

AGENDA

Commuter Rail and Transit Committee Meeting

November 15, 2012

10:30 a.m.

Location

SANBAG Office
Super Chief Conference Room
1170 West 3rd St., 2nd Fl.
San Bernardino, CA

Commuter Rail and Transit Committee Membership

Chair

Mayor Patrick Morris
City of San Bernardino

Mayor Larry McCallon
City of Highland

Vice Chair

Mayor Paul Eaton
City of Montclair

Mayor L. Dennis Michael
City of Rancho Cucamonga

Mayor Peter Aguilar
City of Redlands

Mayor Ray Musser
City of Upland

Mayor Bill Jahn
City of Big Bear Lake

Mayor Richard Riddell
City of Yucaipa

Council Member Mike Leonard
City of Hesperia

Council Member Alan Wapner
City of Ontario

Supervisor Neil Derry
County of San Bernardino

San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.

In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:

***The San Bernardino County Transportation Commission**, which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.*

***The San Bernardino County Transportation Authority**, which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.*

***The Service Authority for Freeway Emergencies**, which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.*

***The Congestion Management Agency**, which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.*

*As a **Subregional Planning Agency**, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.*

Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.

**San Bernardino Associated Governments
County Transportation Commission
County Transportation Authority
Service Authority for Freeway Emergencies
County Congestion Management Agency**

AGENDA

Commuter Rail and Transit Committee Meeting

**November 15, 2012
10:30 a.m.**

Location:

SANBAG Office
1170 West 3rd St., 2nd Fl., San Bernardino
The Super Chief Conference Room

CALL TO ORDER – 10:30 a.m.
(Meeting Chaired by Mayor Patrick Morris)

- I. Pledge of Allegiance
- II. Attendance
- III. Announcements
- IV. Agenda Notices/Modifications – Denise Kadlec

1. Possible Conflict of Interest Issues for the Commuter Rail and Transit Committee Meeting of November 15, 2012 Pg. 8

Note agenda item contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Committee Member abstentions shall be stated under this item for recordation on the appropriate item.

Consent Calendar

Consent Calendar items shall be adopted by a single vote unless removed by member request.

2. Attendance Register Pg. 9

A quorum shall consist of a majority of the membership of each SANBAG Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.

Notes/Actions

Discussion Items

3. 2013 Commuter Rail and Transit Committee Meeting Schedule Pg. 11

1. Approve the 2013 Commuter Rail and Transit Committee meeting schedule; and
2. Approve a new proposed time of 10:00 a.m.

Mitch Alderman

4. Amendment No. 2 to Contract No. C11126 with Nossaman, LLP for E Street sbX right-of-way legal services. Pg. 25

That the Committee recommend the Board:

1. Approve Amendment No. 2 to Contract No. C11126 with Nossaman, LLP in the amount of \$1,000,000 increasing the total not-to-exceed amount to \$4,150,000.
2. Approve budget amendment to Task No. 311 increasing the task by \$1,000,000 with funding to be provided by reimbursement from Omnitrans per Contract No. C10263.

Mitch Alderman

5. Approve Agreement No. 12-25-107-00 between SANBAG, OCTA, RCTC, VCTC and SCRRA. Pg. 31

That the Committee recommend the Board ratify the actions of staff taken in Fiscal Year 2010/2011 in approving the transfer of credit for federal grant funds held by Metrolink among fiscal years and member agencies to avoid the loss of federal grant funds needed for the Metrolink Rehabilitation project approve Agreement No. 12-25 107-00 between San Bernardino Associated Governments, Orange County Transportation Authority, Riverside County Transportation Commission, Ventura County Transportation Commission, and Southern California Regional Rail Authority for the approval of Southern California Regional Rail Authority Federal Transit Administration Section 5309 funds and grant application.

Mitch Alderman

6. Reimburse the Orange County Transportation Commission for purchase of excess Southern California Regional Rail Authority (Metrolink) rolling stock, Rotem passenger cars. Pg. 42

That the Committee recommend the Board give direction to staff for a \$6.04 million reimbursement to the Orange County Transportation Authority (OCTA) for excess Rotem cars purchased by OCTA. **Mitch Alderman**

7. Property Appraisal, Agreement for Possession and Use, and Acquisition of property necessary for the Downtown San Bernardino Passenger Rail Project and San Bernardino Transit Center Pg. 68

That the Committee recommend the Board acting in its capacity as the San Bernardino County Transportation Commission:

1. Approve appraisals for the following properties required for the construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP) and San Bernardino Transit Center (SBTC): 0138-231-02, -04, -05, -09 & -10, ROBERT & JUDITH ANN HARRAKA, FAM TRUST; 0138-273-01, -02 -03, -04 & -36, BRUCE W. HEFFTNER; 0138-273-09, -10, -11, -12, -13, -16 & -33, BIG Z AUTOWORKS, INC; 0138-273-24 and -25, JAMES E. OTT & BARBARA J. OTT, TRUSTEES OF THE JAMES E. OTT & BARBARA J. OTT 2010 REVOCABLE TRUST DATED JULY 9, 2010; 0138-273-26 & -27, KRISTIN NEVILLE, TRUSTEE TRUST NO. 982-2Z U/A/D 9/4/95; 0138-273-20, -21 & -40, RIVERSIDE CEMENT COMPANY; 0138-312-15, JAMES McHENRY & KATHRYN McHENRY; 0138-312-53, HOAK BROS. PLATING; 0138-312-14, TIGER YANG & SALLY YANG; 0138-312-55, ASHADI INVESTMENT, LLC; 0138-312-16 & -57, TUE LE, & NIKIE NGUYEN; 0138-312-39, DAVID SAMPANIS & STEPHEN ABBEY; 0138-312-51, MI CASA PROPERTY, LLC.; 0138-312-37 JAMES W. SEIFERT; 0134-331-23 & -24, KLR PROPERTY, LLC.; 0137-043-10, -11 & -26, VARP, INC.; 0136-011-04, ARTHUR R. READ; 0136-011-03 & -38, and 0136-081-08, -09, -10, -11 & -12, JENNIFER DE GORTER REVOCABLE TRUST DATED 6-6-01; 0136-011-31 & -41, 0136-091-11 & -12, JONG UK BYUN & BOK SOON BYUN; 0136-011-22, -26, -27 & -28, FLETCHER TRUST; 0136-021-16, -17 & -18, GEORGE V. MANTZOROS & GLORIA MANTZOROS; 0136-021-28, AFFAITATI, LLC; 0136-101-14, -15 & -21, SOUTHERN CALIFORNIA GAS COMPANY; 0136-111-01, RAMON GONZALEZ AND IRMA GONZALEZ, TRUSTEES UTD NOVEMBER 4, 2002; 0138-271-15, -16 & -17, ANTONIO MARTINEZ; 0138-271-18, ANCIRIA VASQUEZ; 0138-271-19, MELVON INVESTMENTS, LLC.; 0138-271-20, SYLVIA MICELI; 0138-271-21, EDWARD L. HOLLY; 0138-271-01, -02 & -03. LEONARDO & ELIZABETH HERNANDEZ; 0136-171-42, ARROWHEAD CENTRAL CREDIT UNION (collectively the "Properties"); and

Agenda Item 7 Continued....

2. Authorize acquisition of the Properties, or partial interests in such Properties, at an estimated not to exceed aggregate total of \$5,486,377, which the amount will be updated and finalized prior to the December 5, 2012, Board meeting; and
3. Authorize the Executive Director or his designee, to act on behalf of the San Bernardino County Transportation Commission, in signing the Purchase and Sale Agreements and such other documents necessary for the acquisition of the Properties, generally consistent with the procedure set out in SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy No. 34507).
4. Allocate \$6,587,000 of undesignated unreserved State Transit Assistance Fund County Pop (PUC99313) to fund right-of-way activities for the Downtown San Bernardino Passenger Rail Project.
5. Approve Fiscal Year 2012/2013 budget amendment to increase Task 0379 Commuter Rail Capital by \$6,587,000 of State Transit Assistance Fund County Pop (PUC99313) and increase Task 0311 Transit Capital by \$2,000,000 funded by the San Bernardino Transit Center fund for reimbursement by Omnitrans. **Mitch Alderman**

8. Amendment to By-Laws of Valley Transportation Services, Inc. (VTrans) Pg. 72

That the Committee recommend the Board approve an Amendment to the By Laws of Valley Transportation Services, Inc. as included in Attachment A to this agenda item.

Monica Morales

9. License agreement for use of San Bernardino Associated Governments (SANBAG) right-of-way and right-of-entry Permit on SANBAG right-of-way Pg. 80

That the Committee recommend the Board acting as the San Bernardino County Transportation Commission:

1. Approve License Agreement No. R13073 with William J. Patterson for the interim use of a portion of Right of Way for the parking of vehicles for employees of adjacent business and the installation, operation, maintenance and repair of a private road crossing, business sign and a fire water pipeline along the north portion of crossing San Bernardino Associated Governments' Redlands Subdivision right-of-way northerly of W. Redlands Boulevard and adjacent to Tennessee Street in the City of Redlands and;
2. Approve License Agreement No. R13072 with Verizon Communication, Inc. for the installation, operation, maintenance and repair of one (1) overhead fiber optic cable containing up to seventy two (72) fibers crossing San Bernardino Associated Governments' San Gabriel Subdivision at the point where Meridian Avenue would cross the rail right-of-way in the City of San Bernardino; and
3. Waive San Bernardino Associated Governments Contract and Procurement Policy 11000 V.F., for Contract Nos. R13072 and R13073 which limits the maximum standard contract term to five-years; and
4. Authorize the Executive Director or his designee to execute the License Agreements in Recommendations 1 and 2, and any other necessary and proper documents to implement the License agreements' terms, that are approved as to form by General Counsel. **Casey Daley**

Comments from Committee Members

Public Comment

ADJOURNMENT

Additional Information

Acronym List

Pg. 125

Complete packages of the SANBAG agenda are available for public review at the SANBAG offices and our website: www.sanbag.ca.gov. Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

Meeting Procedures and Rules of Conduct

Meeting Procedures

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility

The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Agendas – All agendas are posted at 1170 W. 3rd Street, 2nd Floor, San Bernardino at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed at the SANBAG offices located at 1170 W. 3rd Street, 2nd Floor, San Bernardino and our website: www.sanbag.ca.gov.

Agenda Actions – Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

Closed Session Agenda Items – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

Agenda Times – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

Public Comment – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. "Public Testimony on any Item" still apply.*

Disruptive Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*

**SANBAG General Practices for Conducting Meetings
of
Board of Directors and Policy Committees**

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.

The Vote as specified in the SANBAG Bylaws.

- Each member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he would like to amend his motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is not addressed until after a vote on the first motion.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Board/Committee Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

Adopted By SANBAG Board of Directors January 2008



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 1

Date: November 15, 2012

Subject: Information Relative to Possible Conflict of Interest

Recommendation*: Note agenda items and contractors/subcontractors which may require member abstentions due to possible conflicts of interest.

Background: In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual. This agenda contains recommendations for action relative to the following contractors:

| Item No. | Contract No. | Contractor/Agents | Subcontractors |
|----------|--------------|--|----------------|
| 4 | C11126 | Nossaman, LLP <i>Rick Rayl, Partner</i> | None |

Financial Impact: This item has no direct impact on the budget.

Reviewed By: This item is prepared monthly for review by the Board of Directors and Policy Committee members.

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

| | | | | |
|-----|-----|-----|------|-----|
| COG | CTC | CTA | SAFE | CMA |
|-----|-----|-----|------|-----|

Check all that apply.

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD - 2011

| Name | Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|-----|-----|-------|-------|-----|------|------|-----|------|-----|-----|-----|
| Patrick Morris City of San Bernardino | X | C | X | X | X | X | X | X | X | C | X | X |
| Paul Eaton City of Montclair | X | A | | X | X | X | X | X | X | A | X | X |
| Neil Derry County of San Bernardino (Self Suspension 5/3/2011) | X | N | | | | | | | | N | | |
| Peter Aguilar City of Redlands | X | | | | | | | X | X | C | | X |
| Bill Jahn City of Big Bear Lake | X | C | X | X | X | X | X | X | X | E | | X |
| Mike Leonard City of Hesperia | | E | X | X | | X | | | | L | X | X |
| Larry McCallon City of Highland | | L | X | X | X | X | | | X | L | X | X |
| L. Dennis Michael City of Rancho Cucamonga | | | | | | | | X | | E | | |
| Ray Musser City of Upland | | | | | | | X | X | X | D | X | X |
| Richard Riddell City of Yucaipa | X | E | X | | X | X | X | X | X | | X | X |
| Alan Wapner City of Ontario | | D | X | | X | X | | X | X | | | X |

X = Member attended meeting. Empty box = Member did not attend meeting. Crossed out box = Not a member at the time.

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD – 2012

| Name | Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|-----|-----|-------|-------|-----|------|------|-----|------|-----|-----|-----|
| Patrick Morris City of San Bernardino | | X | X | X | X | X | X | X | | X | | |
| Paul Eaton City of Montclair | | X | | X | X | X | X | X | | X | | |
| Neil Derry County of San Bernardino (Self Suspension 5/3/2011) | | | X | X | | X | | X | | | | |
| Peter Aguilar City of Redlands | | X | | | X | X | X | X | | X | | |
| Bill Jahn City of Big Bear Lake | | | | | X | X | | X | | X | | |
| Mike Leonard City of Hesperia | | | X | X | | X | X | X | | | | |
| Larry McCallon City of Highland | | X | X | X | X | X | | X | | | | |
| L. Dennis Michael City of Rancho Cucamonga | | X | X | X | X | X | | X | | | | |
| Ray Musser City of Upland | | X | X | X | X | X | X | X | | X | | |
| Richard Riddell City of Yucaipa | | X | X | | X | X | X | X | | X | | |
| Alan Wapner City of Ontario | | | X | X | X | X | | | | X | | |

X = Member attended meeting. Empty box = Member did not attend meeting. Crossed out box = Not a member at the time.



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 3

Date: November 15, 2012

Subject: 2013 Commuter Rail and Transit Committee Meeting Schedule

- Recommendation:***
1. Approve the 2013 Commuter Rail and Transit Committee meeting schedule; and
 2. Approve a new proposed time of 10:00 a.m.

Background: The San Bernardino Associated Governments (SANBAG) Commuter Rail and Transit Committee have established a regular meeting schedule on the third Thursday of each month, beginning at 12:00 p.m., at the SANBAG offices. This item proposes a monthly meeting schedule adoption as well as a new proposed time of 10:00 a.m. for the calendar year 2013. Although a monthly schedule is adopted, it is acknowledged that when there are not sufficient business items to require a meeting, the meeting will be cancelled. It has also been the practice to modify the meeting date and time when the meeting has been rescheduled due to conflicts with other meetings or holiday schedules. SANBAG staff, however, has been directed to make every effort to minimize deviation from the regular schedule to insure continuity of meetings and participation.

A proposed 2013 meeting schedule is identified below for approval. Committee members and staff are urged to calendar these meetings for the coming year. Advance confirmation of meetings or cancellation notices are part

*

Approved
 Commuter Rail and Transit Committee

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

| | | | | | | | | | |
|-----|---|-----|---|-----|---|------|--|-----|---|
| COG | X | CTC | X | CTA | X | SAFE | | CMA | X |
|-----|---|-----|---|-----|---|------|--|-----|---|

Check all that apply.

CRTC1211b-maa

Attachment:

<http://portal.sanbag.ca.gov/mgmt/workgroups/admin/Shared%20Documents/2013%20SANBAG%20Master%20Calendar.docx>

of SANBAG's standard procedure for meeting preparation. The proposed meeting schedule conforms to the third Thursday of each month at 10:00 a.m.; however conflicts include:

- January 17, 2013 – League of California Cities - New Mayors and Council Members
- March 21, 2013 – City/County Conference
- September 19, 2013 – League Annual Conference
- November 21, 2013 – CSAC Annual Meeting
- December 19, 2013 – Due to Holidays

Proposed 2013 Commuter Rail and Transit Committee Meeting Schedule

January 24, 2013
February 21, 2013
March 14, 2013
April 18, 2013
May 16, 2013
June 20, 2013
July 18, 2013 (DARK)
August 15, 2013
September 12, 2013
October 17, 2013
November 14, 2013
December 12, 2013

Financial Impact: This item is consistent with the approved Fiscal Year 2012/2013 SANBAG Budget.

Reviewed By: This item is not scheduled for review by any other policy or technical advisory committee.

Responsible Staff: Mitch Alderman, Director of Transit and Rail Programs

SANBAG Master Calendar 2013

| ~ January 2013 ~ | | | | | | |
|------------------|---|---------------------------------------|---|--|---|-----------|
| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
| | | 1 New Year's Day HOLIDAY | 2 Board (Regular Date) | 3 SCAG Regional Council | 4 | 5 |
| 6 | 7 Orthodox Christmas Christian HOLIDAY | 8 | 9 Board (Proposed Date) | 10 | 11 SCRRRA Board | 12 |
| 13 | 14 | 15 | 16 General Policy League New Mayors & Council Members | 17 Metro Valley Study Session League New Mayors & Council Members | 18 League New Mayors & Council Members | 19 |
| 20 | 21 Martin Luther King Day HOLIDAY | 22 | 23 | 24 Commuter Rail/Transit Mohammad's Birthday Islamic HOLIDAY | 25 Mt/Desert Committee | 26 |
| 27 | 28 | 29 | 30 | 31 | Notes: | |

~ February 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|----------------------------------|-----|--------------------------------|----------------------------------|---------------------------|-----|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 Board. | 7 SCAG Regional Council | 8 SCRRA Board | 9 |
| 10 | 11 | 12 | 13 General Policy Committee | 14 Metro Valley Study Session | 15 Mt/Desert Committee | 16 |
| 17 | 18 President's Day HOLIDAY | 19 | 20 | 21 Commuter Rail/Transit | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | Notes: | |

~ March 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|-----------------------------|---|--------------------------------------|---|--|-----------------------------|
| | | | | | 1 | 2 NACO Legislative Conf. |
| 3 NACO Legislative Conf. | 4 NACO Legislative Conf. | 5 NACO Legislative Conf. | 6 Board NACO Legislative Conf. | 7 SCAG Regional Council | 8 SCRRA Board | 9 |
| 10 | 11 | 12 | 13 General Policy Committee | 14 Metro Valley Study Session Commuter Rail/Transit | 15 MT/Desert Committee | 16 |
| 17 | 18 | 19 | 20 | 21 City/County Conference Now Ruz Baha'i HOLIDAY | 22 City/County Conference | 23 |
| 24 | 25 | 26 Passover Jewish HOLIDAY (Starts Mar.26-Apr.2) | 27 | 28 | 29 Good Friday Christian HOLIDAY | 30 |
| 31 Cesar Chavez Easter Sunday | Notes: | | | | | |

~ April 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|--|--|--|---|---|----------------------------------|-----------|
| | 1 Cesar Chavez (Observed) | 2 Passover Jewish HOLIDAY (Ends) | 3 Board (COG Workshop tentative) | 4 SCAG Regional Council | 5 | 6 |
| 7 | 8 | 9 | 10 General Policy Committee | 11 Metro Valley Study Session | 12 SCRRRA Board | 13 |
| 14 | 15 | 16 | 17 | 18 Commuter Rail/Transit Committee | 19 Mt/Desert Committee | 20 |
| 21 First Day of Ridvan Baha'i HOLIDAY | 22 | 23 | 24 League Legislative Action Day | 25 | 26 | 27 |
| 28 | 29 Ninth Day of Ridvan Baha'i HOLIDAY | 30 | Notes: | | | |

~ May 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---------------------------|--------------------------------------|-----------|--|--|----------------------------------|---------------|
| | | | 1 Board (New Members Workshop) | 2 SCAG Regional Council Twelfth Day of Ridvan Baha'i HOLIDAY | 3 | 4 |
| 5 | 6 | 7 | 8 General Policy Committee | 9 Metro Valley Study Session | 10 SCRRA Board | 11 |
| 12 Mother's Day | 13 | 14 | 15 Shavuot Jewish HOLIDAY | 16 Commuter Rail/Transit Committee | 17 Mt/Desert Committee | 18 |
| 19 | 20 | 21 | 22 | 23 Declaration of the Bab Baha'i HOLIDAY | 24 | 25 |
| 26 | 27 Memorial Day HOLIDAY | 28 | 29 Ascension of Bahauallah Baha'i HOLIDAY CSAC Legislative Conf. | 30 CSAC Legislative Conf. | 31 | Notes: |

~ June 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|--------------------|--------|-----|--------------------------------|---|---------------------------|-----|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 Board | 6 SCAG Regional Council | 7 SCRRA Board | 8 |
| 9 | 10 | 11 | 12 General Policy Committee | 13 Metro Valley Study Session SANBAG General Assembly | 14 | 15 |
| 16 Father's Day | 17 | 18 | 19 | 20 Commuter Rail/Transit Committee | 21 Mt/Desert Committee | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | Notes: | | | | | |

~ July 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-------------------------------|-------------------------------|--|--|--|---|-------------------------------|
| | 1 | 2 | 3 Board | 4 Independence Day HOLIDAY SCAG Regional Council (Regular Day) | 5 | 6 |
| 7 | 8 | 9 Martyrdom of the Bab Baha'i HOLIDAY Beginning of Ramadan Islamic HOLIDAY | 10 General Policy Committee (DARK) | 11 Metro Valley Study Session (DARK) | 12 SCRRA Board | 13 |
| 14 | 15 | 16 | 17 | 18 Commuter Rail/Transit Committee (DARK) | 19 M/Desert Committee (DARK) NACO Annual Meeting | 20 NACO Annual Meeting |
| 21 NACO Annual Meeting | 22 NACO Annual Meeting | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | Notes: | | |

~ August 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----------|-----------|-----------|---------------------------------------|--|----------------------------------|--|
| | | | | 1 SCAG Regional Council | 2 | 3 Lailatul Qadr Islamic HOLIDAY |
| 4 | 5 | 6 | 7 Board (DARK) | 8 End of Ramadan Islamic HOLIDAY | 9 SCRRRA Board | 10 |
| 11 | 12 | 13 | 14 General Policy Committee | 15 Metro Valley Study Session Commuter Rail/Transit Committee | 16 Mt/Desert Committee | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

~ September 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|---------------------------|---------------|------------------------------------|---|--|------------------------------------|
| 1 | 2 Labor Day HOLIDAY | 3 | 4 Board | 5 SCAG Regional Council Rosh Hashanah Jewish HOLIDAY | 6 | 7 |
| 8 | 9 | 10 | 11 General Policy Committee | 12 Metro Valley Study Session Commuter Rail/Transit Committee | 13 Mt/Desert Committee SCRRA Board | 14 Yom Kippur Jewish HOLIDAY |
| 15 | 16 | 17 | 18 League Annual Conference | 19 Sukkot (Sept. 19-25) Jewish HOLIDAY League Annual Conference | 20 League Annual Conference | 21 |
| 22 | 23 | 24 | 25 | 26 Shmini Atzeret/Simchat Torah Jewish HOLIDAY | 27 | 28 |
| 29 | 30 | Notes: | | | | |

~ October 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|--|-------------------------------|--------------------------------------|-------------------------------|--|---------------------------|-----|
| | | 1 | 2 Board | 3 SCAG Regional Council | 4 | 5 |
| 6 | 7 | 8 | 9 General Policy Committee | 10 Metro Valley Study Session | 11 SCRRRA Board | 12 |
| 13 | 14 Columbus Day HOLIDAY | 15 Eid al-Adha Islamic HOLIDAY | 16 | 17 Commuter Rail/Transit Committee | 18 Mt/Desert Committee | 19 |
| 20 Birth of the Bab Baha'i HOLIDAY | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 Halloween | Notes: | |

~ November 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|-------------------------------|---|--------------------------------|---|---|-----|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 Board | 7 SCAG Regional Council | 8 SCRRA Board | 9 |
| 10 | 11 Veterans Day HOLIDAY | 12 Birth of Bahauallah Baha'i HOLIDAY | 13 General Policy Committee | 14 Metro Valley Study Session Commuter Rail/Transit | 15 Mt/Desert Committee | 16 |
| 17 | 18 | 19 CSAC Annual Meeting | 20 CSAC Annual Meeting | 21 CSAC Annual Meeting | 22 CSAC Annual Meeting | 23 |
| 24 | 25 | 26 Day of the Covenant Baha'i HOLIDAY | 27 | 28 Thanksgiving Day HOLIDAY Ascension of 'Abdu'l-Baha Baha'i HOLIDAY Hanukkah (Nov.28-Dec.5) Jewish HOLIDAY | 29 Thanksgiving Day After HOLIDAY | 30 |

~ December 2013 ~

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|-----|---------------------------------|--------------------------------|---|---|-----|
| 1 | 2 | 3 | 4 Board | 5 SCAG Regional Council | 6 | 7 |
| 8 | 9 | 10 | 11 General Policy Committee | 12 Metro Valley Study Session Commuter Rail/Transit Committee | 13 Mt/Desert Committee SCRRRA Board | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 Christmas Eve HOLIDAY | 25 Christmas Day HOLIDAY | 26 Kwanzaa (Dec.26-Jan. 1) Interfaith/African-American HOLIDAY | 27 | 28 |
| 29 | 30 | 31 New Year's Eve HOLIDAY | Notes: | | | |



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 4

Date: November 15, 2012

Subject: Amendment No. 2 to Contract No. C11126 with Nossaman, LLP for E Street sbX right-of-way legal services.

Recommendation:* That the Committee recommend the Board:

1. Approve Amendment No. 2 to Contract No. C11126 with Nossaman, LLP in the amount of \$1,000,000 increasing the total not-to-exceed amount to \$4,150,000.
2. Approve budget amendment to Task No. 311 increasing the task by \$1,000,000 with funding to be provided by reimbursement from Omnitrans per Contract No. C10263.

Background: On July 7, 2010, San Bernardino Associated Governments (SANBAG) and Omnitrans entered into Contract No. C10263, whereby SANBAG is to acquire right-of-way for the E Street sbX Bus Rapid Transit (BRT) project (Project), on behalf of Omnitrans. The Project is a 15.7 mile fixed route line with sixteen (16) stations and four (4) park-and-ride lots.

As part of the Project, SANBAG was required to obtain a total of one hundred fifty-one (151) parcels that included permanent acquisitions, temporary construction easements, and licenses from property owners.

*

Approved
 Commuter Rail and Transit Committee

Date:

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

| | | | | | | |
|-----|-----|---|-----|---|------|-----|
| COG | CTC | X | CTA | X | SAFE | CMA |
|-----|-----|---|-----|---|------|-----|

CRTC1211a-maa

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11126-2.docx>

To help fulfill the obligations under the contract with Omnitrans, SANBAG entered into Contract No. C11126 with Nossaman, LLP to provide the legal services necessary to acquire the right-of-way for the Project on January 5, 2011. The original contract value was for a not-to-exceed amount of \$2,500,000.

The original contract was amended on May 2, 2012, with Amendment No.1 that provided an extra \$650,000 for anticipated legal services needed to complete the right-of-way acquisitions. However, the anticipated costs under legal service contracts are more difficult to accurately estimate, versus design or construction contracts, due to the number of variables encountered in legal representation. Since right-of-way acquisition involves negotiations between two or more parties, and often times with opposing counsel, and the unique features of each parcel acquired, the estimated legal costs can vary significantly.

The sbX right-of-way phase is moving closer toward completion. It is estimated by Nossaman that the acquisitions will be completed by June 2015. However, over the past several months a series of unanticipated legal needs for the Project emerged necessitating an additional budget and contract amendment.

Based on discussions with Nossaman, the need for the budget increase is a result of:

- Outstanding legal matters for parcels in active eminent domain litigation as well as outstanding claims and complaints that have been filed or may arise for loss of business good will.
- Construction implementation of right-of-way settlement agreements.
- Legal issues arising during the construction phase related to project design.
- Revisions by Omnitrans to original plats, legal descriptions and design.

All of Nossaman's costs to date have been reimbursed to SANBAG by Omnitrans under Contract No. C10263. Amendment No. 1 to C10263 with Omnitrans requires that SANBAG obtain concurrence from the Omnitrans Executive Director prior to approving any additional amendments to contracts with SANBAG's Project vendors. Omnitrans has been advised of the need to amend Nossaman's contract for the sbX and Omnitrans Executive Director concurs with this amendment. Approval of this contract Amendment No. 2 would continue to be funded under that same reimbursement agreement.

Financial Impact: Approval of this item would result in a budget amendment to Fiscal Year 2012/2013, Task No. 0311, funded by a local projects fund, Omnitrans Reimbursement.

Commuter Rail & Transit Committee Agenda Item

November 15, 2012

Page 3

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the contract amendment.

Responsible Staff: Mitch Alderman, Director of Transit and Rail Programs



CONTRACT SUMMARY SHEET

Contract No. C C11126 Amendment No. 2

By and Between

San Bernardino Associated Governments and Nossaman, LLP

Contract Description Legal Services for the E Street sbX Project

Board of Director's Meeting Date: December 5, 2012

Overview of BOD Action: 1. Approve Amendment No. 2 to Contract No. C11126 with Nossaman, LLP in the amount of \$1,000,000 increasing the total not-to-exceed amount to \$4,150,000; 2. Approve budget amendment to Task No. 379 increasing the task by \$1,000,000 with funding to be provided by reimbursement from Omnitrans per Contract No. C10263

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW

| | | | | | |
|---|-----------|------------------|--|-----------|---------------------|
| Original Contract Amount | \$ | 2,500,000 | Original Contingency Amount | \$ | |
| Revised Contract Amount <i>Inclusive of prior amendments</i> | \$ | 650,000 | Revised Contingency Amount <i>Inclusive of prior amendments</i> | \$ | |
| Current Amendment Amount | \$ | 1,000,000 | Contingency Amendment | \$ | |
| TOTAL CONTRACT VALUE | \$ | 4,150,000 | TOTAL CONTINGENCY VALUE | \$ | |
| TOTAL BUDGET AUTHORITY (contract value + contingency) | | | | | \$ 4,150,000 |

| | | |
|---|---|----------------------------------|
| Contract Start Date 1/5/11 | Current Contract Expiration Date 6/30/15 | Revised Contract Expiration Date |
| Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain. | | |

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. _____.

A Budget Amendment is required. How are we funding current FY? A Budget amendment of \$1,000,000 is required for task 0311 funded by Omnitrans C10263

Federal Funds
 State Funds
 Local Funds
 TDA Funds
 Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract:
 Omnitrans Reimbursement C10263

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

- Retention? If yes, indicate % _____.
- Disadvantaged Business Enterprise (DBE) Goal _____ %

| | | |
|--|-----------------------------|---------|
| Monica Morales | <i>Monica Morales</i> | 11-8-12 |
| Project Manager (Print Name) | Signature Monica Morales | Date |
| <i>Mitch A. Alderman</i> | <i>[Signature]</i> | Date |
| Task Manager (Print Name) | Signature Mitch A. Alderman | Date |
| <i>AZ</i> | <i>[Signature]</i> | Date |
| Dir. of Fund Admin. & Programming (Print Name) | Signature Andrea Zurick | Date |
| <i>Jeffery Hill</i> | <i>[Signature]</i> | 11/8/12 |
| Contract Administrator (Print Name) | Signature Jeffery Hill | Date |
| <i>W. STAWARSKI</i> | <i>[Signature]</i> | 11/8/12 |
| Chief Financial Officer (Print Name) | Signature Bill Stawarski | Date |

AMENDMENT NO. 2 TO

CONTRACT NO. C11126

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

NOSSAMAN, LLP

This AMENDMENT No. 2 to CONTRACT No. C11126 is effective as defined herein by and between San Bernardino Associated Governments/San Bernardino County Transportation Authority (“AUTHORITY”) and Nossaman, LLP. (“CONSULTANT”).

RECITALS:

WHEREAS, AUTHORITY and CONSULTANT entered into Contract No. C11126 (“Contract”), dated January 5, 2011, whereby AUTHORITY has engaged the services of CONSULTANT to provide Legal Services for the E Street sbX (“Project”); and

WHEREAS, the parties desire to amend the aforesaid Contract to amend the budget to provide for additional levels of legal services than were provided for in the original budget, and;

WHEREAS, the parties agree that the additional work will increase the Not-To-Exceed amount by \$1,000,000 Dollars.

NOW THEREFORE, the parties do mutually agree to amend Contract No. C11126 in the following particulars only:

1. Amend **Article 3, “Performance of Service and Hourly Rates,” subsection 7,** to revise the total Not-To-Exceed amount to be \$4,150,000.
2. All other terms and conditions of the Agreement shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 and it is effective on the date executed by **AUTHORITY**.

NOSSAMAN, LLP

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Name Rick Rayl, Esq
Title Partner

By: _____
Janice Rutherford
President, Board of Directors

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 5

Date: November 15, 2012

Subject: Approve Agreement No. 12-25-107-00 between SANBAG, OCTA, RCTC, VCTC and SCRRRA.

Recommendation:* That the Committee recommend the Board ratify the actions of staff taken in Fiscal Year 2010/2011 in approving the transfer of credit for federal grant funds held by Metrolink among fiscal years and member agencies to avoid the loss of federal grant funds needed for the Metrolink Rehabilitation project approve Agreement No. 12-25 107-00 between San Bernardino Associated Governments, Orange County Transportation Authority, Riverside County Transportation Commission, Ventura County Transportation Commission, and Southern California Regional Rail Authority for the approval of Southern California Regional Rail Authority Federal Transit Administration Section 5309 funds and grant application.

Background: In Fiscal Year 2010/2011 grant CA-05-0235 was submitted to the Federal Transit Administration (FTA) for Metrolink’s Rehabilitation project. This grant includes \$3,200,000 from San Bernardino Associated Governments (SANBAG) as their contribution to the Metrolink Rehabilitation project. However, Riverside County Transportation Commission (RCTC) had federal funds that were in danger of lapsing. In order to prevent this, RCTC offered to use their federal dollars to pay for SANBAG’s share to the Metrolink Rehabilitation project, and in exchange they would use SANBAG’s funds in grant CA-05-0235 at a later time.

*

| | |
|--|--|
| | <p><i>Approved</i> <i>Commuter Rail and Transit Committee</i></p> <p><i>Date:</i> _____</p> <p><i>Moved:</i> <i>Second:</i></p> <p><i>In Favor:</i> <i>Opposed:</i> <i>Abstained:</i></p> <p><i>Witnessed:</i> _____</p> |
|--|--|

| | | | | | | | | |
|-----|--|-----|---|-----|---|------|-----|--|
| COG | | CTC | X | CTA | X | SAFE | CMA | |
|-----|--|-----|---|-----|---|------|-----|--|

Such transfers are within federal law and are not unusual in managing federal grant funds. The transfer avoided the loss of \$5.2 Million to the regional transportation system. Staff agreed to participate in the transfers believing it to be in the best interests of the regional commitment to Metrolink service and that it presented no risk of any loss of funds to SANBAG.

This agreement is for SANBAG to reimburse RCTC \$3,200,000 from grant CA-05-0235 and in turn RCTC will move these funds to a new grant application. In addition, RCTC will be applying these funds to cover RCTC's share of the Rotem Reimbursement to Orange County Transportation Authority (OCTA). Instead of creating multiple contracts, RCTC has elected to combine all its transactions from other transportation commissions. All other agencies involved have approved and executed the agreement, and SANBAG has already received the full benefits of applying RCTC grant funds to SANBAG's financial obligations. This action would complete SANBAG's obligation to reimburse the funds that SANBAG already received as part of the arrangement.

Staff is recommending that the Committee recommend the Board approve Agreement No. 12-25 107-00 between San Bernardino Associated Governments, Orange County Transportation Authority (OCTA), Riverside County Transportation Commission, Ventura County Transportation Commission (VCTC), and Southern California Regional Rail Authority (SCRRA) for the approval of Southern California Regional Rail Authority Federal Transit Administration Section 5309 funds and grant application.

Financial Impact: This contract does not have any direct financial impact on the SANBAG's Fiscal Year 2012/2013 budget.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.

Responsible Staff: Nancy Strickert, Transit Analyst

CONTRACT SUMMARY SHEET

Contract No. 12-25-107-00 Amendment No. _____

By and Between

RCTC, OCTA, VCTC and SCRRA and SANBAG

Contract Description Funding Swap

Board of Director's Meeting Date: December 5, 2012
Overview of BOD Action: Approve Agreement No. 12-25 107-00 between San Bernardino Associated Governments, Orange County Transportation Authority, Riverside County Transportation Commission, Ventura County Transportation Commission, and Southern California Regional Rail Authority for the approval of Southern California Regional Rail Authority Federal Transit Administration Section 5309 funds and grant application.

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW

| | | | | | |
|---|-----------|------------------|--|-----------|--|
| Original Contract Amount | \$ | 3,200,000 | Original Contingency Amount | \$ | |
| Revised Contract Amount <i>Inclusive of prior amendments</i> | \$ | | Revised Contingency Amount <i>Inclusive of prior amendments</i> | \$ | |
| Current Amendment Amount | \$ | | Contingency Amendment | \$ | |
| TOTAL CONTRACT VALUE | \$ | 3,200,000 | TOTAL CONTINGENCY VALUE | \$ | |

TOTAL BUDGET AUTHORITY (*contract value + contingency*) \$ 3,200,000

| | | |
|---------------------------------|--|----------------------------------|
| Contract Start Date 12/05/12 | Current Contract Expiration Date 12/05/12 | Revised Contract Expiration Date |
|---------------------------------|--|----------------------------------|

Has the contract term been amended? No Yes - please explain.

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. _____.

A Budget Amendment is required.

How are we funding current FY? This funding is from FY10/11 and does not go through SANBAG's Books

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract:

This funding is already in a SCRRA Grant application. No funding will go through SANBAG

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

| | | |
|--|-----------|------|
| Project Manager (Print Name) | Signature | Date |
| Task Manager (Print Name) | Signature | Date |
| Dir. of Fund Admin. & Programming (Print Name) | Signature | Date |
| Contract Administrator (Print Name) | Signature | Date |
| Chief Financial Officer (Print Name) | Signature | Date |

FTA SECTION 5309 MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE
ORANGE COUNTY TRANSPORTATION AUTHORITY
AND
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
SAN BERNARDINO ASSOCIATED GOVERNMENTS
AND
VENTURA COUNTY TRANSPORTATION COMMISSION
AND
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
FOR APPROVAL OF
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY USES OF MEMBER
AGENCY FTA SECTION 5309 FUNDS

This Memorandum of Understanding ("MOU") is effective as of June 30, 2012, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584 (hereinafter referred to as "OCTA"), Riverside County Transportation Commission, 4080 Lemon Street, 3rd Floor, P.O. Box 12008, Riverside, CA 92502 (hereinafter referred to as "RCTC"), San Bernardino Associated Governments, 1170 West 3rd Street, San Bernardino, CA 92410 (hereinafter referred to as "SANBAG") and Ventura County Transportation Commission, 950 County Square Drive, Ventura, CA 93003 (hereinafter referred to as "VCTC"), (collectively, the "Member Agencies"), and the Southern California Regional Rail Authority, One Gateway Plaza, 12th Floor, P.O. Box 531776 Los Angeles, CA 90053-1776, (hereinafter referred to as "SCRRA"), (collectively, the "Parties" and individually a "Party").

RECITALS:

WHEREAS, SCRRA was in the process of executing Federal Transit Administration ("FTA") Section 5309 grant CA-05-0235-04 with the FTA which includes formula FTA Section 5309 funds from OCTA, SANBAG and VCTC; and

WHEREAS, FTA has informed RCTC that \$5.2 million of RCTC's Fiscal Year ("FY") 2009 formula FTA Section 5309 funds from Urbanized Area ("UZA") 25 will lapse and no longer be available to the region if not executed in a grant by September 30, 2011; and

WHEREAS, the parties wish to ensure the RCTC FTA Section 5309 funds do not lapse; and

WHEREAS, FTA and Southern California Association of Governments ("SCAG") have both provided approval for SCRRA to substitute \$5.2 million of the RCTC FY 2009 UZA 25 FTA Section 5309 funds for \$5.2 million of the OCTA, SANBAG, and VCTC FY 2010 FTA Section 5309 funds in grant CA-05-0235-04; and

WHEREAS, the change to grant CA-05-0235-04 will not result in a significant delay in execution of this grant beyond September 30, 2011; and

WHEREAS, the parties agree that the OCTA, SANBAG, and VCTC FY 2010 FTA Section 5309 funds originally included in grant CA-05-0235-04 will be entered into and utilized for the FY 13 grants for RCTC rail rehabilitation/renovation and/or OCTA Rotem Reimbursement efforts, to be executed before September 30, 2012; and

WHEREAS, the local match funds already included in grant CA-05-0235-04 will remain in grant CA-05-0235-04 providing match to the substituted RCTC FTA Section 5309 funds; and

NOW, THEREFORE, it is mutually understood and agreed by the PARTIES as follows:

ARTICLE 1. APPROVAL OF USES OF FUNDS

- A. The Parties approve the substitution of OCTA, SANBAG, and VCTC FY 2010 FTA Section 5309 funds originally included in grant CA-05-0235-04 with the RCTC FY 2009 FTA Section 5309 funds as detailed in Attachment A, attached hereto and incorporated herein by reference.
- B. The Parties agree that OCTA, SANBAG, and VCTC FY 2010 FTA Section 5309 funds originally included in grant CA-05-0235-04 will be entered into the FY 13 grants for RCTC rail rehabilitation/renovation and/or OCTA Rotem Reimbursement efforts.

ARTICLE 2. TERM

- A. The term of this MOU is from the initial FY10 Rehab grant approval date until the funds are expended in both grant CA-05-0235-04 and the FY 13 grants for RCTC rail rehabilitation/renovation and/or OCTA Rotem Reimbursement efforts are completed, any required audits are completed, and the grants are closed.

ARTICLE 3. ENTIRE AGREEMENT

- A. This MOU, along with its Attachments, constitutes the entire understanding between the Parties with respect to the subject matter herein. The MOU shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the individuals who agreed to the original MOU or someone with the same level of authority.
- B. If any term, provision, covenant or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- C. This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.
- D. This MOU shall be governed by California law. The covenants and agreements of this MOU shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assigns.

ARTICLE 4. NOTICE

Any notices or correspondences in connection with this MOU shall be sent to:

OCTA:
Jennifer Bergener
550 South Main Street,
P.O. Box 14184,
Orange, California 92863-1584

E-mail: jbergener@octa.net

RCTC:
Sheldon Peterson
4080 Lemon Street, 3rd Floor,
P.O. Box 12008,
Riverside, CA 92502

E-mail: speterson@rctc.org

SANBAG:
Mitch Alderman
1170 West 3rd Street,
San Bernardino, CA 92410

E-mail: malderman@sanbag.ca.gov

VCTC:
Mary Travis
950 County Square Drive,
Ventura, CA 93003

E-mail: mtravis@goventura.org

SCRRA:
Karen Sakoda
SCRRA
One Gateway Plaza, 12th Floor
P.O. Box 531776
Los Angeles, CA 90053-1776
E-mail: sakodak@scrra.net

Notice will be given to the Parties at the address specified above or by e-mail with hard copy to follow, unless otherwise notified in writing of a change of address.

ARTICLE 5. INDEMNIFICATION, DEFAULT

- A. No Party nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or committed to be done by another Party in connection with any funds approved to be used or used by the Party accepting the funds, its officers, agents, employees, contractors and subcontractors under this MOU. Each Party shall, in connection with any funds used or approved to be used hereunder by such Party, fully indemnify, defend and hold the other Parties, and their officers, agents and employees, harmless

from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever arising out of or related to the funds approved to be used or used hereunder by such Party, including without limitation: (i) misuse of the funds by the Party accepting the funds, or its officers, agents, employees, contractors or subcontractors; or (ii) breach of such a Party's obligations under this MOU.

- B. The SCRRA in using the funds as described in this MOU is not a contractor nor an agent or employee of the Member Agencies. The SCRRA attests to no organizational or personal conflicts of interest and agrees to notify the Member Agencies immediately in the event that a conflict or the appearance thereof, arises. The SCRRA shall not represent itself as an agent or employee of the Member Agencies and shall have no powers to bind the Member Agencies in contract or otherwise.
- C. No Party hereto shall be considered in default in the performance of its obligation hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of a public enemy, and government acts beyond the control and without fault or negligence of the affected Party. Each Party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder, or prevent performance of any obligations under this MOU.

ARTICLE 6. SIGNATURE AUTHORITY

Each person signing this MOU has the full authority to sign this MOU on behalf of the Party for which he or she is signing and also has the ability to bind that Party to the obligations and commitments set forth in this MOU.

[Signatures on following page]

**SIGNATURE PAGE TO
THE FTA SECTION 5309 MEMORANDUM OF UNDERSTANDING**

IN WITNESS WHEREOF, the PARTIES hereto have caused this MOU to be executed on the date first above written.

ORANGE COUNTY TRANSPORTATION AUTHORITY

Will Kempton, Chief Executive Officer

Approved as to form:

Legal Counsel to OCTA

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

Anne Mayer, Executive Director

Approved as to form:

Legal Counsel to RCTC

SAN BERNARDINO ASSOCIATED GOVERNMENTS

Janice Rutherford, President SANBAG Board of Directors

Approved as to form:

Legal Counsel to SANBAG

**SIGNATURE PAGE TO
THE FTA SECTION 5309 MEMORANDUM OF UNDERSTANDING
[continued]**

VENTURA COUNTY TRANSPORTATION COMMISSION

Darren Kettle, Executive Director

Approved as to form:

Legal Counsel to VCTC

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

By: _____

Its: _____

Approved as to form:

Legal Counsel to SCRRA

Attachment A

| RCTC 5309 SWAP OVERVIEW | | | | | |
|---|-------|--------------------|---|---------------------------------------|--|
| Start: FY10-11 Rehabilitation Grants: CA-05-0235-04 5309 | | | | | |
| Finish: FY 13 Rehab & OCTA Rotem Reimbursement | | | | | |
| | | Amounts in Grant | Amounts to be replaced with RCTC FY09 uza25 (1) | Amount Available for RCTC use in FY13 | Planned use of Funds |
| OCTA tip# ora37111 2008 -11 approved 03/02/09 = \$7,200,000. | | | | | |
| fy09 uza 2 la-lb (Metrolink) | | \$2,937,640 | | | |
| fy10 uza 2 la-lb (Metrolink) | | \$1,036,906 | \$500,000 | \$500,000 | FY 13 RCTC Rotem Reimbursement to OCTA |
| | total | \$3,974,546 | | | |
| VCTC tip# ven990609 2008 -38 approved 02/17/10 = \$2,988,000. | | | | | |
| fy10 uza 143 thousand oaks | | \$876,659 | \$500,000 | \$500,000 | FY 13 RCTC's Share of Annual Rehab |
| fy10 uza 91 oxnard | | \$1,579,744 | \$1,000,000 | \$1,000,000 | FY 13 RCTC's Share of Annual Rehab |
| | total | \$2,456,403 | | | |
| SANBAG tip# ven990602 2008 -16 approved 06/30/09 = \$3,078,000 (fy11) + \$3,286,000 (fy12) = \$6,364,000. | | | | | |
| fy09 uza 2 la-lb | | \$54,586 | | | |
| fy10 uza 25 riv-sb | | \$1,924,244 | \$1,700,000 | \$1,700,000 | FY 13 RCTC Rotem Reimbursement to OCTA |
| fy10 uza 2 la-lb | | \$1,981,414 | \$1,500,000 | \$1,500,000 | FY 13 RCTC Rotem Reimbursement to OCTA |
| | total | \$3,960,244 | | | |
| All FY 10 funds | | \$7,398,967 | \$5,200,000 | \$5,200,000 | |
| 1. These funds that RCTC is providing to avoid lapsing of these FY 09 5309 funds will be repaid through a new grant & reimbursement activity for \$5.2 million using the original OCTA, VCTC and SANBAG FY 10 funds | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 6

Date: November 15, 2012

Subject: Reimburse the Orange County Transportation Commission for purchase of excess Southern California Regional Rail Authority (Metrolink) rolling stock, Rotem passenger cars.

Recommendation:* That the Committee recommend the Board give direction to staff for a \$6.04 million reimbursement to the Orange County Transportation Authority (OCTA) for excess Rotem cars purchased by OCTA .

Background: Prior to the economic downturn in 2006, OCTA ordered 59 Rotem cars to expand service between Fullerton and Laguna Niguel, known as the Metrolink Service Expansion Project (MSEP). However, as a result of economic conditions, OCTA ran fewer trains resulting in 22 excess cars and is now asking the other Southern California Regional Rail Authority (SCRRA) members to pay their share of these excess cars even though the member agencies never discussed or agreed to this expenditure prior to ordering the cars. The shared costs being proposed by OCTA to the member agencies are as follows for a total of \$33.65 million.

*

| | |
|--|---|
| | <p><i>Approved</i> Commuter Rail and Transit Committee</p> <p>Date: _____</p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p> |
|--|---|

| | | | | | | | | | |
|-----|--|-----|---|-----|---|------|--|-----|--|
| COG | | CTC | X | CTA | X | SAFE | | CMA | |
|-----|--|-----|---|-----|---|------|--|-----|--|

Check all that apply.
 CRTC1211c-maa
 Attachments:
<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20A%20-%20CEO%27s%20Letter%20to%20SCRRA.pdf>
<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20B%20-%20Letter%20from%20SCRRA%20to%20OCTA.pdf>
<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20C%20-%20SCRRA%20Rotem%20Agenda%20Item.pdf>

LACMTA - \$19.93 m
 SANBAG - \$6.04 m
 RCTC - \$4.66 m
 VCTC - \$3.02 m

Beginning in 2003, SCRRA began the process of ordering new passenger and cab cars for Metrolink trains. After some contractual changes and re-bidding, SCRRA awarded a contract to Rotem on March 14, 2006, for a base order of 54 coach cars and 33 cab cars for a total of 87. Shortly after the base order was placed, Options 1 & 2 were exercised for an additional 20 cab cars. In July 2009, Option 3 was exercised for an additional 6 coach cars and 4 cab cars bringing the total number of cars with the 3 options to 117. On November 30, 2011, the SCRRA Board exercised Option 4 to purchase an additional 20 cars which brings the complete total Rotem purchase to 137 cars. Of this total, OCTA directly paid for 59 cars for their Fullerton to Laguna Niguel expansion project, RCTC paid for 17 cars for their Perris Valley Line expansion project, and SANBAG paid for 3 cars for non-specific uses, with the balance of the cars purchased by the SCRRA all-share formula amongst the member agencies, i.e. – SANBAG, RCTC, LACMTA, VCTC, and OCTA. The member agencies contributed various local, state, and federal funds for a total of \$273.8 million with LACMTA paying for VCTC’s share. SANBAG’s share of was approximately 16% (\$44 million).

| | Options 1-3 | Option 4 | Total |
|--------------------|-----------------------|----------------------|-----------------------|
| Revenues | | | |
| Federal | \$ 73,909,736 | | \$ 73,909,736 |
| State | \$ 20,987,140 | \$ 34,802,952 | \$ 55,790,092 |
| Local | \$ 141,353,012 | | \$ 141,353,012 |
| Liquidated Damages | | \$ 2,763,448 | \$ 2,763,448 |
| TOTAL | \$ 236,249,888 | \$ 37,566,400 | \$ 273,816,288 |

Current Metrolink Service

For each weekday, SCRRA operates 37 consists with a total of 195 cars. A consist is the make-up of each train. Since the Rotem cars are safer due mostly to crash energy management systems, each consist, at a minimum, is comprised of

CRTC1211c-maa

Attachments:

<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20A%20-%20CEO%27s%20Letter%20to%20SCRRA.pdf>

<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20B%20-%20Letter%20from%20SCRRA%20to%20OCTA.pdf>

<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20C%20-%20SCRRA%20Rotem%20Agenda%20Item.pdf>

one Rotem cab car at the end of the each train and one Rotem coach car behind the locomotive. (A cab car is used in the “push” mode with a compartment and duplicate train controls for the engineer.) In general, all Metrolink trains run in the “pull” mode coming out of Los Angeles with the locomotive in the lead and in the “push” mode with the cab car running at the front of the train headed towards Los Angeles. Since there are no plans or funding to purchase additional Rotem cars, and once all 137 Rotem cars are put into service, 58 of the existing Bombardier cars are will be needed to complete each consist. As a result of purchasing the 137 Rotem cars and the restrictions on selling most of the equal amount of Bombardier cars, SCRRA has begun to store the Bombardier cars throughout the Metrolink system. SCRRA is also exploring leasing as many Bombardier cars as possible. It should be noted that of the 22 commuter rail agencies in the US, the Metrolink fleet of Bombardier cars is the 6th youngest at 12 years. The FTA uses 30 years as a life-span for commuter cars; however, there are Bombardier cars that exceed 30 years. Nearly all Bombardier cars manufactured for service in North America are still in service with some exceeding 40 years.

Safety

At about the time of the Metrolink Glendale crash on January 26, 2005, in which 11 people lost their lives, the commuter industry and regulators were considering the requirement that all passenger rail cars be equipped with crash energy management systems. Generally, this is a system that absorbs impacts on each of a car. However, as a result of the Metrolink Chatsworth crash on September 12, 2008, the federal government enacted the Rail Safety Improvement Act of 2008 on October 16, 2008, which required positive train control (PTC). While the new Metrolink Rotem cars are safer and employ crash energy management, PTC is a much safer system since it is a collision prevention system verses collision mitigation from crash energy management systems.

Available Funding Sources/Impacts to Programs

Should the SANBAG Board agree to reimburse OCTA for the SANBAG share of the 22 Rotem cars (\$6.04 million), the funds will need to be taken in whole or part from the following funding sources which will result in impacts to the associated program, projects, or agencies.

CRTC1211c-maa

Attachments:

<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20A%20-%20CEO%27s%20Letter%20to%20SCRRA.pdf>

<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20B%20-%20Letter%20from%20SCRRA%20to%20OCTA.pdf>

<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20C%20-%20SCRRA%20Rotem%20Agenda%20Item.pdf>

CMAQ – HOT Lanes, DSBPRP, RPRP, Omnitrans, SCRRA
FTA Section 5337 – SCRRA, Omnitrans
FTA Section 5307 – Omnitrans, DSBPRP, RPRP, SCRRA
LTF- DSBPRP, RPRP, SCRRA, Omnitrans, VTrans
STA- DSBPRP, RPRP, Omnitrans, VTrans
MEASURE I Rail – DSBPRP, RPRP
Bond 1b, PTMISEA – All Transit Operators, SCRRA, SANBAG

(DSBPRP – Downtown San Bernardino Passenger Rail Project)
(RPRP – Redlands Passenger Rail Project)
(DSBPRP includes the Omnitrans San Bernardino Transit Center)
(FTA – Federal Transit Administration)
(LTF – Local Transportation Funds) (State)
(STA – State Transit Assistance Funds)

Tentatively, LACMTA, RCTC, and VCTC are planning to reimburse OCTA through the SCRRA rehab by paying OCTA's share of rehab through Fiscal Year 2016/2017. LACMTA would use local sales tax funds, RCTC would use FTA funds, and VCTC would use STIP funds.

Key Policy and Staff Decisions

- March 2006 – SCRRA Board: Base Rotem Order followed by Options 1 & 2
- July 2009 – SCRRA Board: Rotem Option 3
- November 12, 2010 – Special TAC Meeting (See discussing following.)
- November 17, 2010 – CEO's letter to SCRRA (Attachment A)
- September 2, 2011 – Letter from SCRRA to OCTA (See Attachment B)
- October 14, 2011 – SCRRA Board: Authorize CEO to negotiate and execute agreement with OCTA and to work with Agencies. (See Attachment C) The agreement from this SCRRA item was executed on January 18, 2012.
- November 19, 2011 – SCRRA Board: Rotem Option 4

A special TAC meeting was held on November 12, 2010, to discuss the situation of the excess Rotem cars. Representatives from SANBAG, LACMTA, RCTC, OCTA, VCTC, and SCRRA were present. Since no agreement between the agencies was reached on the disposition of the excess cars as to sell, store them for future OCTA service, or split the purchase costs, SCRRA management

CRTC1211c-maa

Attachments:

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<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20C%20-%20SCRRA%20Rotem%20Agenda%20Item.pdf>

unilaterally decided to deploy the excess cars. Since this was a critical decision that could have adverse effects on the member agencies, the TAC recommended to SCRRA staff that this be taken to the board and subsequent member agency boards for direction and approval for deploying the cars. SCRRA management rejected this recommendation and deployed the cars. It wasn't until the following year on October 14, 2012, when an item was presented to the SCRRA board for consideration (See Attachment C).

Financial Impact: No fiscal impact at this time. However, should the SANBAG Board agree to reimburse OCTA for the SANBAG share of the 22 Rotem cars (\$6.04 million), the funds will need to be taken in whole or part from the funding sources identified above under *Available Funding Sources/Impacts to Programs* which will result in impacts to the associated program, projects, or agencies. Also, should the Board agree to the reimbursement, a future agenda item with the necessary details will be brought to the Commuter Rail and Transit Committee and Board for consideration.

Reviewed By: This item will be reviewed by the Commuter Rail and Transit Committee on November 15, 2012.

Responsible Staff: Mitch Alderman, Director of Transit and Rail Programs

CRTC1211c-maa

Attachments:

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<http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/Attachment%20C%20-%20SCRRA%20Rotem%20Agenda%20Item.pdf>

ATTACHMENT A

November 17, 2010

Mr. John E. Fenton
Chief Executive Officer
Southern California Regional Rail Authority
700 South Flower Street, 26th Floor
Los Angeles, CA 90017



Dear Mr. Fenton:



As the chief executive officers of the five member agencies that comprise the Southern California Regional Rail Authority Joint Powers Agency, we have a strong desire to see the Southern California Regional Rail Authority (Metrolink) succeed under your leadership. We commend you on your efforts to bring a renewed focus on safety to this regional organization, and look forward to working with you on developing the future of Metrolink in Southern California.



We appreciate your recognition of the benefits of a continuing partnership with the five member agencies. Over the last few years, our partnership has resulted in a full funding plan for the federally-mandated positive train control (PTC), the acquisition of 117 new passenger rail cars with state of the art safety features, as well as significant state and federal funding to grade separate busy local arterial streets from tracks on which Metrolink trains operate.



We also recognize that Metrolink has many challenges ahead; implementation of PTC, protection of scarce operating funds, managing increasing operating costs, decreases in ridership and revenue, aging infrastructure, concerns about the reliability of the locomotive fleet, and the introduction of a significant number of new passenger cars into the fleet are just a few of these challenges. Given this stark reality, we look forward to working with you to strengthen our partnership and to jointly collaborate on solutions that will make Metrolink a success.



As we look forward to the introduction of the new passenger car fleet to the Metrolink system, we believe there are a number of issues that need to be resolved so that all member agencies that financially support the operation of the Metrolink system clearly understand the investments that have been made to date. Further, we need to have a better understanding of the intended use of the new car fleet within the Metrolink system, as well as Metrolink plans for the use of the existing fleet of rail cars that have already been purchased by the five member agencies. As you know, the original intent of the new car purchase was for expanded and new service. Replacement of existing vehicles was not part of that initial plan. Given the severe economic downturn that began in 2008 and continues to today, those service expansion plans have been scaled

Mr. John E. Fenton
November 17, 2010
Page 2

back and ridership and revenue has decreased. This new economic reality is requiring that we reexamine how the existing and new passenger cars will be used.

We understand that Metrolink is proposing to deploy the fleet of 117 new cars on a systemwide basis to serve the entire six-county Metrolink service area. Based upon the information that you have provided to us to date, it would appear that with the receipt of the 117 new passenger cars and the return of passenger cars Metrolink is leasing from other transit operators, Metrolink will have 92 more passenger cars than are required for daily service for the foreseeable future, although start up of the Perris Valley line and expanded Orange County service will reduce this number. In our previous discussions, you had indicated that your desire would be to not operate the older Metrolink vehicles and instead place all of the 117 new passenger cars into service. As member agencies, we provided all of the funding for the original passenger car fleet and have a vested interest in the plans for the older, and now apparently excess, passenger cars. While you have indicated that you have explored some potential options for dealing with these excess cars, to date, a plan has not been developed. It is important that Metrolink and the five member agencies work together to develop the plan for both the old and the new passenger cars.

As we have also previously discussed, two member agencies, the Orange County Transportation Authority (OCTA) and the Riverside County Transportation Commission (RCTC), provided significant additional funding for additional new rail cars for specific purposes, such as the start up of the Perris Valley Line, expanded service on the Inland Empire Orange County Line, and a significant expansion of service on the Orange County Line within Orange County. This additional funding provided by OCTA and RCTC is significant. In addition, much of both OCTA and RCTC's funding came from local sales tax measures which have significant controls in place for the expenditure of funds. As we continue the discussion on the deployment of additional rail cars, we will need to work expeditiously to develop an equitable solution to this matter.

The member agencies understand that as a result of a recent action taken by Los Angeles County Metropolitan Transportation Authority (LACMTA), the Metrolink Board on November 19th will entertain a motion to exercise the available 20 car option as part of the existing passenger vehicle contract. The LACMTA has proposed to loan Metrolink the \$15 million – \$18 million required to exercise the option with the understanding that LACMTA will be reimbursed for this loan and that all member agencies will pay their proportionate share of the option cars.

Mr. John E. Fenton
November 17, 2010
Page 3

To that end, we understand that Metrolink has developed a funding proposal which uses Proposition 1B safety and security funds over the next five to six years to reimburse LACMTA for the loan and to cover the remaining payments on the option. As we understand this proposal, it is cost neutral for the member agencies and would not require any additional member agency funds. These Proposition 1B safety and security funds were originally intended to be used for systemwide sealed corridor improvements, additional PTC funding if needed, and to make certain crash energy management modifications to existing passenger cars. While this is a change in the use of the funds, we believe that overall system safety will be improved with the addition of additional crash energy management cars into the fleet.

With this in mind, it is important that Metrolink engage the member agencies in discussions that will result in resolving the question of whether or not the member agencies have paid their proportionate county share of major capital projects such as the base order for new passenger vehicles, new locomotives, locomotive rehabilitations, the Eastern Maintenance Facility, and the PTC project. In addition, is it critical that Metrolink engage all five member agencies in a discussion as to how to properly integrate the excess cars purchased by RCTC and OCTA into the system and to agree upon equitable solutions which are acceptable to the member agencies.

We look forward to working with you to identify options that provide for the most productive use of the new car fleet while also ensuring an equitable cost sharing arrangement to which our members can agree, and one that balances how the rail cars were paid for with how they are planned to be used. Given the importance of these issues, we believe it is imperative that we approach this with a sense of urgency. With this in mind, we would like to meet within the next two weeks to discuss this with the goal of reaching a conclusion by the end of this calendar year.

Again, we are committed to continuing to build a strong, collaborative relationship with you and your team as we work to enhance passenger rail service and improve safety in our region.

Mr. John E. Fenton
November 17, 2010
Page 4

Sincerely,



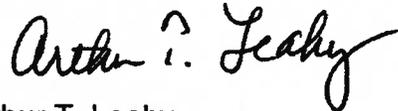
Will Kempton
Chief Executive Officer
Orange County Transportation
Authority



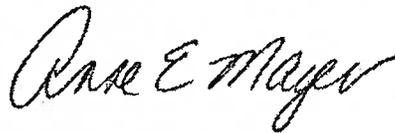
Deborah Robinson Barmack
Executive Director
San Bernardino Associated
Governments



Darren Kettle
Executive Director
Ventura County Transportation
Commission



Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan
Transportation Authority



Anne Mayer
Executive Director
Riverside County Transportation
Commission

WK:dj

c: Metrolink Member Agency Technical Advisory Members

September 2, 2011

Mr. Will Kempton
Chief Executive Officer
Orange County Transportation Authority
550 South Main Street/ P.O Box 14184
Orange, CA 92863-1584

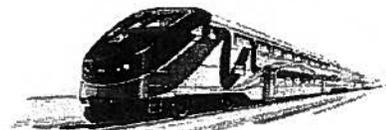
Dear Mr. Kempton,

Metrolink and its Member Agencies have been working to reconcile equity issues related to the Rotem Car procurement. SCRRA has contracted to purchase 137 cars, two-thirds of which have already been delivered. The core issue has been a concern over who contributed to the purchase of the cars and how the cars are utilized in the Metrolink system. After much discussion it was agreed that there are twenty-two (22) cars of this purchase that are in service throughout the system and are assets utilized at the discretion of the SCRRA Board. In order to keep those cars in general system use it was agreed that OCTA would be reimbursed for the cost of the 22 cars.

Given the proposed time to reconcile these costs there are several ways that a Member Agency can reimburse OCTA. Agencies can provide a cash contribution, pick up the OCTA share for a specific project or contribute on behalf of OCTA annual rehab costs. Reconciliation is proposed to begin in FY12/13 and it will be SCRRA's obligation to track and report progress by the other Member Agencies.

This reconciliation between SCRRA and OCTA is built on the core concept that the Metrolink service is a partnership and that all cars purchased are part of the system. The attached proposed Reconciliation Worksheet shows all Member Agency's share of the cost of the 22 cars in question. The cars have an agreed upon value of nearly \$42 million. The shares of the cost have been calculated using the "All-Share Formula" currently used for many of the system wide costs. The columns of the Work Sheet identify whether the reconciliation will occur with a cash contribution, allocation of annual rehab costs or reconciliation for a specific purpose. SCRRA will administer how the other member agencies handle the settlement of their shares.

Also attached is a proposed draft Memorandum of Understanding (MOU) for your comments. This MOU solidifies the concept that the system-wide deployment of vehicles is a benefit to the service as it provides flexibility and the ability to defer immediate rehab costs of the existing fleet. In order to

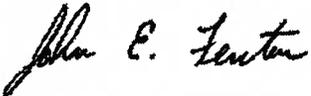


maintain such flexibility, this reconciliation must occur. The following sequence should bring this matter to conclusion:

1. Review Memorandum of Understanding and proposed reconciliation projects;
2. Take MOU to SCRRA Board of Directors in October (This item is slated to go to the September 23rd Planning and Finance Committee);
3. Seek annual rehabilitation and capital project reconciliation
4. Begin Reconciliation in FY 12/13, complete reconciliation in FY 16/17

I look forward to discussing this with you and the other Member Agencies.

Sincerely,



JOHN E. FENTON
Chief Executive Officer

cc: Member Agency CEOs
Richard Katz

Rotem Car Reconciliation

(All Cars In System Service)

Rotem Trailer Cars

| | |
|---------------|---------|
| Base Price | \$1.840 |
| Insurance | \$0.020 |
| Freight Cost | \$0.047 |
| Total per car | \$1.907 |

Total Reimbursement for 22 Cars \$41.954

All-Share Ratio

| | |
|--------------|-------------|
| LACMTA | 47.50% |
| OCTA | 19.80% |
| SANBAG | 14.40% |
| RCTC | 11.10% |
| VTCT | 7.20% |
| Total | 100% |

<-----Values From All-Share %----->

| Member Agency | Total Due | Rehab Costs EMF Phase Express | | | Total Paid |
|---------------|-----------------|-------------------------------|-----------------|----------------|-----------------------|
| | | Cash (a) (b) | II - (C) | Trains | |
| VTCT | \$3.022 | \$2.000 | \$1.022 | \$0.000 | \$3.022 |
| OCTA | \$8.306 | | | | |
| LACMTA | \$19.929 | | \$8.125 | \$0.744 | \$19.929 ^d |
| SANBAG | \$6.041 | | \$3.180 | \$0.573 | \$6.041 ^e |
| RCTC | \$4.657 | | \$4.413 | \$0.244 | \$4.657 |
| Total | \$41.955 | \$2.000 | \$16.740 | \$1.561 | \$33.649 |

(a) VTCT cash contribution to Option 4 moves like amount for FY 16 PTMISEA funds for OCTA discretion.

(b) Combination of Passenger Cars, Locomotives, & Other Rehab

(c) Cost share formula for EMF Phase II: LA 47.68%, SB 36.72%, RS 15.58%.

Shares relate to train miles by agency over affected segments (minus OCTA).

(d) LACMTA contribution for trailer cars for express service to Antelope Valley (3 Trailer 1 spare) -AND-

60% of 3 SB Express Trailers

(e) SANBAG 40% of 3 SB Express Trailers.

5-Year Payback

(all values given in millions of dollars)

| Member Agency | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | Project | Paid Over |
|-------------------|-----------------|-----------------|-----------------|-----------------|----------------|----------------|----------------|-----------|
| VCTC | \$3.022 | \$1.022 | \$0.818 | \$0.613 | \$0.409 | \$0.204 | Cash | 1 Year |
| Cash | \$2.000 | | | | | | | |
| Rehab | | \$0.204 | \$0.204 | \$0.204 | \$0.204 | \$0.204 | OCTA Rehab | 5 Years |
| EMF Phase II | | | | | | | EMF Phase II | 5 Years |
| Express Trains | | | | | | | Express Trains | 5 Years |
| Declining Balance | \$1.022 | \$0.818 | \$0.613 | \$0.409 | \$0.204 | \$0.000 | | |
| LACMTA | \$19.929 | \$19.929 | \$15.943 | \$11.957 | \$7.972 | \$3.986 | | |
| Cash | | | | | | | | |
| Rehab | \$1.625 | \$1.625 | \$1.625 | \$1.625 | \$1.625 | \$1.625 | | |
| EMF Phase II | \$0.149 | \$0.149 | \$0.149 | \$0.149 | \$0.149 | \$0.149 | | |
| Express Trains | \$2.212 | \$2.212 | \$2.212 | \$2.212 | \$2.212 | \$2.212 | | |
| Declining Balance | \$19.929 | \$15.943 | \$11.957 | \$7.972 | \$3.986 | \$0.000 | | |
| SANBAG | \$6.041 | \$6.041 | \$4.833 | \$3.625 | \$2.416 | \$1.208 | | |
| Cash | | | | | | | | |
| Rehab | \$0.636 | \$0.636 | \$0.636 | \$0.636 | \$0.636 | \$0.636 | | |
| EMF Phase II | \$0.115 | \$0.115 | \$0.115 | \$0.115 | \$0.115 | \$0.115 | | |
| Express Trains | \$0.458 | \$0.458 | \$0.458 | \$0.458 | \$0.458 | \$0.458 | | |
| Declining Balance | \$6.041 | \$4.833 | \$3.625 | \$2.416 | \$1.208 | \$0.000 | | |
| RCTC | \$4.657 | \$4.657 | \$3.726 | \$2.794 | \$1.863 | \$0.931 | | |
| Cash | | | | | | | | |
| Rehab | \$0.883 | \$0.883 | \$0.883 | \$0.883 | \$0.883 | \$0.883 | | |
| EMF Phase II | \$0.049 | \$0.049 | \$0.049 | \$0.049 | \$0.049 | \$0.049 | | |
| Express Trains | | | | | | | | |
| Declining Balance | \$4.657 | \$3.726 | \$2.794 | \$1.863 | \$0.931 | \$0.000 | | |

DRAFT

MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

AND

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

FOR

ROTEM RAIL CARS REIMBURSEMENT

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THIS MEMORANDUM OF UNDERSTANDING, is effective this ____ day of _____ 2011, by and between Southern California Regional Rail Authority (SCRRA), and the Orange County Transportation Authority (OCTA). The OCTA, San Bernardino Associated Governments, Ventura County Transportation Commission, Riverside County Transportation Commission and Los Angeles County Metropolitan Transportation Authority make up the MEMBER AGENCIES of the Southern California Regional Rail Authority.

RECITALS:

WHEREAS, SCRRA HAS PURCHASED 137 Rotem Cab and Trailer Passenger Cars and uses them as directed by its Board of Directors; and

WHEREAS, OCTA's Board of Directors, on June 9, 2005, approved the Metrolink Service Expansion Program (MSEP), to offer increased Metrolink service in Orange County; and

WHEREAS, in 2005 OCTA committed \$137 million to purchase 59 new rail cars to support existing and expanded Metrolink service, including the MSEP; and

WHEREAS, OCTA has scaled back the MSEP service roll out to align with available revenues; and

WHEREAS, it was determined that 37 of the 59 railcars independently funded by OCTA will be required for the expanded service, leaving 22 rail cars for available system-wide utilization; and

WHEREAS, MEMBER AGENCIES and SCRRA mutually desire to utilize the available 22 railcars for system-wide service within the Metrolink system; and

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed on the date
1 first above written.

2 **SOUTHERN CALIFORNIA REGIONAL**
3 **RAIL AUTHORITY**

ORANGE COUNTY TRANSPORTATION AUTHORITY

4 By: _____
5 John E. Fenton
6 Chief Executive Officer

By: _____
Will Kempton
Chief Executive Officer

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**METROLINK**

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

TRANSMITTAL DATE: October 7, 2011

MEETING DATE: October 14, 2011 **ITEM 8**

TO: Board of Directors

FROM: Chief Executive Officer

SUBJECT: Rotem Car Reconciliation

Issue

Board approval is required to enter into an agreement with the Orange County Transportation Authority (OCTA) and subsequently agreements with the other Member Agencies (MA) for reconciliation of costs associated with the Rotem Car procurement.

Recommendation

Staff recommends the Board authorize the Chief Executive Officer (CEO) to complete negotiations and execute an agreement with OCTA for the reconciliation of costs for Rotem Cars (see attached document). Additionally, delegate authority to the CEO to enter supporting agreements, if needed, with each Member Agency and to track progress on overall reconciliation for 22 Rotem cars.

Alternative

The Board can recommend an alternate approach to document and reconcile Rotem Car procurement costs between Member Agencies.

Background

SCRRA awarded a contract to Rotem for the procurement of 137 passenger rail cars. The base order of the contract was for 87 cars (54 Trailers and 33 Cabs). This quantity of cars was to provide a cab car for every consist and would also provide additional trailer cars for over-crowded trains or proposed new services. The contract also contained options that have been executed and bring the total procurement to 57 cabs and 80 trailers. The first three options were funded by specific member agencies that were procuring additional cabs and trailers for future expansion needs. The final option was for 20 trailers and was funded by bond funds designated to Metrolink.

Metrolink Service is provided by train consists that run all over the 512 mile system. A train that starts in Riverside may travel to Los Angeles, then Oceanside, then spend the

night in San Bernardino. The next day that same train set will travel on the different routes, receive mid-day service at the Central Maintenance Facility, then will end the day at the Oceanside layover. These "cycles" are choreographed to meet the service commitments of the schedule and to also make sure that the equipment is properly cleaned and maintained. Thus the concept that one member agency funds a discrete asset is counter to how that asset is utilized. While acknowledging that OCTA contributed funds for too many cars, the proposed reconciliation agreement documents and preserves the system-wide use of Metrolink assets.

OCTA took board action in October 2005 that committed \$137 million for the purchase of 59 cars. This quantity of cars was to support levels of service that are no longer anticipated. OCTA has been pursuing reconciliation for cars in excess of their current needs. The MAs started work on this issue in mid-2010. The initial concern was to document which agency contributed what funds and to identify what was the proposed purpose of those assets. Some cars were designated for expansion while others were designated for over-crowding or for spares. The next step was to determine how many cars were subject to the reconciliation. It was determined with the guidance of the MA CEOs that the correct number of cars in question was 22. It was also determined that because the OCTA contributions went to the original base order the reconciliation amount was guided by the cost of the cars in the base order.

The reconciliation can come from direct MA contributions to specific shared projects or simply by one MA assuming a portion of OCTA's annual rehab contribution. The agreement is to be flexible so reconciliation can occur with operating, capital or rehab funds. The reconciliation time period is recommended to start with next fiscal year's rehab budget, as explained in the attached letter and draft agreement, and to be complete within 5 years.

It should be noted that other agencies have contributed additional ROTEM cars and this contribution is recognized and credited towards the funding agency so that service expansion and future rehab costs are equitably distributed. Each agency has contributed a mix of funds to support the future service needs.

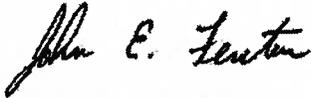
This is of primary concern to RCTC in regard to the future Perris Valley Line service which is slated to begin in 2013. RCTC contributed funds for 10 Rotem cars and 2 locomotives to support that service. This report is intended to memorialize the agreement of all parties that once the new Perris Valley Line service is ready to start the rail cars needed to run the service will be available without additional cost to RCTC for either the purchase of new ROTEM cars or the rehabilitation of existing equipment.

This agreement is entered into with OCTA but ultimately needs the other MA's participation and agreement to fulfill.

Budget Impact

This agreement does not impact the current year operating or rehab budget. Future rehab budgets may be impacted by reconciliation contributions.

Prepared by: Gray Crary, Chief Strategic Officer



JOHN E. FENTON
Chief Executive Officer



September 2, 2011

Mr. Will Kempton
Chief Executive Officer
Orange County Transportation Authority
550 South Main Street/ P.O Box 14184
Orange, CA 92863-1584

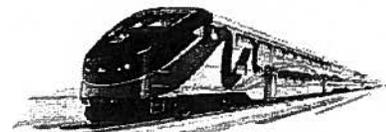
Dear Mr. Kempton,

Metrolink and its Member Agencies have been working to reconcile equity issues related to the Rotem Car procurement. SCRRA has contracted to purchase 137 cars, two-thirds of which have already been delivered. The core issue has been a concern over who contributed to the purchase of the cars and how the cars are utilized in the Metrolink system. After much discussion it was agreed that there are twenty-two (22) cars of this purchase that are in service throughout the system and are assets utilized at the discretion of the SCRRA Board. In order to keep those cars in general system use it was agreed that OCTA would be reimbursed for the cost of the 22 cars.

Given the proposed time to reconcile these costs there are several ways that a Member Agency can reimburse OCTA. Agencies can provide a cash contribution, pick up the OCTA share for a specific project or contribute on behalf of OCTA annual rehab costs. Reconciliation is proposed to begin in FY12/13 and it will be SCRRA's obligation to track and report progress by the other Member Agencies.

This reconciliation between SCRRA and OCTA is built on the core concept that the Metrolink service is a partnership and that all cars purchased are part of the system. The attached proposed Reconciliation Worksheet shows all Member Agency's share of the cost of the 22 cars in question. The cars have an agreed upon value of nearly \$42 million. The shares of the cost have been calculated using the "All-Share Formula" currently used for many of the system wide costs. The columns of the Work Sheet identify whether the reconciliation will occur with a cash contribution, allocation of annual rehab costs or reconciliation for a specific purpose. SCRRA will administer how the other member agencies handle the settlement of their shares.

Also attached is a proposed draft Memorandum of Understanding (MOU) for your comments. This MOU solidifies the concept that the system-wide deployment of vehicles is a benefit to the service as it provides flexibility and the ability to defer immediate rehab costs of the existing fleet. In order to

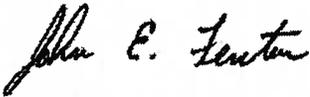


maintain such flexibility, this reconciliation must occur. The following sequence should bring this matter to conclusion:

1. Review Memorandum of Understanding and proposed reconciliation projects;
2. Take MOU to SCRRA Board of Directors in October (This item is slated to go to the September 23rd Planning and Finance Committee);
3. Seek annual rehabilitation and capital project reconciliation
4. Begin Reconciliation in FY 12/13, complete reconciliation in FY 16/17

I look forward to discussing this with you and the other Member Agencies.

Sincerely,



JOHN E. FENTON
Chief Executive Officer

cc: Member Agency CEOs
Richard Katz

Rotem Car Reconciliation

(All Cars In System Service)

Rotem Trailer Cars

| | |
|----------------------|----------------|
| Base Price | \$1.840 |
| Insurance | \$0.020 |
| Freight Cost | \$0.047 |
| <u>Total per car</u> | <u>\$1.907</u> |

Total Reimbursement for 22 Cars **\$41.954**

All-Share Ratio

| | |
|--------------|-------------|
| LACMTA | 47.50% |
| OCTA | 19.80% |
| SANBAG | 14.40% |
| RCTC | 11.10% |
| VCTC | 7.20% |
| Total | 100% |

<-----Values From All-Share %----->

| Member Agency | Total Due | Cash (a) (b) | Rehab Costs | EMF Phase II - (C) | Express Trains | Total Paid |
|---------------|-----------------|----------------|-----------------|--------------------|-----------------------|-----------------|
| VCTC | \$3.022 | \$2.000 | \$1.022 | \$0.000 | \$0.000 | \$3.022 |
| OCTA | \$8.306 | | | | | |
| LACMTA | \$19.929 | | \$8.125 | \$0.744 | \$11.060 ^d | \$19.929 |
| SANBAG | \$6.041 | | \$3.180 | \$0.573 | \$2.288 ^e | \$6.041 |
| RCTC | \$4.657 | | \$4.413 | \$0.244 | \$0.000 | \$4.657 |
| Total | \$41.955 | \$2.000 | \$16.740 | \$1.561 | \$13.348 | \$33.649 |

(a) VCTC cash contribution to Option 4 moves like amount for FY 16 PTMISEA funds for OCTA discretion.

(b) Combination of Passenger Cars, Locomotives, & Other Rehab

(c) Cost share formula for EMF Phase II: LA 47.68%, SB 36.72%, RS 15.58%.

Shares relate to train miles by agency over affected segments (minus OCTA).

(d) LACMTA contribution for trailer cars for express service to Antelope Valley (3 Trailer 1 spare) -AND-

60% of 3 SB Express Trailers

(e) SANBAG 40% of 3 SB Express Trailers.

5-Year Payback

(all values given in millions of dollars)

| Member Agency | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | Project | Paid Over |
|-------------------|-----------------|-----------------|-----------------|-----------------|----------------|----------------|----------------|-----------|
| VCTC | \$3.022 | \$1.022 | \$0.818 | \$0.613 | \$0.409 | \$0.204 | Cash | 1 Year |
| Cash | \$2.000 | | | | | | | 5 Years |
| Rehab | | \$0.204 | \$0.204 | \$0.204 | \$0.204 | \$0.204 | OCTA Rehab | 5 Years |
| EMF Phase II | | | | | | | EMF Phase II | 5 Years |
| Express Trains | | | | | | | Express Trains | 5 Years |
| Declining Balance | \$1.022 | \$0.818 | \$0.613 | \$0.409 | \$0.204 | \$0.000 | | |
| LACMTA | \$19.929 | \$19.929 | \$15.943 | \$11.957 | \$7.972 | \$3.986 | | |
| Cash | | | | | | | | |
| Rehab | \$1.625 | \$1.625 | \$1.625 | \$1.625 | \$1.625 | \$1.625 | | |
| EMF Phase II | \$0.149 | \$0.149 | \$0.149 | \$0.149 | \$0.149 | \$0.149 | | |
| Express Trains | \$2.212 | \$2.212 | \$2.212 | \$2.212 | \$2.212 | \$2.212 | | |
| Declining Balance | \$19.929 | \$15.943 | \$11.957 | \$7.972 | \$3.986 | \$0.000 | | |
| SANBAG | \$6.041 | \$6.041 | \$4.833 | \$3.625 | \$2.416 | \$1.208 | | |
| Cash | | | | | | | | |
| Rehab | \$0.636 | \$0.636 | \$0.636 | \$0.636 | \$0.636 | \$0.636 | | |
| EMF Phase II | \$0.115 | \$0.115 | \$0.115 | \$0.115 | \$0.115 | \$0.115 | | |
| Express Trains | \$0.458 | \$0.458 | \$0.458 | \$0.458 | \$0.458 | \$0.458 | | |
| Declining Balance | \$6.041 | \$4.833 | \$3.625 | \$2.416 | \$1.208 | \$0.000 | | |
| RCTC | \$4.657 | \$4.657 | \$3.726 | \$2.794 | \$1.863 | \$0.931 | | |
| Cash | | | | | | | | |
| Rehab | \$0.883 | \$0.883 | \$0.883 | \$0.883 | \$0.883 | \$0.883 | | |
| EMF Phase II | \$0.049 | \$0.049 | \$0.049 | \$0.049 | \$0.049 | \$0.049 | | |
| Express Trains | | | | | | | | |
| Declining Balance | \$4.657 | \$3.726 | \$2.794 | \$1.863 | \$0.931 | \$0.000 | | |

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MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

AND

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

FOR

ROTEM RAIL CARS REIMBURSEMENT

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THIS MEMORANDUM OF UNDERSTANDING, is effective this ____ day of _____ 2011, by and between Southern California Regional Rail Authority (SCRRA), and the Orange County Transportation Authority (OCTA). The OCTA, San Bernardino Associated Governments, Ventura County Transportation Commission, Riverside County Transportation Commission and Los Angeles County Metropolitan Transportation Authority make up the MEMBER AGENCIES of the Southern California Regional Rail Authority.

RECITALS:

WHEREAS, SCRRA HAS PURCHASED 137 Rotem Cab and Trailer Passenger Cars and uses them as directed by its Board of Directors; and

WHEREAS, OCTA's Board of Directors, on June 9, 2005, approved the Metrolink Service Expansion Program (MSEP), to offer increased Metrolink service in Orange County; and

WHEREAS, in 2005 OCTA committed \$137 million to purchase 59 new rail cars to support existing and expanded Metrolink service, including the MSEP; and

WHEREAS, OCTA has scaled back the MSEP service roll out to align with available revenues; and

WHEREAS, it was determined that 37 of the 59 railcars independently funded by OCTA will be required for the expanded service, leaving 22 rail cars for available system-wide utilization; and

WHEREAS, MEMBER AGENCIES and SCRRA mutually desire to utilize the available 22 railcars for system-wide service within the Metrolink system; and

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed on the date first above written.

**SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY**

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
John E. Fenton
Chief Executive Officer

By: _____
Will Kempton
Chief Executive Officer

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 7

Date: November 15, 2012

Subject: Property Appraisal, Agreement for Possession and Use, and Acquisition of property necessary for the Downtown San Bernardino Passenger Rail Project and San Bernardino Transit Center

Recommendation:* That the Committee recommend the Board acting in its capacity as the San Bernardino County Transportation Commission:

1. Approve appraisals for the following properties required for the construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP) and San Bernardino Transit Center (SBTC): 0138-231-02, -04, -05, -09 & -10, ROBERT & JUDITH ANN HARRAKA, FAM TRUST; 0138-273-01, -02 -03, -04 & -36, BRUCE W. HEFFTNER; 0138-273-09, -10, -11, -12, -13, -16 & -33, BIG Z AUTOWORKS, INC; 0138-273-24 and -25, JAMES E. OTT & BARBARA J. OTT, TRUSTEES OF THE JAMES E. OTT & BARBARA J. OTT 2010 REVOCABLE TRUST DATED JULY 9, 2010; 0138-273-26 & -27, KRISTIN NEVILLE, TRUSTEE TRUST NO. 982-2Z U/A/D 9/4/95; 0138-273-20, -21 & -40, RIVERSIDE CEMENT COMPANY; 0138-312-15, JAMES McHENRY & KATHRYN McHENRY; 0138-312-53, HOAK BROS. PLATING; 0138-312-14, TIGER YANG & SALLY YANG; 0138-312-55, ASHADI INVESTMENT, LLC; 0138-312-16 & -57, TUE LE, & NIKIE NGUYEN; 0138-312-39, DAVID SAMPANIS & STEPHEN ABBEY; 0138-312-51, MI CASA PROPERTY, LLC.; 0138-312-37 JAMES W. SEIFERT; 0134-

*

Approved
 Commuter Rail and Transit Committee

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

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| COG | CTC | X | CTA | SAFE | CMA |
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Check all that apply
 CRTC1211a-mmm

331-23 & -24, KLR PROPERTY, LLC.; 0137-043-10, -11 & -26, VARP, INC.; 0136-011-04, ARTHUR R. READ; 0136-011-03 & -38, and 0136-081-08, -09, -10, -11 & -12, JENNIFER DE GORTER REVOCABLE TRUST DATED 6-6-01; 0136-011-31 & -41, 0136-091-11 & -12, JONG UK BYUN & BOK SOON BYUN; 0136-011-22, -26, -27 & -28, FLETCHER TRUST; 0136-021-16, -17 & -18, GEORGE V. MANTZOROS & GLORIA MANTZOROS; 0136-021-28, AFFAITATI, LLC; 0136-101-14, -15 & -21, SOUTHERN CALIFORNIA GAS COMPANY; 0136-111-01, RAMON GONZALEZ AND IRMA GONZALEZ, TRUSTEES UTD NOVEMBER 4, 2002; 0138-271-15, -16 & -17, ANTONIO MARTINEZ; 0138-271-18, ANCIRIA VASQUEZ; 0138-271-19, MELVON INVESTMENTS, LLC.; 0138-271-20, SYLVIA MICELI; 0138-271-21, EDWARD L. HOLLY; 0138-271-01, -02 & -03. LEONARDO & ELIZABETH HERNANDEZ; 0136-171-42, ARROWHEAD CENTRAL CREDIT UNION (collectively the "Properties"); and

2. Authorize acquisition of the Properties, or partial interests in such Properties, at an estimated not to exceed aggregate total of \$5,486,377, which the amount will be updated and finalized prior to the December 5, 2012, Board meeting; and
3. Authorize the Executive Director or his designee, to act on behalf of the San Bernardino County Transportation Commission, in signing the Purchase and Sale Agreements and such other documents necessary for the acquisition of the Properties, generally consistent with the procedure set out in SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy No. 34507).
4. Allocate \$6,587,000 of undesignated unreserved State Transit Assistance Fund County Pop (PUC99313) to fund right-of-way activities for the Downtown San Bernardino Passenger Rail Project.
5. Approve Fiscal Year 2012/2013 budget amendment to increase Task 0379 Commuter Rail Capital by \$6,587,000 of State Transit Assistance Fund County Pop (PUC99313) and increase Task 0311 Transit Capital by \$2,000,000 funded by the San Bernardino Transit Center fund for reimbursement by Omnitrans.

Background:

The San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission (Commission), is proposing to extend Metrolink commuter passenger rail service approximately one mile east from its current terminus at the existing San Bernardino Metrolink Station/Santa Fe Depot (Depot) located at 1170 West 3rd Street, San Bernardino, to new Metrolink commuter rail platforms at the proposed

San Bernardino Transit Center (SBTC) near the intersection of Rialto Avenue and E Street in the City of San Bernardino (City), California.

On June 3, 2009, the San Bernardino Associated Governments (SANBAG) approved the double track extension of Metrolink service from the current terminus at the Santa Fe Depot to the proposed site of the SBTC located at the southwest corner of Rialto Avenue and E Street in the City of San Bernardino as the locally preferred alternative. The project would soon become known as the Downtown San Bernardino Passenger Rail Project (DSBPR).

On February 3, 2010, SANBAG awarded Contract No. C10079 to HDR Engineering for the design, environmental, FTA processing and right-of-way acquisition services for the DSBPRP and the Redlands Rail Passenger Project (RPRP).

On December 7, 2011, SANBAG awarded Contract No. 12077 to HDR for the design and engineering of the San Bernardino Transit Center (SBTC). The SBTC consists of a bus facility capable of accommodating 22 Omnitrans' buses, a transit station building that includes a security center, customer service center, public restrooms, a break room for the bus operators and supervisors, as well as additional amenities to facilitate retail vending.

On September 5, 2012, SANBAG, acting as the County Transportation Commission, certified the Final Environmental Impact Report for both the DSBPR and SBTC and on October 27, 2012, received the Finding of No Significant Impact (FONSI) from the Federal Transit Administration. Receipt of the FONSI clears a critical hurdle in the overall development of the Project and allows the right-of-way acquisition phase to begin.

With the receipt of the FONSI, SANBAG is now proceeding with the right-of-way phase of the DSBPR/SBTC project. Under Contract No. C10079, HDR's right-of-way sub consultant, Epic Land Solutions, has prepared appraisals for the various properties that are necessary to make the needed improvements along the Project corridor.

The SANBAG Ten-Year Delivery Plan included \$6,587,000 in Local Transportation Fund (LTF) funding to be used for right-of-way acquisition purposes for the DSBPR. LTF funding is one of the most flexible sources of funding and can be used for operations, capital and other transit planning purposes. Staff is recommending utilizing existing undesignated unreserved State Transit Assistance funds to be allocated for the right-of-way acquisition. STA funds are more restrictive and intended for capital purposes. This action will allow for LTF funds to be available for other broader transit purposes.

Acquisition of these Properties in a timely manner is critical to maintaining the planned construction schedule for the Project. To assist in maintaining the schedule, staff is recommending that the Board authorize the Executive Director, or his designee, to act on behalf of the Commission in signing Purchase & Sale Agreements, and such other documents necessary for the acquisition of the Properties, using a procedure similar to the procedure implemented for streets and highways right-of-way acquisitions set forth in SANBAG Valley Freeway Program Policy No. 40004 (reference: Administrative Settlement Policy 34507). This Board-approved policy establishes a standard administrative process for acquisition of right-of-way whereby the Executive Director is authorized to pursue acquisitions utilizing certain factors, such as an available appraisal, the inexact nature of the process by which just compensation is determined through legal processes, and the impact of such acquisition through voluntary settlement on the project-wide perspective, including, e.g., project deadlines and funding issues. This process is appropriate for the acquisition of the Properties. Purchase and Sale Agreements generally consistent with a form agreement to be presented to the Board for Board approval will be used. The final documents will be reviewed by SANBAG's legal counsel for approval as to form prior to execution of the documents by the Executive Director or his designee.

Staff requests the Committee approve the above recommendations for the Board's consideration.

Financial Impact: This item requires a budget amendment to the approved Fiscal Year 2012/2013 budget to increase Task 0379 Commuter Rail Capital by \$6,587,000 using State Transit Assistance Fund County Pop (PUC99313) increasing the total task budget from \$23,416,568 to \$30,003,568 and to increase Task 0311 Transit Capital by \$2,000,000 using the San Bernardino Transit Center fund for reimbursement by Omnitrans.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel has reviewed this item.

Responsible Staff: Casey Dailey, Transit Analyst



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 8

Date: November 15, 2012

Subject: Amendment to By-Laws of Valley Transportation Services, Inc. (VTrans)

Recommendation:* That the Committee recommend the Board approve an Amendment to the By Laws of Valley Transportation Services, Inc. as included in Attachment A to this agenda item.

Background: In September 2010, San Bernardino Associated Governments (SANBAG) designated Valley Transportation Services, Inc. (VTrans) as the Consolidated Transportation Services Agency (CTSA) for the San Bernardino Valley. Following designation of VTrans as the CTSA, three (3) of the seven (7) members of the Vtrans Board of Directors were appointed by the SANBAG Board, per the VTrans By-Laws. On September 16, 2010, the VTrans Board members adopted the VTrans By-Laws.

VTrans' By-Laws may be amended at any meeting of its Board by a majority vote provided that the amendment has received prior approval by the SANBAG Board of Directors. Once the SANBAG Board approves the amendment to the Vtrans By-Laws, Vtrans may make the formal amendment to their By-Laws.

Included in Attachment A to this agenda item are a series of modifications to the Vtrans By-Laws. Most of the changes proposed by Vtrans to its By-Laws are administrative and typographical. The following are the substantive changes to the By-Laws:

- Change to Article 1, Section 3, to insert Section D, allowing for VTrans to

*

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| | <p><i>Approved</i> Commuter Rail and Transit Committee</p> <p>Date: _____</p> <p>Moved: Second:</p> <p>In Favor: Opposed: Abstained:</p> <p>Witnessed: _____</p> |
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| COG | | CTC | X | CTA | X | SAFE | | CMA | |
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provide support and or services in areas other than described in Section 3 A, provided that additional funding is identified.

- Modification to Section 2 including Terms of Office, changing the term of one member of the Board of Directors initially appointed by each appointing agency from 3 years to 4 years.
- The balance of the changes is primarily clearer language and changes to keep the wording consistent throughout the document.

Originally, VTrans did request one (1) additional change to the VTrans By-Laws, which would have removed SANBAG's prior approval of any changes to the By-Laws. However, SANBAG staff informed VTrans staff that it could not support the recommended, revised language at this time. It is possible that VTrans and SANBAG staff meet in the future to discuss this potential change again. At this time, however, the change is not incorporated into this set of amended By-Laws.

Financial Impact: This item has no impact on the current Fiscal Year 2012/2013 SANBAG Budget. All staff activities associated with preparation of this item are consistent with Task No. 0309 General Transit.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel has approved this item as to form.

Responsible Staff: Monica M. Morales, Transit Specialist

Revised and Restated Bylaws of Valley Transportation Services, a CTSA

Article I – Name, Offices and Purpose

1. The name of this nonprofit public benefit corporation is Valley Transportation Services, a Consolidated Transportation Services agency (CTSA), also known as “VTrans.”
2. The location of the principal place of business shall be at 299 W. Foothill Boulevard, Suite 202, Upland, CA, 91786.
3. The purposes of Valley Transportation Services are to:
 - a. Improve the quality and effectiveness of transportation services to senior citizens, persons with disabilities and persons of low income within the area described as the western portion of San Bernardino County including the cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Montclair, Loma Linda, Ontario, Rancho Cucamonga, Rialto, Redlands, San Bernardino, Upland and Yucaipa, referred to herein as the “San Bernardino Valley”.
 - b. Identify, organize and service the special transit needs of senior citizens, person with disabilities and persons of low income within the San Bernardino Valley.
 - c. To provide support for transit services to other agencies within the San Bernardino Valley.
 - d. To provide transportation support and services to agencies in areas outside the San Bernardino Valley, provided that only funding separate and apart from funding dedicated to or intended for VTrans’ services and activities within the San Bernardino Valley is used.

Article II – Membership

The Board of Directors shall constitute the members.

Article III – Board of Directors

1. Board Role, Size and Compensation
 - a. Subject to the limitations as prescribed by the Nonprofit Public Benefit Corporation Law, all corporate powers shall be exercised by or at the direction of, and the business and affairs of the Corporation shall be managed by, the Board of Directors. The individual directors shall act only as members of the Board, and shall have no power as individuals unless otherwise authorized by the Board.
 - b. The Board is comprised of 7 members who shall be appointed as follows:
 - (1) Three (3) appointed by San Bernardino Associated Governments (must be representative of the San Bernardino Valley area)
 - (2) Two (2) appointed by San Bernardino County Board of Supervisors (must be representative of the San Bernardino Valley area)
 - (3) Two (2) appointed by Omnitrans (must be representative of the San Bernardino Valley area)

- c. The Board members may be elected officials or members of the general public representative of the designated populations, but may not be employees of the identified appointing entities.
- d. The Board members shall receive no compensation other than the reimbursement of reasonable expenses incurred on behalf of the San Bernardino Valley CTSA.
- e. A SANBAG representative shall serve as an ex-officio member of the Board of Directors.
- f. Members of the Board shall not be entitled to designate or send an alternate for attendance or voting at meetings.
- g. For incorporating purposes, the original incorporating members may consist of three (3) SANBAG appointees and within 90 days of incorporation the remaining appointing entities will submit the names of additional members of the board of directors.

2. Terms of Office, Resignations, and Vacancies:

- a. Of the initial members appointed to the Board of Directors, the first term of one member appointed by each of the indentified appointing entities shall be four years, and the second term (if any) shall be three years. The term length shall be selected by the appointing agency.
- b. Except for the initial members referenced in section 2.a. above, the term of a member shall be three years.
- c. Each member is eligible for re-appointment for a maximum of two consecutive terms.
- d. Any member may resign at any time by giving written notice of such to the President, Secretary, Treasurer, or Board and to that member's appointing body pursuant to Article III, 1. b. Such resignation shall take effect at the time specified in the notice.
- e. The term of office of any member shall expire and there shall be a vacancy on the Board in the event the Board declares the term of a member to have expired following: (1) a failure by that member to attend three consecutive meetings of the Board whether excused or unexcused; or (2) a total of four unexcused absences in a 12 month period. A letter will be sent to the appointing body with a notification of the member's status.

3. Board of Directors Meetings and Notices:

- a. **Regular Meetings:** The Board of Directors shall meet at least quarterly, at an agreed upon time and place. An official Board meeting requires that each Board member have written notice at least two weeks in advance. Board members are required to contact the Secretary to the Board of Directors at least 48 hours in advance when they are unable to attend a regularly scheduled meeting of the Board. Members who fail to so notify the Secretary to the Board of Directors prior to the scheduled meeting will be considered unexcused. Notice to the public shall be given in manner as required by applicable law, including the Brown Act.
- b. **Special Meetings:** Special meetings of the Board for any purpose may be called at any time by the Chief Executive Officer, Chair, or by two members. Notice of the time and place of special meetings shall be given to each member by personal delivery of written notice, by e-mail, by facsimile, either directly to the member or to a person at the member's office who would reasonably be expected to communicate such notice promptly to the member. The notice of a special meeting need not state the purpose of the meeting.

4. Quorum:

Not less than a majority of the Directors currently appointed and serving shall constitute a quorum of the Board of Directors. Every act or decision made by a majority of the members present at a meeting duly held at which a quorum is present shall be the act of the Board subject to the provisions of these Bylaws and/or the California Nonprofit Public Benefit Corporation Law. In the absence of a quorum at any meeting of the Board, a majority of the members present may adjourn the meeting. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum for such meeting.

Article IV - Officers and Duties

a. There shall be four officers of the Board, consisting of a chair, vice chair, secretary and treasurer, all of whom shall hold their respective office for a term of one year. Officers of the Board shall be elected at a Board meeting to be held in December of each year for a term beginning on January 1 of the subsequent year and ending on December 31 of that subsequent year.

b. The officers' duties are as follows:

The **chair** shall convene regularly scheduled Board meetings, shall preside or arrange for other members of the executive committee to preside at each meeting in the following order, vice chair, secretary and treasurer, and shall with ratification of the Board appoint persons to all committees. The **vice chair** shall chair committees on special subjects as designated by the Board.

The **secretary** shall ensure the maintenance of a record of the proceedings of all meetings of the Board; ensure the service of all notices required by Law or by the Bylaws; and ensure that all correspondence requiring response or which may be submitted for such purpose by another officer is answered. The Secretary shall ensure the maintenance of a complete, up to date, and accurate record of the Articles of Incorporation, Bylaws and any amendments to the Bylaws and shall ensure the filing with the Secretary of State of any amendments to the Articles of Incorporation.

The **treasurer** shall ensure that there is a report quarterly to the Board on the financial statement of the corporation and more frequently as requested by the Board. The books and records of the corporation shall be open to inspection at all times to the Board of Directors. There shall be an annual audit by a certified public accountant.

The Board may authorize any officer, employee or agent, in the name and on behalf of the corporation, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board to the contrary, the Chair [and/or the Chief Executive Officer] shall be authorized to execute such instruments on behalf of the corporation.

All checks, drafts and other orders for the payment of money out of the funds of the corporation, and all notes or other evidences of indebtedness of the corporation, shall be signed on behalf of the corporation by the Treasurer or by such other officer or employee as may be determined by the Board.

Article V – Committees

1. The Board may, by majority vote of the members then in office, create such other committees of the Board on any subjects within the powers or purposes of the Corporation, as needed. The Board chair shall appoint all committee chairs.
2. The Executive Committee shall consist of the four officers. Except for powers to amend the Articles of Incorporation and Bylaws, the executive committee shall have all the powers and authority of the Board of Directors in the intervals between meetings of the Board of Directors, and is subject to the direction and control of the full Board.
3. The Finance Committee shall consist of 3 Board Members, one of whom must be the Board Treasurer. The committee will, among other things, be required to review the annual audit, oversee preparation of the annual budget by the staff, and monitor financial performance on an ongoing basis through records provided by staff.

Article VI – Chief Executive Officer and Staff

1. Chief Executive Officer – the Chief Executive Officer is hired by the Board. The Chief Executive Officer shall fulfill the day-to-day responsibilities for the organization including carrying out the organization’s goals and policies. The Chief Executive Officer will attend all Board meetings, report on the progress of the organization, answer questions of the Board of Directors and carry out the duties described in the job description. The Board of Directors can designate other duties as necessary.
2. The Chief Executive Officer is responsible to hire staff as needed. The Chief Executive Officer has the authority to hire and to make staffing adjustments when necessary. The Board of Directors can terminate the Chief Executive Officer as provided in any employment contract.

Article VII – Indemnification of Directors and Officers and Insurance

1. Right of Indemnity. To the full extent permitted by law, this corporation shall indemnify its directors, officers, employees and other persons described in Section 5238(9a) of the California Corporations Code, including persons formally occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection

with any "proceeding," as that term is used in such Section and including an action by or in the right of the corporation, by reason of the fact that such person is or was a person described by such section. "Expenses" as used in the Bylaws shall have the same meaning as in Section 5238(a) of the California Corporations Code.

2. Approval of Indemnity. Upon written request to the Board by any person seeking indemnification under Section 5238(a) or Section 5238(c) of the California Corporations Code, the Board shall promptly determine in accordance with Section 5238(e) of the Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met, and if so the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevent the formation of a quorum of directors who are not parties to such proceeding, the Board or the attorney or other person rendering services in connection with the defense shall apply to the court in which such proceeding is or was pending to determine whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met.
3. Advancement of Expenses. To the full extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under this Article VII in defending any proceeding covered by the Article shall be advanced by the corporation prior to the final disposition of the proceeding upon receipt by the corporation of an undertaking by or on behalf of such person that the advance will be repaid unless it is ultimately determined that such person is entitled to be indemnified by the corporation therefore.
4. Insurance. The corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, members, employees and other agents of the corporation, against any liability asserted against or incurred by an officer, member, employee or agent in such capacity or arising out of the officers, members, employees or agents status as such.

Article VIII – Amendments

1. The Bylaws may be amended at any meeting of the Board by a majority vote of the current membership of the Board, provided the proposed amendment has been sent to each member at least thirty (30) days before the meeting and has received prior concurrence from the SANBAG Board of Directors.

CERTIFICATE OF SECRETARY

I, _____, HEREBY CERTIFY THAT:

I AM THE DULY ACTING Secretary of Valley Transportation Services, a California nonprofit public benefit corporation; and the foregoing Bylaws constitute the Revised and Restated Bylaws of said Corporation duly adopted _____ by the Board of Directors effective _____, 2012.

IN WITNESS WHEREOF, I have hereunder subscribed my name this ___ of _____, 2012.

/s/ _____

[Name, Title]



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 9

Date: November 15, 2012

Subject: License agreement for use of San Bernardino Associated Governments (SANBAG) Right-of-Way and Right-of-Entry Permit on SANBAG Right-of-Way

Recommendation:* That the Committee recommend the Board acting as the San Bernardino County Transportation Commission:

1. Approve License Agreement No. R13073 with William J. Patterson for the interim use of a portion of Right-of-Way for the parking of vehicles for employees of adjacent business and the installation, operation, maintenance and repair of a private road crossing, business sign and a fire water pipeline along the northly portion of crossing San Bernardino Associated Governments' Redlands Subdivision Right-of-Way northerly of W. Redlands Boulevard and adjacent to Tennessee Street in the City of Redlands and;

2. Approve License Agreement No. R13072 with Verizon Communication, Inc. for the installation, operation, maintenance and repair of one (1) overhead fiber optic cable containing up to seventy-two (72) fibers crossing San Bernardino Associated Governments' San Gabriel Subdivision at the point where Meridian Avenue would cross the rail Right-of-Way in the City of San Bernardino;

*

| | |
|--|---|
| | <p><i>Approved</i> Commuter Rail and Transit Committee</p> <p>Date: _____</p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p> |
|--|---|

| | | | | | | | | | |
|-----|--|-----|---|-----|--|------|--|-----|--|
| COG | | CTC | X | CTA | | SAFE | | CMA | |
|-----|--|-----|---|-----|--|------|--|-----|--|

Check all that apply.

CRTC1211a-cd
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13073.docx>
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13072.docx>

3. Waive San Bernardino Associated Governments Contract and Procurement Policy 11000 V.F., for Contract Nos. R13072 and R13073 which limits the maximum standard contract term to five (5) years; and
4. Authorize the Executive Director or his designee to execute the License Agreements in Recommendations 1 and 2, and any other necessary and proper documents to implement the License agreements' terms, that are approved as to form by General Counsel.

Background:

Between 1991 and 1993, San Bernardino Associated Governments (SANBAG) acquired the Baldwin Park branch line, the Pasadena Subdivision, and the Redlands branch line, all railroad rights-of-way, for its Commuter Rail program. Following the acquisition of these rail assets, in 1994, SANBAG contracted with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to provide property management services. During 2011, SANBAG went through a procurement process to bid the services provided by the LACMTA and on May 4, 2011, the Board awarded Contract No. C11206 to Epic Land Solutions.

Historically, the management services provided to SANBAG by LACMTA has included: environmental due diligence, management of leases, licenses and easements, weed abatement and trash removal, preparing agreements and licenses for utilities and street crossings of the Right-of-Way, and marketing surplus property. To expedite the provision of these services, SANBAG provided the LACMTA power-of-attorney to handle these matters on SANBAG's behalf. SANBAG's rail assets portfolio includes approximately 1,050 licenses, leases, and agreements that generate roughly \$400,000 in annual revenue. The revenues generated by SANBAG's rail assets are used to fund improvements related to the rail system. Examples of past projects include the restoration of the San Bernardino Depot, San Bernardino Parking Structure, and the restoration of the Upland Lemon Grower's Warehouse.

When SANBAG re-procured these services last year, SANBAG did not grant Epic Land Solutions, Inc. (Epic) power-of-attorney. Consequently, this Board action is required to authorize SANBAG to enter into or amend any new or existing license, lease, or agreement for the use of SANBAG's property.

The licenses to be granted per this item will be for an interim use of Right-of-Way property to be used for parking of vehicles, a private road crossing, business sign and a fire water pipeline on the Redlands Subdivision and an overhead crossing of SANBAG's Right-of-Way commonly known as Metrolink's San Gabriel Subdivision, as shown below.

William J. Patterson will be located north of West Redlands Boulevard, adjacent to Tennessee Street in the City of Redlands, SANBAG mile post 7.97. The total area needed for the use is 18,505 square feet.

Verizon Communications, Inc. will be located at Meridian Avenue at the point where it would cross the rail Right-of-Way in the City of San Bernardino, SANBAG Mile Post 83.6 (SCRRA Mile Post 54.20). The total area needed for the use is 1,000 square feet.

Financial Impact: Approval of the agreement with Mr. Patterson will result in a one-time refundable deposit of \$550 and monthly license payment of \$550 to SANBAG. Approval of the agreement with Verizon Communications, Inc. will result in the payment of a one-time administrative fee of \$1,500 and \$2,000 annual license payment to SANBAG. The License payment fees will be collected by Epic Land Solutions, Inc. on behalf of SANBAG and retained in the SANBAG Rail Assets Trust account until the funds are transmitted to SANBAG's Finance Department. The revenue may be budgeted in subsequent fiscal years for projects that benefit SANBAG's rail system/assets. All staff time associated with preparation of this item and coordination of the license document is consistent with the current Fiscal Year 2012/2013 budget task 0377.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and the license agreements.

Responsible Staff: Casey Dailey, Transit Analyst



CONTRACT SUMMARY SHEET

Contract No. R 13073 Amendment No. _____

By and Between

San Bernardino Associated Governments and William J. Patterson

Contract Description License Agreement to cross SANBAG railroad right-of-way

| | |
|---|--|
| Board of Director's Meeting Date: December 6, 2012 | |
| Overview of BOD Action: Approve License Agreement R13073 with William J. Patterson for an interim use of SANBAG ROW for for parking of vehicles for employees of adjacent business and their invitees, private road crossing, business sign and a fire water pipeline only | |
| Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |

| CONTRACT OVERVIEW | | | |
|---|-----------|---------------|--|
| Original Contract Amount | \$ | 550.00 | Original Contingency Amount |
| Revised Contract Amount <i>Inclusive of prior amendments</i> | \$ | | Revised Contingency Amount <i>Inclusive of prior amendments</i> |
| Current Amendment Amount | \$ | | Contingency Amendment |
| TOTAL CONTRACT VALUE | \$ | 550.00 | TOTAL CONTINGENCY VALUE |
| TOTAL BUDGET AUTHORITY (contract value + contingency) | | | \$ 550.00 |

| | | |
|---|----------------------------------|----------------------------------|
| Contract Start Date 12/6/12 | Current Contract Expiration Date | Revised Contract Expiration Date |
| Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain. | | |

| FINANCIAL INFORMATION | |
|---|--|
| <input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0377</u> . | |
| <input type="checkbox"/> A Budget Amendment is required. | |
| How are we funding current FY? Rail Assets | |
| <input type="checkbox"/> Federal Funds | <input type="checkbox"/> State Funds <input checked="" type="checkbox"/> Local Funds <input type="checkbox"/> TDA Funds <input type="checkbox"/> Measure I Funds |
| Provide Brief Overview of the Overall Funding for the duration of the Contract: Rail Assets | |
| <input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable | |

| CONTRACT MANAGEMENT INFORMATION | |
|--|--|
| Check all applicable boxes: | |
| <input type="checkbox"/> Retention? If yes, indicate % _____. | |
| <input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ % <input type="checkbox"/> Underutilized DBE (UDBE) Goal _____ % | |

| | | |
|---|---------------------------------|---------------------|
| Task Manager (Print Name) <u>CASEY DAILEY</u> | Signature <u>Mitch Alderman</u> | Date <u>11/7/12</u> |
| Project Manager (Print Name) <u>Jessie Hill</u> | Signature <u>Casey Dailey</u> | Date <u>11.7.12</u> |
| Contracts Administrator (Print Name) <u>W. SWANSON</u> | Signature <u>Jessie Hill</u> | Date <u>11/8/12</u> |
| Chief Financial Officer (Print Name) <u>AZ</u> | Signature <u>NA</u> | Date <u>11/5/12</u> |
| Director of Fund Administration & Programming | Signature | Date |

CONTRACT NO: R13073

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

WILLIAM J. PATTERSON

For

**License Agreement on the Redlands Subdivision
Mile Post 7.97**

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of December 5, 2012 by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a county transportation commission and local transportation authority and existing under the authority of Sections 13050 et seq and 18050 of the California Public Utilities Code ("SANBAG"), and **WILLIAM J. PATTERSON** an Individual, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

- 1. Description of License Property:
 An at grade parcel of land on the northerly portion of the SANBAG Right-of-Way commonly known as the Redlands Subdivision northerly of W. Redlands Boulevard and adjacent to Tennessee Street in the City of Redlands at SANBAG Mile Post 7.97
 Approximate area:
 Eighteen Thousand Five Hundred and Five Square Feet (18,505 Sq. Ft.) (§1.1)
- 2. Use of License Property:
 A revocable use of a portion of the Right of Way to be used for parking of vehicles for employees of adjacent business and their invitees, private road crossing, business sign and a fire water pipeline only, and no other uses (§1.1, §10)
- 3. Commencement Date:
 January 1, 2013, or upon final execution of agreement (§1.2)
- 4. Term (circle one):
 A. Month-to-month
 B. N/A months, ending N/A 20 N/A, unless canceled by SANBAG as provided in Section 1.2 on 30 days' notice (§1.2)
- 5. License Fees:
 A. Base License Fee:
 \$550.00 per month commencing upon the earlier to occur of:
 - a. Ninety (90) days after the Commencement Date of this agreement
 OR
 - b. Execution by Licensee of a lease or license of its adjacent property at 1120 West Redlands Boulevard, Redlands, CA (§2.1)

- B.** Additional License Fee:
- a. One time refundable deposit: \$550.00
 - b. ~~Other fees:~~ \$N/A
- (§2.1)

- C.** Base License Fee Adjustment Dates (Not applicable)
- a. ~~Annually based on CPI~~
 - b. ~~At intervals of not less than three (3) years based on current fair market rent~~
- (§2.2)

6. Insurance Amount (See Exhibit "B") (§16)

7. SANBAG's Address:
SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715 (§24.1)

8. Licensee's Address:
WILLIAM J. PATTERSON
30450 E. Sunset Drive So.
Redlands, California 92373-7364 (§24.1)
Attn: William J. Patterson

9. Facility:
Parking of vehicles for employees of adjacent business and their invitees, private road crossing, business sign and a fire water pipeline only as shown on Exhibit A attached hereto (§1.1)

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

SANBAG:

LICENSEE:

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

WILLIAM J. PATTERSON

By: _____
Janice Rutherford
President, Board of Directors

By: _____
Name:
Title:

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contracts Administrator

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Exhibits:

- "A" License Property
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" Additional Provisions

PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 **Grant of License.** SANBAG hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit A and described in Item 1 of the Basic License Provisions (the "License Property"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Facility described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Facility"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Facility. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the use of the Facility or the License Property, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The License Property, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

1.2 **Term of Agreement.** The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provisions, or if Item 4.A is circled, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a license for the term specified in said Item 4.B; provided, however, that SANBAG shall have the right to terminate this Agreement prior to the date specified in Item 4.B by delivering thirty (30) days' prior written notice to Licensee, provided that SANBAG, in its sole, reasonable judgment, determines that it then may require possession of the License Property for its primary, transportation-related purposes. The term of this Agreement as provided above is referred to as the "Term".

1.3 **Condition of License Property.** Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

2. PAYMENTS

2.1 **License Fee.** As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the amount per month specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2. If Item 5.B.a of the Basic License Provisions is circled, the one time fee noted therein shall be due and payable upon execution of this Agreement. If Item 5.B.b of the Basic License Provisions is circled, the fee noted therein shall be due and payable as indicated in that item. If Item 5.A.a of the Basic License Provisions is circled, an amount equal to twelve (12) times the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, annually in advance for the convenience of both parties, without affecting the Term of this Agreement as specified in Section 1.2. If Item 5.A.b of the Basic License Provisions is circled, the first month's Base License Fee noted therein shall be due and payable upon execution of this Agreement. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term, except that the Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis.

2.2 License Fee Adjustment.

2.2.1 **Annual CPI Adjustment.** If Item 5.C.a of the Basic License Provisions is circled, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date(s) is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Adjustment

Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if none, the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by SANBAG.

2.2.2 Fair Market Adjustment. If Item 5.C.b of the Basic License Provisions is circled, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 2.2.1, above) payable under this Section 2 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the License Property as determined by SANBAG in good faith. Such increases shall be effective on an anniversary date of the Commencement Date. SANBAG shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable anniversary date. If no adjustment is made on the third anniversary of the Commencement Date, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

2.3 Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this Agreement will cause SANBAG to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Licensee is not received by SANBAG within five (5) days of when due, Licensee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver of Licensee's default with respect to the overdue payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Agreement, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 24.5.

3. TAXES

Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility, the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the Facility's operations.

4. CONSTRUCTION

Any work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the SANBAG's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to SANBAG. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, Licensee shall submit work plans to SANBAG for review and approval. Any such Work must be carried out pursuant to work plans approved in writing by SANBAG. In addition, Licensee shall provide SANBAG with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Facility, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. Unless otherwise requested by SANBAG, upon completion of any Work, Licensee shall restore the SANBAG Property to its condition immediately preceding the commencement of such Work.

5. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Facility or the License Property shall first be approved in writing by SANBAG. With respect to such Work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". Additionally,

Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the License Property to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property.

6. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses incurred by SANBAG in connection with Work on or maintenance of the License Property or the Facility, including, but not limited to, costs incurred by SANBAG in furnishing any materials or performing any labor, reviewing Licensee's Work plans and/or inspecting any Work, installing or removing protection beneath or along SANBAG's tracks, furnishing of watchmen, flagmen and inspectors as SANBAG deems necessary and such other items or acts as SANBAG in its sole discretion deems necessary to monitor or aid in compliance with this Agreement.

7. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Facility or SANBAG Property, and fully and promptly pay all persons who perform labor upon said Facility or SANBAG Property. Licensee shall not suffer or permit to be filed or enforced against the SANBAG Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Work, or out of any other claim or demand of any kind. Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by SANBAG with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SANBAG from all obligations and claims made against SANBAG for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of SANBAG. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SANBAG in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, SANBAG shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse SANBAG for the cost of such discharge within ten (10) business days after billing. SANBAG reserves the right at any time to post and maintain on the SANBAG Property such notices as may be necessary to protect SANBAG against liability for all such liens and claims. The provisions of this section shall survive the termination of this Agreement.

8. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall maintain the License Property and the Facility in a first-class condition during the Term of this Agreement and shall perform all maintenance and clean-up of the License Property and the Facility as necessary to keep the License Property and the Facility in good order and condition, to SANBAG's satisfaction. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property, by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties.

9. LANDSCAPING

If required by SANBAG, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Facility from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping work shall be done in accordance with the provisions of Section 4 above.

10. USE

The License Property and the Facility shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be

made by Licensee in the use of the License Property, the Facility or the commodity or product being conveyed through the Facility (if any) without SANBAG's prior written approval.

11. ABANDONMENT

Should Licensee at anytime abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

12. BREACH

Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SANBAG at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to SANBAG upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the remedies that SANBAG may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

13. SURRENDER

Upon termination of this Agreement, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove the Facility and restore the SANBAG Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option (i) perform the same at Licensee's expense, which costs Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Facility. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the SANBAG Property is restored.

14. INDEMNIFICATION

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its subsidiaries, officers, directors, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Licensee, or its officers, directors, affiliates, Licensee's Parties or anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee in connection with the SANBAG Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the SANBAG Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this Agreement, in each case whether occurring during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of SANBAG,

Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for a Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

15. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SANBAG Property, accident or fire or other casualty on the SANBAG Property, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the SANBAG Property. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Agreement.

16. INSURANCE

Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, SANBAG does not allow self-insurance, however, if Licensee can demonstrate assets and retention funds meeting SANBAG's self-insurance requirements, SANBAG may permit Licensee to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SANBAG at its sole and absolute discretion. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

17. TESTS AND INSPECTIONS

SANBAG shall have the right at anytime to inspect the License Property and the Facility so as to monitor compliance with this Agreement. If, in SANBAG's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the SANBAG Property, adjacent property (whether or not owned by SANBAG) or SANBAG operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any federal, state or local environmental, health and/or

safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Facility or the License Property or contamination of the SANBAG Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the SANBAG Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

In addition, in the event of any release on or contamination of the License Property, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SANBAG Property and all affected adjacent property -- whether or not owned by SANBAG) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover.

19. UNDERGROUND STORAGE TANKS

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

At SANBAG's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the SANBAG Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

20. SUBORDINATE RIGHTS

This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, maintain and use existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the License Property and in the vicinity of Facility. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or hereafter, and the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

21. COMPLIANCE WITH LAWS

Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the SANBAG Property and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. SANBAG may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.

22. CONDEMNATION

In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Facility. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. MARKERS

Project markers in form and size satisfactory to SANBAG, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of Licensee at such locations as SANBAG shall designate. Such markers shall be relocated or removed upon request of SANBAG without expense to SANBAG. Absence of markers in or about SANBAG Property does not constitute a warranty by SANBAG of the absence of subsurface installations.

24. GENERAL PROVISIONS

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

24.2 Non-Exclusive License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the License Property.

24.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

24.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG that is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due SANBAG as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

24.6 Captions. The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

24.7 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all payment obligations with respect to License Fees and all obligations concerning the condition of the SANBAG Property and the Facility.

24.8 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

24.9 Effective Date/Nonbinding Offer. Submission of this License for examination or signature by Licensee does not constitute an offer or option for license, and it is not effective as a license or otherwise until executed and delivered by both SANBAG and Licensee. Each individual executing this License on behalf of SANBAG or Licensee represents and warrants to the other party that he or she is authorized to do so.

24.10 Amendment. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.11 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Agreement.

24.12 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

24.13 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.14 Further Acts. Licensee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, at SANBAG's sole discretion, the relocation of the Facility and the license granted hereby.

24.15 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the License Property under this License is an interim use. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such public Project. Licensee expressly acknowledges and agrees that: (1) SANBAG may terminate this license for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the License Property; and (3) in the event SANBAG terminates this License and requires Licensee to vacate the License Property for any -public Project, Licensee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the License Property.

| |
|----------|
| Licensee |
| SANBAG |

24.16 Future Need of License Property. If SANBAG shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of SANBAG, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by SANBAG, relocate or remove its Facility at Licensee's sole cost and expense.

24.17 Time of Essence. Time is of the essence.

24.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

24.19 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.

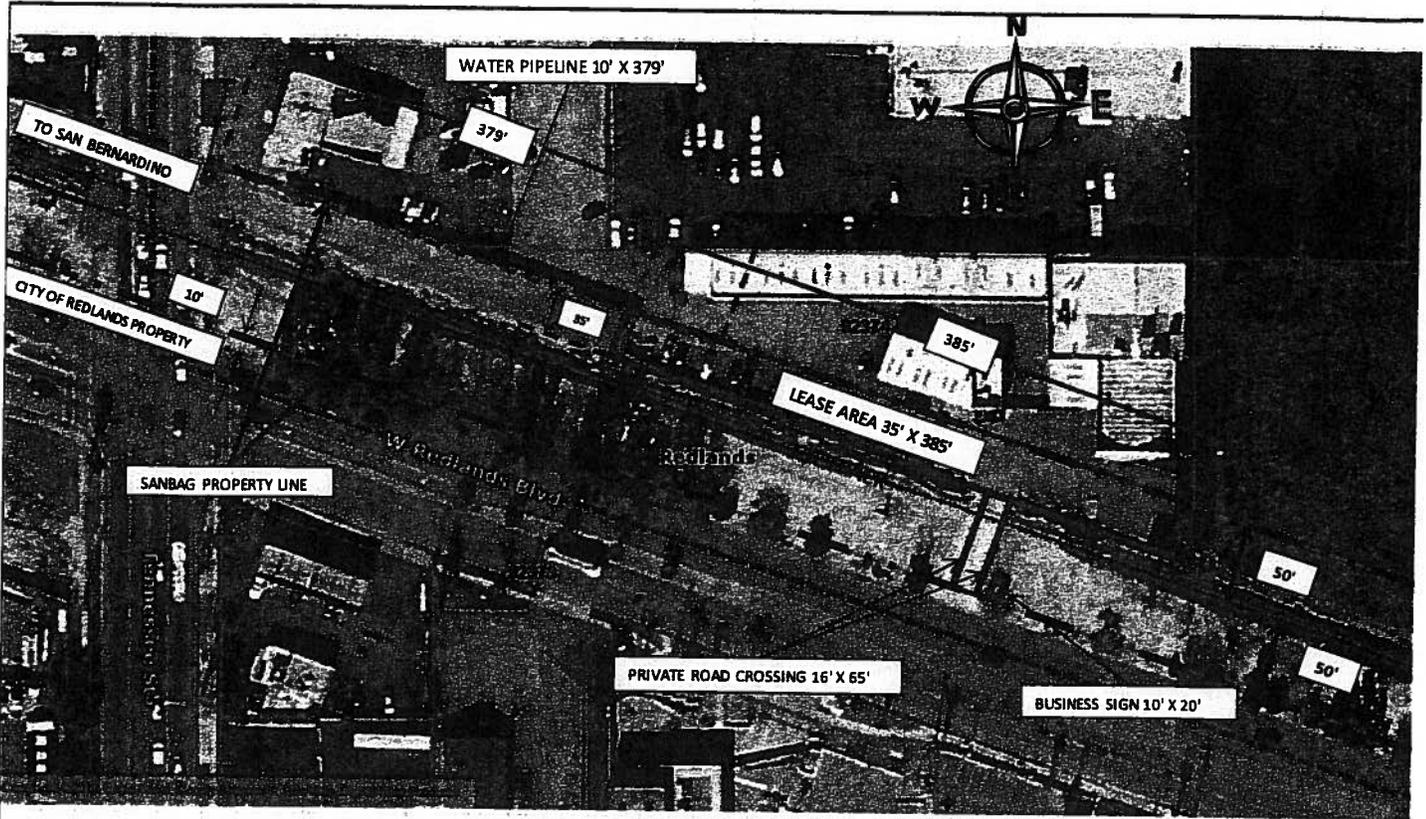
24.20 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.21 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

Exhibit "A"

License Property

EXHIBIT "A"



APN: 0169-251-04

| | | |
|---------------------------------|-----------------------------------|--|
| Date: 10/26/2012 | | Contract Number RRND007671 |
| Line Redlands | Mile Post 7.97 | Lessee/Licensee Bill Patterson |
| County San Bernardino | Thomas Guide Grid 607J7 | SANBAG File Number |
| Area 18,505 Sq. Ft | City Redlands | Use Parking, Driveway and Water Pipeline |
| Map Reference RRND 3 | Scale 1"=100' | Cross Streets Redlands Blvd. at Tennessee Street |



**SAN BERNARDINO
ASSOCIATED GOVERNMENTS**
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterments.
- Insurance Services Office Railroad Protective Liability
- Contractor's Pollution Liability with coverage for:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage.
- If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- Course of Construction: Completed value of the project.
- Property Insurance: Full replacement cost with no coinsurance penalty provision.
- Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- Contractors Pollution Liability: \$1,000,000 per occurrence \$2,000,000 annual aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANBAG. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials and employees; or the Lessee, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Exhibit "B"

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. SANBAG shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by SANBAG.

Verification of Coverage

Lessee, Licensee, or Permittee shall furnish SANBAG with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the SANBAG before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG.

Exhibit "C"

Permitted Hazardous Materials

No hazardous materials are permitted to be used or stored on License Property.

EXHIBIT "D-1"

Additional Provisions

1. **Importation of Soil/Fill Dirt.** Licensee shall not bring upon or use any Import Soil on the Premises in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a *certified hazardous waste testing laboratory* and the test results have been approved by SANBAG's Environmental Consultant. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as Clean Soil to the reasonable satisfaction of SANBAG's Environmental Consultant.
2. **Maintenance of Premises.** Licensee shall keep the Premises free and clear of weeds, trash, vegetation, unauthorized vehicle parking, graffiti and occupancy by transients/homeless persons or individuals. Licensee shall be fully responsible for ALL maintenance and maintenance that is required or necessary in connection with Licensee's use of Premises.
3. **Protection of Underground and Aboveground Installations.** Licensee shall ensure that it and Licensee's Parties protect, from and against any and all damage, all underground and aboveground installations and improvements, such as pipes, fiber optic lines and wires, which may be impacted by any work or any use of the Premises by Licensee.
4. **Improvements.** Both Licensee and SANBAG acknowledge that the Premises is Licensed in "AS IS" condition and any track removal, grading, paving and fencing as may be necessary or required to meet Licensee's needs will be the sole responsibility of the Licensee. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Licensee will be responsible for the removal of all permitted improvements upon termination of License.
5. **Utilities.** Licensee shall pay for any and all utilities for its benefit, security and use.
6. **Warranties.** SANBAG makes no warranties as to the suitability of the location for Licensee's intended use as to zoning, visibility, traffic count or any other factors which may cause Licensee to want to License the premises.
7. **Zoning or Permitting.** Any permits, inspection fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, or any labor expenses for the installation or maintenance of any permitted improvements are the Licensee's sole responsibility. Copies of permits are to be readily available for inspection by SANBAG personnel.
9. **Signage.** NO SIGNS PERMITTED on, or along the perimeter of the Premises unless such signs were requested and approved under your original proposal and covered by the required insurance.

| | |
|----------|--------|
| Licensee | SANBAG |
| | |

Initials



CONTRACT SUMMARY SHEET

Contract No. R 13072 Amendment No. _____

By and Between

San Bernardino Associated Governments and Verizon Communications, Inc.

Contract Description License Agreement to cross SANBAG railroad right-of-way

Board of Director's Meeting Date: December 6, 2012

Overview of BOD Action: Approve License Agreement R13072 with Verizon Communication, Inc. for the installation, operation, maintenance and repair of one (1) overhead fiber optic cable containing up to seventy two (72) fibers only

Is this a Sole-Source procurement? Yes No

| CONTRACT OVERVIEW | | | |
|---|-----------|-----------------|--|
| Original Contract Amount | \$ | 3,500.00 | Original Contingency Amount |
| Revised Contract Amount <i>Inclusive of prior amendments</i> | \$ | | Revised Contingency Amount <i>Inclusive of prior amendments</i> |
| Current Amendment Amount | \$ | | Contingency Amendment |
| TOTAL CONTRACT VALUE | \$ | 3,500.00 | TOTAL CONTINGENCY VALUE |
| TOTAL BUDGET AUTHORITY (contract value + contingency) | | | \$ 3,500.00 |

| | | |
|---|----------------------------------|----------------------------------|
| Contract Start Date 12/6/12 | Current Contract Expiration Date | Revised Contract Expiration Date |
| Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain. | | |

| FINANCIAL INFORMATION | | | | |
|---|--------------------------------------|---|------------------------------------|--|
| <input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. 0377. | | | | |
| <input type="checkbox"/> A Budget Amendment is required. How are we funding current FY? Rail Assets | | | | |
| <input type="checkbox"/> Federal Funds | <input type="checkbox"/> State Funds | <input checked="" type="checkbox"/> Local Funds | <input type="checkbox"/> TDA Funds | <input type="checkbox"/> Measure I Funds |
| Provide Brief Overview of the Overall Funding for the duration of the Contract: Rail Assets | | | | |
| <input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable | | | | |

| CONTRACT MANAGEMENT INFORMATION | |
|--|--|
| Check all applicable boxes: | |
| <input type="checkbox"/> Retention? If yes, indicate % _____. | |
| <input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ % <input type="checkbox"/> Underutilized DBE (UDBE) Goal _____ % | |

| | | |
|---|---|-------------------------------------|
| Task Manager (Print Name) <u>CASEY DAILEY</u> | <u>M. A. Alderman</u> Signature Mitch Alderman | <u>11/7/12</u> Date |
| Project Manager (Print Name) <u>Jeffery Hill</u> | <u>[Signature]</u> Signature Casey Dailey | <u>11.7.12</u> Date |
| Contracts Administrator (Print Name) <u>STAN</u> | <u>[Signature]</u> Signature Jeffery Hill | <u>11/8/12</u> Date |
| Chief Financial Officer (Print Name) <u>AZ</u> | <u>N/A</u> Signature | <u>11/8/12</u> Date |
| Director of Fund Administration & Programming | <u>N/A</u> Signature | <u> </u> Date |

CONTRACT NO: R13072

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

VERIZON COMMUNICATIONS, INC.

FOR

**License Agreement on the San Gabriel Subdivision
Mile Post 83.6**

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of December 5, 2012 by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a county transportation commission, existing under the authority of Section 13050 et seq. of the California Public Utilities Code ("SANBAG"), and **VERIZON COMMUNICATIONS, INC.** a corporation of the State of Delaware, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I**BASIC LICENSE PROVISIONS**

1. Description of License Property:
An overhead crossing of the SANBAG property commonly known as the San Gabriel Subdivision San Bernardino at a point where Meridian Avenue would cross the rail Right-of-Way in the City of San Bernardino, County of San Bernardino at SANBAG Mile Post 83.6 (SCRRRA Mile Post 54.20)
Approximate area:
One Thousand Square Feet (1,000 Sq. Ft.) (§1.1)

2. Use of License Property:
Installation, operation, maintenance and repair of one (1) overhead fiber optic cable containing up to seventy two (72) fibers only, and no other uses (§1.1, §10)

3. Commencement Date:
January 1, 2013 or upon execution of the Board of Directors (§1.2)

4. Term (circle one):
 - A. Month-to-month
 - B. N/A months, ending N/A 20 N/A, unless canceled by SANBAG as provided in Section 1.2 on 30 days' notice (§1.2)

5. License Fees:
 - A. Base License Fee:
\$2,000.00 per year, payable (circle one):
 - a. Annually in advance
 - b. Monthly in advance (§2.1)

 - B. Additional License Fee:
 - a. One time Administrative fee: \$1,500.00
 - b. Other fees: \$N/A (§2.1)

- (C) Base License Fee Adjustment Dates (Circle, if applicable)
- (a) Annually based on CPI effective January 1, 2014
 - (b) At intervals of not less than three (3) years based on current fair market rent (§2.2)
6. Insurance Amount (See Exhibit "B") (§16)
7. SANBAG's Address:
 SAN BERNARDINO ASSOCIATED GOVERNMENTS
 1170 W. 3rd Street, 2nd Floor
 San Bernardino, California 92410-1715 (§24.1)
8. Licensee's Address:
 VERIZON COMMUNICATIONS, INC.
 11 S. 4th Street
 Redlands, California 92543 (§24.1)
 Attn: Lex Treepaisan
 909-748-6654
9. Facility:
 One over (1) overhead fiber optic cable containing up to seventy two (72) fibers (§1.1)

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

SANBAG:

LICENSEE:

SAN BERNARDINO ASSOCIATED GOVERNMENTS

VERIZON COMMUNICATIONS, INC.

By: _____
Janice Rutherford
President, Board of Directors

By: _____
Name: Lex Treepaisan
Title: Project Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contracts Administrator

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- "A" License Property
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" Additional Provisions

PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 Grant of License. SANBAG hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit A and described in Item 1 of the Basic License Provisions (the "License Property"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Facility described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Facility"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Facility. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the use of the Facility or the License Property, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The License Property, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

1.2 Term of Agreement. The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provisions, or if Item 4.A is circled, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a license for the term specified in said Item 4.B; provided, however, that SANBAG shall have the right to terminate this Agreement prior to the date specified in Item 4.B by delivering thirty (30) days' prior written notice to Licensee, provided that SANBAG, in its sole, reasonable judgment, determines that it then may require possession of the License Property for its primary, transportation-related purposes. The term of this Agreement as provided above is referred to as the "Term".

1.3 Condition of License Property. Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

2. PAYMENTS

2.1 License Fee. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the amount per month specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2. If Item 5.B.a of the Basic License Provisions is circled, the one time fee noted therein shall be due and payable upon execution of this Agreement. If Item 5.B.b of the Basic License Provisions is circled, the fee noted therein shall be due and payable as indicated in that item. If Item 5.A.a of the Basic License Provisions is circled, an amount equal to twelve (12) times the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, annually in advance for the convenience of both parties, without affecting the Term of this Agreement as specified in Section 1.2. If Item 5.A.b of the Basic License Provisions is circled, the first month's Base License Fee noted therein shall be due and payable upon execution of this Agreement. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term, except that the Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis.

2.2 License Fee Adjustment.

2.2.1 Annual CPI Adjustment. If Item 5.C.a of the Basic License Provisions is circled, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date(s) is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month

containing the prior Adjustment Date or, if none, the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by SANBAG.

2.2.2 Fair Market Adjustment. If Item 5.C.b of the Basic License Provisions is circled, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 2.2.1, above) payable under this Section 2 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the License Property as determined by SANBAG in good faith. Such increases shall be effective on an anniversary date of the Commencement Date. SANBAG shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable anniversary date. If no adjustment is made on the third anniversary of the Commencement Date, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

2.3 Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this Agreement will cause SANBAG to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Licensee is not received by SANBAG within five (5) days of when due, Licensee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver of Licensee's default with respect to the overdue payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Agreement, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 24.5.

3. TAXES

Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility, the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the Facility's operations.

4. CONSTRUCTION

Any work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the SANBAG's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to SANBAG. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, Licensee shall submit work plans to SANBAG for review and approval. Any such Work must be carried out pursuant to work plans approved in writing by SANBAG. In addition, Licensee shall provide SANBAG with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Facility, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. Unless otherwise requested by SANBAG, upon completion of any Work, Licensee shall restore the SANBAG Property to its condition immediately preceding the commencement of such Work.

5. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Facility or the License Property shall first be approved in writing by SANBAG. With respect to such Work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii)

may, for any reason, need to enter onto the License Property to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property.

6. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses incurred by SANBAG in connection with Work on or maintenance of the License Property or the Facility, including, but not limited to, costs incurred by SANBAG in furnishing any materials or performing any labor, reviewing Licensee's Work plans and/or inspecting any Work, installing or removing protection beneath or along SANBAG's tracks, furnishing of watchmen, flagmen and inspectors as SANBAG deems necessary and such other items or acts as SANBAG in its sole discretion deems necessary to monitor or aid in compliance with this Agreement.

7. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Facility or SANBAG Property, and fully and promptly pay all persons who perform labor upon said Facility or SANBAG Property. Licensee shall not suffer or permit to be filed or enforced against the SANBAG Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Work, or out of any other claim or demand of any kind. Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by SANBAG with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SANBAG from all obligations and claims made against SANBAG for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of SANBAG. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SANBAG in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, SANBAG shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse SANBAG for the cost of such discharge within ten (10) business days after billing. SANBAG reserves the right at any time to post and maintain on the SANBAG Property such notices as may be necessary to protect SANBAG against liability for all such liens and claims. The provisions of this section shall survive the termination of this Agreement.

8. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall maintain the License Property and the Facility in a first-class condition during the Term of this Agreement and shall perform all maintenance and clean-up of the License Property and the Facility as necessary to keep the License Property and the Facility in good order and condition, to SANBAG's satisfaction. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property, by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties.

9. LANDSCAPING

If required by SANBAG, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Facility from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping work shall be done in accordance with the provisions of Section 4 above.

10. USE

The License Property and the Facility shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be

made by Licensee in the use of the License Property, the Facility or the commodity or product being conveyed through the Facility (if any) without SANBAG's prior written approval.

11. ABANDONMENT

Should Licensee at anytime abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

12. BREACH

Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SANBAG at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to SANBAG upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the remedies that SANBAG may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

13. SURRENDER

Upon termination of this Agreement, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove the Facility and restore the SANBAG Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option (i) perform the same at Licensee's expense, which costs Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Facility. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the SANBAG Property is restored.

14. INDEMNIFICATION

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its subsidiaries, officers, directors, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Licensee, or its officers, directors, affiliates, Licensee's Parties or anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee in connection with the SANBAG Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the SANBAG Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this Agreement, in each case whether occurring during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of SANBAG,

Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for a Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

15. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SANBAG Property, accident or fire or other casualty on the SANBAG Property, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the SANBAG Property. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Agreement.

16. INSURANCE

Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, SANBAG does not allow self-insurance, however, if Licensee can demonstrate assets and retention funds meeting SANBAG's self-insurance requirements, SANBAG may permit Licensee to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SANBAG at its sole and absolute discretion. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

17. TESTS AND INSPECTIONS

SANBAG shall have the right at anytime to inspect the License Property and the Facility so as to monitor compliance with this Agreement. If, in SANBAG's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the SANBAG Property, adjacent property (whether or not owned by SANBAG) or SANBAG operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Facility or the License Property or contamination of the SANBAG Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the SANBAG Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

In addition, in the event of any release on or contamination of the License Property, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SANBAG Property and all affected adjacent property -- whether or not owned by SANBAG) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover.

19. UNDERGROUND STORAGE TANKS

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

At SANBAG's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the SANBAG Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

20. SUBORDINATE RIGHTS

This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, maintain and use existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the License Property and in the vicinity of Facility. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or hereafter, and

the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

21. COMPLIANCE WITH LAWS

Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the SANBAG Property and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. SANBAG may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.

22. CONDEMNATION

In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Facility. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. MARKERS

Project markers in form and size satisfactory to SANBAG, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of Licensee at such locations as SANBAG shall designate. Such markers shall be relocated or removed upon request of SANBAG without expense to SANBAG. Absence of markers in or about SANBAG Property does not constitute a warranty by SANBAG of the absence of subsurface installations.

24. GENERAL PROVISIONS

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

24.2 Non-Exclusive License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the License Property.

24.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

24.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG that is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due SANBAG as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

24.6 Captions. The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

24.7 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination

of this Agreement, including without limitation, all payment obligations with respect to License Fees and all obligations concerning the condition of the SANBAG Property and the Facility.

24.8 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

24.9 Effective Date/Nonbinding Offer. Submission of this License for examination or signature by Licensee does not constitute an offer or option for license, and it is not effective as a license or otherwise until executed and delivered by both SANBAG and Licensee. Each individual executing this License on behalf of SANBAG or Licensee represents and warrants to the other party that he or she is authorized to do so.

24.10 Amendment. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.11 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Agreement.

24.12 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

24.13 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.14 Further Acts. Licensee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, at SANBAG's sole discretion, the relocation of the Facility and the license granted hereby.

24.15 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the License Property under this License is an interim use. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such public Project. Licensee expressly acknowledges and agrees that: (1) SANBAG may terminate this license for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the License Property; and (3) in the event SANBAG terminates this License and requires Licensee to vacate the License Property for any –public Project, Licensee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the License Property.

24.16 Future Need of License Property. If SANBAG shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of SANBAG, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by SANBAG, relocate or remove its Facility at Licensee's sole cost and expense.

24.17 Time of Essence. Time is of the essence.



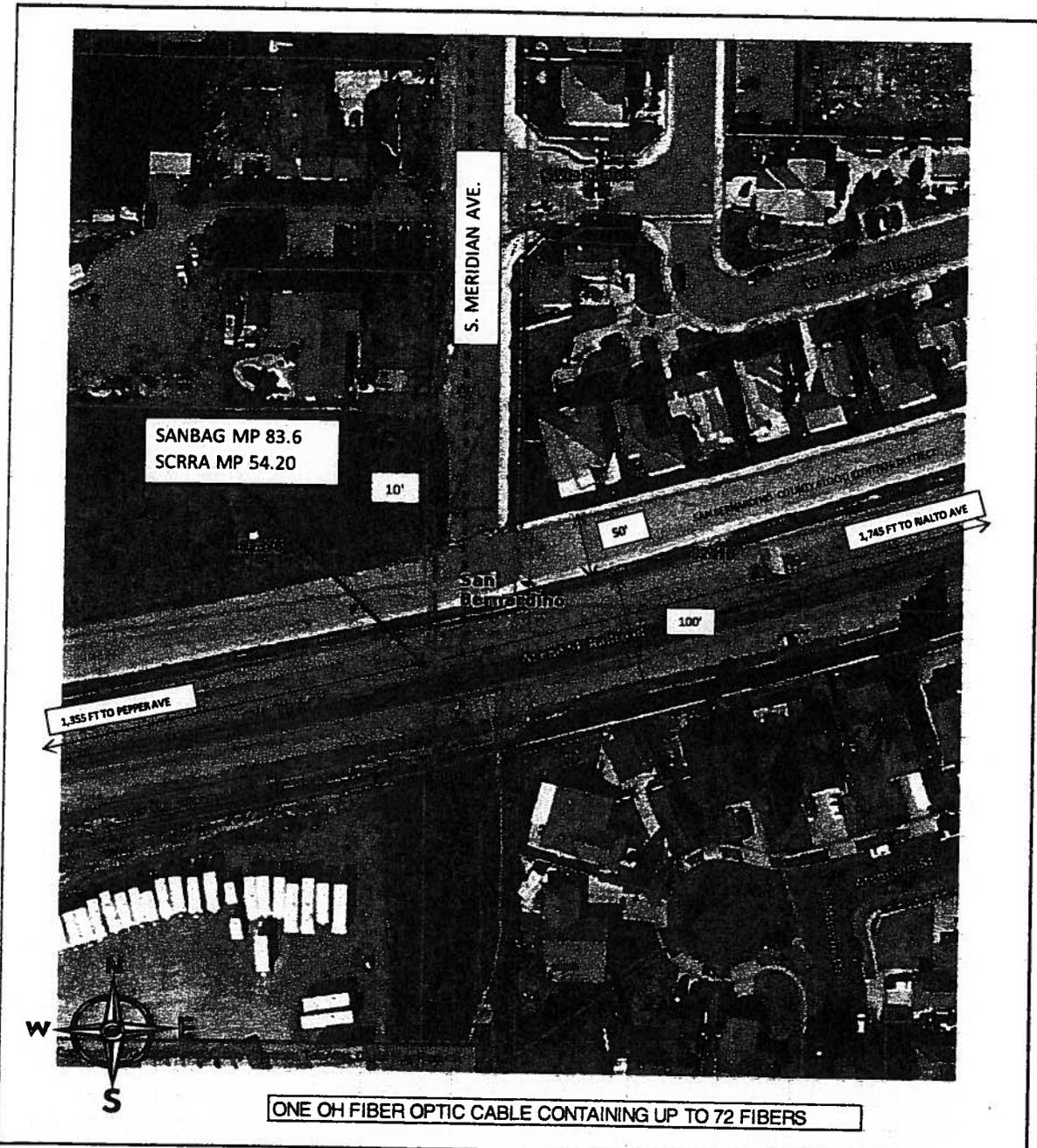
24.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

24.19 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.

24.20 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.21 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

Exhibit "A"
License Property
EXHIBIT "A"



APN: 0142-132-03

| | |
|-------------------------------------|---|
| Date 10/25/2012 | Contract Number RSSB003754 |
| Branch/Line San Gabriel Sub S.B. | Mile Post SANBAG 83.6, SCRRRA 54.20 |
| County San Bernardino | Lessee/Licensee Verizon Communications, Inc. |
| Area 1,000 Sq. Ft. | Thomas Guide Grid 606A2 |
| Map Reference SSB 1 | Cross Streets Meridian Ave. & Rialto Ave. |
| | City San Bernardino |
| | Use OH Fiber Optic Crossing |
| | Scale 1"=100' |

Governments
SANBAG
 Working Together

SAN BERNARDINO
ASSOCIATED GOVERNMENTS
 1170 W. 3rd Street, 2nd Floor
 San Bernardino, CA 92410-1715

Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterments.
- Insurance Services Office Railroad Protective Liability
- Contractor's Pollution Liability with coverage for:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage.
- If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- Course of Construction: Completed value of the project.
- Property Insurance: Full replacement cost with no coinsurance penalty provision.
- Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- Contractors Pollution Liability: \$1,000,000 per occurrence \$2,000,000 annual aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANBAG. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials and employees; or the Lessee, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Exhibit "B"

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. SANBAG shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by SANBAG.

Verification of Coverage

Lessee, Licensee, or Permittee shall furnish SANBAG with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the SANBAG before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG.

Exhibit "C"

Permitted Hazardous Materials

No hazardous materials are permitted to be used or stored on License Property.

Exhibit "D-1"

**ADDITIONAL REQUIREMENTS
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (SCRRA)**

1. Licensee agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Right of Entry Agreement (Form Number 6) and deliver and secure approval of the insurance required by the two exhibits attached to Form Number 6. If the Licensee retains a contractor to perform any work within the rail right-of-way, the Licensee shall incorporate in its contract documents SCRRA Form Number 6 and SCRRA Rules and Requirements for Construction on Railway Property (Form Number 37). SCRRA's Right of Way Engineers Office can be reached at 1-213-452-0353.
2. Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads.
3. Licensee's contractor shall contact SCRRA's consultant/contractor at 1-877-452-0205 to schedule safety training. The contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry. No work may commence on the railroad right of way until this training has been completed.
4. The Licensee agrees to comply and to ensure that its contractor complies with the instructions of SCRRA's Employee-In-Charge (EIC) and representatives, in relation to the proper manner of protection of the tracks and the traffic moving thereon, pole lines, signals and other property of SCRRA or its member agency tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operation of SCRRA's track and other facilities.
5. Licensee's contractor will call 1-213-305-8424 to arrange for flagging services a minimum of five (5) working days prior to beginning work. Although every effort is made to accommodate your schedule, prior notification does not guarantee the availability of protective services for the proposed date of work.
6. Licensee shall be responsible for the location, and protection of any and all public or private surface, sub-surface, and overhead lines and structures. Licensee shall not damage, destroy or interfere with any existing encumbrances, licenses and rights (whether public or private), granted upon or relating to the railroad right-of-way.
7. The contractor shall call SCRRA's signal department at 1-909-859-4100 to mark signal and communication cables and conduits. In case of signal emergencies or grade crossing problems, the contractor shall call SCRRA's 24-hour signal emergency number 1-888-446-9721.
8. The Licensee shall obtain permission from the owners of any fiber optic, gas, or oil lines that may be located along or across the right-of-way.
9. Licensee shall prepare and submit traffic control plan for SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.

10. If SCRRA shall deem it necessary in the future, to build additional track, tracks or other facilities in connection with the operation of its railroad, at the request of SCRRA, the Licensee shall modify, at its own expense, the proposed utility and/or roadway to conform to the rail line.

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| Licensee | SANBAG |
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Initials

EXHIBIT "D-2"

SANBAG General Notes

1. All personnel entering the railroad right-of-way shall comply with SANBAG and BNSF/SCRRA requirements. Failure to comply will be grounds for termination of work and revocation of the Right-of-Entry (ROE) permit.
2. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete BNSF's/SCRRA's Contractor Safety Training course.
3. The ROE permittee shall pay for all flagging, inspections, and review costs as required in the ROE permit. Work beyond the hours of 7 am to 5 pm, Monday through Friday, will be charged at 1.5 times the standard hourly rate.
4. The contractor shall adhere to all requirements set forth by SANBAG, BNSF, the ROE permit, project plans and specifications, and the job site BNSF/SCRRA flagman/Employee-in-Charge (EIC). The BNSF/SCRRA flagman/EIC has sole responsibility to protect the railroad infrastructure and operations. At all times, the Contractor shall follow the flagman/EIC's direction.
5. All persons entering the railroad right-of-way shall have taken the BNSF/SCRRA safety training course.
6. No work shall be performed within the railroad right-of-way without a Right-of-Entry permit, flag requests submitted to BNSF/SCRRA, and a BNSF/SCRRA flagman/EIC present during all construction and related activities.
7. The contractor shall comply with all environmental and third party permits as required by the work.
8. The contractor shall make the necessary arrangements for each equipment operator to have constant and direct radio contact with their foreman. The foreman will in turn have constant and direct contact with the BNSF/SCRRA flagman/EIC.
9. The contractor shall have the permitted stamped set of plans on-site. Work will be terminated by SANBAG should no stamped plans be on-site.
10. The contractor shall contact Maureen Lucey-Smith at Epic Land Solutions, SANBAG's property administrator, (951) 321-4744, 48-hours in advance for any inspections required in the ROE permit.
11. The movement of trains is unpredictable. Trains may approach the job site in any direction, at any speed, at any time, and may stop and occupy the track within the contractor's work zone for an undetermined period of time.
12. No personnel shall cross any track without the approval from the BNSF/SCRRA flagman/EIC.
13. Only the BNSF/SANBAG flagman/EIC is permitted to perform flagging operations within the railroad right-of-way.

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| Licensee | SANBAG |
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This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist SANBAG Board Members and partners as they participate in deliberations at SANBAG Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. SANBAG staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

| | |
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| AB | Assembly Bill |
| ACE | Alameda Corridor East |
| ACT | Association for Commuter Transportation |
| ADA | Americans with Disabilities Act |
| ADT | Average Daily Traffic |
| APTA | American Public Transportation Association |
| AQMP | Air Quality Management Plan |
| ARRA | American Recovery and Reinvestment Act |
| ATMIS | Advanced Transportation Management Information Systems |
| BAT | Barstow Area Transit |
| CALACT | California Association for Coordination Transportation |
| CALCOG | California Association of Councils of Governments |
| CALSAFE | California Committee for Service Authorities for Freeway Emergencies |
| CARB | California Air Resources Board |
| CEQA | California Environmental Quality Act |
| CMAQ | Congestion Mitigation and Air Quality |
| CMIA | Corridor Mobility Improvement Account |
| CMP | Congestion Management Program |
| CNG | Compressed Natural Gas |
| COG | Council of Governments |
| CPUC | California Public Utilities Commission |
| CSAC | California State Association of Counties |
| CTA | California Transit Association |
| CTC | California Transportation Commission |
| CTC | County Transportation Commission |
| CTP | Comprehensive Transportation Plan |
| DBE | Disadvantaged Business Enterprise |
| DEMO | Federal Demonstration Funds |
| DOT | Department of Transportation |
| EA | Environmental Assessment |
| E&D | Elderly and Disabled |
| E&H | Elderly and Handicapped |
| EIR | Environmental Impact Report (California) |
| EIS | Environmental Impact Statement (Federal) |
| EPA | Environmental Protection Agency |
| FHWA | Federal Highway Administration |
| FSP | Freeway Service Patrol |
| FRA | Federal Railroad Administration |
| FTA | Federal Transit Administration |
| FTIP | Federal Transportation Improvement Program |
| GFOA | Government Finance Officers Association |
| GIS | Geographic Information Systems |
| HOV | High-Occupancy Vehicle |
| ICTC | Interstate Clean Transportation Corridor |
| IEEP | Inland Empire Economic Partnership |
| ISTEA | Intermodal Surface Transportation Efficiency Act of 1991 |
| IIP/ITIP | Interregional Transportation Improvement Program |
| ITS | Intelligent Transportation Systems |
| IVDA | Inland Valley Development Agency |
| JARC | Job Access Reverse Commute |
| LACMTA | Los Angeles County Metropolitan Transportation Authority |
| LNG | Liquefied Natural Gas |
| LTF | Local Transportation Funds |

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|------------|--|
| MAGLEV | Magnetic Levitation |
| MARTA | Mountain Area Regional Transportation Authority |
| MBTA | Morongo Basin Transit Authority |
| MDAB | Mojave Desert Air Basin |
| MDAQM | Mojave Desert Air Quality Management District |
| MOU | Memorandum of Understanding |
| MPO | Metropolitan Planning Organization |
| MSRC | Mobile Source Air Pollution Reduction Review Committee |
| NAT | Needles Area Transit |
| NEPA | National Environmental Policy Act |
| OA | Obligation Authority |
| OCTA | Orange County Transportation Authority |
| PA&ED | Project Approval and Environmental Document |
| PASTACC | Public and Specialized Transportation Advisory and Coordinating Council |
| PDT | Project Development Team |
| PNRS | Projects of National and Regional Significance |
| PPM | Planning, Programming and Monitoring Funds |
| PSE | Plans, Specifications and Estimates |
| PSR | Project Study Report |
| PTA | Public Transportation Account |
| PTC | Positive Train Control |
| PTMISEA | Public Transportation Modernization, Improvement and Service Enhancement Account |
| RCTC | Riverside County Transportation Commission |
| RDA | Redevelopment Agency |
| RFP | Request for Proposal |
| RIP | Regional Improvement Program |
| RSTIS | Regionally Significant Transportation Investment Study |
| RTIP | Regional Transportation Improvement Program |
| RTP | Regional Transportation Plan |
| RTPA | Regional Transportation Planning Agencies |
| SB | Senate Bill |
| SAFE | Service Authority for Freeway Emergencies |
| SAFETEA-LU | Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users |
| SCAB | South Coast Air Basin |
| SCAG | Southern California Association of Governments |
| SCAQMD | South Coast Air Quality Management District |
| SCRRA | Southern California Regional Rail Authority |
| SHA | State Highway Account |
| SHOPP | State Highway Operations and Protection Program |
| SOV | Single-Occupant Vehicle |
| S RTP | Short Range Transit Plan |
| STAF | State Transit Assistance Funds |
| STIP | State Transportation Improvement Program |
| STP | Surface Transportation Program |
| TAC | Technical Advisory Committee |
| TCIF | Trade Corridor Improvement Fund |
| TCM | Transportation Control Measure |
| TCRP | Traffic Congestion Relief Program |
| TDA | Transportation Development Act |
| TEA | Transportation Enhancement Activities |
| TEA-21 | Transportation Equity Act for the 21 st Century |
| TMC | Transportation Management Center |
| TMEE | Traffic Management and Environmental Enhancement |
| TSM | Transportation Systems Management |
| TSSDRA | Transit System Safety, Security and Disaster Response Account |
| USFWS | United States Fish and Wildlife Service |
| VCTC | Ventura County Transportation Commission |
| VVTA | Victor Valley Transit Authority |
| WRCOG | Western Riverside Council of Governments |

San Bernardino Associated Governments



MISSION STATEMENT

To enhance the quality of life for all residents, San Bernardino Associated Governments (SANBAG) will:

- Improve cooperative regional planning

- Develop an accessible, efficient, multi-modal transportation system

- Strengthen economic development efforts

- Exert leadership in creative problem solving

To successfully accomplish this mission, SANBAG will foster enhanced relationships among all of its stakeholders while adding to the value of local governments.

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