Governments SANBAG Working Together

San Bernardino Associated Governments
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Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

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

AGENDA

Commuter Rail and Transit Committee Meeting

January 24, 2012

10:00 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

Vice Chair
Mayor Paul Eaton
City of Montclair

Mayor Peter Aguilar
City of Redlands

Council Member Bill Jahn
City of Big Bear Lake

Council Member Mike Leonard
City of Hesperia

Mayor Larry McCallon
City of Highland

Mayor L. Dennis Michael
City of Rancho Cucamonga

Mayor Ray Musser
City of Upland

Council Member Richard Riddell
City of Yucaipa

Council Member Alan Wapner
City of Ontario

Supervisor James Ramos
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

January 24, 2013
10:00 a.m.

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

CALL TO ORDER – 10:00 a.m.
(Meeting Chaired by Mayor Patrick Morris)

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

Notes/Actions

1. Possible Conflict of Interest Issues for the Commuter Rail and Transit Committee Meeting of January 24, 2013 — Pg. 10

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. 15

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. Transit and Rail Department Budget Amendments for Fiscal Year 2012/2013 Pg. 16

That the Committee recommend the Board approve the following Fiscal Year 2012/2013 budget amendments:

1. Increase Task No. 0379 Commuter Rail Capital in the amount of $38,250 funded with prior year fund balance of Local Transportation Fund Rail, $11,750 of State Transit Assistance Fund Rail, and $528,000 of Rail Assets for a new task total of $36,586,402.54.

2. Increase Task No. 0502 TDA Administration in the amount of $359,700 funded with prior year fund balance of Local Transportation Fund Administration funds reallocated to Fiscal Year 2012/2013 for a new task total of $829,705.

3. Increase Task No. 0406 Traveler Services in the amount of $19,375 funded with Measure I 1990-2010 Valley Traffic Mitigation Environment Enhancement funds for a new task total of $2,250,775.07. **Monica Morales**

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

4. Reimburse the Orange County Transportation Commission for purchase of excess Southern California Regional Rail Authority (SCRRA) rolling stock, Rotem passenger cars. Pg. 18

That the Committee recommend the Board reimburse the Orange County Transportation Authority (OCTA) $6.04 million for excess Rotem cars purchased by OCTA, contingent upon reimbursement to San Bernardino Associated Governments (SANBAG) from the Los Angeles County Metropolitan Transportation Authority (LACMTA), Riverside County Transportation Commission (RCTC), and OCTA for their respective shares for the implementation of the SCRRA Eastern Maintenance Facility (EMF). **Mitch Alderman**

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

Notes/Actions

5. **Amendment to the Expenditure Plan for the remaining Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)** Pg. 46

Approve the amendments to the Expenditure Plan for Proposition 1B, Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funds as identified in the attached documents. **Nancy Strickert**

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

6. **Amendment to the Financial Commitment to the Southern California Regional Rail Authority (SCRRA) for Fiscal Year (FY) 2012/2013** Pg. 49

1. Reduce the approved SANBAG financial commitment to the SCRRA Fiscal Year 2012/2013 operating budget by $2,500,000.
2. Authorize the use of $2,500,000 from prior Fiscal Year SCRRA carryover fund balance held by SCRRA to offset the $2,500,000 reduction in SANBAG's direct financial contribution.
3. Authorize the retention of $288,000 in prior year carryover fund balance by SCRRA to off-set variances between their Fiscal Year 2010/2011 and Fiscal Year 2011/2012 budgets.

Mitch Alderman

This item is not scheduled for review by any other Policy or Technical Advisory Committee.

7. **Amendment to By-Laws of Valley Transportation Services, Inc. (VTrans)** Pg. 51

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

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.

Notes/Actions

8. Downtown San Bernardino Passenger Rail and San Bernardino Transit Center, Set Date for Hearings to Consider Resolutions of Necessity Pg. 59

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

1. Set a date and time of Wednesday, February 6, 2013, 10:00 A.M. for Hearings to consider Resolutions of Necessity for properties required to construct the Downtown San Bernardino Passenger Rail and San Bernardino Transit Center projects in the City of San Bernardino. Property owners associated with the right-of-way acquisitions are: Robert & Judith Ann Harraka, Family Trust; Bruce W. Hefftner; Big Z Autoworks, Inc.; James E. Ott & Barbara J. Ott, Trustees of the James E. Ott & Barbara J. Ott 2010 Revocable Trust dated July 9, 2010; Kristin Neville, Trustee Trust No. 982-2Z U/A/D 9/4/95; Riverside Cement Company; James McHenry & Kathryn McHenry; Hoak Bros. Plating; Tiger Yang & Sally Yang; Ashadi Investment, LLC; Tue Le, & Nikie Nguyen; David Sampanis & Stephen Abbey; Mi Casa Property, LLC.; James W. Seifert; KLR Property, LLC.; Varp, Inc.; Arthur R. Read; Jennifer de Gorter Revocable Trust Dated 6-6-01; Jong Uk Byun & Bok Soon Byun; Fletcher Trust; George V. Mantzoros & Gloria Mantzoros; Affaitati, LLC; Southern California Gas Company; Ramon Gonzalez and Irma Gonzalez, Trustees UTD November 4, 2002; Antonio Martinez; Anciria Vasquez; Melvon Investments, LLC.; Sylvia Miceli; Edward L. Holly; Leonardo & Elizabeth Hernandez; Arrowhead Central Credit Union.

2. Direct the Clerk of the Board to mail notices of hearing to property owners listed in Attachment "A".

Mitch Alderman

This item has not received prior policy or technical advisory committee review. SANBAG General Counsel has reviewed and approved this item.

Notes/Actions

9. Property Appraisals, Agreement for Possession and Use, and Acquisition of property necessary for the Downtown San Bernardino Passenger Rail Project and San Bernardino Transit Center Pg. 63

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): 0136-111,14,-15,-23 & -24, San Bernardino Economic Development Corporation; 0136-011-38, California Department of Transportation (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 $1,634,100, which the amount will be updated and finalized prior to the February 6, 2013, 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 San Bernardino Associated Governments Valley Freeway Program Policy No. 40004 (reference: Administrative Settlement Policy No. 34507).

4. Allocate $1,957,573 of undesignated, unreserved State Transit Assistance Fund County Population (PUC99313) to fund right-of-way activities for the Downtown San Bernardino Passenger Rail Project. This allocation amount is comprised of the estimated property acquisition costs plus contingency. **Casey Dailey**

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

Notes/Actions

10. Amendments to Contract No. C12009 and No. C12178 for Parsons Brinkerhoff Pg. 66

That the Committee recommend the Board:

1. Approve Amendment No. 1 to Contract No. C12009 with Parsons Brinkerhoff for construction management services for the Downtown San Bernardino Passenger Rail project to increase the contract value by $289,215 for a new not-to-exceed amount of $6,551,539.72;

2. Approve Amendment No. 1 Contract No. C12178 with Parsons Brinkerhoff for construction management service for the Omnitrans Bus facility to increase the contract value by $32,135 for a new not to-exceed amount of $715,890;

3. Allocate $289,215 of undesignated unreserved Local Transportation Funds (LTF) to fund construction management services for the Downtown San Bernardino Passenger Rail Project;

4. Approve Fiscal Year 2012/2013 budget amendment to increase Task No. 0379 Commuter Rail Capital in the amount of $289,215 to be funded by unallocated Local Transportation Funds (LTF), and increase Task No. 0311 Transit Capital by $32,135 funded by the San Bernardino Transit Center fund for reimbursement by Omitrans. **Casey Daily**

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 agreements. The department of Fund Administration has reviewed and approved this item.

Notes/Actions

11. License agreements for use of San Bernardino Associated Governments (SANBAG) right-of-way Pg. 80

That the committee recommend the Board acting as the San Bernardino Country Transportation Authority and the San Bernardino County Transportation Commission:

1. Repeal of the Board's November 7, 2012, approval of Approve License Agreement No. R13043 with Time Warner Cable, crossing San Bernardino Associated Governments' San Gabriel Subdivision right-of-way at Central Avenue, southerly of 9th Street in the City of Upland; and

2. Approve License Agreement No. R13043 with Time Warner Cable Pacific West Limited Liability Corporation (LLC) for installation, operation, maintenance and repair of one overhead fiber optic cable containing up to twelve fibers crossing San Bernardino Associated Governments' San Gabriel Subdivision right-of-way at Central Avenue, southerly of 9th Street in the City of Upland; and

3. Waive San Bernardino Associated Governments Contract and Procurement Policy 11000 V.F., for Contract No. R13043 which limits the maximum standard contract term to five-years; and

4. Authorize the Executive Director or his designee to execute the License Agreements and any other necessary and proper documents to implement the License agreements' terms that are approved as to form by General Counsel. **Monica Morales**

This item is not scheduled for review by any other Policy or Technical Advisory Committee. SANBAG General Counsel and Contract Administrator have reviewed this item and the license agreement.

Comments from Committee Members

Public Comment

ADJOURNMENT

Additional Information

Acronym List Pg. 103

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

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

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
8	APN #		
	0138-231-02	Robert & Judith Ann Harraka, Family Trust	
	0138-231-04		
	0138-231-05		
	0138-231-09		
	0138-231-10		
	0138-273-01	Bruce W. Hefftner	
	0138-273-02		

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1301z-maa

Item No.	Contract No.	Contractor/Agents	Subcontractors
8 Cont.	0138-273-03	Bruce W. Hefftner	
	0138-273-04		
	0138-273-36		
	0138-273-09	Big Z Autoworks, Inc	
	0138-273-10		
	0138-273-11		
	0138-273-12		
	0138-273-13		
	0138-273-16		
	0138-273-33		
	0138-273-24	James E. Ott & Barbara J. Ott,	
	0138-273-25	Trustees of the James E. Ott	
		& Barbara J. Ott 2010	
		Revocable Trust dated July 9,	
		2010	
	0138-273-26	Kristin Neville, Trustee Trust	
	0138-273-27	No. 982-2Z U/A/D 9/4/95	
	0138-273-20	Riverside Cement Company	
	0138-273-21		
	0138-273-40		
	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	Tue Le, & Nikie Nguyen	
	0138-312-57		
	0138-312-39	David Sampanis & Stephen	
		Abbey	
	0138-312-51	Mi Casa Property, LLC	
	0138-312-37	James W. Seifert	
	0134-331-23	KLR Property, LLC	
	0134-331-24		
	0137-043-10	Varp, Inc.	
	0137-043-11		
	0137-043-26		
	0136-011-04	Arthur R. Read	

Item No.	Contract No.	Contractor/Agents	Subcontractors
8 Cont.	0136-011-03 0136-011-38 0136-081-08 0136-081-09 0136-081-10 0136-081-11 0136-081-12	Jennifer de Gorter Revocable Trust Dated 6-6-01	
	0136-011-31 0136-011-41 0136-091-11 0136-091-12	Jong Uk Byun & Bok Soon Byun	
	0136-011-22 0136-011-26 0136-011-27 0136-011-28	Fletcher Trust	
	0136-021-16 0136-021-17 0136-021-18	George V. Mantzoros & Gloria Mantzoros	
	0136-021-28	Affaitati, LLC	
	0136-101-14 0136-101-15 0136-101-21	Southern California Gas Company	
	0136-111-01	Ramon Gonzalez and Irma Gonzalez, Trustees UTD November 2002	
	0138-271-15 0138-271-16 0138-271-17	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 0138-271-02 0138-271-03	Leonardo & Elizabeth Hernandez	
	0136-171-42	Arrowhead Central Credit Union	

Item No.	Contract No.	Contractor/Agents	Subcontractors
9	APN # 0136-111,14,-15,23 & 24 0136-011-38	San Bernardino Economic Development Corporation, a California Non-Profit Corporation State of California, CALTRANS	
10	C12009	Parsons Brinkerhoff *Doug Sawyer*	Leighton Consulting Lynn Capouya Pacific Railway Enterprise Project Design Consultants RAW International RH & Associates SECA IRC Simon Wong
10	C12178	Parsons Brinkerhoff *Doug Sawyer*	Leighton Consulting Lynn Capouya Pacific Railway Enterprise Project Design Consultants RAW International RH & Associates SECA IRC Simon Wong
11	R13043	Time Warner Cable Pacific West LLC *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.

CRTC1301z-maa

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD – 2013

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Patrick Morris City of San Bernardino												
Paul Eaton City of Montclair												
James Ramos County of San Bernardino												
Peter Aguilar City of Redlands												
Bill Jahn City of Big Bear Lake												
Mike Leonard City of Hesperia												
Larry McCallon City of Highland												
L. Dennis Michael City of Rancho Cucamonga												
Ray Musser City of Upland												
Richard Riddell City of Yucaipa												
Alan Wapner City of Ontario												

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

CRTC-ATT13

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	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	X	
Bill Jahn City of Big Bear Lake					X	X		X		X	X	
Mike Leonard City of Hesperia			X	X		X	X	X			X	
Larry McCallon City of Highland		X	X	X	X	X		X			X	
L. Dennis Michael City of Rancho Cucamonga		X	X	X	X	X		X			X	
Ray Musser City of Upland		X	X	X	X	X	X	X		X	X	
Richard Riddell City of Yucaipa		X	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.

CRTC-ATT12

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

Subject: Transit and Rail Department Budget Amendments for Fiscal Year 2012/2013

Recommendation:* That the Committee recommend the Board approve the following Fiscal Year 2012/2013 budget amendments:

1. Increase Task No. 0379 Commuter Rail Capital in the amount of $38,250 funded with prior year fund balance of Local Transportation Fund Rail, $11,750 of State Transit Assistance Fund Rail, and $528,000 of Rail Assets for a new task total of $36,586,402.54.

2. Increase Task No. 0502 TDA Administration in the amount of $359,700 funded with prior year fund balance of Local Transportation Fund Administration funds reallocated to Fiscal Year 2012/2013 for a new task total of $829,705.

3. Increase Task No. 0406 Traveler Services in the amount of $19,375 funded with Measure I 1990-2010 Valley Traffic Mitigation Environment Enhancement funds for a new task total of $2,250,775.07.

Background: During the budget process, estimated revenues and projected expenditures are prepared in addition to projected fund balances for each fund. A positive fund balance is generated when revenues exceed expenditures.

*

Approved
Commuter Rail & Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1210b-mmm

Since the Fiscal Year 2011/2012 is now closed, staff has reviewed fund balance, expenses and revenues, and identified the need to use fund balance for various expenditures in the Fiscal Year 2012/2013 budget.

Some examples of items being budgeted include; unanticipated expenses such as BNSF flagging fees for Eastern Maintenance Facility (EMF), City of San Bernardino additional final invoice for Metrolink parking structure, Environmental Impact Report (EIR) fee's related to EMF, Transportation Development Act (TDA) audits and Vanpool services in the Victor Valley area.

Some of the items listed above, were not anticipated during the Fiscal Year 2012/2013 budgeting process which began in the early part of the 2012 calendar year. In addition, the Transit and Rail department went through an employee turnover with all new staff except the Director of Transit and Rail and a Transit Specialist. Due to this fact, the new staff has identified items which required a budget amendment.

Financial Impact: Approval of this item would result in a budget amendment to the Fiscal Year 2012/2013 adopted budget for the tasks identified in recommendations one (1) through three (3) Tasks include No. 0379 Commuter Rail General, Task No. 0502 TDA Administration and Task No. 0406 Traveler Services.

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

Responsible Staff: Monica Morales, Transit Specialist

CRTC1210b-mmm

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

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

Recommendation:* That the Committee recommend the Board reimburse the Orange County Transportation Authority (OCTA) $6.04 million for excess Rotem cars purchased by OCTA, contingent upon reimbursement to San Bernardino Associated Governments (SANBAG) from the Los Angeles County Metropolitan Transportation Authority (LACMTA), Riverside County Transportation Commission (RCTC), and OCTA for their respective shares for the implementation of the SCRRA Eastern Maintenance Facility (EMF).

Background: 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 of the contract 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 to 117. On November 30, 2011, the SCRRA Board exercised Option 4 to purchase an additional 20 cars which brought the complete total Rotem purchase to 137 cars. Of this total, OCTA directly paid for

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.
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http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301b1-maa.pdf
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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. The balance of cars purchased was paid for using the SCRRA "All-share Formula", which distributes costs amongst the member agencies for system-wide costs. The member agencies contributed various local, state, and federal funds for a total of $273.8 million with LACMTA paying Ventura County Transportation Commission (VCTC's) share. SANBAG's share, including the 3 cars purchased for non-specific uses, was approximately 16% ($44 million).

Rotem Car Funding Allocations

Revenues	Options 1-3	Option 4	Total
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		$2,763,448	$2,763,448
TOTAL	**$236,249,888**	**$37,566,400**	**$273,816,288**

In October 2005, the OCTA Board directed SCRRA to purchase 59 Rotem cars to support expanded service between Fullerton and Laguna Niguel, known as the Metrolink Service Expansion Project (MSEP). However, as a result of economic conditions and reduced transit demand, SCRRA is operating fewer trains than originally anticipated between Fullerton and Laguna Niguel, resulting in 22 excess Rotem cars in the SCRRA fleet. OCTA is now asking the other SCRRA members to pay for a share of these excess cars. The total amount of these 22 cars equals $41.9 million and is distributed to each of the other member agencies based on the All-share Formula. The proposed distribution is as follows:

Rotem Car Reconciliation – Distribution of Costs

Agency	All-share Formula Distribution	Cost Distribution
SANBAG	14.4%	$6,041,376
LACMTA	47.5%	$19,928,150
OCTA	19.8%	$8,306,892
RCTC	11.1%	$4,656,894
VCTC	7.2%	$3,020,688
	Total	**$41,954,000**

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. Rotem cars are safer as compared to the

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http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301b2-maa.pdf
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301b3-maa.pdf

Bombardier cars previously purchased due mostly to crash energy management systems. Due to these additional safety features, each consist, at a minimum, is comprised of 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 will be needed to complete each consist. As a result of purchasing the Rotem cars and 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 7th 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 within each car that absorbs impact energy. 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 PTC is a train to train collision prevention system, the new Metrolink Rotem cars are safer and employ a collision mitigation system that addresses collisions not only with other trains but also with pedestrians and automobiles.

OCTA Reimbursement through EMF Expansion Costs

To facilitate the maintenance of Metrolink trains that serve the counties of Los Angeles, Orange, and Riverside, SCRRA developed the Eastern Maintenance Facility (EMF) located in the City of Colton on BNSF property. The EMF was

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http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301b2-maa.pdf
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301b3-maa.pdf

originally planned to be developed in three phases. Phase I was completed in 2009 and consisted of track capacity to store five trains, two service and inspection tracks, a train car wash, and an administration building. Phase II consists of an expansion of the two service and inspection tracks complementary to Phase I, plus a new maintenance building. Phase III includes the expansion of the existing storage tracks. Since the EMF does not service trains operating into Ventura County, VCTC is excluded from paying for the development of this facility. Thus a modified All-share Formula was created to distribute costs amongst the remaining four SCRRA member agencies as follows:

SANBAG - 15.5%
LACMTA - 51.2%
RCTC - 12.0%
OCTA - 21.3%

SCRRA has indicated that during the implementation of Phase I of the EMF site, SANBAG and LACMTA paid larger portions than what is described in the All-share Formula. The Phase 1 allocations are listed below:

EMF Phase I Cost Distributions

Agency	All-share Formula Distribution	Cost by Formula Distribution	Actual Costs Paid by Agency	Overpaid (Underpaid)
SANBAG	15.5%	$7,666,300	$11,391,000	$3,724,969
LACMTA	51.2%	$25,323,520	$25,614,000	$291,368
RCTC	12.0%	$5,935,200	$4,166,265	($1,768,727)
OCTA	21.3%	$10,534,980	$8,287,000	($2,247,610)
		Total	**$49,458,265**	

Implementation of the SANBAG Downtown San Bernardino Passenger Rail Project requires the EMF Phase III expansion to be completed to provide additional train storage space. It was determined that the Phase II improvements were not required at this time. As such, SANBAG took the lead on the design and construction of the Phase III project with the to-date contracted expenditures as follows:

EMF Phase III Expenditures

Company	Discipline	SANBAG Contract	Amount
HDR	Design	C10079	$1,976,557

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http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301b3-maa.pdf

Engineering			
Parsons Brinckerhoff	Construction Management	C12009	$1,476,053
Los Angeles Engineering	Construction Contractor	C12217	$10,110,765
SCRRA	Design Review and Construction Support	C12254	$157,650
BNSF	Signal Relocation/Flagging	Pending Purchase Order for Signals	$171,520
		Total Costs To-date	**$13,892,545**

Based on the All-share Formula the cost allocations for the Phase III EMF Project are as follows:

EMF Phase III Cost Distributions

Agency	All-share Formula Distribution	Cost by Formula Distribution	Actual Costs Paid by Agency	Overpaid (Underpaid)
SANBAG	15.5%	$2,153,344	$13,892,545	$11,739,201
LACMTA	51.2%	$7,112,983	$0	($7,112,983)
RCTC	12.0%	$1,667,105	$0	($1,667,105)
OCTA	21.3%	$2,959,113	$0	($2,959,113)
		Total	**$13,892,545**	

Should the Board approve the action as indicated in the "Recommendation" above, staff will work with SCRRA, LACMTA, OCTA, and RCTC to develop the necessary agreements and fund reimbursement strategies for a future agenda item to be reviewed and approved by this committee and the Board. With SANBAG paying for OCTA's Rotem cars and factoring in the amounts SANBAG has overpaid for the EMF Phase I and III Projects, SANBAG could net approximately $9.4 million in reimbursements.

Additional Background Information

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 discussion below)
- November 17, 2010 – CEO's letter to SCRRA (Attachment A)
- September 2, 2011 – Letter from SCRRA to OCTA (See Attachment B)

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- October 14, 2011 – SCRRA Board: Authorize CEO to negotiate and execute agreement with OCTA and to work with Agencies. (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 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 SCRRA 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: Combining the OCTA Rotem reimbursement with the LACMTA, OCTA, and RCTC reimbursement to SANBAG for the SCRRA EMF implementation, SANBAG should realize a $9,422,794 net savings. Any credit/savings being designated to SANBAG will be reduced against future fiscal years with the reduction of SANBAG "all share" contributions to SCRRA and will be reflected as such during the budgeting process.

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

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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

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.

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.

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

ATTACHMENT B

METROLINK.

Southern California Regional Rail Authority

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

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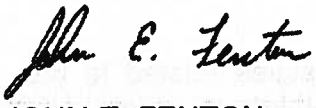
maintain such flexibility, this reconciliation must occur. The following sequence should bring this matter to conclusion:

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

METROLINK

Rotem Car Re-conciliation

(All Cars In System Service)

August 2011

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%
VCTC	7.20%
Total	**100%**

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

Member Agency	Total Due	Cash (a)	Rehab Costs (b)	EMF Phase II - (C)	Express Trains	fn4	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
VCTC	**$3.022**	**$1.022**	**$0.818**	**$0.613**	**$0.409**	**$0.204**
Cash	$2.000					
Rehab		$0.204	$0.204	$0.204	$0.204	$0.204
EMF Phase II						
Express Trains						
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
EMF Phase II		$0.149	$0.149	$0.149	$0.149	$0.149
Express Trains		$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
EMF Phase II		$0.115	$0.115	$0.115	$0.115	$0.115
Express Trains		$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
EMF Phase II		$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

Project	Paid Over
Cash	1 Year
OCTA Rehab	5 Years
EMF Phase II	5 Years
Express Trains	5 Years

DRAFT

MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

AND

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

FOR

ROTEM RAIL CARS REIMBURSEMENT

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:

WHERAS, 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

Whereas, these 22 available railcars will be deployed for system use based on need and operational efficiency; and

Whereas, MEMBER AGENCIES will reconcile funds through cash contributions for by paying OCTA's share of capital or rehab project costs for the use of these 22 railcars; and

Whereas, SCRRA shall document and track MEMBER AGENCIES' progress toward reconciliation.

UNDERSTANDING

1. This MOU specifies the roles and responsibilities of the MEMBER AGENCIES as they pertain to the subject matter addressed herein. MEMBER AGENCIES will reconcile their respective share of the 22 rail cars either directly or through the annual rehabilitation program process that SCRRA coordinates.
2. MEMBER AGENCIES will reconcile OCTA their respective share of the 22 railcars based on the current cost sharing agreement as follows: METRO 47.5%, OCTA 19.8%, RCTC 11.1%, SANBAG 14.4% and VCTC 7.2%.
3. OCTA has agreed to fund the initial payments for the 22 railcars and each of the other MEMBER AGENCIES will make annual payments or pay portions of rehab or specific projects on behalf of OCTA for the next five years, and no later than June 30, 2017.
4. Payments by the MEMBER AGENCIES shall be due to OCTA or payable to SCRRA on behalf of OCTA upon adoption of each MEMBER AGENCIES respective annual budget. OCTA will consider form of payment including, but not limited to, cash, credits against future OCTA operating, rehab or capital shares, and fund exchanges.
5. The understandings in this MOU will be confirmed in a formal annual cooperative agreement administered by SCRRA between the MEMBER AGENCIES.

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

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

By: _____
John E. Fenton
Chief Executive Officer

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Will Kempton
Chief Executive Officer

DRAFT

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.

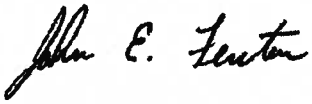
This is of primary concern to RCTC in regard to the future Perris Valley Line service which is slated to begin in 2013. RCTC contributed funds for 10 Rotem cars and 2 locomotives to support that service. This report is intended to memorialize the agreement of all parties that once the new Perris Valley 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

METROLINK.

Southern California Regional Rail Authority

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

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metrolinktrains.com

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

JOHN E. FENTON
Chief Executive Officer

cc: Member Agency CEOs
Richard Katz

METROLINK

Rotem Car Re-conciliation

(All Cars In System Service)

August 2011

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%
VCTC	7.20%
Total	**100%**

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

Member Agency	Total Due	Cash (a)	Rehab Costs (b)	EMF Phase II - (C)	Express Trains	fn4	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
VCTC	**$3.022**	**$1.022**	**$0.818**	**$0.613**	**$0.409**	**$0.204**
Cash	$2.000					
Rehab		$0.204	$0.204	$0.204	$0.204	$0.204
EMF Phase II						
Express Trains						
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
EMF Phase II		$0.149	$0.149	$0.149	$0.149	$0.149
Express Trains		$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
EMF Phase II		$0.115	$0.115	$0.115	$0.115	$0.115
Express Trains		$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
EMF Phase II		$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

Project	Paid Over
Cash	1 Year
OCTA Rehab	5 Years
EMF Phase II	5 Years
Express Trains	5 Years

DRAFT

MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

AND

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

FOR

ROTEM RAIL CARS REIMBURSEMENT

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:

WHERAS, 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

Whereas, these 22 available railcars will be deployed for system use based on need and operational efficiency; and

Whereas, MEMBER AGENCIES will reconcile funds through cash contributions for by paying OCTA's share of capital or rehab project costs for the use of these 22 railcars; and

Whereas, SCRRA shall document and track MEMBER AGENCIES' progress toward reconciliation.

UNDERSTANDING

1. This MOU specifies the roles and responsibilities of the MEMBER AGENCIES as they pertain to the subject matter addressed herein. MEMBER AGENCIES will reconcile their respective share of the 22 rail cars either directly or through the annual rehabilitation program process that SCRRA coordinates.
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4. Payments by the MEMBER AGENCIES shall be due to OCTA or payable to SCRRA on behalf of OCTA upon adoption of each MEMBER AGENCIES respective annual budget. OCTA will consider form of payment including, but not limited to, cash, credits against future OCTA operating, rehab or capital shares, and fund exchanges.
5. The understandings in this MOU will be confirmed in a formal annual cooperative agreement administered by SCRRA between the MEMBER AGENCIES.

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: _____	By: _____
John E. Fenton Chief Executive Officer	Will Kempton Chief Executive Officer

DRAFT

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San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

Subject: Amendment to the Expenditure Plan for the remaining Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)

Recommendation:* Approve the amendments to the Expenditure Plan for Proposition 1B, Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funds as identified in the attached documents.

Background: Proposition 1B, approved by the voters in November 2006, includes a provision that $4 billion be deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA). Of this amount, $3.6 billion is to be made available to project sponsors for eligible public transit capital projects. The remaining $400 million will be used for state-supported intercity passenger rail projects.

Upon appropriation by the Legislature, 50% of the annual amount made available is allocated to Regional Transportation Planning Agencies (RTPAs) and County Transportation Commissions (CTC) based on population and 50% is allocated to eligible public transit operators. The following transit operators received

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.
CRCT1301a-ns
Attachment:
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301a1-ns.xlsx

allocations: Barstow Area Transit (BAT), Morongo Basin Transit Authority (MBTA), Mountain Area Regional Transit Authority (MARTA), Needles Area Transit (NAT), Omnitrans, Southern California Regional Rail Authority and Victor Valley Transit Authority (VVTA).

The SANBAG Board approved an allocation in the amount of $70,286,423 to the transit operators on February 3, 2010. The allocations provided capital funds for a number of transit projects throughout the county and included items such as bus procurement, E Street sbX, Redlands Passenger Rail Project and other miscellaneous system improvements.

AB 1072, Chapter 271, Statues of 2009, requires that project sponsors submit to Caltrans a description of transit capital projects it intends to fund with PTMISEA through the end of the program, which is currently set for Fiscal Year 2016/2017. The original expenditure plans were due to Caltrans by February 1, 2010. Approval of this item will amend the original Expenditure Plans provided by SANBAG to Caltrans for VVTA.

Financial Impact: This item has no immediate impact on the adopted budget. Any future allocations of PTMISEA funds to SANBAG will require a budget amendment at that time. VVTA is responsible for directly applying for their own PTMISEA funds from the State and do not directly affect the SANBAG Budget.

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

Responsible Staff: Nancy Strickert, Transit Analyst

CRCT1301a-ns
Attachment:
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301a1-ns.xlsx

ATTACHMENT A

Caltrans

Effective: 10/09

Public Transportation Modernization, Improvement, & Service Enhancement Program (PTMISEA)
PTMISEA Program Expenditure Plan Worksheet

Sponsor Agency: Victor Valley Transit Authority
City/County: Hesperia/San Beranrdino
Sponsor Contact: Kevin Kane
Email: kkane@vvta.org
Phone: (760) 948-4330
Total PTMISEA Appropriation: 822271 + 10076421 (This is the total amount of PTMISEA funding that was listed in the October 30, 2009 letter from the California State Controller, John Chiang.)

Project Name	Project Description	PTMISEA Funds by FY										Other Fund Sources			Total Estimated Project Cost
		Prior	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total	Federal	State	Local	
Operator Allocation	**GC 8879.55(a)(3)**														
3 ADA ParaT. Rplc buses	Purchase ADA Paratransit replacement buses (CMAQ match)				$63,659						$63,659	$491,342			$555,001
2 Fixed Route rplc buses	Purchase fixed route replacement buses (CMAQ match)				$110,615						$110,615	$853,773			$964,388
Shelters & Accessibility Imprv.	Purchase shelters, benches, and accessibility improvements				$144,915						$144,915	$25,085			$170,000
1 rplc service truck	Purchase replacement service truck				$35,000						$35,000				$35,000
Path of travel bus stop imprv.	Path of travel bus stop improvements (Article 3 match)				$28,189						$28,189			$92,166	$120,355
ITS hardware/software	ADA paratransit and fixed route communications and data resources					$190,556	$249,337				$439,893				$439,893
Population Allocation	**GC 8879.55(a)(2)**														
3 fixed route expansion buses	Purchase fixed route expansion buses				$1,800,000						$1,800,000				$1,800,000
Shelters & Accessibility Imprv.	Purchase shelters, benches, and accessibility improvements					$125,000					$125,000	$50,170			$175,170
2 ADA ParaT. Rplc buses	Purchase ADA Paratransit replacement buses					$190,000					$190,000				$190,000
ITS hardware/software	Purchase ADA paratransit and fixed route communications and data resources					$385,918					$385,918				$385,918
8 Premium ParaT. Rplc buses	Purchase replacement buses					$1,205,000					$1,205,000				$1,205,000
2 Service vehicles rplc	Purchase replacement service vehicles					$105,000					$105,000				$105,000
4 ADA ParaT. Rplc buses	Purchase ADA Paratransit replacement buses						$460,000				$460,000				$460,000
Shelters & Accessibility Imprv.	Purchase shelters, benches, and accessibility improvements						$125,000				$125,000				$125,000
4 County Rplc buses	Purchase County replacement buses Type VII's						$500,000				$500,000				$500,000
8 ADA ParaT. Rplc buses	Purchase ADA Paratransit replacement buses							$680,000			$680,000				$680,000
Shelters & Accessibility Imprv.	Purchase shelters, benches, and accessibility improvements							$125,000			$125,000				$125,000
8 ADA ParaT. Rplc buses	Purchase ADA Paratransit replacement buses								$760,000		$760,000				$760,000
2 Service vehicles rplc	Purchase replacement service vehicles								$75,000		$75,000				$75,000
Shelters & Accessibility Imprv.	Purchase shelters, benches, and accessibility improvements								$100,000		$100,000				$100,000
2 Service vehicles rplc	Purchase replacement service vehicles									$80,000	$80,000				$80,000
5 fixed route rplc buses	Purchase fixed route replacement buses									$2,810,503	$2,810,503				$2,810,503
5 ADA ParaT. Rplc buses	Purchase ADA Paratransit replacement buses									$450,000	$450,000				$450,000
Shelters & Accessibility Imprv.	Purchase shelters, benches, and accessibility improvements									$100,000	$100,000				$100,000
											$0				$0
	Totals:	$0	$0	$0	$2,182,378	$2,201,474	$1,334,337	$805,000	$935,000	$3,440,503	$10,898,692	$1,420,370	$0	$92,166	$12,411,228

Total Number of Projects: 24

Description:
Each project sponsor shall complete the above table listing each project to be funded with PTMISEA funds. These projects should represent the sponsor's entire share of PTMISEA funds for the life of the Bond.
The total amount in the blue highlighted cell (below) should equal the project sponsor's total PTMISEA appropriation (above).

Shaded areas are pre calculated. Please do not change the formulas.

Sponsor Agency Signature: _____ Date: _____

Caltrans Signature: _____ Date: _____

CRTC1301a1-ns

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

Subject: Amendment to the Financial Commitment to the Southern California Regional Rail Authority (SCRRA) for Fiscal Year (FY) 2012/2013

Recommendation:*

1. Reduce the approved SANBAG financial commitment to the SCRRA Fiscal Year 2012/2013 operating budget by $2,500,000.
2. Authorize the use of $2,500,000 from prior Fiscal Year SCRRA carryover fund balance held by SCRRA to offset the $2,500,000 reduction in SANBAG's direct financial contribution.
3. Authorize the retention of $288,000 in prior year carryover fund balance by SCRRA to off-set variances between their Fiscal Year 2010/2011 and Fiscal Year 2011/2012 budgets.

Background: On May 2, 2012, the SANBAG Board approved conditional financial contributions to SCRRA for FY 2012/2013. The conditions required a fare increase for the Metrolink system and a stipulation that the Los Angeles County Metropolitan Transportation Authority (LACMTA) begin paying a share of six (6) San Bernardino Line trains that SANBAG had been fully subsidizing. SCRRA approved as part of their budget a 7% fare increase and a net reduction in SANBAG's service contributions in the amount of $516,000 correspnding to LACMTA's contributions on the San Bernardino Line and SANBAG's contributions towards additional IEOC service.

*

Approved
Commuter Rail and Transit Committee

Date:

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

CRTC1301a-maa

During the past several years of budget preparation and approval of the SANBAG financial contribution to SCRRA operations, staff has noted that there is a balance of prior year carryover funds retained by SCRRA. Staff has made efforts over the last three (3) years to redopsit these carryover funds into appropriate accounts from which they originated. These funds would then be available for future use on transit programs or projects of benefit to the San Bernardino Valley. However, SANBAG's efforts to recover these funds from SCRRA have previously been unsuccessful.

As a result, SANBAG staff continues efforts to work with the Finance staff from SCRRA to develop the easiest solution for crediting SANBAG the prior carryover fund balance. The current proposed solution reduces SANBAG's operating subsidy in the FY 2012/2013 and authorizes SCRRA to use the fund balance to off-set the reduction.

The estimated carryover fund balance provided to SANBAG by SCRRA is $2,878,000 as of June 2012. Staff is proposing to reduce the direct operating subsidy to SCRRA in the amount of $2,500,000 and direct SCRRA to use the same amount from carryover fund balance to off-set this reduction. Additionally, SANBAG staff is recommending that the Board authorize SCRRA to retain $288,000 of the carryover funds as protection to SCRRA in the event that any variances in the carryover fund balance are identified during the FY 2011/2012 audit.

These issues were identified in Item No. 29 of the September 5, 2012, SANBAG Board meeting approving Amendment No. 6 to HDR Engineering, Inc. The $2,500,000 reduction in operating subsidy was used as part of the funding for the HDR Amendment No. 6 as was an additional $309,300 of Measure I Metrolink/Rail funds.

Financial Impact: This item has no impact on the current FY 2012/2013 Budget. Item No. 29 of the September 5, 2012, Board Meeting approved the changes to the SANBAG Budget. This item more formally acknowledges these adjustments within the context of the contribution to the SCRRA operating budget.

Reviewed By: This item is not scheduled for review by any other Policy or Technical Advisory Committee.

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

CRTC1301a-maa

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San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

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. The role of the CTSA is to provide consolidated transportation services for senior and persons with disabilities. Following designation of VTrans as the CTSA, the SANBAG Board appointed three (3) of the seven (7) Vtrans Board of Directors, per the VTrans By-Laws. Subsequently, 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:

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

CRTC1301a-mmm
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2012/crtc1211/AgendaItems/CRTC1211c1-mmm.doc

- Change to Article 1, Section 3, to insert Section D, allowing VTrans 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. It is also important to note that this change would not obligate additional funding to Vtrans that would otherwise be provided to areas outside the San Bernardino Valley.
- Modification to Section 2 regarding Terms of Office, change the initial appointment of Board of Director members by each appointing agency from a term of three (3) years to four (4) years.
- The remaining changes provide more well-defined language and consistent wording throughout the document.

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

ATTACHMENT A

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]

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

Subject: Downtown San Bernardino Passenger Rail and San Bernardino Transit Center, Set Date for Hearings to Consider Resolutions of Necessity

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

1. Set a date and time of Wednesday, February 6, 2013, 10:00 A.M. for Hearings to consider Resolutions of Necessity for properties required to construct the Downtown San Bernardino Passenger Rail and San Bernardino Transit Center projects in the City of San Bernardino. Property owners associated with the right-of-way acquisitions are: Robert & Judith Ann Harraka, Family Trust; Bruce W. Hefftner; Big Z Autoworks, Inc.; James E. Ott & Barbara J. Ott, Trustees of the James E. Ott & Barbara J. Ott 2010 Revocable Trust dated July 9, 2010; Kristin Neville, Trustee Trust No. 982-2Z U/A/D 9/4/95; Riverside Cement Company; James McHenry & Kathryn McHenry; Hoak Bros. Plating; Tiger Yang & Sally Yang; Ashadi Investment, LLC; Tue Le, & Nikie Nguyen; David Sampanis & Stephen Abbey; Mi Casa Property, LLC.; James W. Seifert; KLR Property, LLC.; Varp, Inc.; Arthur R. Read; Jennifer de Gorter Revocable Trust Dated 6-6-01; Jong Uk Byun & Bok

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

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http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301c-cd.docx

Soon Byun; Fletcher Trust; George V. Mantzoros & Gloria Mantzoros; Affaitati, LLC; Southern California Gas Company; Ramon Gonzalez and Irma Gonzalez, Trustees UTD November 4, 2002; Antonio Martinez; Anciria Vasquez; Melvon Investments, LLC.; Sylvia Miceli; Edward L. Holly; Leonardo & Elizabeth Hernandez; Arrowhead Central Credit Union.

2. Direct the Clerk of the Board to mail notices of hearing to property owners listed in Attachment "A".

Background: SANBAG, acting as the San Bernardino County Transportation Commission (Commission), is proposing to extend Metrolink commuter passenger rail service approximately one (1) 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. One of the remaining critical path items prior to construction is right-of-way acquisition. The SANBAG Board has approved appraisals and authorized offers be made for property interests required for projects. While SANBAG and its right-of-way sub-consultant, Epic Land Solutions, continue to negotiate with property owners of the subject parcels it appears unlikely that all parcels will be acquired through negotiated sales. The alternative to a negotiated sale is acquiring the property through eminent domain which requires compliance with a legally prescribed process. Part of the process is setting a hearing date and time for the consideration of Resolutions of Necessity for the parcels to be acquired through the eminent domain process. At the hearing, the Commission will receive information on the project, the public need for the property, and testimony from the property owners, if the owners so desire. With the information provided, the Commission will consider the adoption of the Resolutions of Necessity at the hearing.

Financial Impact: This item has no financial impact.

Reviewed By: This item has not received prior policy or technical advisory committee review. SANBAG General Counsel has reviewed and approved this item.

Responsible Staff: Casey Daily, Transit Analyst

Attachment A

Downtown San Bernardino Passenger Rail & San Bernardino Transit Center Condemnation Parcels

APN/Owner	Property Type
0138-231-02, -04, -05, -09 & -10 Robert & Judith Ann Harraka, Family Trust	Business
0138-273-01, -02 -03, -04 & -36 Bruce W. Hefftner	Business
0138-273-09, -10, -11, -12, -13, -16 & -33 Big Z Autoworks, Inc.	Business
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	Business & Residential
0138-273-26 & -27 Kristin Neville, Trustee Trust No. 982-2Z U/A/D 9/4/95	Business
0138-273-20, -21 & -40 Riverside Cement Company	Business
0138-312-15 James McHenry & Kathryn McHenry	Residential
0138-312-53 Hoak Bros. Plating	Business
0138-312-14 Tiger Yang & Sally Yang	Residential
0138-312-55 Ashadi Investment, LLC	Residential
0138-312-16 & -57 Tue Le, & Nikie Nguyen	Business
0138-312-39 David Sampanis & Stephen Abbey	Business
0138-312-51, Mi Casa Property, LLC.	Business
0138-312-37 James W. Seifert	Business
0134-331-23 & -24 KLR Property, LLC.	Business
0137-043-10, -11 & -26 Varp, Inc.	Residential
0136-011-04 Arthur R. Read	Business

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0136-011-03 & -38, and 0136-081-08, -09, -10, -11 & -12 Jennifer de Gorter Revocable Trust Dated 6-6-01	Business
0136-011-31 &-41, 0136-091-11 & -12 Jong Uk Byun & Bok Soon Byun	Business
0136-011-22, -26, -27 & -28 Fletcher Trust	Business
0136-021-16, -17 & -18 George V. Mantzoros & Gloria Mantzoros	Business
0136-021-28 Affaitati, LLC	Business
0136-101-14, -15 & -21 Southern California Gas Company	Business
0136-111-01 Ramon Gonzalez and Irma Gonzalez, Trustees UTD November 4, 2002	Business
0138-271-15, -16 & -17 Antonio Martinez	Residential
0138-271-18 Anciria Vasquez	Vacant
0138-271-19 Melvon Investments, LLC.	Residential
0138-271-20 Sylvia Miceli	Vacant
0138-271-21 Edward L. Holly	Business
0138-271-01, -02 & -03 Leonardo & Elizabeth Hernandez	Vacant
0136-171-42 Arrowhead Central Credit Union	Vacant

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TRANSPORTATION MEASURE I

■ 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: January 24, 2013

Subject: Property Appraisals, 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): 0136-111,14,-15,-23 & -24, San Bernardino Economic Development Corporation; 0136-011-38, California Department of Transportation (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 $1,634,100, which the amount will be updated and finalized prior to the February 6, 2013, 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

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1301b-cd

San Bernardino Associated Governments Valley Freeway Program Policy No. 40004 (reference: Administrative Settlement Policy No. 34507).

4. Allocate $1,957,573 of undesignated, unreserved State Transit Assistance Fund County Population (PUC99313) to fund right-of-way activities for the Downtown San Bernardino Passenger Rail Project. This allocation amount is comprised of the estimated property acquisition costs plus contingency.

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 (1) 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 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 properties included in this item were not included in the Board action taken on December 5, 2012, because it was originally anticipated that those parcels would be given to SANBAG at no cost. However, with the dissolution of redevelopment agencies, the SBEDC parcels are going to need to be acquired by SANBAG as part of the DSBPR/SBTC projects.

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 No. 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. The final documents will be reviewed by SANBAG's General 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 is consistent with Fiscal Year 2012/2013 adopted budget. All funds necessary for right-of-way acquisition for the remainder of Fiscal Year 2012/2013 have been approved in a previous Board action.

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 as to form.

Responsible Staff: Casey Dailey, Transit Analyst

CRTC1301b-cd

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TRANSPORTATION MEASURE I

■ 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: 10

Date: January 24, 2013

Subject: Amendments to Contract No. C12009 and No. C12178 for Parsons Brinkerhoff

Recommendation:* That the Committee recommend the Board:

1. Approve Amendment No. 1 to Contract No. C12009 with Parsons Brinkerhoff for construction management services for the Downtown San Bernardino Passenger Rail project to increase the contract value by $289,215 for a new not-to-exceed amount of $6,551,539.72;

2. Approve Amendment No. 1 Contract No. C12178 with Parsons Brinkerhoff for construction management service for the Omnitrans Bus facility to increase the contract value by $32,135 for a new not-to-exceed amount of $715,890;

3. Allocate $289,215 of undesignated unreserved Local Transportation Funds (LTF) to fund construction management services for the Downtown San Bernardino Passenger Rail Project;

4. Approve Fiscal Year 2012/2013 budget amendment to increase Task No. 0379 Commuter Rail Capital in the amount of $289,215 to be funded by

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

CRTC1301a-cd
Attachment:
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301a-cd.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/FIRST%20AMENDMENT%20TO%20CONTRACT%20C12009.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/FIRST%20AMENDMENT%20TO%20CONTRACT%20C12178.docx

unallocated Local Transportation Funds (LTF), and increase Task No. 0311 Transit Capital by $32,135 funded by the San Bernardino Transit Center fund for reimbursement by Omnitrans.

Background: On January 4, 2012, the San Bernardino Associated Governments (SANBAG) Board of Directors awarded Contracts No. C12009 and No. C12178 to Parsons Brinkerhoff (PB) for construction management services for the Eastern Maintenance Facility (EMF), Downtown San Bernardino Passenger Rail (DSBPR) and San Bernardino Transit Center (SBTC) projects, respectively. The EMF and DSBPR were both included in Contract No. C12009. At the time the contracts were awarded, the scope of services was based on an aggressive project delivery schedule of twenty-six (26) months from January 2012 to April 2014. However, due to significant delays by the Federal Transit Administration regarding the level of environmental clearance required for both projects, the schedule has been extended by eighteen (18) months to October 2015, when it is anticipated that the DSBPR will be completed and operational.

The proposed amendments to Contracts No. C12009 and No. C12178 include three (3) elements: 1) Increasing the amount of Other Direct Costs (ODC) by $161,450; 2) adding pre-construction utility verification or "potholing" to the scope of both contracts for a total amount of $159,900; and 3) adding Southern California Regional Rail Authority (SCRRA) to the indemnification section of the contracts.

In the original contract, ODCs included provisions for PB to provide two (2) large double wide trailers to serve as field offices for EMF, DSBPR and SBTC. However, since PB is also performing construction management services for other SANBAG projects, a decision was made for PB to lease one of the office store fronts across the street from SANBAG offices. The office is larger and can accommodate for meetings should the need arise; the closer proximity also facilitates greater efficiencies due to the close proximity to SANBAG offices providing for easier coordination between PB and SANBAG staff. The added cost of the field office and incremental increase in other direct costs as a result of the increased duration of the contract accounts for the majority of the ODC increase request. SANBAG staff was able to negotiate with PB to reduce the original estimate by approximately 10% as a result of recently implemented procedures related to performing independent cost estimates.

The second element of Amendment No. 1 to the contracts is the addition of pre-construction utility verification or "potholing". Potholing is required to provide positive locations of existing utilities to the design and construction teams. Potholing can be done either before or after construction begins. By performing the potholing during the design phase and before construction bids are received, a

significant reduction in risk, and thus cost savings in construction bids can be realized by providing exact locations of utilities. Additionally, identifying the locations of utilities early should prevent delays and change orders associated with potential utility conflicts during construction. Potholing can save hundreds of labor hours and hundreds of thousands of dollars by identifying the exact location of utilities, rather than finding their locations once construction begins. This is especially true in older cities such as San Bernardino where accurate utility as-built plans and records can be difficult to find or do not exist.

The third, and final, element to Amendment No. 1 is the addition of Southern California Regional Rail Authority to the indemnity section of the contracts. Since much of the work related to the EMF and DSBPR involve work within the rail right-of-way and the need for Metrolink coordination during the construction of the projects, the additional indemnification is needed.

The total amount of both contract amendments is $321,350, of which approximately 90% or $289,215 will be charged to the DSBPR/EMF project and approximately 10% or $32,135, will be charged to the SBTC project. The tables below outline the original contract costs, the proposed increase and the resulting total contract costs.

	CONTRACT #: C12009	ORIGINAL CONTRACT		AMENDMENT 1		REVISED CONTRACT	
		TOTAL HOURS	TOTAL CONTRACT COSTS	INCREASED HOURS	INCREASED COSTS	TOTAL HOURS	TOTAL CONTRACT COSTS
	EASTERN MAINTENANCE FACILITY						
1	PRE-CONSTRUCTION SERVICES	1,212	$183,007.06			1,212	$183,007.06
2	CONSTRUCTION	4,538	$625,442.64			4,538	$625,442.64
3	SURVEY	1,878	$233,658.20			1,878	$233,658.20
4	POST-CONSTRUCTION SERVICES	640	$92,444.62			640	$92,444.62
5	STAFF AUGMENTATION						
	OTHER DIRECT COSTS		$54,500.00		*$40,685.00*		$95,185.00
	SUBCONSULTANT COSTS		$287,000.00				$287,000.00
	SUB-TOTAL	8,268	$1,476,052.52	*0*	*$40,685.00*	8,268	$1,516,737.52
	DSBPR						
1	PRE-CONSTRUCTION SERVICES	2,576	$362,034.94	*591*	*$143,910.00*	3,167	$505,944.94
2	CONSTRUCTION	15,085	$1,926,032.08			15,085	$1,926,032.08
3	SURVEY	6,576	$817,803.52			6,576	$817,803.52
4	POST-CONSTRUCTION SERVICES	993	$135,331.63			993	$135,331.63
5	STAFF AUGMENTATION	1,540	$216,917.90			1,540	$216,917.90
	OTHER DIRECT COSTS		$137,277.13		*$104,620.00*		$241,897.13
	SUBCONSULTANT COSTS		$1,190,875.00				$1,190,875.00
	SUB-TOTAL	26,770	$4,786,272.20	*591*	*$248,530.00*	27,361	$5,034,802.20
	TOTAL CONTRACT COSTS	35,038	$6,262,324.72	*591*	*$289,215.00*	35,629	$6,551,539.72

CRTC1301a-cd
Attachment:
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301a-cd.docx

	CONTRACT #: C12178	Original Contract		AMENDMENT 1		REVISED CONTRACT	
		TOTAL HOURS	TOTAL CONTRACT COSTS	INCREASED HOURS	INCREASED CONTRACT COSTS	TOTAL HOURS	TOTAL CONTRACT COSTS
	OMNITRANS BUS FACILITY						
1	PRE-CONSTRUCTION SERVICES	368	$51,719.00	*66*	*$15,990.00*	434	$67,709.00
2	CONSTRUCTION	2,155	$275,148.00			2155	$275,148.00
3	SURVEY	940	$116,829.00			940	$116,829.00
4	POST-CONSTRUCTION SERVICES	143	$19,334.00			143	$19,334.00
5	STAFF AUGMENTATION	220	$30,989.00			220	$30,989.00
	OTHER DIRECT COSTS		$19,611.00		*$16,145.00*		$35,756.00
	SUBCONSULTANT COSTS		$170,125.00				$170,125.00
	SUB-TOTAL	3,826	$683,755.00	*66*	*$32,135.00*	3,892	$715,890.00
	TOTAL CONTRACT COSTS	3,826	$683,755.00	*66*	*$32,135.00*	3,892	$715,890.00

Financial Impact: This item is not consistent with the currently adopted Fiscal Year 2012/2013 SANBAG Budget. A budget amendment is included in the recommendation above increasing Task No. 0379 Commuter Rail Capital in the amount of $289,215 using previously Valley Unallocated Local Transportation Funds (LTF). And task No. 0311 Transit Capital in the amount of $32,135 funded by a separate reimbursement agreement with Omnitrans, SANBAG Receivable Contract No. C12117.

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 agreements. The department of Fund Administration has reviewed and approved this item.

Responsible Staff: Casey Dailey, Transit Analyst

CRTC1301a-cd
Attachment:
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/ctrc1301/AgendaItems/CRTC1301a-cd.docx

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 12009 Amendment No. 1

By and Between

San Bernardino Associated Governments and PARSONS BRINKERHOFF

Contract Description Construction Management Services for the Downtown San Bernardino Passenger Rail Project

Board of Director's Meeting Date: February 6, 2013

Overview of BOD Action: 1) Approve Amendment No. 1 to Contract No. C12009 with Parsons Brinkerhoff for construction management services for the Downtown San Bernardino Passenger Rail project to increase the contract value by $289,215 for a new not-to-exceed amount of $6,551,539.72; 3) Allocate $289,215 of undesignated unreserved Local Transportation Funds (LTF) to fund construction management services for the Downtown San Bernardino Passenger Rail Project; 4) Approve Fiscal Year 2012/2013 budget amendment to increase Task No. 0379 Commuter Rail Capital in the amount of $289,215 to be funded by unallocated Local Transportation Funds (LTF).

Is this a Sole-Source procurement? ☐ Yes ☒ No

CONTRACT OVERVIEW

Original Contract Amount	$	6,262,324.72	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$	6,262,324.72	**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$	289,215	**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	6,551,539.72	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY ***(contract value + contingency)***				$	6,551,539.72

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/8/2011	12/31/2015	

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 for Task 0379.

How are we funding current FY? Commuter Rail Capital, $6,551,539.72

☐ Federal Funds ☒ State Funds ☐ Local Funds ☐ TDA Funds ☐ Measure I Funds

*Provide Brief Overview of the **Overall** Funding for the duration of the Contract:* LTF Rail

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☒ Retention? If yes, indicate % 10.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

MITCHELL A. ALDERMAN Project Manager (Mitch Alderman)	M.A. Alderman Signature	1/11/13 Date
MITCHELL A ALDERMAN Task Manager (Mitch Alderman)	M.A. Alderman Signature	1/11/13 Date
Andrea Zureick Dir. of Fund Admin. & Programming (Print Name)	Andrea Zureick Signature	1/14/13 Date
Jeffery Hill Contract Administrator (Print Name)	[illegible] Signature	1/15/13 Date
W. STAWARSKI Chief Financial Officer (Print Name)	[illegible] Signature	1/15/13 Date

FIRST AMENDMENT TO CONTRACT C12009

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

PARSONS BRINCKERHOFF

FOR

"CONSTRUCTION MANAGEMENT SERVICES FOR THE DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT"

This Amendment is entered into by and between the San Bernardino Associated Governments/San Bernardino Transportation Authority (referred to hereafter as "AUTHORITY"), and the firm of Parsons Brinckerhoff (hereinafter referred to as "CONSULTANT") with reference to the following facts:

AUTHORITY and CONSULTANT are the parties to a certain Contract dated _____ entitled: CONTRACT C12009 BY AND BETWEEN SAN BERNARDINO ASSOCIATED GOVERNMENTS AND PARSONS BRINCKERHOFF FOR THE DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT.

1. The parties wish to amend said Contract:
   a. to reflect agreed upon changes to the direct costs of the Project, and
   b. to extend the indemnification provisions of the Contract to the benefit of the Southern California Regional Rail Authority (SCRRA).

Now, therefore, the parties agree as follows:

1. Attachment A to the Contract, Scope of Work, is hereby amended to add Section 1.14: Pre Construction Utility Verification, attached hereto as Attachment A and to amend Attachment B, Billing Rate Schedule, to reflect the increased cost of Pre Construction Utility Verification and Other Direct Costs.
2. The first paragraph of Section 3.2 of the Contract is hereby amended to read as follows:
3. "The total Not-To-Exceed Amount is Six Million Five Hundred Fifty-One Thousand, Five Hundred Thirty-nine Dollars and Seventy-two cents ($6,551,539.72) for services to be provided under this contract.
4. The following paragraph is added to Article 23, Indemnity:

   Except as provided below for those services falling within the scope of Civil Code section 2782.8, CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by SCRRA), and hold harmless the SCRRA and its officers, employees, agents and volunteers, from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any

person and for any costs or expenses incurred by the SCRRA on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the indemnitees. CONSULTANT's indemnification obligation applies to SCRRA's "active" as well as "passive" negligence but does not apply to the SCRRA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. To the extent CONSULTANT's services fall within the scope of Civil Code section 2782.8, the following indemnification is applicable. CONSULTANT shall defend and indemnify SCRRA and its officers, employees, agents and volunteers for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the design professional.

5. The date that this Amendment is executed by AUTHORITY shall be its Effective Date.
6. In all other respects, the Contract shall remain in full force and effect without modification.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year below written.

CONSULTANT

By: _____

Name

Title

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: _____

Janice Rutherford

President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Robert D. Herrick

Assistant General Counsel

CONCURRENCE

By: _____

Jeffery Hill,

Contracts Administrator

Attachment A

1.14 Pre Construction Utility Verification

Provide qualified staff to facilitate existing utility locations and coordinate supplemental pothole digging and surveying as required for DSBPRP and SANBAG. Collect and deliver all surveys in project datums and units using conventional total-station, reflectorless and/ or GPS survey methods. All work shall be performed by or under the direct supervision of a licensed professional qualified to perform land surveying in the State of California. Research for additional as-built plans shall be performed, including review of records from utility owners, City, County and Caltrans. Coordination shall be made with local agencies for required permits and traffic control. Coordination shall also be made with Underground Service Alert (USA) to obtain inquiry identification numbers and surface markings prior to excavation, as is required by State law.

Pothole digging may be completed primarily by vacuum extraction methods. At the conclusion of potholing, field surveys shall be made and results computed and mapped. Deliverables shall include pothole data sheets and all resulting utility locations in 3-D DGN, or DWG and ASCII formats. Potholing shall be performed by a specialty potholing contractor who has experience in southern California and whose personnel have experience doing pothole work on and around Rail projects. Both hydro & air assisted vacuum excavation methods may be employed. The typical utility pothole will be approximately 12"X12" wide, and up to a maximum depth of about 15 feet, depending on soils type encountered. The potholes shall be backfilled using the native material that was extracted from the hole or with SE30+ sand, depending on which digging method used. Holes in pavement shall be repaired per the requirements of the jurisdictional authority involved. A total of 60 utility potholes are anticipated.

Supplemental field surveys shall also be made to assist with existing utility locations, especially in congested areas or areas where the project footprint has grown beyond the mapping limits. Electronic utility locations using MetroTech 810 line tracers shall be used to provide additional detail or to verify record plans and atlas maps where needed. Accessible storm drain manholes and inlets, as well as sanitary sewer manholes shall be tied and dipped to provide additional level of detail.

Attachment "B" (Billing Rate Schedule)

PARSONS BRINCKERHOFF
SANBAG Contract No. C12009 – Amendment #1
Downtown San Bernardino Passenger Rail Project

		TOTAL HOURS	TOTAL COSTS
	EASTERN MAINTENANCE FACILITY		
1	PRE-CONSTRUCTION SERVICES	1,212	$183,007.06
2	CONSTRUCTION	4,538	$625,442.64
3	SURVEY	1,878	$233,658.20
4	POST-CONSTRUCTION SERVICES	640	$92,444.62
5	STAFF AUGMENTATION		
	OTHER DIRECT COSTS		$95,185.00
	SUBCONSULTANT COSTS		$287,000.00
	SUB-TOTAL	8,268	$1,516,737.52
		TOTAL HOURS	TOTAL COSTS
	DSBPR		
1	PRE-CONSTRUCTION SERVICES	3,167	$505,944.94
2	CONSTRUCTION	15,085	$1,926,032.08
3	SURVEY	6,576	$817,803.52
4	POST-CONSTRUCTION SERVICES	993	$135,331.63
5	STAFF AUGMENTATION	1,540	$216,917.90
	OTHER DIRECT COSTS		$241,897.13
	SUBCONSULTANT COSTS		$1,190,875.00
	SUB-TOTAL	27,361	$5,034,802.20
	TOTAL PROJECT COSTS	35,629	$6,551,539.72

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 12178 Amendment No. 1

By and Between

San Bernardino Associated Governments and PARSONS BRINKERHOFF

Contract Description Construction Management Services for the Omnitrans Bus Facility

Board of Director's Meeting Date: February 6, 2013

Overview of BOD Action: 2) Approve Amendment No. 1 Contract No. C12178 with Parsons Brinkerhoff for construction management service for the Omnitrans Bus facility to increase the contract value by $32,135 for a new not-to-exceed amount of $715,890; 3) Approve Fiscal Year 2012/2013 budget amendment to increase Task No. 0379 Commuter Rail Capital in the amount of $289,215 to be funded by unallocated Local Transportation Funds (LTF), and increase Task No. 0311 Transit Capital by $32,135 funded by the San Bernardino Transit Center fund for reimbursement by Omnitrans

Is this a Sole-Source procurement? ☐ Yes ☒ No

CONTRACT OVERVIEW

Original Contract Amount	$	683,755	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$	683,755	**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$	32,135	**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	715,890	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	715,890

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/8/2011	12/31/2015	

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 for task 0311.

How are we funding current FY? Omnitrans Reimbursement Agreement, C12117, $ 32,135

☐ 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

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☒ Retention? If yes, indicate % 10.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Mitch A. Alderman Project Manager	Mitchell A. Alderman Signature	1/11/13 Date
Mitch A. Alderman Task Manager	Mitchell A. Alderman Signature	1/11/13 Date
Andrea Zureick Dir. of Fund Admin. & Programming (Print Name)	Andrea Zureick Signature	1/14/13 Date
Jeffery Hill Contract Administrator (Print Name)	Signature	1/15/13 Date
W. Stewart Chief Financial Officer (Print Name)	Signature	1/15/13 Date

FIRST AMENDMENT TO CONTRACT C12178

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

PARSONS BRINCKERHOFF

FOR

"CONSTRUCTION MANAGEMENTSERVICES FOR OMNITRANS BUS FACILITY"

This Amendment is entered into by and between the San Bernardino Associated Governments/San Bernardino Transportation Authority (referred to hereafter as "AUTHORITY"), and the firm of Parsons Brinckerhoff (hereinafter referred to as "CONSULTANT") with reference to the following facts:

1. AUTHORITY and CONSULTANT are the parties to a certain Contract dated _____ entitled: CONTRACT C12178 BY AND BETWEEN SAN BERNARDINO ASSOCIATED GOVERNMENTS AND PARSONS BRINCKERHOFF FOR "CONSTRUCTION MANAGEMENT SERVICES FOR OMNITRANS BUS FACILITY".
2. The parties wish to amend said Contract:
   a. to reflect agreed upon changes to the direct costs of the Project, and
   b. to extend the indemnification provisions of the Contract to the benefit of the Southern California Regional Rail Authority (SCRRA).

Now, therefore, the parties agree as follows:

1. Attachment A to the Contract, Scope of Work, is hereby amended to add Section 1.14: Pre Construction Utility Verification, attached hereto as Attachment A and to amend Attachment B, Billing Rate Schedule, to reflect the increased cost of Pre Construction Utility Verification and Other Direct Costs.
2. The first sentence of section 3.2 of the Contract is hereby amended to read:
3. "The total Not-To-Exceed amount is Seven Hundred Fifteen Thousand Eight Hundred Ninety Dollars ($715,890.00) for services to be provided under this Contract.
4. The following paragraph is added to Article 23, Indemnity:

   Except as provided below for those services falling within the scope of Civil Code section 2782.8, CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by SCRRA), and hold harmless the SCRRA and its officers, employees, agents and volunteers, from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by the SCRRA on account of any claim

except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the indemnitees. CONSULTANT's indemnification obligation applies to SCRRA's "active" as well as "passive" negligence but does not apply to the SCRRA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. To the extent CONSULTANT's services fall within the scope of Civil Code section 2782.8, the following indemnification is applicable. CONSULTANT shall defend and indemnify SCRRA and its officers, employees, agents and volunteers for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the design professional.

5. The date that this Amendment is executed by AUTHORITY shall be its Effective Date.
6. In all other respects, the Contract shall remain in full force and effect without modification.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year below written.

CONSULTANT

By: _____

Name

Title

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: _____

Janice Rutherford

President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Robert D. Herrick

Assistant General Counsel

CONCURRENCE

By: _____

Jeffery Hill,

Contracts Administrator

Attachment A

1.14 Pre Construction Utility Verification

Provide qualified staff to facilitate existing utility locations and coordinate supplemental pothole digging and surveying as required for DSBPRP and SANBAG. Collect and deliver all surveys in project datums and units using conventional total-station, reflectorless and/ or GPS survey methods. All work shall be performed by or under the direct supervision of a licensed professional qualified to perform land surveying in the State of California. Research for additional as-built plans shall be performed, including review of records from utility owners, City, County and Caltrans. Coordination shall be made with local agencies for required permits and traffic control. Coordination shall also be made with Underground Service Alert (USA) to obtain inquiry identification numbers and surface markings prior to excavation, as is required by State law.

Pothole digging may be completed primarily by vacuum extraction methods. At the conclusion of potholing, field surveys shall be made and results computed and mapped. Deliverables shall include pothole data sheets and all resulting utility locations in 3-D DGN, or DWG and ASCII formats. Potholing shall be performed by a specialty potholing contractor who has experience in southern California and whose personnel have experience doing pothole work on and around Rail projects. Both hydro & air assisted vacuum excavation methods may be employed. The typical utility pothole will be approximately 12"X12" wide, and up to a maximum depth of about 15 feet, depending on soils type encountered. The potholes shall be backfilled using the native material that was extracted from the hole or with SE30+ sand, depending on which digging method used. Holes in pavement shall be repaired per the requirements of the jurisdictional authority involved. A total of 60 utility potholes are anticipated.

Supplemental field surveys shall also be made to assist with existing utility locations, especially in congested areas or areas where the project footprint has grown beyond the mapping limits. Electronic utility locations using MetroTech 810 line tracers shall be used to provide additional detail or to verify record plans and atlas maps where needed. Accessible storm drain manholes and inlets, as well as sanitary sewer manholes shall be tied and dipped to provide additional level of detail.

Attachment "B" (Billing Rate Schedule)

PARSONS BRINCKERHOFF
SANBAG Contract No. C12178 – Amendment #1
Omnitrans Bus Facility

		TOTAL HOURS	TOTAL COSTS
	OMNITRANS BUS FACILITY		
1	PRE-CONSTRUCTION SERVICES	434	$67,709.00
2	CONSTRUCTION	2,155	$275,148.00
3	SURVEY	940	$116,829.00
4	POST-CONSTRUCTION SERVICES	143	$19,334.00
5	STAFF AUGMENTATION	220	$30,989.00
	OTHER DIRECT COSTS		$35,756.00
	SUBCONSULTANT COSTS		$170,125.00
	SUB-TOTAL	3,886	$715,890.00
	TOTAL PROJECT COSTS	3,886	$715,890.00

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ 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: 11

Date: January 24, 2013

Subject: License agreements for use of San Bernardino Associated Governments (SANBAG) right-of-way

Recommendation:* That the committee recommend the Board acting as the San Bernardino Country Transportation Authority and the San Bernardino County Transportation Commission:

1. Repeal of the Board's November 7, 2012, approval of Approve License Agreement No. R13043 with Time Warner Cable, crossing San Bernardino Associated Governments' San Gabriel Subdivision right-of-way at Central Avenue, southerly of 9th Street in the City of Upland; and

2. Approve License Agreement No. R13043 with Time Warner Cable Pacific West Limited Liability Corporation (LLC) for installation, operation, maintenance and repair of one overhead fiber optic cable containing up to twelve fibers crossing San Bernardino Associated Governments' San Gabriel Subdivision right-of-way at Central Avenue, southerly of 9th Street in the City of Upland; and

3. Waive San Bernardino Associated Governments Contract and Procurement Policy 11000 V.F., for Contract No. R13043 which limits the maximum standard contract term to five-years; and

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC 1301c-mmm

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R13043.docx

4. Authorize the Executive Director or his designee to execute the License Agreements and any other necessary and proper documents to implement the License agreements' terms that are approved as to form by General Counsel.

Background: On November 7, 2012, the Board approved a license agreement with Time Warner Cable, as the legal entity to cross SANBAG right-of-way. Following Board approval, San Bernardino Associated Governments (SANBAG) staff was notified that Time Warner Cable desired to make changes to the previously agreed license agreement. This change involves the deletion of Time Warner Cable as the legal entity and reflect the legal entity change of Time Warner Cable Pacific West LLC. Current SANBAG policy does not allow staff to process administrative changes, such as a name change. As such this item is being presented to make this administrative modification.

Time Warner Cable Pacific West LLC licensed property will be located at Central Avenue, South of 9th Street in the City of Upland, SANBAG mile post 103.2 Southern California Regional Rail Authority (SCRRA) mile post 34.61. The approximate area needed for the crossing is 1,000 square feet. All original terms in the original agreement remain unchanged.

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.

The licenses to be granted under this item will be for overhead crossing of SANBAG's right-of-way commonly known as Metrolink's San Gabriel Subdivision, as well as underground crossing of SANBAG's right-of-way on the Redlands Subdivision as shown below.

It may be necessary to refine the boiler-plate license agreements. Staff is working with General Counsel to develop a policy governing future licenses, leases and agreements for use with SANBAG's rail right-of-way and property. Options would likely range from continuing to present each new or amended agreement to the Board for action, or creating boilerplate documents approved by the Board that could be executed by the Executive Director or his designee, and a fee schedule.

Financial Impact: Approval of these Agreements will result in the payment of a one-time administrative fee of $1,500 for each of the License Agreements and a $2,000 annual license payment to SANBAG if applicable. The License fee payments 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 or Technical Advisory Committee. SANBAG General Counsel and Contract Administrator have reviewed this item and the license agreement.

Responsible Staff: Monica Morales, Transit Specialist

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13043 Amendment No. _____

By and Between

San Bernardino Associated Governments and Time Warner Cable Pacific West LLC

Contract Description License Agreement

Board of Director's Meeting Date: February 6, 2013

Overview of BOD Action: Approve License Agreement No. R13043 with Time Warner Cable Pacific West LLC for installation, operation, maintenance and repair of one overhead fiber optic cable containing up to twelve fibers only

Is this a Sole-Source procurement? Yes ☒ No

CONTRACT OVERVIEW

Original Contract Amount	$	3,500	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$		**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$		**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	3,500	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	3,500

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
2/6/13		

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

FINANCIAL INFORMATION

☒ Budget authority for this contract currently exists in Task No. 0377.

☐ A Budget Amendment is required. How are we funding current FY? Rail Assets

☐ Federal Funds ☐ State Funds ☒ Local Funds ☐ TDA Funds ☐ Measure I Funds

*Provide Brief Overview of the **Overall** Funding for the duration of the Contract:* Rail Assets

☐ Payable ☒ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ % ☐ Underutilized DBE (UDBE) Goal _____ %

JUSTIN FORNELLI Task Manager (Print Name)	Signature ~~Mitch Alderman~~ JUSTIN FORNELLI	Date 1/15/13
Monica Morales Project Manager (Print Name)	Signature Monica Morales	Date 1.16.13
Jeffery Hill Contracts Administrator (Print Name)	Signature ~~Jeffery Hill~~	Date 1/15/13
W Stawarski Chief Financial Officer (Print Name)	Signature William Stawarski	Date 1/15/13
Andrea Zureick Fund Administration	Signature Andrea Zureick	Date 1-15-13

SANBAG R13043 Epic File: RSSB003753 Type: License Version: 20110922

CONTRACT NO: R13043

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS
AND
TIME WARNER CABLE PACIFIC WEST LLC

For

License Agreement on the San Gabriel Subdivision
Mile Post 103.2

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of February 6, 2013 by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, acting in its capacity as the San Bernardino County transportation commission existing under the authority of Section 130050 et seq. of the California Public Utilities Code ("SANBAG"), and **TIME WARNER CABLE PACIFIC WEST LLC**, a Delaware limited liability company ("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 Right-of-Way property commonly known as the San Gabriel Subdivision San Bernardino at Central Avenue southerly of 9th Street in the City of Upland (Montclair), County of San Bernardino, SANBAG Mile Post 103.2 (SCRRA Mile Post 34.61)
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 with up to twelve fibers only, and no other uses (§1.1, §10)

3. Commencement Date:
February 6, 2013 (§1.2)

4. Term (circle one):
   - (A.) Month-to-month as adjusted per section 2.2 of the General License Provisions
   - 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)

     This supersedes the forth sentence of section 2.1 of the General License Provisions starting with "If Item 5,A,a"
   - (B.) Additional License Fee:
     - (a) One time administration 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 commencing November 1, 2013

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:
TIME WARNER CABLE PACIFIC WEST LLC
550 North Continental Blvd., Suite 250
El Segundo, CA 90245
Attn: Contracts Administrator (§24.1)

9. Facility:
One (1) overhead fiber optic cable with up to twelve 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 hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

TIME WARNER CABLE PACIFIC WEST LLC

By: _____
Title:

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: _____
Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

INDEX TO LICENSE AGREEMENT - PART II

Section

Page

1. GRANT OF LICENSE/TERM 1
2. PAYMENTS 1
3. TAXES 2
4. CONSTRUCTION 2
5. CONTRACTORS; APPROVAL AND INSURANCE 2
6. REIMBURSEMENT 3
7. LIENS 3
8. MAINTENANCE AND REPAIR 3
9. LANDSCAPING 3
10. USE 3
11. ABANDONMENT 4
12. BREACH 4
13. SURRENDER 4
14. INDEMNIFICATION 4
15. ASSUMPTION OF RISK AND WAIVER 5
16. INSURANCE 5
17. TESTS AND INSPECTIONS 5
18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY 5
19. UNDERGROUND STORAGE TANKS 6
20. SUBORDINATE RIGHTS 6
21. COMPLIANCE WITH LAWS 7
22. CONDEMNATION 7
23. MARKERS 7
24. GENERAL PROVISIONS 7

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.

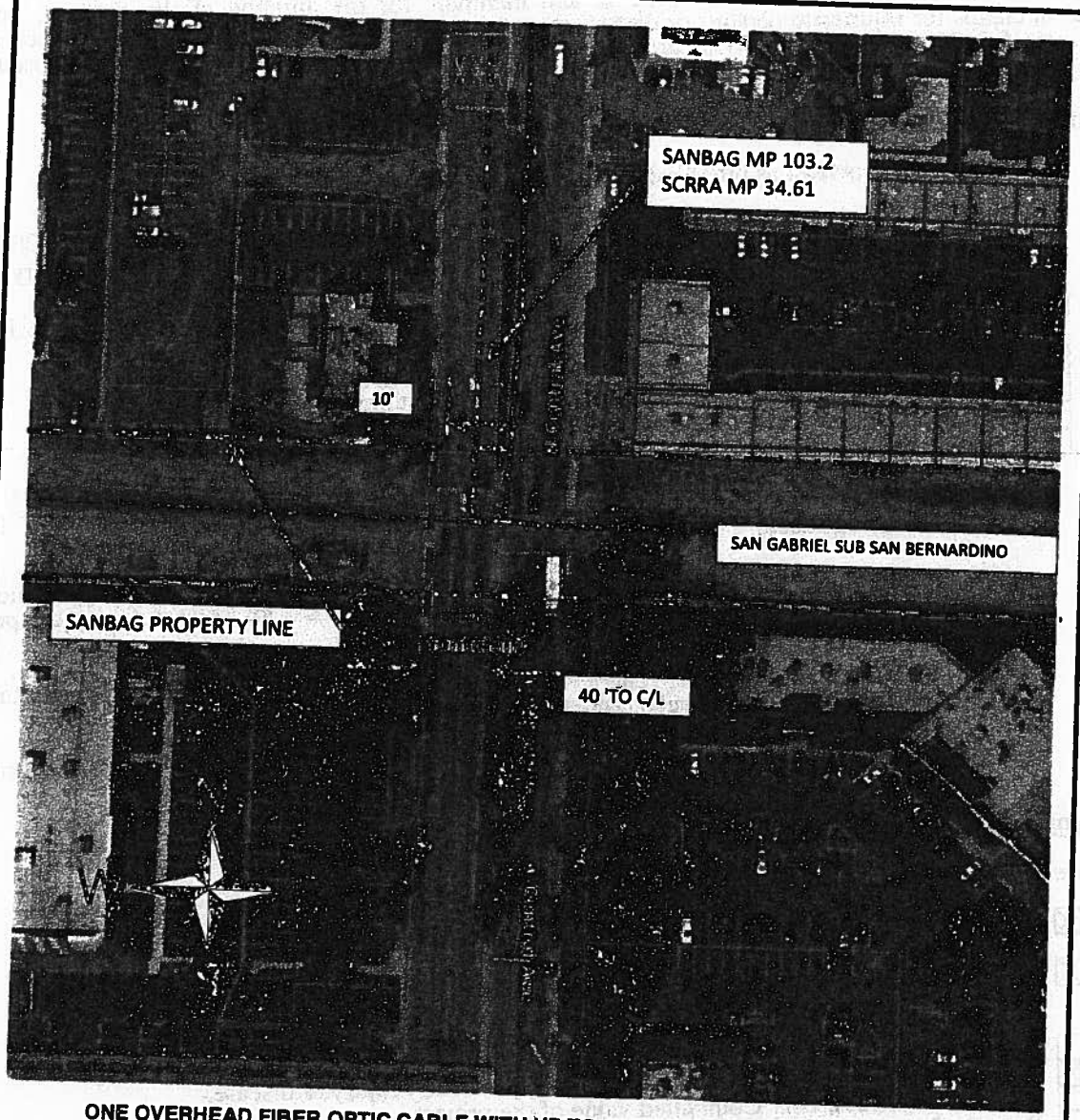
24.19 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.

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"



ONE OVERHEAD FIBER OPTIC CABLE WITH UP TO 12 FIBERS ONLY

APN: 1046-551-15			
Date 09/05/2012			
Branch/Line SSB	Mile Post 34.61 SANBAG 103.2	Lessee/Licensee TIME WARNER CABLE	Governments SANBAG Working Together
County SAN BERNARDINO	Nearest Cross Street 9TH STREET	SANBAG File Number RSSB003753	SAN BERNARDINO ASSOCIATED GOVERNMENTS
Area 1,000 SQ. FT.	City MONTCLAIR	Scale 1"=100'	1170 W. 3rd Street, 2nd Floor
Map Reference SSB6	Use OH FIBER	Thomas Guide Grid 601 G3	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"

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

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SANBAG Acronym List

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.

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

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	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
SRTP	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 21st 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

Governments
SANBAG
Working Together

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.

Approved June 2, 1993
Reaffirmed March 6, 1996