



TRI DELTA TRANSIT

Eastern Contra Costa Transit Authority
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APPENDIX A

Agenda Item 7a Dynamic Personal Micro Transit Project

PowerPoint Presentation (Kaplan Kirsch Rockwell)

Background Information of Public-Private Partnerships (Kaplan Kirsch Rockwell)

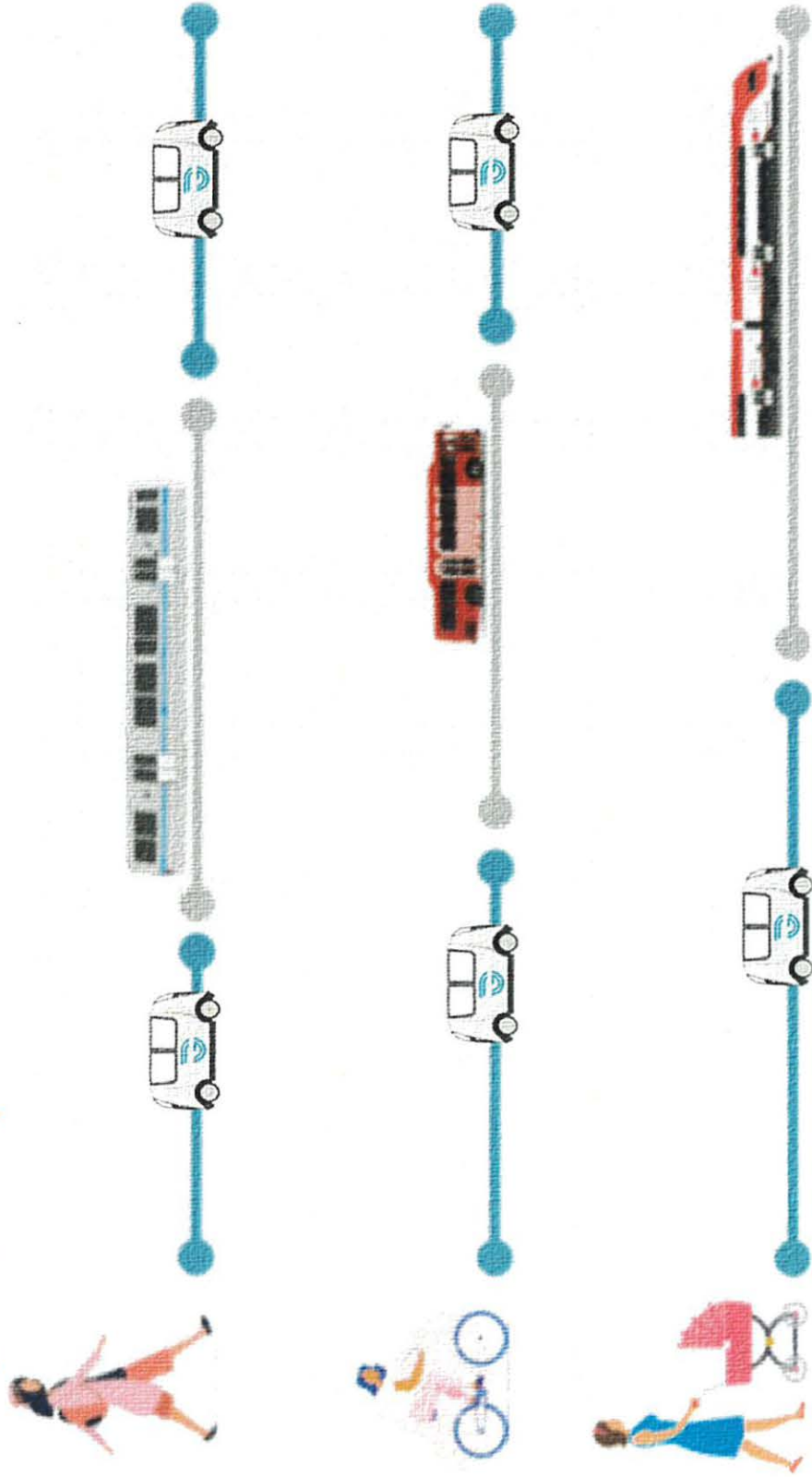
Board of Directors Meeting

Wednesday March 23, 2022

DPMT Feasibility Study

- Dynamic Personal Micro Transit (DPMT) Project Feasibility Study completed in Spring 2021
- Evaluated benefits of DPMT System
- Feasibility to attract Public Funding and Private Financing
- Tri Delta Transit Board adopted Resolution 210324D in support of Study Findings March 24, 2021

A Complete Trip



DPMT Project Parameters

ASSUMED PARAMETERS
FOR THE PROJECT

- Key Project Goals:
 - On-demand
 - Wait times from 2 – 5 minutes
 - No shared vehicles (1-party ride, non-stop travel, point to point service)
- Product Requirements:
 - Fully automated vehicles
 - Plan for GHG neutral operations
 - Made in the USA (Vehicle/Infrastructure)
 - ADA accessible
- Operations:
 - Fully traffic-separated operations
 - Directionally separated tracks
 - Option to operate at grade

Additional Project Priorities

Additional Priorities

- Technological readiness: Proof of Concept
- Passenger convenience
- Scalability
- Safety
- Environmental sustainability (emissions, carbon efficiency, etc.)
- Fare policies to fit within regional integrated fare structures

P3 Spectrum: Project Delivery Structures



Project delivery approaches range from public to P3 options with varying amounts of private sector involvement. In all cases, the public sponsor retains ultimate ownership of the asset(s).

	Design-Bid-Build	CM/GC at Risk	Design-Build	Design-Build-Finance	Design-Build-Finance-Operate-Maintain
Design & Construction	Public	Private	Private	Private	Private
Operations & Maintenance	Public	Public	Public	Public	Private
Financing	Public	Public	Public	Private	Private

→

Increased risk transfer to private sector
Increased cost of capital/financing
Reduced public sponsor control

Legal Authorities of CCTA and Tri Delta Transit

- CCTA/Tri Delta Transit individually have limited DBFOM contracting authority
- Each, together, have project delivery authorizing statutes that may - individually or in combination - provide the flexibility required to proceed.
 - MOU with Tri Delta Transit for O&M
 - Design-Build Authority
 - Infrastructure Finance Act

Anticipated Delivery Model

- Two-step process for selecting DBFOM Developer.
 - (1) System Pre-Development Agreement (“SPDA”) Phase:
 - Additional planning, refine approach, funding plan
 - Preliminary Engineering
 - Environmental Clearance
 - (2) System Development Agreement for design and construction of future phases of the Project(s).

Role of Tri Delta Transit

- Participate in the Industry Outreach and follow up meeting with potential bidders.
- Review and comment on the draft RFP prior to release.
- Participate in selection of the Developer team.
- Participate in project development and negotiations with the selected Developer team during the SPDA Phase.
- Tri Delta Transit will be a counterparty on any agreements with the Developer of the proposed Project(s).

Role of CCTA

- Facilitate Industry Outreach and follow-up meetings with potential bidders as needed.
- Develop and issue the RFP and select a Developer team.
- Oversee the selected Developer team and lead efforts during the SPDA Phase.
- Identify any funding required during the SPDA Phase.
- CCTA will be a counterparty on any agreements with the Developer of the proposed Project(s).

Industry Outreach

- Hosted by CCTA and Tri Delta Transit on February 8, 2022
- Provide background on project to industry:
 - Technology Companies
 - Infrastructure Financing Companies
 - Engineering/Construction Firms
- Seek input on project delivery options
- 30+ attendees
- Several one-on-one meetings completed

Anticipated Schedule

- February 8, 2022 – Industry Day ✓
- February 8-11, 2022 – One-on-One Meetings ✓
- April 2022 – MOU Execution
- April/May 2022 – RFP Release
- July 2022 – Selection of Development Team
- September 2022 – System Pre-Development Agreement Execution
- Early 2025 – System Development Agreement Execution



Questions?



What is a Public-Private Partnership?

There is no single accepted definition of Public-Private Partnership, or P3, and the definition of P3 can encompass a broad range of approaches. A few representative definitions include:

*World Bank PPP Knowledge Lab / Reference Guide:*¹

- “A long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility and [payment] is linked to performance.”

*FHWA Center for Innovative Finance Support:*²

- “P3s for new build facilities can involve construction of a new asset or modernization, upgrade, or expansion of an existing facility. These P3s are structured as design-build-finance-operate-maintain (DBFOM) concessions that bundle together and transfer to a private sector partner responsibilities for design, construction, finance, and long term operations and maintenance over the [term of the agreement].”

*Design-Build Institute of America (DBIA):*³

- “...a P3 is a project delivery model that involves an agreement between a public owner and a private sector partner for the design, construction, financing, and often [but not always] long-term operations and maintenance of one or more infrastructure assets by the private sector partner.”
- “...the public owner transfers to the private sector partner risks that are typically retained by the public owner under a traditional delivery model such as design-bid-build.”
- “P3s also typically use a performance based approach to technical requirements and specifications, thereby creating an opportunity for the public owner to harness the private sector’s expertise and innovation and ensure a contractually specified level of performance of an asset over the term of the P3 agreement.”

More About P3s

- P3s do not...
 - Mean free money.
 - Amount to a one contract model fits all approach.
 - Equal privatization or mean the private sector “charges what it wants.”
- P3s do not eliminate...
 - The need to consider other delivery models.
 - The need for hands-on project oversight.
 - The need to consider NEPA/CEQA.
 - Public controls over important public interest considerations.
- P3s can provide flexibility.

¹ See: <https://pppknowledge.org/guide/sections/3-what-is-a-ppp-defining-public-private-partnership>

² See: <https://www.fhwa.dot.gov/ipd/p3/>

³ See: <https://dbia.org/wp-content/uploads/2018/05/Primer-Public-Private-Partnerships.pdf>

Potential Advantages of a P3 Model

- Increasing opportunities for innovation.
- Introduces lenders and equity providers, increasing project oversight, incentivizing long term performance and disincentivizing delays, costs overruns, poor project delivery etc.
- Increases project size and duration to attract larger, more experience contractors.
- Can optimize overall project costs by limiting redundant mobilization expenses across many projects.
- Saves public sponsor personnel and financial resources by combining several procurements into one.
- Transfers construction completion risk to private developer.
- Transfers specific risks to private sector (site conditions, permits, etc.); certain unquantifiable or unpriceable risks (unknown hazardous materials) typically retained by public sponsor.

Notable Features of a P3 Procurement

- Two step (RFQ-RFP process) common, but not required.
- Early Developer/Contractor involvement (through a negotiated “pre-development” phase) increasingly common.
- Often (not always) exemptions to customary procurement rules and requirements are needed.
- Alternative Technical Concepts (ATCs) provide opportunities for bidders to deviate from base contract technical requirements on a confidential and individual basis, who then receive the benefit of cost-saving innovations.
- Enhance bidder diligence and enhanced pre-bid interactions (confidential one-on-one meetings, comments etc.).
- The P3 agreement is often required to be executed before closing on the financing necessary to perform the work; the in-between period includes post-execution risk-sharing and termination mechanisms in the event financing is not able to be completed.
- Federal rules and guidance recognize many of these distinct P3 procurement requirements.

Four Primary Functions of a P3 Agreement

- Confers authority and a framework for the private sector’s involvement.
- Provides for the delivery of services and relevant standards for delivery. (*For example: passenger convenience & service parameters, safety, scalability, sustainability.*)
- Operates as a risk allocation matrix, i.e. imposing project risk upon the party (in theory) best capable of handling it. This is perhaps the most important concept. (*For example: permitting, ROW acquisition, funding/revenue risks.*)
- Provides the framework for generating a payment or revenue stream (which does NOT necessarily require user or availability payments) that forms the basis for a private counterparty’s decision to participate in and to finance a project. (*For example: fare policies.*)

Legal Authorities of CCTA and Tri Delta Transit

- California has not broadly embraced alternative project delivery methods, for example through a generally applicable P3 statute.
- Neither CCTA nor Tri Delta has broad or inherent DBFOM contracting authority which would cover all kinds of potential P3 models.

- Each, together, have project delivery authorizing statutes that may individually or in combination provide the flexibility required to proceed other than through traditional (e.g. design-bid-build) means, including through a form of P3.

Inherent Authorities

- CCTA's powers derive from the Local Transportation Authority and Improvement Act (the "Local Transportation Act") pursuant to Contra Costa Ordinance 88-01 (as amended by Ordinance 06-02).
- The Local Transportation Act generally prescribes traditional delivery methods absent separate statutory authority to use alternative methods.
- CCTA also lacks requisite authority to operate a transit system as part of DBFOM contract.
- Tri Delta has the power to own, operate, and provide public transportation services, as well as complimentary powers related to financial obligations, project funding, and project delivery.

Additional Sources of Authority

- Public Contract Code § 22160, et seq. (the "Design-Build Law"), sets forth California's general regime for non-state agencies to deliver certain projects using a design-build approach.
- The Design-Build Law crucially prohibits a local agency from including a long-term operations component in contracts, although they may include operations during an [undefined] period of training or transition.

The Infrastructure Finance Act (IFA)

- The Infrastructure Finance Act (AB 2660), codified at Government Code § 5956, et seq. (the "IFA") provides authority for certain types of P3s for "fee-producing infrastructure facilities."
- Both CCTA and Tri Delta are entitled to act under the IFA.
- The IFA authorizes governmental agencies to solicit proposals and enter into agreements with private entities for the "design, construction, or reconstruction", and "lease to," private entities for fee-producing infrastructure projects for terms up to 35-years.
- Notably, authorized forms of project include "municipal improvements," "commuter and light rail," "tunnels," and "structures and buildings."
- Ambiguities and limitations in the IFA have limited the IFA's application to date for P3s in California.
 - The IFA's most significant restriction prohibits use of the IFA to design, construct, finance, or operate a "state project," which includes "state financed projects."
 - However, the IFA also states limitations shall not prohibit any governmental agency from utilizing authorizations contained in other provisions of law." This includes design-build authority.
 - Notably, the IFA authorizes projects which are built or operated in relation to other projects and facilities. "Projects may be proposed and selected individually or as part of a related or larger project", i.e. they need not be entirely stand alone or without relation to other projects or facilities.

DPMT Anticipated Delivery Model – Roles

Under the proposed model, CCTA and Tri Delta Transit would jointly competitively procure a "System Pre-Development Agreement" (SPDA) contract with a development consortium (the "DBFOM Developer Team"). The DBFOM Developer Team would consist of three "Major Participants" – a "System Technology Partner", a "Construction Manager", and a "P3 Developer," each with the general responsibilities listed below.

Although this approach envisions a single coordinated procurement, formally the authority for competitive procurement of and contracting each of these Major Participant roles would rest upon separate CCTA legal authorities. The Major Participant roles would include:

P3 Developer

- Responsible for:
 - Vehicle procurement
 - Non-State-funded work
 - Operations of the Project as it is developed (across phases, if applicable)
- Potentially delivered under the IFA (depending on ultimate funding sources)
- Integrated design, systems, and operations
- Assumption of revenue risk

Construction Manager

- Responsible for management, delivery, integration, oversight, and ongoing maintenance of:
 - State-funded capital work (specifications to be provided by the System Technology Partner and the P3 Developer)
 - Projects contracted by CCTA outside of the P3 Developer scope
- Potentially delivered under design-build or CM/GC authority

System Technology Partner

- Responsible for autonomous technology, program implementation, and integration
- To deliver advanced stage permitting, design, and funding before construction may begin
- “Sits in the middle” between the P3 Developer and Construction Manager
- All projects would be required to adhere to common design and technology standards that apply across all Project phases