

City of San José

Request for Proposals (DOT 10183)

To develop a scalable Transit Solution that connects SJC to Diridon Station in Downtown San José

May 10, 2022

KEY DATES	
Task	Date
Release Date	May 10, 2022
Procurement Contact: Email Address:	Lauren Profeit PW_Procurement@sanjoseca.gov
Pre-Proposal Conference	Tuesday, June 7, 2022, at 1:00 PM
Deadline for Questions and Clarifications	September 9, 2022
Deadline for final Addendum to the RFP	October 7, 2022
Proposal Due Date and Time Location:	November 8, 2022, at 11:00 am. (Pacific Time) Proposal responses must be submitted online through Biddingo prior to the proposal due date and time.

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1. Defined Terms and Abbreviations

1.1 Defined Terms¹

Unless the context requires otherwise, capitalized terms and acronyms used in this RFP and not otherwise defined in this Section 1.1 shall have the meanings given in Appendix D (Form of PDA).

Table 1: Defined Terms

Term	Abbreviation	Definition
Addendum, Addenda		Supplemental additions, deletions, and modifications to the provisions of this RFP after the release date of this RFP.
Administrative Submittals	AS	Volume 1 of the Proposal containing the administrative submittals Proposer is required to submit in accordance with Appendix C1 (Volume 1: Administrative Submittals).
Airport Connector		See Section 2.1 (Background).
BAFO		See Section 7.6.3 (Best and Final Offers).
City		See Section 2.1 (Background).
City's Contact Person		The Person designated as the City's point of contact for this procurement in Section 5.3.1 (City's Contact Person).
Commercial Close		The full execution and delivery of the Implementation Agreement.
Cost Index		The Engineering News Record's Building Cost Index. Where indicated in this RFP for the purpose of escalating a reference project's cost data, Respondent should use the ratio of the value of the January 2022 Building Cost Index divided by its value on the month of the project's Financial Close (or its equivalent).
Developer		Each successful Proposer that executes or will execute, a PDA with the City, as described in Section 8.4 (Predevelopment Agreement Execution).
Development Team		The Developer, each of its Major Participants and each other subcontractor named as part of the Developer's team, in their role as being responsible for development of the Project during the PDA Phase and during the RFP process.
Eligible Security Issuer		A reputable state financial institution authorized to issue bonds, letters of credit, or sureties having either: (1) a long-term unsecured debt ratio of at least: (a) "A" by Standard & Poor's Rating Services; (b) "A" by Fitch, Inc.; (c) "A2" by Moody's Investor Service, Inc.; or (d) "A" by DBRS, Inc. or (2) a rating of at least "A-" and "Class VIII" from A.M. Best Company, Inc.
Equity Member		With respect to a Proposer, each Person that will hold a direct ownership interest in the proposed Developer, including each Person identified by that Proposer as an "Equity Member" in its Proposal.
Executive Summary		See Section 1.4 of Table C-1: Volume 1: Administrative Submittals Appendix C1 (Volume 1: Administrative Submittals).
Financial Close		When all financing documents needed to fund the final design and construction of the Project are signed, all conditions precedent described in the Implementation Agreement have been satisfied or waived, and the ProCo has access to financing to sufficient to cover the cost of the Project's design and construction, as well as other costs as required in the Implementation Agreement.
Financial Proposal		Each Proposer's response to the requirements set out in Appendix C4 (Volume 4: Financial Proposal) submitted as Volume 4 of the Proposal.
Financial Proposal Score		The sum of the points allocated to a Proposer's Financial Proposal in accordance with Section 7.4.3 (Financial Proposal).

¹ Defined terms to be kept in view as RFP and form of PDA (if applicable) are developed. Subject to further review and revision.

Term	Abbreviation	Definition
Implementation Agreement		See Section 2.2 (Request for Proposal).
Implementation Phase		The period between Commercial Close and expiry of the Implementation Agreement at the end of the Project Term, or any earlier termination of the Implementation Agreement.
Lead D&C Contractor		The Person proposed to have primary responsibility for design and construction of the proposed Transit Solution; or the Person proposed to have primary responsibility for the provision of preconstruction services during the PDA Phase, including construction cost estimating, construction scheduling, risk management, value engineering, and constructability reviews, if the Person with primary responsibility for design and construction during the Implementation Phase is proposed to be procured during the PDA Phase.
Lead Designer		The Person proposed to have primary responsibility for preparation of the detailed designs, plans, and specifications for the proposed Transit Solution, including primary responsibility for the performance of design and engineering services during the PDA Phase; or the Person proposed to provide design services during the PDA Phase, if the Person with primary responsibility for design services during the Implementation Phase is proposed to be procured during the PDA Phase.
Major Participant		Each of the following: each Equity Member (and if an Equity Member is an investment fund, the fund's general partner[s]); the Lead Designer; the Technology Provider; the Lead D&C Contractor; the O&M Provider(s); and in each case where the Major Participant is an incorporated or unincorporated consortium or joint venture, each member or joint venturer in that Major Participant. A Person may fulfil more than one Major Participant role (for example, an Equity Member may fulfill the role of Lead D&C Contractor, Technology Provider, Lead Designer, and/or O&M Provider if it possesses the necessary experience to fulfil the evaluation criteria and perform the relevant services during the PDA Phase).
Major Subsystem		For the purposes of the RFP, the Transit Technology's Major Subsystems are the following: (a) transit vehicles, (b) propulsion and/or power systems not otherwise incorporated in the transit vehicles, ² (c) vehicle operation control systems, (d) running surfaces or tracks, and (e) guideway equipment.
Notice of Preferred Proposer(s)		The notice that will be sent to all Proposers from the City containing the name of the Preferred Proposer(s), in accordance with Section 8.1 (Selection of Preferred Proposer(s)).
One-on-One Meetings		Is defined in Section 5.6 (One-on-One Meetings).
O&M Provider(s)		The Person (or Persons) proposed to have primary responsibility for providing the operations and maintenance services for the proposed Transit Solution; or the Person(s) proposed to provide operations and maintenance advisory services during the PDA Phase, if the Person(s) with primary responsibility for operations and maintenance during the Implementation Phase is proposed to be procured during the PDA Phase. The role may be performed by separate Persons for operations and maintenance.
Option		See Section 2.3 (Project Description and Scope).

² For example, in the case of electric battery-operated vehicles, this item refers to the battery-charging equipment and infrastructure.

Term	Abbreviation	Definition
PDA Cost Cap		The maximum allowed costs that will be reimbursed by the City following any expiry under Section 2.2(f)(iv)(A) (Phased Work and Notices to Proceed) or termination for convenience in accordance with Section 22.1 (Non-Default Termination or Expiry) of Appendix D (Form of PDA).
PDA Cost Cap for PDA Phase 1		See Section 7.4.3(1) (Financial Proposal).
PDA Cost Cap (Design) for PDA Phase 2		See Section 7.4.3(2) (Financial Proposal).
PDA Management Plan	PMP	See Appendix C3 (Volume 3: Technical and Commercial Proposal).
PDA Phase		The period between the date on which the PDA is fully executed and Commercial Close, or any earlier termination of the PDA.
Person		Any individual, firm, corporation, joint venture, limited liability company, limited liability partnership, company, voluntary association, partnership, trust, public or private organization, unincorporated organization, or other legal entity or combination of the foregoing.
Policy		See Section 4.2 (Improper Conduct and Conflicts of Interest).
Predevelopment Agreement	PDA	See Section 2.2 (Request for Proposal).
Preferred Proposer(s)		The Proposer, or two or more Proposers, that offer the City the best value as determined in accordance with the evaluation and selection process set out in Section 7 (Evaluation Process and Criteria).
Pre-Proposal Conference		A presentation of the RFP and Project requirements by the City to prospective Proposers in accordance with Section 5.4 (Pre-Proposal Conference).
Procurement Objectives		The objectives for the procurement under this RFP described in Section 2.4 (Procurement Objectives).
Procurement Portal		Biddingo. [www.biddingo.com/sanjose] Further details are provided in Section 4.7 (Procurement Portal).
Project		See Section 2.1 (Background).
Project Objectives		The objectives for the Project described in Section 2.3.1 (Project Objectives).
Project Company	ProCo	The counterparty to the City as signatory to the Implementation Agreement and responsible for delivering the Project. The ProCo must be the Developer or a new special-purpose entity, capitalized and financed to the satisfaction of the City and controlled by the Developer or an Affiliate of the Developer.
Project Term		The term of the Implementation Agreement, expected to be 30 years from the Scheduled Substantial Completion Date of the Project (i.e., construction period plus 30 years).
Proposal		The Proposer's response, in its entirety, to this RFP, including the Administrative Submittals, Team Proposal, Technical and Commercial Proposal, and Financial Proposal.
Proposal Due Date		The date and time by which the Proposal must be submitted as shown in Appendix A (RFP Schedule), and which may be modified by the City in accordance with this RFP.
Proposal Letter		The letter submitted by the Proposer as part of the Administrative Submittals in the form set out in Appendix C5.1 (AD Form A: Proposal Letter).
Proposal Security		See Section 6.5 (Proposal Security).
Proposal Validity Period		A period of 210 consecutive days commencing on (and including) the Proposal Due Date.

Term	Abbreviation	Definition
Proposer(s)		The entity, company, partnership, consortium, or joint venture (whether incorporated or unincorporated), including any Equity Member, who: (a) prior to Proposal submission, is interested in submitting a Proposal in response to this RFP and has obtained a copy of this RFP; or (b) on and after Proposal submission, has submitted a Proposal in response to this RFP.
Proposer Submissions		See Section 4.4 (Public Records Laws).
Proposer's Contact Person		The person designated and notified by a Proposer in accordance with Section 5.3.2 (Proposer's Contact Person)
Public Records Act		See Section 4.4 (Public Records Laws).
Reference Documents		The documents listed in Appendix E (List of Reference Documents) and any other information provided to Proposers in accordance with Section 4.10 (Reference Documents and Diligence). Reference Documents include general information regarding the Project found on the City's website.
Reference Project		See Appendix C6.2 (TM Form B: Project Delivery Experience: Reference Projects).
Request for Proposals	RFP	The request issued by the City for Proposals to design, build, finance, operate, and maintain the Project, as may be amended by Addendum in accordance with this RFP.
RFP Comments		Written comments, questions, objections, or requests for clarification relating to this RFP submitted in accordance with Section 5.55 (Questions and Responses Regarding this RFP).
RFP Schedule		The City's anticipated schedule for the procurement process and award of the PDA, set out in Appendix A (RFP Schedule).
Safety Certification Plan		Plan to identify the processes to verify and document that the design, construction, and installation of systems and equipment are in compliance with safety requirements; training, operations and maintenance manuals have been provided; rules and procedures are written; and operations personnel are trained in the rules and procedures. Additionally, it provides a framework for ensuring that appropriate safety related activities have been performed and documented to support certification.
Substantial Completion		When (i) construction is completed in accordance with the requirements of the Implementation Agreement and the Project can be used for its intended purpose, and (ii) the Project is in a condition of full operational functionality.
Team Proposal		Each Proposer's response to the requirements set out in Appendix C2 (Volume 2: Team Proposal) submitted as Volume 2 of the Proposal.
Team Proposal Score		See Section 7.4.1 (Team Proposal).
Technical and Commercial Proposal		Each Proposer's response to the requirements set out in Appendix C3 (Volume 3: Technical and Commercial Proposal) submitted as Volume 3 of the Proposal.
Technical and Commercial Proposal Score		See Section 7.4.2.2 (Scored Evaluation for the Technical and Commercial Proposal).
Technology Provider		The Person with primary responsibility to develop and deliver the Transit Technology to be integrated with the proposed Transit Solution; or, if the proposed Transit Technology has a minimum TRL of 8 and is based on a generic and non-proprietary technical specification that can be shown to be met by two or more suppliers active in the transit industry, as stated in Section 1.1 of Volume 3 of the Proposer's Proposal, the Person proposed to have primary responsibility for the provision of transit technology advisory services during the PDA Phase, if the Person with primary responsibility for transit technology during the Implementation Phase is proposed to be procured during the PDA Phase.
Technology Readiness Level	TRL	The level of maturity of the Transit Technology proposed under a Transit Solution, as assessed in accordance with Appendix C7.4 (TS Form D: Technology Maturity).

Term	Abbreviation	Definition
Total Proposal Score		The sum of the Proposer’s Team Proposal Score, Technical and Commercial Proposal Score, and Financial Proposal Score, as described in Section 7.5 (Total Proposal Score and PDA Award)
Transaction Documents		Collectively, the PDA, Implementation Agreement, and any other documents to be executed by the City and the Developer or the ProCo, with respect to the Project.
Transit Infrastructure		For purposes of the RFP, the Transit Infrastructure consists of the permanent fixed facilities necessary to operate the Transit Technology. The Transit Infrastructure includes—but is not limited to—guideway structures (whether aerial, on grade, or underground); station structures, vehicle and other maintenance and storage facilities; facilities to accommodate power and propulsion systems (including equipment to connect to utility infrastructure); offices and administrative facilities, and facilities to integrate all the above into existing urban and SJC infrastructure (e.g., roadways, pedestrian and bicycling improvements, drainage structures, etc.)
Transit Solution		For the purposes of the RFP, the Transit Solution consists of a complete and fully integrated Transit Technology and Transit Infrastructure capable of delivering the Project Objectives and satisfying the Technical Requirements.
Transit Technology		For the purposes of the RFP, the Transit Technology consists of the transit vehicles, running surfaces or tracks, guideway equipment, station operation equipment, power distribution, vehicle operation control system (whether centralized or otherwise), equipment for maintenance, and all other equipment and operating systems, which are integrated to transport passengers in conformance with the Technical Requirements.

1.2 Abbreviations

Table 2: Abbreviations

Abbreviation	Term
AP	Availability Payment
BAFO	Best and Final Offer
CEQA	California Environmental Quality Act
CPUC	California Public Utility Commission
DB	design-build
DBE	Disadvantaged Business Enterprise
DBFOM	design-build-finance-operate-maintain
EPP	Environmentally Preferable Procurement
MSF	maintenance and storage facility
MTC	Metropolitan Transportation Commission
O&M	Operations and Maintenance
PDA	Predevelopment Agreement
PMP	PDA Management Plan
ProCo	Project Company
RFP	Request for Proposal
ROW	Right of Way
SJC	San José Mineta International Airport
TRL	Technology Readiness Level

1.3 Interpretation

1. The various topical headings contained in this RFP are intended for convenience only and do not affect the meaning or interpretation of this RFP or any of its provisions.
2. In this RFP, the following apply unless otherwise expressly stated:
 - a. the singular includes the plural and vice versa (as the context may require);
 - b. references to any Applicable Law include all statutory or regulatory provisions consolidating, amending, or replacing the Applicable Law referred to;
 - c. the word “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation”;
 - d. references to Persons include their permitted successors and assigns and, in the case of a Government Entity, entities succeeding to their respective functions and capacities;
 - e. words of any gender shall include each other gender, where appropriate;
 - f. the word “or” is not exclusive;
 - g. “shall” when stated is to be considered mandatory; and
 - h. in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”

2. Introduction and Project Background

2.1 Background

The City of San José (“City”) is the tenth largest city in the United States and the City-owned Norman Y. Mineta International Airport (“SJC”) is one of the fastest-growing airports in the U.S. The City projects significant growth in the next 20 years and anticipates continued investment in private development in its Downtown. In response to the continued growth of Silicon Valley, local and regional leaders seek to create a transit connection between SJC and regional job centers.

In 2000, Santa Clara County passed Measure A, which established a 30-year half-cent sales tax to support transit projects that included the Airport Connector. Recently, the Metropolitan Transportation Commission (“MTC”) adopted the Plan Bay Area 2050 which identifies the Airport Connector as a priority project.

The City seeks to develop a scalable Transit Solution that connects SJC to Diridon Station in Downtown San José (as described more fully in this RFP, the “Airport Connector” or “Project”). Diridon Station is an intermodal transportation hub that includes regional rail systems and local and intercity light-rail and bus services. Over the next 15 years, Diridon Station will undergo significant capital improvements to increase its capacity to serve the region. It is projected to be the busiest transit hub in the Western U.S. by 2040.

The City’s aim is to align the Project schedule with the SJC Capital Improvement Program and Diridon Station capital improvement schedule, to the extent possible. The City seeks to work with a Developer(s) to identify whether a public/private partnership can facilitate delivery of the Project at a faster pace and at a reduced cost to the City than under a traditional method of delivery.

2.2 Request for Proposal

Through this Request for Proposal (“RFP”) the City requests that proposers (“Proposers”) submit a proposal (“Proposal”) for the performance of predevelopment work for the Project under a Predevelopment Agreement (“PDA”), with the potential opportunity to enter into an implementation agreement (“Implementation Agreement”) after completion of the predevelopment work for delivery of the Project on a long-term, market-risk revenue design-build-finance-operate-maintain (“DBFOM”) basis. The City may award up to two PDAs, as further described in Section 3 (“Anticipated Project Structure”).

2.3 Project Description and Scope

The Project seeks to implement approximately a three-to-four-mile dedicated guideway upon which an electrically propelled, automated driverless transit technology solution would be installed to operate between SJC Terminal B and Diridon Station. Any proposed alignment must be contained within City limits and should not extend into any other local or regional jurisdictions. The Project may include an optional segment connecting SJC Terminal B with Terminal A and parking facilities at SJC (“Option”). The City will work with the selected Proposer(s) to determine whether to proceed with inclusion of that Option as part of the predevelopment work under the PDA. The City is interested in additional stops along the route if the business case for the service is improved by them.

The Project should advance local and regional sustainability goals and create a scalable transit service that enables future linkage of major sites within the City and other major sites in the Bay Area. The Project should support urban integration and human-scale activation in the network by attracting users to walk, bike, and use transit to access stops on the network.

Project scope and features are to include:

1. an off-line maintenance and storage facility (“MSF”);
2. defined Project Site and modifications, sitework, utilities, and other work necessary to deliver the Project;

3. long-term operations and maintenance (“O&M”);
4. station and facilities design that is coordinated and compatible with the buildout of the Diridon Integrated Station project, currently in project development;
5. intuitive transfers that integrate Diridon Station and SJC as a single facility from a passenger perspective to create a seamless travel experience for all passengers, including those with luggage and varied accessibility needs;
6. Universal Design including, at a minimum, ADA requirements;
7. quick and level boarding for passengers with luggage; and
8. faster travel connections between downtown San José (Diridon Station) and SJC.

2.3.1 Project Objectives

The City seeks to collaborate with a private partner to develop a Project that achieves the following objectives. Proposals should demonstrate, to the extent possible, how the Proposal aligns with these objectives. The City seeks to implement a Transit Solution for the Project that:

1. is capable of being certified for passenger operations/revenue service and is ADA-accessible;
2. provides for operator flexibility for the City over the long term (i.e., an ability to repurpose the system and any permanent infrastructure from one operator to another);
3. is scalable to allow for future system growth;
4. provides safe, fast, frequent, and reliable service for passengers that is separated from mixed traffic; and
5. integrates Diridon Station and SJC as a single facility from the passenger’s perspective and creates a seamless travel experience for passengers with luggage.

2.4 Procurement Objectives

The City seeks to:

1. implement a technically and commercially viable revenue risk Project;
2. focus on goals and outcomes so as to create space to leverage private-sector expertise and innovation for early project decisions (i.e., with respect to the Transit Technology, the cost of the Transit Solution, and the approach to project risks such as interfaces, stakeholder/third-party/community engagement, ROW, utilities, etc.);
3. leverage schedule savings by (i) conducting technical and commercial feasibility in parallel with the environmental review process and project design and (ii) identifying early work packages for implementation of the Project, with the goal to align the Project schedule with the SJC Capital Improvement Program and Diridon Station capital improvement schedule;
4. use a competitive procurement to engage a long-term private-sector partner to deliver the Project through its entire life-cycle, from project development, financing, and construction through long-term operations and maintenance and to minimize the City’s risk exposure across that life-cycle;
5. conduct the procurement to provide full and open competition and preserve flexibility for future funding and financing sources that may include state, local, and federal sources; and
6. develop a Project with a total Project cost of no more than \$500 million.³

³ Expressed in dollars as of June 30, 2022

3. Anticipated Project Structure

The City anticipates delivery of the Project through a revenue risk DBFOM Implementation Agreement, that would be negotiated and entered into upon completion of the predevelopment work.

The City anticipates entering into PDAs with up to two Developers and, pursuant to the terms of the PDAs, to proceed to enter into an Implementation Agreement with one Developer.

The City has selected this delivery model as it is open to private sector innovation, particularly with respect to the Transit Solution and commercial structure. Therefore, (i) such Transit Solution must be technically feasible and satisfy the Project Objectives and performance outcomes described in this RFP and the Technical Requirements, and (ii) the commercial and financial structure must be feasible and:

1. has no recourse to the City except for customary revenue risk DBFOM contract relief events and PDA Cost Caps, as applicable;
2. does not rely on the City's on-balance-sheet indebtedness capacity and minimizes any provision of City funding; and
3. provides best value to the City.

Proposers must address the considerations set out in this section in their proposed concept-level commercial and financial structure as part of their Proposal, which shall be prepared in accordance with the requirements defined in this RFP.

3.1 Project Governance

The City is the procuring agency for this RFP and the counterparty to any PDA entered into for this Project.

3.2 Form of Predevelopment Agreement (PDA)

As described above, the City anticipates selecting two Proposers to enter into PDAs with the City and selecting a single Developer at the end of PDA Phase 1. Execution of any PDA will be subject to approval by the City Council.

The form of the PDA for the Project is set out in Appendix D (Form of PDA). The PDA sets out the terms and conditions applicable to the predevelopment work for the Project and the process for finalizing the Implementation Agreement, as well as the Developer's and the City's rights in the event that the City chooses to terminate a PDA with a Developer or not to issue a notice to proceed for a phase of work under the PDA.

The PDA includes an initial phase to conduct a Feasibility Validation with respect to the business case ("Business Case") to be developed by the Developer(s) during the initial phase of the PDA ("PDA Phase 1"). This will be an iterative and interactive process where:

1. Developer(s) prepare(s) their Business Cases in dialogue and collaboration with the City
2. The City and Developer(s) will test and validate the commercial, technical, and financial feasibility of the Business Case and any associated assumptions⁴

At the end of PDA Phase 1, and subject to the City's acceptance of the Feasibility Validation report prepared by the Developer, the City anticipates issuing a notice to proceed to one Developer for the next phase of predevelopment work ("PDA Phase 2"). If two PDAs have been entered into, the City will not issue a notice to

⁴ Including with respect to non-competes, fares, and the inclusion of the Option and any extension rights within the City's jurisdiction within the Project scope.

proceed for PDA Phase 2 to the Developer whose Feasibility Validation report has not been accepted by the City and that Developer's PDA will expire.

The subsequent phases of project development work are described further in the form of the PDA attached to this RFP.

As described further in the form of the PDA, the City expects that the predevelopment work will be performed "at risk" with no entitlement to progress payments. However, if the Project advances to implementation and financial close under the Implementation Agreement, the Developer would be entitled to receive reimbursement of the "at-risk" predevelopment costs from the proceeds of the Project financing.

If the City elects not to proceed with a subsequent PDA Phase or terminates the PDA for any reason other than Developer default, the Developer will be entitled to payment of its predevelopment costs up to the applicable cap (the "PDA Cost Cap"). The Developer will propose both the PDA Cost Cap for PDA Phase 1 and PDA Cost Cap (Design) for PDA Phase 2 as part of the Financial Proposal. The PDA Cost Cap for the subsequent PDA Phases will be agreed upon by the Developer and the City prior to issuance of the notice to proceed for each PDA Phase. Where the PDA is terminated for Developer default, the City may elect to purchase the Developer's work product as further described in the form of PDA.

3.3 Implementation Agreement

As set out in the form of PDA, on completion of the predevelopment work and if the City and the remaining Developer successfully negotiate the terms and conditions, the City and the remaining Developer will execute the Implementation Agreement. Execution of the Implementation Agreement will be subject to approval by the City Council.

The City anticipates a single Implementation Agreement summarizing the responsibilities of the Developer with respect to the Project as a whole, including design and construction, financing, and long-term operation and maintenance (including revenue collection). The Implementation Agreement will structure the revenue sources and asset types for the Project as a public infrastructure project relying on market revenue risk for the core scope. Revenue sources and payment terms for the Option (if the City elects to proceed with inclusion of the Option within the scope) would be defined during the PDA Phase. Potential market revenues are anticipated to consist of fare-box from passengers and other ancillary revenues (i.e., naming rights, advertising, lease of infrastructure, etc.).

3.3.1 State or Federal Credit Assistance for the Project

The City is open to state or federal credit assistance if it makes financial sense. Use of the following in the Proposer's plan of finance is optional: the Transit and Intercity Rail Capital Program (TIRCP) and/or the Short-Line Railroad Improvement Program (SLRIP), or other programs at the state level; or the Transportation Infrastructure Finance and Innovation Act (TIFIA) and/or a Railroad Rehabilitation & Improvement Financing (RRIF), or other programs at the federal level. Their use requires the City's concurrence on approach, mitigation of potential schedule impact, and financial value to the Project.

3.4 Technical Requirements

Technical Requirements are set out in Part C of Exhibit 5 (PDA Work Requirements) to Appendix D (Form of PDA).

3.5 Stakeholder Engagement

Community and stakeholder engagement for the Project will be a continuous and collaborative effort between the City and Developer through the Implementation Phase. The purpose of the engagement is to maintain an open line of communication with the general public, Project-adjacent stakeholders, and institutional partners.

The community and stakeholder engagement will be an inclusive process that incorporates best practices for engaging diverse constituencies from a racial equity perspective, for communities that have historically been

marginalized in public processes. The City strives to integrate best practices in public participation, including defining outreach and engagement objectives per the standards of the International Association of Public Participation Spectrum of Public Participation (https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum_8.5x11_Print.pdf).

An initial task in PDA Phase 1 will be the development of an outreach plan that integrates with the overall project plan to ensure that public feedback can inform project decisions and other milestones. The City expects the Developer team to include a communications consultant, and other consultants as needed, who will work in coordination with the City to conduct outreach, as well as perform activities necessary to develop the project feasibility and business case.

The City has conducted preliminary outreach to key stakeholders, including but not limited to commercial property owners and residential neighbors along the potential route areas, institutional stakeholders, and local community groups. In February 2020, the City commenced informal outreach to neighborhood groups, neighbors, and advocates to provide general background information regarding the Project. Additional information regarding stakeholder engagement including a timeline, past presentations and videos of the public meetings can be found on the project website, under the Community Reach section at <https://www.sanjoseca.gov/your-government/departments-offices/transportation/transit/airport-diridon-stevens-creek-connector>.

Major landholders in the Project vicinity have been asked to express in writing their level of interest and communication preferences with Proposers in relation to the Project. Copies of the letters received are provided as Reference Documents. The City expects to conduct formal engagement to all stakeholders throughout the PDA Phase in collaboration with the Developer.

3.6 Project Status

3.6.1 Environmental Review

The City has not initiated environmental review for the Project under the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA). During the PDA Phase and upon selection of the Transit Solution, the City will determine the level of environmental review required under CEQA, NEPA and the City's Environmental Clearance Ordinance. Additional detail regarding the roles and responsibilities of the City and Developer during the environmental review process are set out in Exhibit 5 (PDA Work Requirements) of Appendix D (Form of PDA).

3.6.2 Project Site

It is anticipated that the Project Site may include both City ROW and private right-of-way. Detail on the potential alignment constraints for the Project Site is included in the alignment section of the Technical Requirements set out in Part C of Exhibit 5 (PDA Work Requirements) to Appendix D (Form of PDA). The provisions governing the Project Site are set out in the Form of PDA.

3.6.3 Utilities

The extent of required utility adjustments is expected to be determined as part of the PDA Phase. The City has provided currently available utility information as part of the Reference Documents.

4. General Provisions

4.1 Compliance with this RFP

Proposers must comply, and ensure that each member of its Development Team complies, with this RFP throughout the procurement. Failure by a Proposer or any member of its Development Team to comply with these general provisions or any other terms of this RFP may result in:

1. disqualification of the Proposer, member of the Development Team, or both from the procurement process; or
2. drawing by the City on the Proposer's Proposal Security, but only under the circumstances described in Section 6.5 (Proposal Security).

4.2 Improper Conduct and Conflicts of Interest

All Proposers and each member of a Development Team are expected to have read and understood this Section 4.2 and the "Procurement and Contract Process Integrity and Conflict of Interest," Section 7 of the Consolidated Open Government and Ethics Provisions adopted on August 26, 2014 (the "Policy"). A complete copy of Resolution 77135 can be found at: <http://www.sanjoseca.gov/documentcenter/view/35087>.

Any Proposer or member of its Development Team who violates the Policy will be subject to disqualification. Generally, the grounds for disqualification include:

1. Contact regarding this procurement with any City official or employee or evaluation team member other than the City's Contact Person in accordance with Section 5.3.1 (City's Contact Person) from the time of issuance of this RFP until the end of the protest period;
2. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of its Proposal;
3. Influencing any City staff member or evaluation team member throughout the procurement process, including the development of technical requirements; and
4. Evidence of submitting incorrect information in the response to this RFP or misrepresenting or failing to disclose material facts during the evaluation process.

In addition to violations of the Policy, the following conduct may also result in disqualification:

1. offering gifts or souvenirs, even of minimal value, to City officers or employees;
2. existence of any lawsuit, unresolved contractual claim or dispute between Proposer or a member of its Development Team and the City;
3. evidence of Proposer's inability to successfully complete the responsibilities and obligations under the PDA, as further described in Section 7.2.2 (Responsibility Review); and
4. Proposer's default under any City agreement, resulting in termination of such agreement.

4.2.1 Disqualification of Former Employees

Chapter 12.10 of the City's Municipal Code generally prohibits a former City officer, or "designated employee" as defined in Chapter 12.10, from providing services to the City connected with his/her former duties or official responsibilities. The Preferred Proposer(s) will be prohibited from either directly or indirectly using any former City officer or designated employee to perform services in violation of Chapter 12.10.

By submitting a Proposal in response to this RFP, the Proposer and each member of its Development Team represents that:

1. they are familiar with the requirements of Chapter 12.10; and
2. their Proposal does not contemplate the use of any former City officer or designated employee in violation of Chapter 12.10.

The failure of the Proposer or any member of its Development Team to comply with Chapter 12.10 at any time during this procurement is grounds for disqualification.

4.2.2 Unfair Competitive Advantage

The City seeks to procure these services through a competitive, impartial process in which all Proposers are treated fairly. A Proposer that has an actual or apparent unfair competitive advantage jeopardizes the integrity of the competitive process.

A number of different situations can give rise to an actual or apparent unfair competitive advantage. Most commonly, an actual or apparent unfair competitive advantage arises because the Proposer or one of its Development Team members has unequal access to nonpublic information or unique insight into the scope of work. Whether an unfair competitive advantage exists depends on the specific facts of each situation.

The existence of an unfair competitive advantage is a basis for the City to disqualify a Proposer's participation in this RFP. If the City determines that a Proposer is disqualified because of the existence of an unfair competitive advantage, it will provide the Proposer with a written statement of the facts leading to its conclusion that an unfair competitive advantage exists. The Proposer may protest the determination in accordance with the process set out in Section 9 (Protest Procedures). Notwithstanding anything to the contrary in Section 9 (Protest Procedures), the Proposer shall submit its written protest no later than five business days after the date of the City's letter of disqualification.

The Proposer represents that before submitting a response to the RFP it investigated and considered the issue of potential unfair competitive advantage, including considering any Development Team members it has worked with. By submitting a Proposal in response to the RFP, the Proposer further acknowledges that performing the work resulting from this RFP could potentially create an actual or apparent unfair competitive advantage for any future work. The City strongly advises each Proposer to consult with their legal counsel regarding these issues.

4.2.3 Conflicts of Interest

Each Proposer submitting a Proposal is responsible for determining whether or not its participation, as well as the participation of any of its Development Team members, in the PDA constitutes a conflict of interest or a potential conflict of interest. Each Proposer must investigate and manage any potential conflict of interest as part of considering whether to submit a Proposal and when assembling its Development Team.

Each Proposer is also solely responsible for considering what potential conflicts of interest, if any, entering into the PDA might present regarding its ability to obtain future contracts for any related, future phases of work.

The conflict-of-interest laws are complicated and determining the existence of a conflict of interest involves a fact-intensive analysis of each particular situation. Proposers are strongly advised to consult with their legal counsel with regard to these conflict-of-interest matters.

The Preferred Proposer(s) will be required to avoid all conflicts of interest or appearance of conflicts of interest in performing the services and, if applicable, in entering into the Implementation Agreement. The Preferred Proposer(s) will be required to:

1. acknowledge that it is familiar with the conflict-of-interest laws, including the organizational conflict-of-interest laws set out in the applicable federal requirements;
2. certify that it does not know of any facts that constitute a conflict of interest; and

3. agree to immediately notify the City if it becomes aware of any facts giving rise to a conflict of interest.

Although there are a number of conflict-of-interest laws and regulations with which Proposers must be familiar, the primary laws and regulations are set out in Sections 4.2.3.1 to 4.2.3.3 below. The descriptions set out in those sections are general and are not intended as a substitute for reviewing the relevant laws and regulations in full.

4.2.3.1 Political Reform Act (Government Code Sections 83111–83116)

In general, the Political Reform Act (referred to in this Section 4.2.3.1 as the "Act") prohibits public officials from making, participating in making, or using their official position to influence a governmental decision in which they have a financial interest. Under the Act, an individual providing services to the City is deemed to be a "public official" if the individual either (A) makes certain specified types of governmental decisions or (B) serves in a staff capacity and, in that capacity, either (1) participates in making a governmental decision or (2) performs the same or substantially similar duties for the City as would a City employee who is required to complete a disclosure form under the Act. For more information on this topic, see the California Fair Political Practices Commission's website at <http://www.fppc.ca.gov/>.

If an individual providing services to the City or an individual employee of the selected Proposer is deemed to be a "public official," then the individual must fill out and submit to the City a Statement of Economic Interests disclosure form, commonly known as a Form 700. The scope of the required disclosure is tailored to the nature of the work that the individual will be performing.

4.2.3.2 Government Code Section 1090

Section 1090 of the Government Code reflects the common-law prohibition against self-dealing. Unlike the Political Reform Act, which applies to all government decisions, Section 1090 applies to contracts. In general, it prohibits a government official or employee from entering into a contract that he/she was involved in making. Section 1090 is concerned with financial interests other than those that are remote or minimal.

It is generally accepted that Section 1090 applies to Proposers who carry out duties commensurate with those of government employees. Moreover, the "making" of a contract is defined broadly under Section 1090 and would include a Proposer's participation in preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitations for bids.

Violating Section 1090 can result in the Proposer's contract with the City being void, the Proposer having to disgorge public funds, and the public entity not having to restore the benefits it received. It can also lead to criminal charges.

Given the complexity in determining the existence of a conflict of interest, it is difficult to generalize about what facts might, or might not, result in a conflict of interest. Accordingly, the following are intended to be no more than general guidelines that Proposers should treat solely as a starting point in its analysis.

Generally speaking, there is a greater risk for conflicts of interest when a Proposer seeks progressive participation in various phases of a project. This risk is fairly limited when a Proposer seeks a contract related to a project for which the Proposer prepared only general, planning type of documents, such as needs assessment reports, environmental review documents, geotechnical reports, site surveys, and site condition assessments. The following situations would tend to pose a higher risk of a conflict of interest and would merit a closer analysis of the issue by a Proposer:

1. The Proposer is seeking a contract in which it participated in the development of the RFI, RFQ, RFP, or bid documents.
2. The Proposer is seeking a contract that would involve it reviewing any of its own work performed under another contract.
3. The Proposer is seeking a contract for a project that is part of a program for which the Proposer provides general program-management services. The concern would be that, as a general program manager, the Proposer likely would be involved in defining the program, the projects within the program, and therefore, the resulting contracts.

4. The Proposer is seeking a contract for a project in which it prepared the conceptual report. The concern would be that the conceptual report would generally define the project and contract scope.
5. The Proposer is seeking a contract for a project in which it prepared an alternative analysis report. The concern would be that such a report proposes to decision-makers the various alternatives in project scope, cost, schedule, and environmental impact. Determining a conflict of interest would require an analysis of the extent of the Proposer's participation in the decision-making process of selecting a preferred alternative.

Without purporting to waive any otherwise applicable provision of Section 1090, none of the above circumstances should be interpreted to apply to the PDA process contemplated in this RFP or the negotiation and execution, if applicable, of an Implementation Agreement contemplated in the pre-construction work under the PDA.

The existence of a conflict of interest is a basis for the City to disqualify a Proposer's participation in this RFP. If the City determines that a Proposer is disqualified because of the existence of a conflict of interest, it will provide the Proposer with a written statement of the facts leading to that conclusion. The Proposer may protest the determination in accordance with Section 9 (Protest Procedures). Notwithstanding anything to the contrary in Section 9 (Protest Procedures), the Proposer shall submit its written protest no later than five business days after the date of the City's letter of disqualification.

4.2.3.3 Organizational Conflicts of Interest

The City has chosen to adopt federal rules regarding organizational conflicts of interest for this procurement. All Persons participating in the RFP should be familiar with all requirements of applicable federal law and regulations, circulars, and guidance, including all applicable third-party procurement and contracting requirements and federal requirements regarding organizational conflicts of interest. Failure to comply with the federal requirements in any respect, including the failure to disclose any actual, perceived or potential conflict of interest, is a basis for the City to disqualify a Proposer's participation in this RFP.

4.2.3.4 Persons/Entities with Identified Conflict

The following persons and firms (including parent or subsidiary organizations) are prohibited from participating in any capacity as a Proposer or Development Team member due to their role and/or participation in the development of the Project:

1. Arup;
2. Kimley-Horn; and
3. Ashurst LLP.

4.2.4 Participation on More Than One Proposer Team

To ensure a fair and competitive procurement process, any Equity Members of the Proposer's Development Team and their Affiliates are prohibited from participating, in any capacity, on another Proposer's team during the procurement process. Except with respect to the foregoing, the City does not have any policy prohibiting sub-consultants or subcontractors from participating on more than one Proposer team.

4.2.5 Non-Collusion

Proposers must not engage in lobbying activities with respect to this RFP, the procurement process, and the Project or attempt to unduly influence the selection process. To that end, each Proposer must execute a Non-Collusion Affidavit in the form provided in Appendix C5.9 (AD Form I: Non-Collusion Affidavit). The Proposer, its Development Team members, and any other team members must not undertake any of the prohibited activities identified in the Non-Collusion Affidavit.

4.3 Discrimination

It is the City's policy that the Preferred Proposer(s) shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City contracts.

4.4 Public Records Laws

All submissions, including Proposals, RFP Comments, and other correspondence with the City regarding this RFP ("Proposer Submissions") become the exclusive property of the City and are generally considered public records under the California Public Records Act (California Government Code section 6250 et seq., the "Public Records Act"). All Proposer Submissions will be subject to the following:

1. The City has a substantial interest in not disclosing Proposer Submissions during the evaluation process. For this reason, the City will not disclose any part of the Proposer Submissions before it issues the Notice of Preferred Proposer(s). After issuance of the Notice of Preferred Proposer(s), all Proposer Submissions will be subject to public disclosure in accordance with the Public Records Act.
2. There are a limited number of exceptions to the disclosure requirements under the Public Records Act, such as for trade secret information. The City is not in a position to determine what information in a Proposer Submission, if any, may be subject to one of these exceptions. Accordingly, if a Proposer believes that any specific portion of a Proposer Submission is exempt from disclosure under the Public Records Act, the Proposer must mark the portion of the Proposer Submission as such and state the specific provision in the Public Records Act that provides the exemption and the factual basis for claiming the exemption.
3. If a request is made for information in a Proposal, RFP Comment, or other correspondence with the City regarding this RFP that a Proposer has properly marked as exempt from disclosure under the Public Records Act (e.g., information that the Proposer has marked as "Confidential," "Trade Secret," or "Proprietary"), the City will provide the Proposer with reasonable notice of the request and the opportunity to seek protection from disclosure by a court of competent jurisdiction. It will be the Proposer's sole responsibility to seek such protection from a court.
4. Any Proposer Submission that contains language attempting to make all or significant portions of the Proposer Submission exempt from disclosure (excluding RFP Comments) or that fails to provide the exemption information required above, are unacceptable and may be cause for the City to consider the Proposer Submission a public record in its entirety. Therefore, do not mark any entire Proposer Submission as "Confidential," "Trade Secret," or "Proprietary."

4.5 Use of Information

Once submitted, Proposer Submissions shall be considered the property of the City and may be returned at the City's sole discretion. The City has the right to use any or all ideas not protected by intellectual property rights that are presented in any Proposal, regardless of whether or not the relevant Proposer is selected or the relevant ideas become part of the PDA or subsequent Implementation Agreement. Despite any Proposer copyright designations contained in a Proposal, the City will have the right to make copies and distribute a Proposal internally, in compliance with the provisions of the Public Records Act and any other public record or other disclosure requirements under the provisions of any state or U.S. statute or regulation, or rule or order of any court of competent jurisdiction.

4.6 Environmentally Preferable Procurement Policy

The City has adopted an Environmentally Preferable Procurement ("EPP") policy. The goal of the EPP policy is to encourage the procurement of products and services that help to minimize the environmental impact resulting from the use and disposal of these products. These products include, but are not limited to, those that contain recycled content, conserve energy or water, minimize waste, or reduce the amount of toxic material used and disposed.

Computers and other electronics are a growing focus of environmentally preferable purchasing activities due to their high prominence in the waste stream, their numerous hazardous chemical constituents, and their significant energy use. Moreover, when these products are improperly disposed of, they can release hazardous substances that pollute the environment.

In support of the EPP policy, the Preferred Proposer(s) will be required to work with the City to apply the EPP policy where it is feasible to do so. In addition, Proposers should address any environmental considerations with their Proposal.

The entire EPP policy may be found on the City's internet site at <http://www.sanjoseca.gov/DocumentCenter/View/3862>

4.7 Procurement Portal

The RFP (including all Addenda), notices and other documents related to the RFP are available for download through the Procurement Portal. Proposers are solely responsible for monitoring the Procurement Portal, for receiving and reviewing all documents provided through the Procurement Portal, and for dissemination of all documents to all of the Proposer's team members. In the event that the Proposal is obtained through any means other than Procurement Portal, the City will not be responsible for the completeness, accuracy, or timeliness of the final solicitation document.

The Procurement Portal is provided via a third-party online platform used for the presentation of government quotes, bids, and proposals. Proposers must register to use the Procurement Portal and to participate in this procurement. There is no cost associated with registering and instructions are provided on entering the Procurement Portal (www.biddingo.com/sanjose). If you have a problem registering, contact Biddingo directly at (800) 208-1290 or by email to info@biddingo.com.

4.8 Qualification and Licensing Requirements

Before execution of the PDA, the Developer must fulfill the City's administrative requirements for doing business with the City. Failure to comply may delay the finalization of the PDA. For additional details see Appendix F (City Contracting Requirements).

4.9 Federal, State, and Local Requirements

Proposers and their respective Proposals must comply with the requirements set out in this RFP and Applicable Law. By submitting a Proposal, the Proposer agrees to the terms, conditions, and requirements contained in this RFP and Applicable Law. The City is considering using federal funds for the Project. If federal funds are used, this RFP, PDA, and Implementation Agreement will be subject to applicable federal law and requirements of applicable federal agencies (whether FTA, FHWA, or other applicable agencies) and such documents will be amended to contain all required federal provisions. Guidelines from other federal agencies may also be applicable as the funding plan and environmental process advances.

4.10 Reference Documents and Diligence

The City may provide Reference Documents via the Procurement Portal for the purpose of providing information relating to the RFP or Project to Proposers. An initial list of Reference Documents is attached hereto in Appendix E (List of Reference Documents).

The Reference Documents are provided for informational purposes only. The City does not certify nor make any representations or warranties as to the reliability, relevance, accuracy, completeness, or fitness for purpose of any of the information contained in the Reference Documents and shall not be responsible or liable to any Proposer for any loss or cause of action whatsoever suffered by a Proposer by reason of any use of information contained in, or any action or forbearance in reliance on, a Reference Document. Proposers are solely responsible for any technical, financial, or business assumptions contained in their Proposals.

If a Proposer intends to use information in any Reference Document, it shall use the information at its own risk and a Proposer is solely responsible for determining which information is sufficiently reliable, relevant, accurate, complete, and fit for the Proposer to use for Proposer's intended purpose. The City will not have any liability to any Proposer with respect to any failure to make available to the Proposer any materials, documents, drawings, plans, or other information relating to the Project. The Reference Documents are subject to revision at any time, but the City is not obligated to notify the Proposer of any such revision. For the purposes of this Section 4.10, references to a Proposer include its subcontractors and their respective representatives.

5. Procurement Process and Schedule

5.1 Method of Procurement

This RFP is issued in accordance with Ordinance No. 30755 which authorizes the City to procure the Project as a long-term market–revenue-risk model, whereby the City could contract with a single private entity to design, construct, finance, operate, and maintain the Project, as well as collect revenues generated by the Project.

Evaluation of Proposals and selection of the Preferred Proposer(s) will be based on the process described in Section 7 (Evaluation Process and Criteria) and Section 8 (Selection Process and Predevelopment Agreement).

5.2 Procurement Schedule

5.2.1 RFP Schedule

The anticipated schedule for the RFP process is set out in the RFP Schedule. The RFP Schedule contains important dates that apply to all Proposers. All dates in the RFP Schedule are subject to change in the City's sole discretion. Any changes to the RFP Schedule will be communicated to the Proposers by Addendum.

5.2.2 Project Procurement and Delivery Schedule

The City anticipates procuring and delivering the Project in three phases: RFP phase, PDA Phase, and Implementation Phase. The anticipated procurement and delivery schedule is set out in Table 3. All dates in the procurement and delivery schedule are subject to change in the City's sole discretion.

Table 3: Project Procurement and Delivery Schedule

	Activity	Timeframe
RFP Phase	RFP	Release May 10th, 2022.
	Selection of Preferred Proposer(s)	No later than February 24, 2023
	Approval and execution of the PDA	Expected Q1/Q2, 2023
PDA Phase 1	Developer(s) prepare their Business Case(s)	Following execution of the PDA
	City and Developer(s) conduct Feasibility Validation	Following execution of the PDA
	Submission of the final Feasibility Validation report(s) by Developer(s)	180-210 days after execution of the PDA
PDA Phase 2	Notice to proceed issued for PDA Phase 2; Developer starts detailed development of the Project	Expected Q3/Q4, 2023
	City and Developer agree on environmental review pathway	TBD
PDA Phase 3	Submission of Implementation Proposal by Developer	60 days from the Commencement Date under PDA Phase 3
	Evaluation of Implementation Proposal by City	TBD
	Final environmental approvals obtained and satisfaction of other conditions to submission of Implementation Proposal	TBD
	Commercial Close of Implementation Agreement (if applicable)	TBD
Implementation Phase	Financial Close of Implementation Agreement (if applicable)	TBD
	Beginning of on-site construction	Following Financial Close
	Substantial Completion (may be in phases)	TBD

5.3 Communications between the City and Proposers

5.3.1 City's Contact Person

Unless otherwise expressly stated in this RFP, all communications in connection with this RFP and the RFP process shall be addressed to the City via the Procurement Portal.

5.3.2 Proposer's Contact Person

Each Proposer is solely responsible for notifying the City at PW_Procurement@sanjoseca.gov of the name, phone number, address, and email address of the Proposer's Contact Person as soon as possible after issuance of this RFP and ensuring that the contact information for the Proposer's Contact Person is accurate and updated at all times during the procurement. The Proposer may update or revise information for the Proposer's Contact Person by notifying the City by email.

5.4 Pre-Proposal Conference

The City will hold a virtual Pre-Proposal Conference. Proposers are invited to attend the Pre-Proposal Conference. Participation in the Pre-Proposal Conference is not mandatory to be considered for award of the PDA; however, when a Pre-Proposal Conference is held, participation is encouraged.

Table 4: Pre-Proposal Conference

Time and Date:	Tuesday, June 7, 2022 1:00 PM
Location:	Zoom Link

5.5 Questions and Responses Regarding this RFP

5.5.1 Submitting a Question or Objection

Proposers must NOT submit any RFP Comments directly to the City's Contact Person. Proposers must submit any RFP Comments using the Procurement Portal. In accordance with Section 4.2 (Improper Conduct and Conflicts of Interest), contacting any City representative(s) other than the City's Contact Person about this RFP, or contacting the City's Contact Person other than by using the Procurement Portal, are prohibited and are grounds for disqualification.

5.5.2 Content of RFP Comments

RFP Comments must be as specific as possible and must identify the RFP or PDA section number and title at issue. A Proposer submitting an RFP Comment must describe the comment, question, objection, or request for clarification as specifically as possible and set out the rationale for the RFP Comment. Further, the City strongly encourages Proposers to consider relevance, brevity, and clarity when submitting RFP Comments.

The Proposer shall submit RFP Comments via the Procurement Portal. RFP Comments must include the Proposer's name but must not indicate the Proposer's identity in the body of the RFP Comment.

5.5.3 Timing and Limits for Submitting an RFP Comment

Proposers must submit any RFP Comments no later than the deadline for RFP Comment submission set out in the RFP Schedule.

5.5.4 City's Issuance of Addenda, Notices, and Responses to RFP Comments

The City reserves the right to issue Addenda revising this RFP and any of its attachments at any time after issuing this RFP.

The City will post all Addenda and notices regarding this RFP on the Procurement Portal. The City may, but is not obliged to, provide a written response to any RFP Comments submitted in accordance with this Section 5.5

(Questions and Responses Regarding this RFP) in the form of a single response or by issuing an Addendum. The City may rephrase RFP Comments as it deems appropriate and may consolidate similar RFP Comments.

5.5.5 Proposers Are Responsible for Checking the Procurement Portal

The Addenda, notices, and responses to RFP Comments issued by the City on the Procurement Portal become part of this RFP. Each Proposer is responsible for checking the Procurement Portal to ensure it has received and reviewed all Addenda, notices, and responses to RFP Comments. By submitting a Proposals, the Proposer acknowledges receipt of all Addenda released prior to the Proposal Due Date.

5.5.6 Relying on Other Written or Oral Statements Prohibited

Proposers can rely only on this RFP and any subsequent Addenda, notices, and responses issued by the City on the Procurement Portal. In the event a Proposer obtains this RFP through any means other than the Procurement Portal, the City will not be responsible for the completeness, accuracy or timeliness of the final RFP document. Proposers cannot rely on—and acknowledge and confirm that they will not submit a Proposal on the basis of—any other written or oral statements or representations (whether negligent, innocent, or otherwise) of the City or its officers, directors, employees, or agents regarding the Project or the RFP.

The only remedy or remedies available with respect to any misrepresentation or untrue statement made to a Proposer will be any remedy available under the express terms of this RFP or the PDA (as applicable).

5.5.7 Questions Containing Confidential Information

Comments a Proposer believes contain confidential or proprietary information and therefore desire not be made public should be raised during One on One Meetings with the City.

The City reserves the right to disagree with the Proposer's belief regarding the confidentiality or proprietary nature of the information, and to make said information public in the interest of maintaining a fair process or complying with Applicable Law. Under such circumstances, the City will inform the Proposer—in advance of any public release—of a response to the RFP Comment and may allow the Proposer, within a time period set by the City, to withdraw the RFP Comment, rephrase the RFP Comment, or have the RFP Comment answered non-confidentially. If a Proposer fails to respond to the City within the time frame identified by the City, such failure will be deemed to be consent from the Proposer allowing the City to respond to the RFP Comment non-confidentially.

5.6 One-on-One Meetings

5.6.1 General

The City intends to conduct bilateral meetings with each Proposer and its advisors during the procurement (each, a "One-on-One Meeting"). One-on-One Meetings are not mandatory, and each Proposer may elect whether to participate in a One-on-One Meeting.

The anticipated schedule for One-on-One Meetings is set out in the RFP Schedule. The City may cancel, adjust the schedule for, or schedule additional One-on-One Meetings in its sole discretion.

The intent of the One-on-One Meetings is to discuss issues and provide clarifications regarding the Project and Project-related documents, including Proposer's RFP Comments submitted in accordance with Section 5.55 (Questions and Responses Regarding this RFP). The City intends the One-on-One Meetings to be interactive, and accordingly, the City may raise its own questions and issues for discussion at any One-on-One Meeting.

5.6.2 Topics and Presentation Materials

The City anticipates two optional rounds of One-on-One Meetings that will consist of two meetings to separately address technical topics and commercial-financial topics, the first round and a single meeting for all topics the

second round. The anticipated topics are set out in Table 5 for the technical One-on-One Meeting and in Table 6 for the commercial-financial One-on-One Meeting. The topics set out in Tables 5 and 6 are subject to change.

Proposers wishing to participate in the One-on-One Meetings must provide written notice to the City by emailing PW_Procurement@sanjoseca.gov per the schedule set forth in Appendix A (RFP Schedule). Proposers who do not provide such written notice by the date and time indicated therein will be deemed not interested in participating in the One-on-One Meetings and will not be afforded the opportunity to do so after that date.

For the initial round of meetings, the City will issue a notice via e-mail to the Proposer no later than 10 days prior to the initial round of One-on-One Meeting, only to those Proposers who have provided written notice of their wish to participate in the One-on-One Meetings, as set forth above. This notice will include, among other things, the date, time, and location of the One-on-One Meeting; any additional rules and procedures specific to the One-on-One Meeting not already set out in this RFP; and the requested topics to be covered in the One-on-One Meeting. Notified Proposers will also be offered the opportunity to submit agenda items for additional topics as described below.

No later than seven (7) days prior to the relevant initial round One-on-One Meeting, the Proposer will submit the following to the City:

- a proposed agenda based on the topics set out in the One-on-One Meeting notice and any additional topics proposed by the Proposer, including a brief description of the items the Proposer wishes to discuss; and
- a list of the Proposer's participants (including name, title, role on Project, and firm).

The City reserves the right, in its sole discretion, to accept, reject, or modify the Proposer's proposed agenda and to limit the number of Proposer attendees in One-on-One Meetings. In addition to topics on the agenda, the City reserves the right to discuss other matters it deems appropriate.

Table 5: Anticipated Topics for the Technical One-on-One Meeting

Anticipated Technical Meeting Topics
Technology Maturity requirements and System Performance Thresholds
System expansion
Technical scope of work during the PDA Phase, including development of the Transit Technology and the Transit Solution
Environmental review and approval process and community engagement during the PDA Phase

Table 6: Anticipated Topics for the Commercial-Financial One-on-One Meeting

Anticipated Commercial-Financial Meeting Topics
Key issues to address in the Form of PDA
Project's commercial and financial structure including:
Credible estimates of the construction costs
Structure of the financing
Commercial operation supported by market revenues
City risk exposure and public funding
Commercial and financial scope of work during each PDA Phase

For the second round of One-on-One Meetings, Proposers wishing to participate in the One-on-One Meetings must provide written notice to the City by emailing PW_Procurement@sanjoseca.gov per the schedule set forth in Appendix A (RFP Schedule). Only one second round meeting will occur per team. The City will issue a notice via e-mail to the Proposer no later than four (4) days prior to the second round One-on-One Meeting, which will include, among other things, the date, time, and location of the One-on-One Meeting.

No later than two (2) days prior to the relevant second round One-on-One Meeting, the Proposer will submit the following to the City:

- a proposed agenda based on the topics set out in the One-on-One Meeting notice and any additional topics proposed by the Proposer, including a brief description of the items the Proposer wishes to discuss; and
- a list of the Proposer's participants (including name, title, role on Project, and firm).

The City reserves the right, in its sole discretion, to accept, reject, or modify the Proposer's proposed agenda and to limit the number of Proposer attendees in One-on-One Meetings. In addition to topics on the agenda, the City reserves the right to discuss other matters it deems appropriate.

5.6.3 Conduct of the One-on-One Meetings

The following rules and procedures will apply to One-on-One Meetings:

1. One-on-One Meetings may be conducted virtually or, if conditions permit, the City may elect to hold in-person meetings.
2. The Proposer shall provide each person participating in the One-on-One Meeting on behalf of the Proposer notice of the rules and procedures set out in this Section 0 or otherwise communicated to the Proposer by the City in accordance with Section 5.6.2 (Topics and Presentation Materials).
3. The Proposer shall adhere to the allotted time scheduled for the One-on-One Meeting, as communicated to the Proposer by the City in accordance with Section 5.6.2 (Topics and Presentation Materials).
4. During One-on-One Meetings, the Proposers may ask questions, make observations, or suggest possible revisions to RFP or Transaction Documents. The City may, but is not required to, respond to questions asked by Proposers in One-on-One Meetings. Any responses provided by the City may not be relied upon by Proposers. Nothing stated at a One-on-One Meeting will modify the RFP unless incorporated via an Addendum issued in accordance with this RFP.
5. Except as otherwise provided in the RFP, the City will not discuss with a particular Proposer any information submitted by another Proposer as part of this procurement or any One-on-One Meetings.
6. Proposers shall not seek to obtain commitments from the City during the One-on-One Meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer. Proposers are prohibited from asking any questions (i) relating to how to maximize points as part of the substantive evaluation of Proposals, (ii) intended to elicit any endorsement of the Proposer, or (iii) in relation to the team structure of other Proposers.
7. No aspect of the One-on-One Meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers.
8. Any discussions or statements made by either party at a One-on-One Meeting shall not be binding on such party.
9. No part of the evaluation of Proposals will be based on conduct or discussions that occur during One-on-One Meetings.
10. The City reserves the right to disclose to all Proposers any issues raised during the One-on-One Meetings, including disclosures that the City, in its sole discretion, (i) deems necessary to address an error, mistake, omission, conflict, or ambiguity in the RFP or Transaction Documents; (ii) deems appropriate to disclose for the purposes of fairness and transparency; or (iii) determines are required by Public Records Law. However, if allowed by Applicable Law, the City will limit any such disclosures to the extent that the City determines, in its sole discretion, that the disclosure would reveal confidential or proprietary information.

5.7 Examination of RFP and Access to Public ROW

Each Proposer is solely responsible for examining, with appropriate care and diligence, the RFP (including all Addenda), the forms of Transaction Documents made available as part of this RFP, and the Reference Documents. In addition, each Proposer is solely responsible for conducting such due diligence as it deems necessary to satisfy itself as to the rights and obligations of the selected Developer(s) under the PDA; the nature

and extent of the risks to be assumed by the selected Developer(s) with respect to the Project; and any other matter, condition, or risk that may impact its Proposal and the performance of services should the Proposer be selected as the Developer.

Each Proposer is solely responsible for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained in this RFP, or of any provision of this RFP that the Proposer fails to understand in accordance with the procedures set out in this RFP. Failure of the Proposer to conduct due diligence, to examine and inform itself, and to review and request clarification is at its sole risk and no relief for error or omission will be provided by the City.

Proposers may visit areas of the proposed alignment open to or accessible by the public at any time. For City-owned areas not accessible to the public, access will only be offered to the selected Developer(s) during the PDA Phase in accordance with the terms of the PDA.

5.8 Inclusion of Proposal in the PDA

Portions of a selected Developer's Proposal will be attached as exhibits and incorporated into the PDA and will be binding obligations of that Developer under the PDA. Such information may include the Team Proposal, Technical and Commercial Proposal (with such exceptions and modifications as are determined by the City to be necessary to ensure that the Technical and Commercial Proposal is not in conflict with the Technical Requirements), the Financial Proposal, and such other portions deemed by the City to be relevant to the obligations of the Developer for the Project. Unless incorporated into the PDA, no information included in a Proposal will be binding on the City.

6. Requirements for Submittal of Proposals

This Section 6 sets out the general requirements for Proposal submissions.

6.1 General Proposal Requirements

6.1.1 General

Each Proposal must include the Administrative Submittals, a Team Proposal, a Technical and Commercial Proposal, and a Financial Proposal that comply with the requirements set out in this RFP. Proposals should contain sufficient information, written in a concise manner, to enable a clear understanding and evaluation of the capabilities of the Proposer and to allow the City to evaluate the Proposer and its Proposal based on the evaluation process and criteria set out in this RFP. Proposals should not include any reservations, qualifications, conditions, assumptions, or exceptions to or deviations from, the requirements of the RFP.

By submitting a Proposal, the Proposer affirms that it satisfies the City's administrative requirements for doing business with the City, as indicated in Exhibit 8 (City Contracting Requirements and Other Regulatory Requirements) of Appendix D (Form of PDA).

6.1.2 Signatures Required for the Proposal

The Proposal Letter shall be signed by the Proposer's authorized representative. If the Proposer is a joint venture, consortium, or partnership, the Proposal Letter must also be executed by all members of the joint venture, consortium, or partnership. An authorized representative of each Major Participant must sign the certification set out at the end of the Proposal Letter. All signatures must be accompanied by evidence of signatory authorization for the relevant entity as specified in Appendix C5.1 (AD Form A: Proposal Letter).

6.1.3 Proposal Validity Period

Each Proposal must be valid for acceptance by the City within the Proposal Validity Period.

If the City requests an extension to the validity of a Proposal beyond the Proposal Validity Period, the Proposer may agree to extend the validity of its Proposal beyond the Proposal Validity Period or may notify the City that it does not accept such extension, in which case the validity of its Proposal will expire at the end of the original Proposal Validity Period. If the Proposer agrees to extend the Proposal Validity Period, the Proposal Security shall also be extended and/or replaced with compliant Proposal Security.

6.2 Proposal Content, Format, and Organization

1. One Proposal – Each Proposer may only submit one Proposal. Multiple or alternate Proposals may not be submitted.
2. Organization – Each Proposal shall contain the volumes and sections within the volumes and shall be organized, numbered, and titled exactly as shown in the submittal checklist provided in Appendix B (Summary and Checklist of Proposal Contents). Any non-PDF or MS Word Proposal documents required to be submitted should be referenced in the Proposal document as appropriate and the title should include an appropriate tab number and submittal reference.
3. RFP forms – Each Proposal must include the forms provided with this RFP. Proposers must complete all blank spaces in the RFP forms in accordance with the directions specified in this RFP and the forms. Proposers shall not make any substantive changes to any RFP form. If a Proposer does not include in its Proposal the information, materials, or other submittal requirements described in the relevant form or this RFP as a result of such information or materials being marked or identified as optional or only required if factually applicable to the Proposer in the form instructions or other submittal, such Proposer shall include in

the relevant section in its Proposal a statement to the following effect: "[Insert relevant section or form field] does not apply because [Proposer to insert brief explanation]."

4. Electronic copies – The Proposer must submit electronic copies of the Proposal in searchable Adobe (.pdf) format via the Procurement Portal. Completed forms in a Proposal may be submitted in either searchable Adobe (.pdf) or Word format, and scanned signed letters and forms may be submitted in non-searchable Adobe (.pdf) format.
5. Page numbering/font size/tabs – Within each volume, pages must be sequentially numbered. Sections must be separated by a divider with a tab, and each page must be single-spaced using no smaller than 12-point font size, except for tables, charts, and graphics, which may use 10-point font size. Tabs must only include references to sections and volumes and must not include other (extraneous) information.
6. Page limits – The tables in the submittal checklist provided in the corresponding Appendices include page limits. Any submittal requested on paper larger than 8-1/2" x 11" format will be considered one page. 11" x 17" pages can be used on any narrative sections for graphics and/or tables. A double-sided page shall be considered two pages for the purposes of page limits. The City may disregard the excess portion of any document(s) of a given submittal not complying with these page limits.
7. English language – Proposals must be in the English language. If any documents required for the Proposal (other than financial statements) were originally drafted in another language, Proposer must provide an English translation, certified by an accredited translator registered with the American Translators Association (<https://www.atanet.org/onlinedirectories>), California Certified Court Interpreters (<http://www.courts.ca.gov/35273.htm>), or California Registered Interpreters (<http://www.courts.ca.gov/35273.htm>). In the event of conflict with the original language, the certified translation shall take precedence. Financial statements, if any, must be provided in English, but do not need to be certified.
8. United States dollars – Except as otherwise noted: (i) Proposer must exclusively use United States dollars in its Proposal; and (ii) in the evaluation of Proposals, the City may choose to disregard any financial figures provided by Proposer in denominations other than United States dollars. If financial statements are converted from a foreign currency into U.S. dollars, the Proposer should indicate the conversion rate used to convert foreign currency to U.S. dollars and use the exchange rate prevailing on the last day of the applicable fiscal year as published in the Wall Street Journal.
9. No extraneous materials – Proposers may not include standard corporate brochures, awards, licenses, embedded video, active hyperlinks, and marketing materials in a Proposal. The City will not evaluate such materials. Proposers are encouraged to avoid excessive expenditure on the presentational aspects of their Proposal.

6.2.1 Proposal Volumes

Each Proposal shall consist of four volumes, as listed in Table 7. The general formatting and submittal requirements that apply to all volumes are set out in Section 6.2 (Proposal Content, Format, and Organization) and the specific content and submittal requirements for each volume are set out in the relevant appendices referenced in Table 7.

Table 7: Proposal Volumes

Volume	Title	Detailed Submittal Requirements	Submittal Forms
Volume 1	Administrative Submittal	Appendix C1	Appendix C5
Volume 2	Team Proposal	Appendix C2	Appendix C6
Volume 3	Technical and Commercial Proposal	Appendix C3	Appendix C7
Volume 4	Financial Proposal	Appendix C4	Appendix C8

6.2.2 Submittal Requirements

Each Proposer shall deliver an electronic copy of the Proposal, in compliance with the requirements set out in Section 6.1 (General Proposal Requirements) and 6.3 (Proposal Delivery).

6.3 Proposal Delivery

6.3.1 Proposal Due Date

The City must receive the Proposals, in their entirety, on or before the Proposal Due Date.

6.3.2 Delivery and Withdrawal Instructions for Proposals

1. All responses to this RFP must be submitted electronically through the Procurement Portal. Proposals are secure and are not accessible by anyone but the Proposer until after the submittal date and time indicated in this RFP.
2. Proposers must submit all required documentation. Required forms and documentation should be uploaded through the Procurement Portal and submitted with the solicitation response.
3. Any questions regarding how to upload attachments or submit a response through the Procurement Portal should be directed to Bidding at (800) 208-1290 or by email to info@biddingo.com
4. Please note: Attaching documentation to the solicitation will not automatically submit a Proposal. It is necessary to click the SUBMIT button before a Proposal will be submitted. Until receipt of an electronic receipt for the submission, the Proposal has not been submitted.
5. Proposers may modify their electronic responses prior to the submittal deadline; however, please note that if you modify a submitted response, is modified, it must be **resubmitted** prior to the Proposal closing date and time. It is the sole responsibility of the Proposer to ensure that their entire solicitation response is submitted prior to the solicitation closing date and time. No Proposal may be withdrawn (in whole or in part) on or after the Proposal Due Date.
6. The City is not responsible for any late or incomplete submissions, including those due to technical issues with the Procurement Portal. It is recommended that bidders allow sufficient time to seek assistance from the Procurement Portal in the event there are unforeseen issues that affect the Proposer's ability to upload and submit their solicitation response.

6.4 Modifications, Withdrawals, and Late Submittals

The City will not accept any Proposals received after the Proposal Due Date. Any Proposals received after such time will be rejected, returned, and not considered. Each Proposer is solely responsible for ensuring that the City receives its Proposal by the Proposal Due Date.

6.5 Proposal Security

6.5.1 Form of Proposal Security

As security for its commitment to enter into the PDA in accordance with the requirements of this RFP and its Proposal commitments, each Proposer shall submit, in accordance with Section 6.2.2 (Submittal Requirements) and Section 6.3 (Proposal Delivery), Proposal Security that meets the requirements set out in this section.

1. The Proposal Security may be a combination of bonds and letters of credit.
2. The Proposal Security shall be in the form(s) provided in Appendix C5.2 (AD Form B: Proposal Security).
3. The required amount of the Proposal Security shall be \$200,000.
4. The Proposal Security must be valid until at least the end of the Proposal Validity Period.

5. The bond(s) and/or letter(s) of credit must be issued by an Eligible Security Issuer. The Proposer must deliver, together with the electronic copy of its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. If any issuer ceases to be an Eligible Security Issuer any time from the date of issuance until the end of the Proposal Validity Period, the Proposer shall promptly notify the City and, within 15 days of this notice, the Proposer shall deliver to the City new bond(s) and/or letter(s) of credit, as the case may be, from a replacement Eligible Security Issuer. Upon the City's receipt of such replacement Proposal Security, the City will promptly return the replaced Proposal Security to the Proposer.

6.5.2 Electronic Submittal of Proposal Security

An electronic .pdf copy of the bond(s) and/or letter(s) of credit must be submitted in compliance with the requirements set out in Section 6.1 (General Proposal Requirements) and 6.3 (Proposal Delivery). Proposers must retain the original wet-signed Proposal Security document(s) and provide such document(s) to the City upon the City's request.

6.5.3 Forfeiture of Proposal Security

Each Proposer understands and agrees that the City shall be entitled to draw on its Proposal Security in its entirety if any of the following occur:

1. The Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet any commitments made in the Proposal (except as otherwise permitted pursuant to this RFP).
2. The City disqualifies the Proposer pursuant to Section 10.1(18) or (19) (The City's Rights).
3. The Proposer is selected as the Preferred Proposer and fails to negotiate in good faith the PDA, as expressly described in Section 8 (Selection Process and Predevelopment Agreement).
4. The Proposer is selected as the Preferred Proposer and fails to execute the PDA, as expressly described in Section 8 (Selection Process and Predevelopment Agreement).
5. The Proposer fails to: (i) notify the City that the issuer of the Proposal Security is not an Eligible Security Issuer; or (ii) deliver replacement Proposal Security, if applicable, in each case, in accordance with Section 6.5.1 (Form of Proposal Security).

Forfeiture of the Proposal Security in accordance with this section will constitute liquidated damages. By submitting its Proposal, the Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate the City for damages it will incur as a result of the Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal.

Such damages include potential harm to the credibility and reputation of the City with policy makers and the general public, delays to the Project, and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead, and other administrative costs).

By submitting its Proposal, the Proposer further acknowledges: (i) that these damages would be difficult and impracticable to measure and prove; (ii) that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate Proposals for it; and (iii) the unavailability of a substitute for those efforts.

The amount of liquidated damages stated in this RFP represent good-faith estimates and evaluations as to the actual potential damages that the City would incur as a result of the Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, the Proposer agrees to such liquidated damages to fix and limit the Proposer's costs and to avoid later disputes over what amount of damages are properly chargeable to the Proposer.

6.5.4 Return of Proposal Security

Except for any Proposal Security that has been forfeited in accordance with Section 6.5.3 (Forfeiture of Proposal Security), the City will return the Proposal Security as follows:

1. To unsuccessful Proposers, within 15 Days after the earliest to occur of: (a) the execution of the PDA; (b) the cancellation of this RFP by the City; or (c) the expiry of the Proposal Validity Period.
2. To a Preferred Proposer, within 15 Days after the earliest to occur of: (a) the execution and delivery of the PDA by that Preferred Proposer and the City and the Preferred Proposer has delivered all other items required to be provided under Section 8.4 (Predevelopment Agreement Execution); (b) the cancellation of this RFP by the City; or (c) the expiry of the Proposal Validity Period.

6.6 Proposal Cost

The City assumes no obligations, responsibilities, or liabilities—fiscal or otherwise—to reimburse all or a part of the costs incurred or alleged to have been incurred by Proposers in responding to this RFP. The cost of preparing a Proposal and any and all costs incurred by the Proposer at any time during or in connection with the RFP process shall be borne solely by the Proposer.

7. Evaluation Process and Criteria

This Section 7 describes the process the City will use to evaluate Proposals and determine the Preferred Proposer(s).

The City's objective is to create a fair and uniform basis to evaluate the Proposals in compliance with all applicable legal requirements governing the RFP process. Proposals will be evaluated and the PDA will be awarded using the selection procedure described below and in Section 8 (Selection Process and Predevelopment Agreement).

7.1 Summary of Evaluation Process

Upon the City's receipt of the Proposals, the City will follow the steps below to evaluate the Proposals and determine the Preferred Proposer(s) (if any).

1. Step 1 – Perform a responsiveness review of each Proposal in accordance with Section 7.2.1 (Responsiveness Review). The City's determination of whether each Proposer is responsible in accordance with Section 7.2.2 (Responsibility Review) will be ongoing throughout the evaluation process.
2. Step 2 – Evaluate and score each responsive Proposer's capability and experience, as described in the Team Proposal, against the criteria set out in Section 7.4.1 (Team Proposal).
3. Step 3 – Evaluate and score each responsive Technical and Commercial Proposal in accordance with Section 7.4.2 (Technical and Commercial Proposal). Proposers should note that the criteria relating to demonstration of a Technology Readiness Level of at least Level 6 as described in Section 7.4.2 (Technical and Commercial Proposal) is a pass/ fail requirement. Only those Proposals that satisfy that minimum requirement will be eligible for award and will proceed to scoring of the Technical and Commercial Proposal and evaluation of the Financial Proposals.
4. Step 4 – Evaluate and score each responsive Financial Proposal in accordance with Section 7.4.3 (Financial Proposal).
5. Step 5 – Upon completion of the above steps, select the Preferred Proposer(s), being the Proposer(s) submitting the Proposal(s) that offer the best value to the City as described in Section 7.5 (Total Proposal Score and PDA Award). The "best value" Proposal(s) will be the Proposal(s) with the highest Total Proposal Score.

The City reserves the right to perform any of the steps described above concurrently or in a different order.

Upon selection of the Preferred Proposer(s), the City anticipates it will proceed with the finalization and award of the PDA in accordance with Section 8 (Selection Process and Predevelopment Agreement).

7.2 Responsiveness and Responsibility Review

7.2.1 Responsiveness Review

The City will review the Proposals for responsiveness to the requirements of this RFP. The City may, in its sole discretion, deem a Proposal non-responsive and disqualify it from further consideration if:

1. it does not fully comply with any instructions or requirements contained in this RFP, including the appendices and forms, including where any part of the Proposal is missing from the Proposal package;
2. the City determines that the Proposal contains a material misrepresentation or irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, unauthorized additions, or items not required by this RFP; or

3. the Proposal includes any conditions or provisions reserving a Proposer's right to accept or reject an award if it is the selected Developer, or any conditions to entering into the PDA.

If the City deems a Proposal non-responsive it shall be disqualified from further consideration. Such disqualification alone will not result in forfeiture of the Proposer's Proposal Security.

A determination of non-responsiveness may be made at any time during the Proposal evaluation process including during an initial responsiveness review or during the further evaluation of the Proposal pursuant to this Section 7.

In accordance with Section 10 (City-Reserved Rights and Disclaimers), the City reserves the right to waive minor informalities, irregularities, and apparent clerical mistakes that are unrelated to the substantive content of the Proposals.

7.2.2 Responsibility Review

During the evaluation process and based on the City's review of the information contained in the Proposals, the City may determine that a Proposer is "not responsible." A Proposer will be "responsible" if it possesses the ability, willingness, and integrity to successfully perform the Developer's scope of work and obligations under the Transaction Documents. Responsibility includes, but is not limited to, the following requirements:

1. possessing the financial resources adequate to perform the PDA or the ability to obtain them;
2. possessing the ability to meet the delivery schedule for the Project, taking into consideration all existing commitments;
3. possessing a satisfactory performance record;
4. possessing a satisfactory record of integrity and business ethics;
5. being neither debarred nor suspended from Federal programs under DOT regulations;
6. possessing the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
7. being in compliance with applicable licensing and tax laws and regulations;
8. possessing the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
9. possessing other qualifications necessary to receive an award under Applicable Law and requirements.

A Proposer that is not responsible is ineligible for award of the PDA. However, such a determination will not, alone, result in the forfeiture of a Proposer's Proposal Security.

7.3 Evaluation of Administrative Submittals

The City will evaluate the Administrative Submittals as either responsive or non-responsive as set out in Section 7.2.1 (Responsiveness Review).

7.4 Evaluation of Team Proposal, Technical and Commercial Proposal, and Financial Proposal

Subject to Section 7.2 (Responsiveness and Responsibility Review), the City will evaluate the Team Proposal, Technical and Commercial Proposal, and Financial Proposal as described in this Section 7.4.

Table 8: Summary of Proposal Scoring

Submittal	Point Allocation
Team Proposal	3,500 points
Development Team and Project Delivery Experience	875 points
Technical Experience	1,750 points
Financial Capacity and Experience	875 points
Technical and Commercial Proposal	4,500 points
Technology Maturity	1,000 points
Transit Solution	2,000 points
Management and Partnering Approach	650 points
Commercial Concept	650 points
Approach to Community and Environment	200 points
Financial Proposal	2,000 points
PDA Cost Cap for PDA Phase 1	1,500 points
PDA Cost Cap (Design) for PDA Phase 2	500 points
Total Proposal Score	10,000 total points

7.4.1 Team Proposal

Subject to Section 7.2 (Responsiveness and Responsibility Review), the City will evaluate and score the Proposer’s team, capability, and experience as described in the Team Proposal in accordance with the criteria in this Section 7.4.1 and assign a score of up to 3,500 total points. The sum of the points allocated to a Proposer in response to the evaluation criteria in this Section 7.4.1 will be that Proposer’s “Team Proposal Score”.

1. Development Team and Project Delivery Experience – Up to 875 points (out of 3,500 total points for “Development Team, Capability, and Experience”)

The Proposer demonstrates, through its proposed Development Team and organization and management structure, that it has the requisite project delivery experience to successfully deliver the Project, including:

- a. understanding and experience of project delivery under a phased PDA or another comparable delivery model that includes:
 - i. collaborative and iterative project definition with the project owner;
 - ii. development of project definition and technical documents alongside environmental and other approval workstreams;
 - iii. negotiation of a revenue risk project implementation proposal;
 - iv. management of the competitive bidding of subcontractors; and
 - v. outreach and engagement of Disadvantaged Business Enterprise (DBE), local and small subcontractors.
- b. understanding and experience of project delivery under a DBFOM contractual structure; and
- c. understanding of the particular challenges and opportunities of the Project and how experience from other projects will be used to address and resolve them.

The Development Team and Project Delivery Experience points will be a cumulative score that factors the Proposers overall responsiveness to the criteria above.

2. **Technical Experience** – Up to 1,750 points (out of 3,500 total points for “Development Team, Capability, and Experience”)

The Proposer demonstrates, by reference to the successful delivery of comparable projects (or comparable elements of projects), that the Development Team has the requisite technical experience to successfully develop the Project during the PDA Phase, including:

- a. design and construction of transit systems, including guideway, operating systems, stations, and maintenance facilities; [Maximum 550 points]
- b. procurement and supply of transit vehicles and design and installation of transit operating system elements and subsystems, incorporating power systems, vehicle control systems, and communication systems; [Maximum 550 points]
- c. operations planning for a Transit Solution that achieves performance outcomes generally consistent with one or more of the performance outcomes articulated in the Technical Requirements or otherwise under this RFP; [Maximum 150 points]
- d. operation and maintenance of transit systems including long-term asset maintenance and renewal, service planning and fleet management, provision of consistently high standards of customer service, and an acceptable safety record; and [Maximum 350 points]
- e. design, construction, and operation of transit projects requiring coordination and liaison with multiple stakeholders such as regulatory agencies, utility owners, employees, adjacent or intersecting contractors, other public agencies and public officials, citizens impacted by the construction, residents, and other affected parties with an acceptable safety record. [Maximum 150 points].

For criteria a. to d. above, the City will more favorably view submittals that demonstrate the Development Team’s capability and experience in transit projects using a similar proposed type of Transit Infrastructure or Transit Technology.

3. **Financial Capacity and Experience** – Up to 875 points (out of 3,500 total points for “Development Team, Capability, and Experience”)

The Proposer demonstrates that the Development Team has the requisite financial capacity and experience to successfully finance and deliver the Project, including:

- a. sufficient financial capacity of Equity Members to arrange equity contributions when required during the PDA Phase and Implementation Phase;
- b. Equity Member experience in delivering and maintaining equity investments in similar revenue risk DBFOM projects;
- c. controlling Equity Member is an infrastructure developer and not the Technology Provider; and
- d. Equity Members’ experience and ability to successfully structure, arrange, negotiate, and achieve financial close for debt financing for similar revenue risk DBFOM projects.

The Financial Capacity and Experience points will be a cumulative score that factors the Proposers overall responsiveness to the criteria above.

7.4.2 Technical and Commercial Proposal

7.4.2.1 *Pass/Fail Evaluation for the Technical and Commercial Proposal*

The City will evaluate the Technical and Commercial Proposal as either a pass or a fail with respect to the following criteria:

1. Technology Maturity of the proposed Transit Technology as stated in Proposer’s TS Form A: Technology Maturity:

- a. If the proposed Transit Technology is proprietary to the Proposer’s Development Team, as stated in Section 1.1 of Volume 3 of the Proposer’s Proposal, then it must have a minimum Technology Readiness Level (TRL) of 6.
 - b. If the proposed Transit Technology is based on a generic and non-proprietary technical specification that can be shown to be met by two or more suppliers active in the transit industry, as stated in Section 1.1 of Volume 3 of the Proposer’s Proposal, then it must have a minimum TRL of 8.
2. Compliance with the System Performance Thresholds defined in Appendix C7.5 (TS Form E: Compliance with System Performance Thresholds);
 3. The Proposer included in its Proposal the Option for the City to determine if it will move forward with it during the PDA Phase; and
 4. The Proposer's Transit Solution and Commercial Concept has been prepared on the basis of achieving the Procurement Objective of a total project cost that does not exceed \$500 million, expressed in dollars as of June 30, 2022.

Only those Proposals that pass the above minimum requirements will be eligible for award and will proceed to further evaluation and scoring of the Technical and Commercial Proposal under Section 7.4.2.2 (Scored Evaluation for the Technical and Commercial Proposal) and evaluation of the Financial Proposals.

7.4.2.2 Scored Evaluation for the Technical and Commercial Proposal

Subject to Sections 7.2 (Responsiveness and Responsibility Review) and 7.4.2.1 (Pass/Fail Evaluation for the Technical and Commercial Proposal), the City will evaluate and score each Technical and Commercial Proposal in accordance with the criteria in this Section 7.4.2.2 and assign a score of up to [4,500] total points. The sum of the points allocated to a Proposer in response to the evaluation criteria in this Section 7.4.2.2 will be that Proposer’s “Technical and Commercial Proposal Score.”

1. **Transit Solution** – Up To 2,000 points (out of 4,500 total points for “Technical and Commercial Proposal”)

The Proposer demonstrates through its Proposal a well-defined, evidence-based Transit Solution that is:

- a. responsive to the Project Objectives, Procurement Objectives, and the Technical Requirements and capable of delivering improved operational performance relative to performance thresholds No. 2, 3, 5 and 6 defined in Appendix C7.5 (TS Form E: Compliance with System Performance Thresholds); [Maximum 1,500 points].
- b. capable of offering a single-seat ride between a future extension from Diridon Station and SJC terminal stations with a cost-effective solution, including the ability to accommodate stations placed at varying spacing and infill stations as part of a future, yet-to-be-determined extension corridor; and [Maximum 250 points].
- c. either service-proven or demonstrates a well-defined, reasonable, and comprehensive approach to obtaining all necessary regulatory approvals and certifications to achieve readiness for passenger service in alignment with the Procurement Objectives. [Maximum 250 points].

2. **Technology Maturity** – Up to 1,000 points (out of 4,500 total points for “Technical and Commercial Proposal”)

With respect to the Transit Technology, the City will determine the Proposer’s Technology Maturity Score in accordance with the following:

- a. TRL Level 6: 0 points.
- b. TRL Level 7: 500 points.
- c. TRL Level 8: 1,000 points.
- d. TRL Level 9: 1,000 points.

3. **Management and Partnering Approach** – Up To 650 points (out of 4,500 total points for “Technical and Commercial Proposal”)

The Proposer demonstrates through its Proposal:

- a. a well-defined, comprehensive, collaborative approach and schedule to the Proposer’s performance of the work during PDA Phase 1, including the proposed organization and management structure, that is efficient and will maximize the certainty of proceeding to PDA Phase 2 and eventually reaching agreement for the Implementation Phase of the Project; [Maximum 350 points].
- b. a well-defined and credible approach to identifying, managing, and mitigating the Project’s principal risks related to the key technical, commercial, and financial aspects of its Proposal; and [Maximum [200] points].
- c. an approach to selection and procurement of subcontractors that will provide certainty and efficiency in delivery of the Project under the Implementation Agreement. [Maximum 100 points].

4. **Approach to Community and Environment** – Up To 200 points (out of 4,500 total points for “Technical and Commercial Proposal”)

The Proposer demonstrates through its Proposal, a well-defined and executable approach during PDA Phase 1 to:

- a. stakeholder and community engagement, with racial equity centered approach, including with members of the public impacted by the Project and other affected parties, and incorporating such inputs into the Business Case; and [Maximum 100 points]
- b. Business Case development that demonstrates a feasibility-level Project definition that thoughtfully considers environmental issues in such a manner that it can be reasonably expected to: [Maximum 100 points]
 - i. be well integrated with the SJC and San José’s urban design;
 - ii. minimize disruption and manage impacts to the right-of-way, existing operations, utility owners and third parties, and other intended interfacing projects (including at Diridon Station) caused by the construction work during the Implementation Phase;
 - iii. minimize environmental impacts of the Project and mitigate for impacts when unavoidable and to the extent practicable; and
 - iv. deliver an environmentally sustainable transportation infrastructure solution.

5. **Commercial Concept** – Up To 650 points (out of 4,500 total points for “Technical and Commercial Proposal”)

The Proposer demonstrates through its Proposal a well-defined concept-level commercial structure for the Project that provides a high degree of confidence in the ability and commitment of the Proposer to:

- a. deliver the Project on a revenue risk basis, demonstrating at a conceptual level a feasible plan for (1) structuring the financing for the Project, (2) achieving commercial operation supported by revenues generated by the Project, and (3) developing credible estimates for capital expenditure and operating expense projections including the cost of developing the Transit Technology consistent with the Proposer’s plan required in Appendix C7.3 (TS Form C: Transit Technology Development Plan);
- b. manage the City’s exposure to risk and limit public funding contributions; and
- c. develop and implement a Project that delivers across all Project Objectives and Procurement Objectives.

7.4.3 Financial Proposal

Subject to Sections 7.2 (Responsiveness and Responsibility Review) and 7.4.2.1 (Pass/Fail Evaluation for the Technical and Commercial Proposal), the City will evaluate and score each Financial Proposal in accordance with the criteria set out in this Section 7.4.3 and assign a “Financial Proposal Score” in accordance with this Section 7.4.3.

1. PDA Cost Cap for PDA Phase 1

- a. The PDA Cost Cap for PDA Phase 1 is the Proposer's compensation for the work products to be developed during PDA Phase 1 in accordance with the provisions of the PDA.
- b. The Proposer must specify its PDA Cost Cap for PDA Phase 1 by completing Appendix C8.1 (FS Form A: PDA Cost Cap for PDA Phase 1).
- c. Pursuant to the terms of this RFP, the PDA Cost Cap for PDA Phase 1 of the successful Proposer(s) will be incorporated as a binding commitment of the Developer in the PDA during PDA Phase 1.

2. PDA Cost Cap (Design) for PDA Phase 2

- a. The PDA Cost Cap (Design) for PDA Phase 2 is the Proposer's compensation for the work products to be developed during PDA Phase 2 in accordance with the provisions of the PDA.
- b. The Proposer must specify its PDA Cost Cap (Design) for PDA Phase 2 by completing Appendix C8.2 (FS Form B: PDA Cost Cap (Design) for PDA Phase 2).
- c. Pursuant to the terms of this RFP, the PDA Cost Cap (Design) for PDA Phase 2 of the successful Proposer(s) will be incorporated as a binding commitment of the Developer in the PDA during PDA Phase 2.

3. PDA Cost Cap Scores

The City will compare the Proposer's PDA Cost Cap for PDA Phase 1 and PDA Cost Cap (Design) for PDA Phase 2 with the respective PDA Cost Caps of all other responsive and responsible Proposers eligible for award. The City will then determine the Proposer's PDA Cost Cap for PDA Phase 1 and PDA Cost Cap (Design) for PDA Phase 2 Scores in accordance with the following formulas:

$$\text{PDA Cost Cap for PDA Phase 1 Score} = \frac{\text{Lowest PDA Cost Cap for PDA Phase 1 Proposed}}{\text{Proposer's PDA Cost Cap for PDA Phase 1}} \times 1,500 \text{ points}$$

Where if the lowest PDA Cost Cap proposed is equal to 0, then:

- a. All Proposers with a PDA Cost Cap for PDA Phase 1 equal to 0 will be awarded 1,500 points
- b. All Proposers with a PDA Cost Cap for PDA Phase 1 greater than 0 will be awarded 0 points

$$\text{PDA Cost Cap (Design) for PDA Phase 2 Score} = \frac{\text{Lowest PDA Cost Cap (Design) for PDA Phase 2 Proposed}}{\text{Proposer's PDA Cost Cap (Design) for PDA Phase 2}} \times 500 \text{ points}$$

Where if the lowest PDA Cost Cap (Design) for PDA Phase 2 proposed is equal to 0, then:

- c. All Proposers with a PDA Cost Cap (Design) for PDA Phase 2 equal to 0 will be awarded 500 points
- d. All Proposers with a PDA Cost Cap (Design) for PDA Phase 2 greater than 0 will be awarded 0 points

4. Financial Proposal Score

The Financial Proposal Score for will then be assigned, being the arithmetic sum of the PDA Cost Cap for PDA Phase 1 Score and the PDA Cost Cap (Design) for PDA Phase 2 Score for each Proposal.'

7.5 Total Proposal Score and PDA Award

Subject to Sections 7.2 (Responsiveness and Responsibility Review) and 7.4.2.1 (Pass/Fail Evaluation for the Technical and Commercial Proposal), each Proposal will be assigned a Total Proposal Score, being the arithmetic sum of the Team Proposal Score, the Technical and Commercial Proposal Score, and the Financial Proposal Score.

The Total Proposal Scores will then be ranked and the highest score or, at the City's sole discretion, the two highest scores will be deemed to offer the "best value" to the City and be selected as the Preferred Proposer(s).

The applicable weightings and maximum achievable Total Proposal Score are set out in **Table 8** under Section 7.4 (Evaluation of Team Proposal, Technical and Commercial Proposal, and Financial Proposal).

7.6 Requests for Proposal Clarification/Interview

7.6.1 Requests for Clarification

The City may, at any time during the Proposal evaluation, issue one or more requests for clarification to Proposers, seek additional information or clarification from the Proposer, and request the Proposer to verify or certify certain aspects of its Proposal. The Proposers must respond to any such request by such time as is specified by the City in such request.

The scope, length, and topics to be addressed in requests for clarification must be prescribed by, and are subject to the sole discretion of, the City. Upon receipt of any requested additional information or clarification, the applicable Proposal or Proposals may be re-evaluated by the City to consider such additional information or clarification.

Any additional information or clarification submitted by the Proposer pursuant to this section will become a part of the Proposer's Proposal.

7.6.2 Interviews

The City may, in its sole discretion, request that any or all Proposers found responsive and responsible attend an interview with the City prior to selection of the Preferred Proposer(s). The interview will provide a Proposer an opportunity to highlight certain aspects of its Proposal, enhance the City's understanding of a Proposal and facilitate the evaluation process. Interviews will not be used to cure Proposal deficiencies or material omissions, materially alter the technical or financial elements of the Proposal and/or otherwise revise the Proposal. The City may adjust the Team Proposal Score and the Technical and Commercial Proposal Score after a Proposer's interview.

7.6.3 Best and Final Offers

A Best and Final Offer ("BAFO") process may be held, in the City's sole discretion, with one or more Proposer(s) if additional information or clarification is necessary to enable the City to make a final decision. The BAFO may allow Proposer(s) to revise some or all of their original Proposal based on additional information provided by the City.

The City will issue the request for a BAFO with instructions outlining the areas to be addressed and the date and time by which the BAFO is to be submitted. After receipt of BAFO responses, Total Proposal Scores may be adjusted based on the new information received.

The City will request only one BAFO unless the City determines that another BAFO is warranted.

The issuance of a BAFO is optional and Proposers should not assume that there will be an additional opportunity to amend their Proposals after the original Proposal submission. Proposers may not request an opportunity to submit a BAFO.

8. Selection Process and Predevelopment Agreement

8.1 Selection of Preferred Proposer(s)

The City will issue a Notice of Preferred Proposer(s) that includes the Proposer rankings based on the evaluation and selection process described in this RFP.

8.2 No Obligation to Select Preferred Proposers

Notwithstanding Section 8.1 (Selection of Preferred Proposer(s)), the City shall be under no obligation to award the PDA.

8.3 Finalization of PDA with Preferred Proposer(s)

Immediately after issuance of the Notice of Preferred Proposer(s), the City will engage with the Preferred Proposer(s) to finalize and execute the PDA by the date contemplated in the RFP Schedule. By submitting its Proposal, each Proposer commits to cooperate with the City, if selected as a Preferred Proposer(s), to finalize and execute the PDA included in this RFP (including attending and actively participating in reasonably scheduled meetings), without any revisions except with respect to the following:

1. minor changes, additions, and modifications necessary to create a complete and legally binding contract;
2. inclusion of the Preferred Proposer's Proposal in Exhibit 4 (Developer Commitments) of the PDA as contemplated under Section 5.8 (Inclusion of Proposal in the PDA) or otherwise required in order to incorporate terms or concepts, and any commitments above and beyond what is required by the Transaction Documents provided in the Proposal submitted by the Preferred Proposer that have been approved or required by the City for inclusion in the PDA; and
3. additions or modifications required to complete the schedules, exhibits, appendices, or forms, as applicable, in the PDA.

If a Preferred Proposer fails to cooperate with the City to finalize and execute the PDA (including by insisting upon terms or conditions for any documents negotiated or provided by the Preferred Proposer under this RFP, including the PDA, that are inconsistent with this RFP) in accordance with this Section 8.3 and Section 8.4 (Predevelopment Agreement Execution), it may forfeit its Proposal Security and the City may: (i) proceed to finalize or attempt to negotiate a PDA with the other Proposers in successive order based on their Total Proposal Scores, commencing with the Proposer with the next best score; (ii) terminate this procurement and pursue other development solicitations relating to some or all aspects of the Project; or (iii) exercise other such rights under provisions of applicable law as it deems appropriate.

8.4 Predevelopment Agreement Execution

Within 15 days of agreeing to the executed version of the PDA with the City in accordance with Section 8.3 (Finalization of PDA with Preferred Proposer[s]), the Preferred Proposer(s) shall deliver the following items to the City:

1. The executed PDA in the form agreed in accordance with Section 8.3 (Finalization of PDA with Preferred Proposer[s]).
2. The name and address of the Developer's agent for service of legal process for this Project. The Developer shall not substitute this authorized agent without prior written notice to the City.
3. The Developer's federal Internal Revenue Service Employer Identification Number.
4. Evidence that the Developer and its Development Team members possess all licenses, registrations, and credentials required to perform the scope of work under the PDA.

5. If not previously submitted in a manner acceptable to the City, a copy of the final organizational documents for the Developer and for each Major Participant.
6. Any other reasonable requirements requested by the City following issuance of the Notice of Preferred Proposer(s).

Delivery of the preceding items is a condition precedent to the final award and execution of the PDA.

If a Preferred Proposer fails to cooperate with the City to finalize and execute the PDA in accordance with this Section 8, the City may formally end discussions with the Preferred Proposer and proceed with the options specified in Section 8.3 (Finalization of PDA with Preferred Proposer[s]).

9. Protest Procedures

9.1 Definitions

For purposes of this Section 9, the following terms have the meanings below:

1. "interested party" means a Proposer, member of a Proposer team, or any person or entity who has a direct economic interest that would be affected by a failure to be awarded the PDA.
2. "protest" means a complaint relating to the RFP or the subsequent award of the PDA.
3. "protester" means an interested party who files a protest as set forth in this Section 9.
4. "reviewing authority" means the Director of Public Works.

9.2 Procedures for Protesting

Without prejudice to the protest rights set out in Section 4.2.2 (Unfair Competitive Advantage) and 4.2.3.2 (Government Code Section 1090), an interested party may file a protest in accordance with this Section 9. A Protestor that desires to submit a written protest should send that protest to the Director of Public Works, addressed as follows:

City of San José, Attention: CIP Procurement Manager, Department of Public Works
200 East Santa Clara Street, 5th Floor
San José, CA 95113-1905

Alternatively, protests may be submitted by email to PW_Procurement@sanjoseca.gov.

The written protest must, at a minimum, include:

1. the name and address of the protester;
2. the solicitation number;
3. detailed grounds for the protest and the factual basis of the protest, including specific references to relevant documents and legal authorities;
4. all relevant supporting information.

9.3 Time for Submitting Protest

A protest must be submitted by the Protester no later than five (5) business days after the Notice of Preferred Proposer(s).

The failure to submit a protest within the applicable time period in this Section 9.3 is a bar to submitting a protest.

9.4 Grounds for which No Protest Is Allowed

There is no right to protest based on the following:

1. incomplete (non-responsive) Proposals;
2. late submission of Proposal; or
3. a dispute regarding the RFP requirements and/or specifications that could have been addressed by submitting a question and/or objection in accordance with Section 5.55 (Questions and Responses Regarding this RFP).

9.5 Additional Information

Any additional information or substantiation requested by the reviewing authority shall be submitted within five (5) days after receipt of notification or such other time as the reviewing authority may specify in order to expedite consideration of the protest. Failure of any protester to comply with a request for information or substantiation by the reviewing authority may result in a resolution of the protest without consideration of any response to the request that is not timely filed.

9.6 Director's Decision

The reviewing authority will issue to the protester a written decision on any protest as expeditiously as possible, taking into account the complexity of the protest. The determination of the reviewing authority will be final, unless reconsideration is warranted because information becomes available that was not known at the time of submission of the protest. The reviewing authority may base the decision on the written protest alone or may informally gather evidence from the protester in accordance with Section 9.5 (Additional Information) or from any other person having relevant information.

The City reserves the right to proceed with the solicitation and award of the PDA in the face of protest.

10. City-Reserved Rights and Disclaimers

10.1 The City's Rights

Notwithstanding any other provision of this RFP in connection with the Project and this procurement, the City reserves all rights available to it under Applicable Law (rights that shall be exercisable by the City at its sole discretion)—including without limitation, with or without cause and with or without notice, the right to at any time:

1. Withdraw, suspend, or cancel this RFP, in whole or in part;
2. Issue a new request for proposals for the Project after withdrawal or cancellation of this RFP or procure or perform the goods and services by any other means;
3. Modify the procurement or any aspect of this RFP, including the form of PDA, in each case for whatever reason and issue Addenda, supplements, and modifications to this RFP, including modifications to the dates set or projected in this RFP;
4. Waive or correct any technical error, defect, informality deficiencies, informalities, or omissions in any Proposal or permit corrections, amendments, and supplements to any Proposal, subject to applicable law;
5. Modify the scope of the Project during the RFP process or the responsibilities of the parties under the form of PDA;
6. Accept or reject any or all Proposals;
7. Award a PDA to one or more Proposers;
8. Exercise its discretion in evaluating Proposals according to the evaluation criteria set out in this RFP to determine the best value Proposal(s) and in doing so accept other than the lowest priced Proposal;
9. Reject any Proposal from a Proposer who has previously failed to timely and satisfactorily perform any contract with the City;
10. Solicit a BAFO from all or some Proposers;
11. Suspend any or all aspects of the process indicated in the RFP;
12. Appoint an evaluation committee to review Proposals, make recommendations to the applicable governing bodies, and seek the assistance of outside technical experts and consultants in Proposal evaluations;
13. Require confirmation of information furnished by a Proposer, additional information from a Proposer concerning its Proposal, and additional evidence of qualifications to perform the work described in this RFP;
14. Conduct discussions, interviews, oral presentations, or negotiations with any or all of the Proposers;
15. Establish a list of Proposers within a competitive range for purposes of discussions, interviews, oral presentations, or negotiations;
16. Investigate the qualifications and responsibility of any Proposer or members of its Development Team, including seeking or obtaining data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP or the Proposer;
17. Determine that no project will be pursued, or that no goods or services will be procured;
18. Disqualify any Proposer who changes its Proposal without the City's approval or violates any Applicable Law, rules, or requirements set out in this RFP or in any other communication from the City;
19. Disqualify the Proposal(s) upon evidence of an organizational conflict of interest, false or misleading certifications or representations in its Proposal, collusion with intent to defraud, or other illegal practices on the part of the Proposer(s);
20. Permit clarifications or corrections to data submitted with any response to the RFP;

21. Exclude from further consideration any Proposal that is not responsive to the requirements of the RFP or that does not satisfy any evaluation criteria of any phase of the evaluation process;
22. Exercise its sole discretion to determine matters of responsiveness and issues or irregularities that may be cured, waived, or addressed through assessment of the evaluation criteria in the RFP, subject to Applicable Law;
23. Award the PDA without any interviews, oral presentations, discussions, or negotiations;
24. Disclose to the public any information contained in a Proposal (or otherwise submitted to the City) as permitted by Applicable Law and the RFP; and
25. Exercise any other right reserved or afforded to the City under this RFP.

10.2 Disclaimers

The City makes no representations that a PDA will be awarded. This RFP does not commit the City to enter into a PDA, or to proceed with the procurement described in this RFP.

In no event shall the City be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as a PDA, in form and substance satisfactory to the City, has been authorized and executed by the City, and then only to the extent set out in the PDA.

No person or firm responding to this RFP shall obtain any claim or right of action against the City by reason of any aspect of the RFP and defects or abnormalities in the selection process; the rejection of any RFP response; the acceptance of any RFP response; any statements, representations, or acts of omissions of the City; the exercise of any City discretion set out in or with respect to any of the foregoing; and any and all matters arising out of any or all of the foregoing.

Neither the City nor any of its respective agents, representatives, consultants, directors, officers, or employees will be charged with or held responsible for, personally or otherwise, any liability by a Proposer or another Person or held liable to a Proposer or another Person under any provision of the RFP or any statement made in the RFP, or because of the submission or attempted submission of a Proposal or other response, action, inaction, or determination by the City or for any other reason arising under or relating to the RFP.

By submitting a Proposal in response to the RFP, each Proposer expressly waives any right it may have to bring a claim against the City or any Person based in whole or in part on any such liability.

In submitting a Proposal in response to the RFP, the Proposer is specifically acknowledging and agreeing to the disclaimers, waivers, limitations and requirements set out in Section 9 (Protest Procedures) and this Section 10.