination Methodology
Appendix E	Typical Risks Related to Third-Party Agreements, from Selected Transit Projects Nationwide
Appendix F	Typical Agreements by Mode and Category
Appendix G	Acronyms

APPENDIX A

Acceptable Quality Level

	DESIRED OUTCOME	PERFORMANCE REQUIREMENT	CHECK LIST	PERFORMANCE MEASURE	ACCEPTABLE QUALITY LEVEL	MONITORING METHOD
1	The PMOC shall review and analyze effects of third-party agreements on scope, budget, and schedule, and shall assess the adequacy of the PMP, RCMP, and Project Sponsor's capacity and capability with regard to management of the third-party agreements.	R1a. The PMOC shall develop and document a process for review and analysis of the required Project documents to determine Project Sponsor's readiness to enter into the next phase of the project.		M1a. Review of the process documentation.	Q1a. PMOC provides documentation of the process.	MM1a. Periodic review by FTA or its agent.
		R1b. The PMOC shall use its process and project management judgment to review and analyze Project documents to determine the readiness of Project Sponsor to enter into the next phase of the project.		M1b. Documented review and analysis of Project documents to determine the readiness of Project Sponsor to enter into the next phase of the project.	Q1b. Review must be made and the PMOC provides internal verification that the process as documented has been followed.	MM1b. Periodic review by FTA or its agent and the PMOC's internal verification.
2	The PMOC shall form a professional opinion of the Project Sponsor's readiness to enter into the next phase of project, receive a grant/loan or enter revenue service.	R2a. The PMOC shall perform a review and analysis of the Project Sponsor's submitted list of third-party agreements to be executed and those that have been executed to assure that all required agreements are in place to enter into the next phase of the project.		M2a. PMOC's review and opinion as to the preparation and implementation of required analysis and documentation third-party agreements demonstrates sound management and engineering practices and professional experience.	Q2a. Professional opinion of the preparation and implementation of required analysis and documentation submitted by Project Sponsor for third-party agreements.	MM2a. Periodic review by FTA or its agent.
		R2b. The PMOC shall, after review and analysis of the Project Sponsor's submitted list of third-party agreements to be executed and those that have been executed, determine whether all technical aspects of the third-party agreements are complete and accurate, and that there is consistency between the project documentation and the proposed third-party agreements.		M2b. PMOC's review and opinion as to accuracy, completeness and consistency between documentation and proposed third-party agreements demonstrates sound management and engineering practices and professional experience.	Q2b. Professional opinion of the accuracy, completeness and consistency between documentation and proposed third-party agreements. Q2c. Determination that the Project Sponsor's PMP, RCMP and Management Capacity and Capability are adequate for management of third-party agreements.	MM2b. Periodic review by FTA or its agent.
3	The PMOC shall provide FTA with a written report of its findings, analysis, recommendations and professional opinions.	R3. The PMOC shall present its findings, analysis, recommendations and professional opinions to FTA in a written report.		M3. Review of the PMOC's presentation of findings, analysis, recommendations and professional opinions by FTA.	Q3. Reports and presentations are professional, clear, concise, and well written. The findings and conclusions have been reconciled with other PMOC reports and have been reconciled with the Project Sponsor to the extent possible.	MM3. Periodic review by FTA or its agent.

APPENDIX B

Sample Table of Contents for PMOC OP 39 Report

- 1.0 EXECUTIVE SUMMARY
 - 1.1 Introduction
 - 1.2 PMOC Review
 - 1.3 Findings with Regard to Third-Party Agreements
 - 1.3.1 Project Management Plan (PMP) Review
 - 1.3.2 Management Capacity and Capability Review
 - 1.3.3 Methodology for Designation of Third-Party Agreements as “Critical”
 - 1.3.4 List of Critical Third-Party Agreements and Review with Respect to Impacts on:
 - Scope
 - Schedule
 - Cost Estimate
 - Satisfactory Continuing Control
 - Safety and Security
 - Project Risk and Contingency Review
 - 1.4 Conclusion
 - 1.5 Recommendations
- 2.0 INTRODUCTION
 - 2.1 Project Sponsor
 - 2.2 Project Description
 - 2.3 Project Status
 - 2.4 Project Budget
 - 2.5 Project Schedule
 - 2.6 Project Management Oversight Contractor (PMOC)
 - 2.7 Status of the Project Sponsor in Meeting Previously Identified FTA Requirements
 - 2.8 PMOC Evaluation Team
 - 2.9 Documents Reviewed
- 3.0 PROJECT MANAGEMENT PLAN REVIEW
 - 3.1 Project Management Plan
 - 3.1.1 PMOC Assessment of Plans for Third-Party Agreements
 - 3.1.2 Conclusion
 - 3.1.3 Recommendations
 - 3.2 Risk and Contingency Management Plan
 - 3.2.1 PMOC Assessment of Inclusion of Third-Party Agreements
 - 3.2.2 Conclusion
 - 3.2.3 Recommendations

- 4.0 MANAGEMENT CAPACITY AND CAPABILITY
 - 4.1 PMOC Assessment of the Project Sponsor staff assigned to manage Third-Party Agreements
 - 4.2 Conclusion
 - 4.3 Recommendations
- 5.0 SCOPE
 - 5.1 Assessment and Effect of Third-Party Agreements on Scope
 - 5.2 Conclusions
 - 5.3 Recommendations
- 6.0 PROJECT DELIVERY
 - 6.1 Assessment and Effect of Third-Party Agreements and Risk Sharing on Contracts
 - 6.2 Conclusions
 - 6.3 Recommendations
- 7.0 PROJECT SCHEDULE
 - 7.1 Assessment and Effect of Third-Party Agreements on Schedule
 - 7.2 Conclusion
 - 7.3 Recommendations
- 8.0 PROJECT COST
 - 8.1 Assessment and Effect of Third-Party Agreements on Cost
 - 8.2 Conclusions
 - 8.3 Recommendations
- 9.0 PROJECT RISK AND CONTINGENCY REVIEW
 - 9.1 Assessment of Inclusion of Third-Party risks and Mitigations
 - 9.2 Conclusion
 - 9.3 Recommendations
- 10.0 SATISFACTORY CONTINUING CONTROL
 - 10.1 Assessment
 - 10.2 Conclusion
 - 10.3 Recommendations
- 11.0 CONCLUSION/RECOMMENDATIONS
 - 11.1 Conclusions
 - 11.2 Recommendations
- 12.0 APPENDICES (as necessary to keep report concise)
 - A List of Third-Party Agreements

APPENDIX C - Review Methodology during Project Life Cycle

Planning (LPA Selection)	Project Design up to 30% (Complete NEPA)	Project Design from approx. 30% to 60%	Prior to Grant Agreement/Construction	Prior to Revenue Service
<p>1. Sponsor should establish a clear screening process to identify, eliminate, or reduce impacts of design alternatives on railroads, major utilities or utility corridors, university property, sensitive research labs, historic bridges, or airports; and alternatives that require use of public ROW or private real estate not owned by the Project Sponsor.</p>	<p>1. Assign sponsor staff with appropriate experience and adequate capacity and capability for management of and liaison with the third parties to develop design alternatives to minimize cost and schedule impacts. Include appropriate screening requirements in the scope for design/environmental consultants working to complete NEPA process.</p>	<p>1. FTA may require a Risk Workshop. Invite third-party liaisons along with their third-party counterparts to the risk workshop to weigh in on cost and schedule impacts and potential mitigation strategies, and to take ownership in resolving the issues. The assigned risk owners must lead or carry out the mitigation strategies.</p>	<p>1. The review at this level should focus on the detail of each agreement, an evaluation of satisfactory continuing control, and the commitments made with respect to the proposed scope, cost, and schedule.</p>	<p>1. Once construction is completed, the start of operation requires occupancy permits and/or safety certifications. The maintenance of the system may require update of the agreements with partner agencies and/or owners of ROW, such as railroads, in which the system is operating.</p>
<p>2. Sponsor should conduct active outreach to identify all potentially affected utility providers and identify utilities having authority to be in the ROW with franchise agreement and those that will need to relocate at cost to the Project Sponsor. Evaluate impacts to the project of all potentially affected utilities. Develop master utility agreement template.</p>	<p>2. Through completion of the environmental review and 30% design, further identify and detail third-party and utility requirements, develop conceptual plans, determine cost and schedule impacts, and incorporate costs and durations in project estimates and schedules. Consider holding an internal risk workshop.</p>	<p>2. FTA may conduct a workshop specifically dedicated to third parties when the project has significant number of third parties with complex issues. Incorporate the outcome of the third-party workshop in the risk register and present it in the general risk workshop. Incorporate in the overall RCMP.</p>	<p>2. Prior to grant/loan execution, FTA, or as directed the PMOC, will need to review the critical third-party agreements and verify that the agreed-upon provisions do not introduce additional scope, cost, or schedule impacts and can be accommodated with the submitted grant/loan budget and schedule.</p>	<p>2. Prior to Revenue Service the PMOC will need to review the critical third-party agreements and verify that construction events have not altered agreed-upon provisions and that any additional scope, cost, or schedule impacts can be accommodated within the submitted grant/loan budget and schedule.</p>

Planning (LPA Selection)	Project Design up to 30% (Complete NEPA)	Project Design from approx. 30% to 60%	Prior to Grant Agreement/Construction	Prior to Revenue Service
3. Once the Locally Preferred Alternative (LPA) is selected, develop a list of third-party agreements and ensure inclusion of their risk and timelines in both the schedule and the risk register.	3. Document status of third-party agreements through meeting minutes and/or memoranda of understanding. Prepare tracking or action item lists to monitor and advance agreements between parties. Update the schedule and risk register for the execution of critical third-party agreements. Develop and advance agreement term sheets, framework documents, or actual agreements.	3. Identify the critical third-party agreements based on the criteria described in this guidance. Sponsor and FTA to meet early to review and reach consensus on those agreements that will be considered “critical” for purposes of grant execution or loan agreement. Update the schedule, risk register, and RCMP.	3. All critical third-party agreements deemed critical for the construction stage must be executed prior to a grant/loan agreement. The PMOC will review adherence based on the readiness review.	3. Verification that the necessary permits and agreements are in place is included in §6.4.2 of the Readiness for Revenue Operations Review performed under OP 54. As part of OP 54 readiness for operations review determines whether the Project Sponsor has all third-party agreements updated and signed and accepted.

APPENDIX D

Criticality Determination Methodology

Criticality is a matter of the circumstances that surround each project's identified third-party interfaces, as expressed in the itemized third-party agreement, as well as that agreement's potential impacts to primary project goals. The process for developing an opinion regarding the critical nature of these agreements requires the involvement of the Project Sponsor, the PMOC, and FTA.

Third-Party Agreement Characteristics

Third-party agreement characteristics must be defined in order to evaluate the critical nature of a particular third-party agreement. As indicated in this guidance, the Sponsor is expected to provide a well-defined listing of third-party agreements necessary for completion of the project or resulting operations. In order to evaluate criticality, this listing should include the following information in addition to the required third-party information noted in Section 4.6 of this guidance:

- Third-party name(s) and relationship(s) to Sponsor.
- Signature authority (authorities) required to finalize agreement.
- Important assumed terms in the agreement contemplated in current scope, cost, schedule, or operations, or in pending or existing contracts.
- Any current disagreement by the parties among important base terms.
- Current status of agreement and assumed date of finalization.
- Project activity (activities) and start date(s) that requires third-party agreement to proceed.

Determination of Criticality

In order to determine criticality, the PMOC should evaluate the degree to which deviation from assumed agreement terms or failure to execute the agreement may affect various project goals. The potential factors with hazardous effects to the project include:

- Capital project development impacts:
 - Scope increase
 - Cost overrun
 - Schedule delays
 - Impedance of construction start or progress
- Operations impacts:
 - Operations cost increase
 - Operational commencement delay or service interruption

For each third-party agreement, the PMOC should rank the impact on the above factors of criticality should the assumed agreement terms not be met. Such ranking may be expressed on a

scale of 1-5, where 1=little impact on each goal above and 5=very high impact on the goal. If any goals are not impacted, this should also be noted. The result of this evaluation should be used to provide a basis of PMOC opinion for the designation of a third-party agreement as “critical.” Note that any single goal that is significantly threatened by deviation from the assumed agreement terms may be sufficient to designate the third-party agreement as “critical.”

The PMOC should also identify any strategies proposed or initiated by the Project Sponsor to mitigate the delay or failure to timely execute any of the identified third-party agreements.

The above analysis should be presented in the OP 39 report, along with an explanation of the basis for the criticality ranking.

FTA Criticality Concurrence

The OP 39 report should be transmitted to the FTA for review and concurrence whether any amendments should be made to the PMOC designations of third-party agreements as “critical”. Where appropriate, report adjustments should be made to reflect final approval of such designations by the FTA.

Recognizing Critical Third-Party Agreements as Risks

Where any third-party agreements have been designated as critical, the PMOC shall also render an opinion of the likelihood of the reported potential deviation (of substance or timing) from the assumed agreement expectations. Where there is a reasonable likelihood that such deviations may occur, the PMOC shall inform the Sponsor of the need to add the third-party agreements to the Sponsor’s risk register, including development of mitigations to resolve the risk.

APPENDIX E

Typical Risks Related to Third-Party Agreements, from Selected Transit Projects Nationwide

<u>Risk by Category</u>	
City and County	
	City requires unexpected amount of landscape improvements along guideway
	Impending lease agreement faces legal challenge
	City unfamiliar with process for transit approval
	Local community changes City agreement over alignment
	Events such as parades and races conflicts with contractor schedule
	City may insist on removal of unused asbestos-containing underground utilities
	City requests additional bikeway beyond expectation in environmental assessment.
	City delays agreement due to potential agreement with developers along alignment.
State	
	Agreement with Coast Guard delayed due to private interests.
	State DOT withholding permit for changing bus highway turn lanes to accommodate transit.
	State DOT delays process of agreeing on utility company construction easement requests.
	State DOT may require updated signalization along state highway alignment.
	State Board of Water Supply may not grant waiver to abandon utilities in place.
	State DOT has not agreed to final design on state highway, delaying project.
Public Utility	
	Public utility reluctance to provide design-phase input until project has full FTA funding.
	Inability to comply with Buy America
Private Utility	
	Private utility will not commit to Buy America requirements.
	Utility failure to meet schedule causes construction delays and claims.
	If utility company does relocation, risk increases of delay.
	Utility cost is Time & Materials; cost estimate may be inaccurate.
	Assumed power connection may not be available.
	Agreements not complete at late design; unexpected costs and delays may occur.
	Utility easement agreements taking longer than expected.
	Utility not proving power on schedule needed by project.
	Utility demanding betterments that threaten the budget.
	Utility potentially unable to meet demand; agreement needed to allow third-party utility installation.

<u>Risk by Category</u>	
	Natural gas line requires complex permit form federal government and state Fire Marshal.
	Access agreements for utility work must be established before utility Third-Party Agreement finalized.
	Inability to comply with Buy America
Academic Institutions	
	University delays station design approval
	University access path delayed
	Disagreement on Track alignment through or near university property
Railroads (RR)	
	Freight Railroad and FRA must agree regarding shared at-grade crossing.
	Timing of freight track switching yard changes uncertain.
	Freight/transit crash wall disagreement delaying RR agreement.
	Settlement costs for RR agreement may exceed expectations.
	Multiple RRs imposing competing requirements.
	Joint RR/transit bridge use causing delays in finalizing bridge design.
	Insufficient railroad force account resources to support schedule for construction work claimed by the railroad union(s).
	Insufficient railroad force account resources to provide access and protection to third-party construction contractors.
	Required track outages/track fouling time not available, cancelled, or terminated early.
Airports	
	Airport may not have legal title to agreed alignment
	Airport concerned about impingement on runway protection zone
Special Districts	
	Stadium authority continues to renegotiate property adjustments.
Partner Agencies	
	Multiple agencies' competing interests causes conflicting project requirements.
Other Private Sector	
	State DOT agreement delayed due to adjacent developers' requests.
	Developer promise to pay for improvements may not hold.
	Adjacent development increasing, causing potential impact to design of alignment and stations.

APPENDIX F

Typical Agreements by Mode and Category

<u>Identification</u>				<u>Type of Agreement/Authorization</u>
No.	Mode	Category	Project Name	
1.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Use & Occupancy Permits (various)
2.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Use & Occupancy Permits ONE (re: Early Wet Utility Relocation Work)
3.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Use & Occupancy Permits TWO (re: EMDT CP Rose)
4.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Use & Occupancy Permit (On City Property) for Wet Utility Potholing
5.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Use & Occupancy Permit (On City Property) for Fault Hazard/Seismic Field Work
6.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Right of Entry Permit (across City Park Property) for access to conduct Subsurface Geotechnical Investigations on other agency's property
7.	LRT	City & County	Sandag MCC	MTS - City of San Diego MOU for Operations & Maintenance
8.	LRT	City & County	Sandag MCC	CALTRANS - City of San Diego Maintenance Agreement for Rose Canyon Bicycle Path
9.	LRT	University	Sandag MCC	SANDAG - UCSD Construction License Agreement
10.	LRT	University	Sandag MCC	MTS - UCSD Agreement for Operation and Maintenance
11.	LRT	City & County	Sandag MCC	SANDAG - VA Revocable License for Non-Federal Use of Real Property
12.	LRT	City & County	Sandag MCC	SANDAG - VA Grant of Easement with Plats & Legals
13.	LRT	City & County	Sandag MCC	MTS - VA Agreement for Operation and Maintenance
14.	LRT	Private Developer	Sandag MCC	MTS &/or SANDAG - La Jolla Village Square Agreement for Operation & Maintenance
15.	LRT	City & County	Sandag MCC	MTS &/or SANDAG - UTC Agreement for Operation and Maintenance
16.	LRT	University	Sandag MCC	SANDAG - UCSD Purchase & Sale Agreements

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
17.	LRT	University	Sandag MCC	SANDAG - UCSD, SD MTS, and CALTRANS MOU Regarding the Mid-Coast Corridor Transit Project and North Coast Corridor Project
18.	LRT	State	Sandag MCC	MTS - CALTRANS SANDAG JU&MA
19.	LRT	State	Sandag MCC	SANDAG - CALTRANS Master Agreement Regarding Collaborative Projects
20.	LRT	City & County	Sandag MCC	SANDAG - VA MOU for Mid-Coast Corridor Transit Project
21.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Cooperative Agreement for Project Review Procedures
22.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Project Implementation Agreement
23.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Purchase & sale Agreement (PSA)
24.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Utility Reimbursement Agreement (re: EMDT)
25.	LRT	City & County	Sandag MCC	SANDAG - City of San Diego Utility Reimbursement Agreements (re: MCCTP)(SANDAG No 5008004)
26.	LRT	University	Sandag MCC	SANDAG - UCSD Utility Design Oversight Reimbursement Agreement (SANDAG No. 5008001)
27.	LRT	City & County	Sandag MCC	SANDAG - NCTD - MTDB (MTS) Master MOU (MTS No.G0930.5-04)
28.	LRT	City & County	Sandag MCC	SANDAG - MTS Master MOU Addendum 5 (MTS No. G0930.5-04)
29.	LRT	City & County	Sandag MCC	SANDAG - MTS Master MOU Addendum 17 (MTS no. G0930.17-04)
30.	LRT	City & County	Sandag MCC	MTS - City of San Diego MOU (MTDB No. 5506.4-90 City Ordinance No.00-15881)
31.	LRT	Utility	Sandag MCC	MTDB (MTS) - AT&SF (BNSF) & NCTD Shared Use Agreement
32.	LRT	Utility	Sandag MCC	MTDB (MTS) - AT&SF (BNSF) Grant Deed with Reserved Freight Easement
33.	LRT	Railroad	Sandag MCC	NCTD - National Railroad Passenger Corp (AMTRAK) Operating Agreement
34.	LRT	University	Sandag MCC	SANDAG - UCSD License Agreement for Survey
35.	LRT	University	Sandag MCC	SANDAG - UCSD License Agreement for Subsurface Investigation (Wet Utilities Potholing)

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
36.	LRT	University	Sandag MCC	SANDAG - UCSD License Agreement for Ambient Data collection for EMF Studies
37.	LRT	University	Sandag MCC	SANDAG - UCSD License Agreements for Subsurface Investigation (Dry Utility Potholing and Associated Survey)
38.	LRT	University	Sandag MCC	SANDAG - UCSD License Agreements for Subsurface Investigation (Geotechnical)
39.	LRT	Railroad	MTA Purple Line	MTA - CSX Transportation - Addendum No. 19B to Master Construction Agreement
40.	LRT	State	MTA Purple Line	MTA - Washington Metropolitan Area Transit Authority Project Construction Agreement
41.	LRT	City & County	MTA Purple Line	MTA - Maryland-National Capital Parks and Planning Commission acting through the Prince George's County Departments of Parks and Recreation Memorandum of Agreement
42.	LRT	City & County	MTA Purple Line	MTA - Maryland-National Capital Parks and Planning Commission acting through the Montgomery County Departments of Parks and Recreation Memorandum of Agreement
43.	LRT	City & County	MTA Purple Line	MTA - Montgomery County, MD Memorandum of Agreement Regarding the Maryland-National Capital Purple Line
44.	LRT	City & County	MTA Purple Line	MTA - Prince George's County, MD Memorandum of Agreement Regarding the Maryland-National Capital Purple Line
45.	LRT	University	MTA Purple Line	MTA - University of Maryland, College Park Memorandum of Agreement Regarding the Maryland-National Capital Purple Line
46.	LRT	Utility	MTA Purple Line	MTA - Potomac Electric Power Company Memorandum of Agreement
47.	LRT	Utility	MTA Purple Line	MTA - Verizon Maryland, LLC Memorandum of Agreement
48.	LRT	Utility	MTA Purple Line	MTA - Washington Gas Light Company Memorandum of Agreement
49.	LRT	Utility	MTA Purple Line	MTA - Washington Suburban Sanitary Commission Memorandum of Agreement
50.	LRT	Utility	MTA Purple Line	MTA - Zayo Group, LLC Memorandum of Agreement
51.	LRT	Utility	MTA Purple Line	MTA - Miscellaneous Utility Owners: Comcast, FiberLight Communications, Starpower Communications, MEDCO, MCI communications, AT&T Corporation, AT&T LNS, Century Link Communications, Century Like QGS, Level 3 Communications
52.	LRT	City & County	MTA Purple Line	MTA Delegation of Authority Memorandum of Agreement with MDE

Identification				<u>Type of Agreement/Authorization</u>
No.	Mode	Category	Project Name	
53.	LRT	City & County	MTA Purple Line	Stormwater Management & Erosion and Soil Control Permit
54.	LRT	City & County	MTA Purple Line	Notice of Intent Application for National Pollutant Discharge Elimination System
55.	LRT	City & County	MTA Purple Line	General Permit for Stormwater Associated with Construction Activity
56.	LRT	State	MTA Purple Line	Joint Federal/State Application for Alteration of any Floodplain, Waterway, Tidal or Non tidal Wetland
57.	LRT	City & County	MTA Purple Line	Wetland & Waterway Permit
58.	LRT	City & County	MTA Purple Line	Floodplain Permit from Maryland and Montgomery and Prince Georges County
59.	LRT	City & County	MTA Purple Line	Water Appropriation & Use Permit
60.	LRT	City & County	MTA Purple Line	Forest Stand Delineation (FSD) & Forest Conservation Plan Submission
61.	BRT	City & County	Van Ness Avenue BRT	CALTRANS - SFMTA Encroachment Permit
62.	BRT	City & County	Van Ness Avenue BRT	SFMTA - HNTB Water Utility Agreement
63.	BRT	City & County	Van Ness Avenue BRT	SFMTA - HNTB AWSS Utility Agreement
64.	BRT	City & County	Van Ness Avenue BRT	SFMTA - CALTRANS Cooperative Agreement
65.	BRT	City & County	Van Ness Avenue BRT	SFMTA - CALTRANS Maintenance Agreement
66.	BRT	City & County	Van Ness Avenue BRT	SFMTA - HNTB Sewer Utility Agreement
67.	Streetcar	City & County		KCATA, City of Kansas City - Kansas City Streetcar Authority Cooperative Agreement
68.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Contract for Sale and Purchase
69.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Central Florida Operating & Management Agreement
70.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Central Florida Transition Agreement

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
71.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Central Florida Dispatch Services Agreement
72.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Central Florida Orientation Services Agreement
73.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Central Florida Master Projects Agreement
74.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - CSXT Central Florida Joint Use Agreement
75.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - Florida Central Railroad (FCEN) Operating Agreement
76.	Commuter Rail	Railroad	SunRail Phase 1	FDOT - AMTRAK Contractual Services Agreement (for Vehicle Maintenance and Other Related Services)
77.	Commuter Rail	City & County	SunRail Phase 1	Orange County, Osceola County, Seminole County, Volusia County, City of Orlando Interlocal Funding Agreement
78.	Commuter Rail	City & County	SunRail Phase 1	Orange County, Osceola County, Seminole County, Volusia County, City of Orlando - FDOT Interlocal Governance Agreement
79.	Commuter Rail	City & County	SunRail Phase 1	Central Florida Commuter Rail Commission - FDOT Interlocal Operating Agreement
80.	Commuter Rail	City & County	SunRail Phase 1	Volusia County, Seminole County, Orange County, City of Orlando - FDOT Station Joint Use Agreement(s)
81.	Commuter Rail	State	SunRail Phase 1	FDOT - LYNX Joint Participation Agreement
82.	Commuter Rail	State	SunRail Phase 1	FDOT - Votran Joint Participation Agreement
83.	Commuter Rail	State	SunRail Phase 1	FDOT - LYNX Interlocal Agreement
84.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - MFS Network Technologies Fiber Optic Cable Agreement
85.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Level 3 Communications Fiber Optic Cable Agreement
86.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - MCI/Verizon Fiber Optic Cable Agreement
87.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Century Link Fiber Optic Cable Agreement
88.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - City of Santa Ana Communications Agreement

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
89.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - AT&T Communications Agreement
90.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Time Warner Cable Communications Agreement
91.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Zayo FNA Abovenet Communications Agreement
92.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Sunesys Communications Agreement
93.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Southern California Edison Power Distribution Agreement
94.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Southern California Gas Company Gas Pipeline Agreement
95.	Streetcar	Utility	OCTA Santa Ana Streetcar	TBD - Oil/Jet Fuel Pipeline Agreement
96.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Orange County Sanitation District Sewer Agreement
97.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - City of Santa Ana Sewer Agreement
98.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Orange County water Agreement
99.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - City of Santa Ana Water
100.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Metropolitan Water District Water
101.	Streetcar	Utility	OCTA Santa Ana Streetcar	OCTA - Southern California Water Company Water
102.	Streetcar	City & County	OCTA Santa Ana Streetcar	OCTA - City of Garden Grove Water
103.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Millbrae Construction & Maintenance Agreement
104.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of San Mateo Construction & Maintenance Agreement
105.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Burlingame Construction & Maintenance Agreement
106.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - CCSF Construction & Maintenance Agreement

Identification				<u>Type of Agreement/Authorization</u>
No.	Mode	Category	Project Name	
107.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Brisbane Construction & Maintenance Agreement
108.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of South SF Construction & Maintenance Agreement
109.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - San Bruno Construction & Maintenance Agreement
110.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - County of San Mateo Construction & Maintenance Agreement
111.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Belmont Construction & Maintenance Agreement
112.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of San Carlos Construction & Maintenance Agreement
113.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Redwood City Construction & Maintenance Agreement
114.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Atherton Construction & Maintenance Agreement
115.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Menlo Park Construction & Maintenance Agreement
116.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Palo Alto Construction & Maintenance Agreement
117.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Mountain View Construction & Maintenance Agreement
118.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Sunnyvale Construction & Maintenance Agreement
119.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of Santa Clara Construction & Maintenance Agreement
120.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - County of Santa Clara Construction & Maintenance Agreement
121.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - City of San Jose Construction & Maintenance Agreement
122.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - San Mateo County Transit Condemnation Authority Agreement
123.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - Santa Clara Valley Transportation Condemnation Authority Agreement
124.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - CCSF Condemnation Authority Agreement

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
125.	Commuter Rail	Partner Agency	CALTRAIN	CALTRAIN - BART Construction & Maintenance Agreement
126.	Commuter Rail	State	CALTRAIN	CALTRAIN - CALTRANS Construction & Maintenance Agreement
127.	Commuter Rail	City & County	CALTRAIN	CALTRAIN - SCVTA Construction & Maintenance Agreement
128.	Commuter Rail	Railroad	CALTRAIN	CALTRAIN - UPRR Construction (Segment 4) Agreement
129.	BRT	Utility	RTC 4th St/Prater Way	RTC - AT&T Relocation/Reimbursement Agreement
130.	BRT	Utility	RTC 4th St/Prater Way	RTC - Charter Communications (Utility Provider) Relocation/Reimbursement Agreement
131.	BRT	Utility	RTC 4th St/Prater Way	RTC - NV Energy Gas & Electric Relocation/Reimbursement Agreement
132.	BRT	Utility	RTC 4th St/Prater Way	RTC - Truckee Meadows Water Authority (TMWA) Reimbursement (Work to be included in FTA-funded Project but funded by TMWA) Agreement
133.	BRT	Utility	RTC 4th St/Prater Way	RTC - ZAYO Relocation Agreement
134.	BRT	Railroad	RTC 4th St/Prater Way	RTC - UPRR Maintenance Consent (Wireline Crossing Agreements issued by UPRR to affected utility companies) Agreement
135.	BRT	City & County	RTC 4th St/Prater Way	RTC - City of Reno Intergovernmental Agreement
136.	BRT	City & County	RTC 4th St/Prater Way	RTC - City of Sparks Intergovernmental Agreement
137.	Commuter Rail	Utility	SMART Train	Sonoma-Marín County - Marin Municipal Water district Relocation Agreements (Prior to rights to be determined)
138.	Commuter Rail	Utility	SMART Train	Sonoma-Marín County - PG&E Relocation Agreement (Prior to rights to be determined)
139.	Commuter Rail	Utility	SMART Train	Sonoma-Marín County - Comcast Relocation Agreement (Prior to rights to be determined)
140.	Commuter Rail	Utility	SMART Train	Sonoma-Marín County - Comcast Intergovernmental Agreement
141.	Commuter Rail	Private	SMART Train	Sonoma-Marín County - RAB Motors Drainage Easement Agreement
142.	Commuter Rail	Private	SMART Train	Sonoma-Marín County - Marin Luxury Existing Lease

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
143.	Commuter Rail	Utility	SMART Train	Sonoma-Marín County - California Public Utilities Commission (CPUC) Railroad Crossing Approvals
144.	Commuter Rail	Private	SMART Train	Sonoma-Marín County - Bacchi Family LP Property Acquisition
145.	Commuter Rail	State	SMART Train	Sonoma-Marín County - CALTRANS Property Acquisition
146.	Commuter Rail	Partner Agency	SMART Train	Sonoma-Marín County - Golden Gate Bridge Highway & Transportation District Access Rights
147.	Rapid Transit	City & County	HART - Honolulu	HART - City Joint Use Memorandum of Understanding
148.	Rapid Transit	City & County	HART - Honolulu	HART - Dept. of Facility & Maintenance (DFM)(Kamehameha/Makalapa Manor) Jurisdictional Transfer
149.	Rapid Transit	City & County	HART - Honolulu	HART - Department of Parks & Recreation (MSF Drainage) Consent to Construct in place
150.	Rapid Transit	State	HART - Honolulu	HART - University of Hawaii (UH) Master Agreement
151.	Rapid Transit	State	HART - Honolulu	HART - West O'ahu (UHWO) Pre-Construction Right of Entry
152.	Rapid Transit	State	HART - Honolulu	HART - West O'ahu (UHWO) Construction Right of Entry for Station
153.	Rapid Transit	State	HART - Honolulu	HART - UH-Leeward Community College (LCC) Pre-Construction Right of Entry
154.	Rapid Transit	State	HART - Honolulu	HART - UH-Leeward Community College (LCC) Construction Right of Entry for Guideway
155.	Rapid Transit	State	HART - Honolulu	HART - UH-Leeward Community College (LCC) Construction Right of Entry for Station
156.	Rapid Transit	State	HART - Honolulu	HART - UH- Urban Gardens Pre-Construction Right of Entry
157.	Rapid Transit	State	HART - Honolulu	HART - UH- Urban Gardens Construction Right of Entry
158.	Rapid Transit	State	HART - Honolulu	HART - UH- Urban Gardens Kiewit Construction Right of Entry
159.	Rapid Transit	State	HART - Honolulu	HART - UH Honolulu Community College (HCC) Pre-Construction Right of Entry
160.	Rapid Transit	State	HART - Honolulu	HART - UH- Honolulu Community College (HCC) Construction Right of Entry for Guideway & Station
161.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Land & natural Resources Kapolei Right of Entry

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
162.	Rapid Transit	State	HART - Honolulu	HART - DLNR - Kapolei Easement
163.	Rapid Transit	State	HART - Honolulu	HART - DLNR - Keehi Lagoon Right of Entry
164.	Rapid Transit	State	HART - Honolulu	HART - DLNR Keehi Lagoon Easement
165.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Education (DOE) Master Agreement and Consent to Construct (Waipahu H.S.)
166.	Rapid Transit	State	HART - Honolulu	HART - Aloha Stadium/Dept. of Accounting & General Services (DAGS) MOU for Guideway & Station
167.	Rapid Transit	State	HART - Honolulu	HART - Aloha Stadium/Dept. of Accounting & General Services (DAGS) Right of Entry for Guideway (for Kiewit)
168.	Rapid Transit	State	HART - Honolulu	HART - Aloha Stadium/Dept. of Accounting & General Services (DAGS) Right of Entry for Guideway
169.	Rapid Transit	State	HART - Honolulu	HART - Aloha Stadium/Dept. of Accounting & General Services (DAGS) Easement for Guideway
170.	Rapid Transit	State	HART - Honolulu	HART - Aloha Stadium/Dept. of Accounting & General Services (DAGS) Right of Entry for Station park & ride
171.	Rapid Transit	State	HART - Honolulu	HART - Aloha Stadium/Dept. of Accounting & General Services (DAGS) Easement for Station park & ride
172.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Transportation Highways Master Agreement HDOT(H)
173.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Transportation Highways Master Agreement HDOT(H)-Amendment
174.	Rapid Transit	State	HART - Honolulu	HART - HDOT(H) (A) - Master Agreement for KHG, Airport and City Center
175.	Rapid Transit	State	HART - Honolulu	HART - HDOT(H) - Joint Use & Occupancy (JU&O) Sub-agreement (WOFH)
176.	Rapid Transit	State	HART - Honolulu	HART - HDOT(H) - Joint Use & Occupancy (JU&O) Sub-agreement (KHG)
177.	Rapid Transit	State	HART - Honolulu	HART - HDOT(H) - Joint Use & Occupancy (JU&O) Sub-agreement (Airport)
178.	Rapid Transit	State	HART - Honolulu	HART - HDOT(H) - Joint Use & Occupancy (JU&O) Sub-agreement (City Center)
179.	Rapid Transit	State	HART - Honolulu	HART - HDOT(A) - Dept. of Transportation Airports Joint Use & Occupancy (JU&O) Sub-agreement for Airport Division parcels
180.	Rapid Transit	State	HART - Honolulu	HART - HDOT(A) Easement Agreement for Airport Division parcel
181.	Rapid Transit	State	HART - Honolulu	HART - HDOT (HAR) - Dept. of Transportation Harbors Easement Agreement

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
182.	Rapid Transit	State	HART - Honolulu	HART - HDOT (HAR) - Right of Entry
183.	Rapid Transit	State	HART - Honolulu	HART - DHHL - Dept. of Hawaiian Home Lands Master Agreement
184.	Rapid Transit	State	HART - Honolulu	HART - DHHL - Dept. of Hawaiian Home Lands License
185.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Public Safety, Oahu Community Correctional Center (OCCC), Dillingham Blvd., Easement Agreement
186.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Public Safety, Oahu Community Correctional Center (OCCC), Dillingham Blvd., Right of Entry
187.	Rapid Transit	State	HART - Honolulu	HART - HCDA-HI Community Development Agreement
188.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Accounting & General Services (DAGS)/HHFDC Right of Entry
189.	Rapid Transit	State	HART - Honolulu	HART - Dept. of Accounting & General Services (DAGS)/HHFDC Easement & Agreement
190.	Rapid Transit	Federal	HART - Honolulu	HART - US Navy Licenses Consent to Construct
191.	Rapid Transit	Federal	HART - Honolulu	HART - US Navy Easement Agreements
192.	Rapid Transit	Federal	HART - Honolulu	HART - US Navy Pearl Harbor Station Acquisition of Fee Transfer
193.	Rapid Transit	Federal	HART - Honolulu	HART - US Post Office Honolulu Processing Center Acquisition
194.	Rapid Transit	Federal	HART - Honolulu	HART - US Gov't/GSA/Federal Courthouse Master Agreement to include Security & Landscape Plan
195.	Rapid Transit	Federal	HART - Honolulu	HART - US Gov't/GSA/Federal Courthouse License (ROE) & TCE Agreements
196.	Rapid Transit	Federal	HART - Honolulu	HART - US Gov't/GSA/Federal Courthouse Easement Document
197.	Rapid Transit	Private Developer	HART - Honolulu	HART - D.R. Horton Agreement for Construction
198.	Rapid Transit	Private Developer	HART - Honolulu	HART - D.R. Horton Easement Agreement
199.	LRT	State	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Dept. of Transportation (MnDOT) Cooperation Agreement establishing roles for the purpose of designing and constructing the SWLRT Project
200.	LRT	State	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Dept. of Transportation (MnDOT) Master Funding Agreement establishing Framework for the Transfer of Funds related to staff reimbursement or enhancements

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
201.	LRT	State	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Dept. of Transportation (MnDOT) Subordinate Funding Agreement for Professional staff costs in 2012
202.	LRT	State	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Dept. of Transportation (MnDOT) Security Information Non-Disclosure Agreement to access MnDOT engineering plans
203.	LRT	State	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Dept. of Employment (DEED) Grant Agreement with DEED providing the Met Council \$2.0 Million in state bonds funds for PE activities
204.	LRT	State	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Dept. of Natural Resources (DNR) Digital Data License Agreement granting the Council use of DNR's Natural Heritage Information System
205.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Counties Transit Improvement Board (CTIB) 2011 Grant Agreement committing \$19.2 million local match
206.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Counties Transit Improvement Board (CTIB) 2016 Grant Agreement committing \$99.314 million local match for Project Development & Engineering
207.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Hennepin County Regional Railroad Authority Master Funding Agreement establishing the Framework for the transfer of funds
208.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Hennepin County SFA for a trail crossing at Blake Road
209.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Hennepin County SFA for a trail between LRT tracks and CSAH 61
210.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Hennepin County SFA for Fiber Optic infrastructure
211.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Southwest Transit Cohabitation Agreement establishing shared goals, undertakings and framework for future agreements
212.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Eden Prairie Employee Interchange Agreement with City of Eden Prairie for Traffic lead staff support through 2014

Identification				<u>Type of Agreement/Authorization</u>
No.	Mode	Category	Project Name	
213.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Eden Prairie Digital Data License Agreement granting the Council use of City's geographic data during Project Development and Engineering activities
214.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Eden Prairie Conditional use agreement granting the Council access to City's stormwater hydraulic model prepared by Wenck Associates to generate stormwater volume and rate flow information along SWLRT alignment
215.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Eden Prairie SFA for a trail from Golden Triangle Station
216.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Eden Prairie SFA for completing design plans and preparing construction cost estimates for 6 locally requested capital investments previously identified as Agreement No.141068F-K
217.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Hopkins Cooperation Agreement identifying Council and City commitments
218.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Minnetonka MOU identifying Council and City coordination on planning and design elements within the city
219.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Minnetonka SFA for an extension of 17th Ave.
220.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Minnetonka SFA for guideway profile adjustments in Minnetonka
221.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of St. Louis Park MOU identifying Council and City coordination on planning and design elements within the city
222.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of St Louis Park SFA for the Xenwood Avenue underpass
223.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of St. Louis Park SFA for Beltline-CSAH 25 intersection improvements
224.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Minneapolis MOU on Proposed Redesign of a Portion of the Southwest LRT Project in Minneapolis

Identification				Type of Agreement/Authorization
No.	Mode	Category	Project Name	
225.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Minneapolis Disclaimer and Indemnity Agreement to access electronic utility mapping data
226.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - City of Minneapolis MOU on Preservation of Kenilworth Corridor in Public Ownership and Control
227.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minneapolis Park & Recreation (MPRB) Memorandum of Understanding for processes related to coordination on project activities for park and recreation areas.
228.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minneapolis Park & Recreation (MPRB) SFA to reimburse MPRB staff costs
229.	LRT	City & County	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Westwood Professional Services Hold Harmless and indemnity agreement to allow the receipt of digital data
230.	LRT	Partner Agency	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Bassett Creek Watershed Management Agreement to setting forth responsibilities and terms for financial transfers to Bassett Creek Watershed Management Commission for support in permitting review and compliance activities
231.	LRT	Private Developer	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - German Settlement Wetland Bank, LLC Agreement to reserve approx. 10 acres of wetland credits to serve as mitigation for SWLRT Project impacts to wetlands
232.	LRT	Private Developer	Southwest Light Rail Transit - Minneapolis	Metropolitan Council - Minnesota Historic Preservation Office Agreements setting forth commitments to mitigate adverse effects on five historic properties impacted by the SWLRT LRT Project
233.	LRT	City & County	Central Corridor Light Rail Transit - Minneapolis	Metropolitan Council, University of Minnesota, City of Minneapolis, Hennepin county Regional Rail Authority and Hennepin County MOU 01 Memorandum of Understanding to work jointly to resolve mitigation of traffic and of the other environmental impacts due to the construction of LRT though the University of Minnesota campus and to define the scope and commitment of the respective parties to the mitigation issues.
234.	LRT	City & County	Central Corridor Light Rail Transit - Minneapolis	Metropolitan Council, University of Minnesota, City of Minneapolis, Hennepin county Regional Rail Authority and Hennepin County MOU 02 Development, Property Rights and Construction Agreement for the design, property identification, and right-of-way acquisition required for the construction and cooperation of LRT through the University campus.

Identification				<u>Type of Agreement/Authorization</u>
No.	Mode	Category	Project Name	
235.	LRT	University	Central Corridor Light Rail Transit - Minneapolis	Metropolitan Council, University of Minnesota Master Funding Agreement for funding staff reimbursement or project enhancements.
236.	LRT	City & County	Central Corridor Light Rail Transit - Minneapolis	Metropolitan Council, City of Minneapolis and Hennepin County Cooperative Operations and Maintenance Agreement to operate and maintain CCLRT in City or County right-of-way
237.	LRT	City & County	Central Corridor Light Rail Transit - Minneapolis	Metropolitan Council - City of St. Paul Cooperative Construction and Utility Relocation Agreement for the relocation of public utilities and cost participation related to Advanced Utility Relocation
238.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Qwest Government Utility Relocation Agreement
239.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - DVP Utility Relocation Agreement
240.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Verizon Utility Relocation Agreement
241.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - City of Falls Church Water Utility Relocation Agreement
242.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Fairfax Water Utility Relocation Agreement
243.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - TCG Virginia, Inc. Agreement, PO and Modification
244.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Verizon Business/MCI Agreement, PO and Modification
245.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Washington Gas Agreement, Po and work Order Agreement
246.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - AboveNet Agreement, Po and Modification
247.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Cox Agreement, Po and Modification
248.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners -Level 3 Agreement, Po and Modification
249.	Metrorail	Utility	Dulles Metrorail - Virginia	Virginia Dept of Rail and Public Transportation, Dulles Transit Partners - Fiberlight Agreement, Po and Modification
250.	Streetcar	City & County	KC Streetcar	KC Area Transportation Authority, City of KC, Missouri and KC Streetcar Authority Cooperative Agreement

APPENDIX G

List of Acronyms

ADA	Americans with Disabilities Act
CIG	Capital Investment Grants Program
CM/GC	Construction Manager/General Contractor
CNPA	Concurrent Non-Project Activity
D-B	Design-Build
DBF	Design-Build-Finance
DBOM	Design-Build-Operate-Maintain
DOT	Department of Transportation
FAST	Fixing America's Surface Transportation Act
FFGA	Full Funding Grant Agreement
FONSI	Finding of No Significant Impact
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
LONP	Letter of No Prejudice
LPA	Locally Preferred Alternative
MAP-21	Moving Ahead for Progress in the 21st Century Act
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act
OP	Oversight Procedure
P3	Public-Private Partnership
PMO	Project Management Oversight
PMOC	Project Management Oversight Contractor
PMP	Project Management Plan
RAMP	Real Estate Acquisition Management Plan
RCMP	Risk and Contingency Management Plan
ROD	Record of Decision
ROW	Right of Way
RR	Railroad
SCC	Standard Cost Category
SGR	State of Good Repair
SSGA	Small Starts Grant Agreement
SYGA	Single Year Grant Agreement
TCC	FTA Office of Chief Counsel
TIFIA	Transportation Infrastructure Finance and Innovation Act
TIGER	Transportation Investment Generating Economic Recovery
TOD	Transit-Oriented Development
TPE	FTA Office of Planning and Environment
TPM	FTA Office of Capital Project Management