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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
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Revised Back-Up Material Agenda Item No. 13

General Policy Committee

May 8, 2013

9:00 am

Location:

San Bernardino Associated Government
Santa Fe Depot
Super Chief Conference Room, 2nd Floor
1170 W. 3rd Street
San Bernardino, CA

DISCUSSION CALENDAR

Administrative

13. Amendment No. 1 for Contract No. C11174 Valley Transportation Services

That the Committee recommend the Board approve Amendment No. 1 to Contract No. C11174 with Valley Transportation Services. **Monica Morales**

Amendment No. 1 to Contract No. C11174 was revised to reflect the following:

- *Excess Liability requirements within the contract were changed from \$1,000,000 per occurrence and \$1,000,000 in the aggregate to \$5,000,000 per occurrence and \$5,000,000 in the aggregate.*

CONTRACT NO. C11174-01

AMENDED AND RESTATED

**SAN BERNARDINO ASSOCIATED GOVERNMENTS
AND
VALLEY TRANSPORTATION SERVICES
FOR**

The operation of a consolidated transportation services agency to provide for the coordination of transit services for seniors, persons with disabilities and persons of low income.

This Contract is made as of the Effective Date as defined herein, by and between San Bernardino Associated Governments, the County Transportation Commission and County Transportation Authority (hereinafter "SANBAG"), and Valley Transportation Services (hereinafter "VTrans").

RECITALS

WHEREAS, SANBAG in its capacity as the County Transportation Commission is the designated transportation planning agency for San Bernardino County and in its capacity as the County Transportation Authority is the responsible agency for the administration of Measure I, the retail transactions and use tax approved for transportation purposes; and

WHEREAS, SANBAG in its capacity as the County Transportation Commission is required in Section 6680 of Title 21 of the California Code of Regulations to designate an entity as the Consolidated Transportation Services Agency (CTSA); and

WHEREAS, SANBAG in its capacity as the County Transportation Authority has adopted Measure I 2010 -2040, Ordinance No. 04-01, which may be amended from time to time by SANBAG, but which currently provides that 8% of the San Bernardino Valley Measure revenue collected for Senior and Disabled Transit Services and that at least 2% of Valley Measure revenue shall be collected for the purpose of a CTSA and;

WHEREAS, on September 1, 2010, the SANBAG Board of Directors approved Resolution 11-004 designating VTrans as a CTSA for the San Bernardino Valley; and

WHEREAS, on September 1, 2010, SANBAG also resolved to provide funding for VTrans.

NOW, THEREFORE BE IT RESOLVED

The parties agree as follows:

1. **Purpose.** The purpose of this Contract is to provide for the allocation by SANBAG of Valley Measure I revenue for Ongoing Annual Programs (as defined below) and the expenditure thereof by VTrans as set forth herein. VTrans agrees to use the Valley Measure I funds only in accordance with the terms of this Contract and Measure I (as defined below).

2. **Definitions.** As used in this Contract, the following terms shall have the following meanings:

- a. "Measure I" – means San Bernardino County Transportation Authority Ordinance No. 04-01, as adopted by the voters of San Bernardino County, as it may be amended from time to time by SANBAG as provided therein and including the Transportation Expenditure Plan and Schedules attached to and included in said Ordinance, providing for the continuation of a one-half of one-percent (0.5%) retail transactions and use tax by the San Bernardino County Transportation Authority for local transportation purposes and the Transportation Expenditure Plan set forth in Section II. A. 4.
- b. "Ongoing Annual Programs" - means the Valley Senior and Disabled (VSD) Program as set forth in the Measure I 2010-2040 Strategic Plan – Policy 40009 program (Strategic Plan) adopted, as set forth in Measure I.
- c. "Valley Measure I revenue" – means revenue collected from the San Bernardino Valley subarea under Measure I.
- d. Qualified Expenditures – means those expenditures for Ongoing Annual Programs consistent with all of the following: Measure I, the Strategic Plan, SANBAG's approved guidelines for the use of Measure I funds, VTrans' 5 Year Business Plan as approved by SANBAG as specified in this Contract and VTrans' then current annual budget, also as approved by SANBAG hereunder.. Subject to the required approvals under Section 3 below, these expenditures may include the operation costs and the capital needs of VTrans, including possible use as matching funds for capital purposes, cost sharing agreements with other organizations for the provision of senior and disabled transportation services or other support of senior and disabled transportation functions of partner organizations.

3. Revenue Allocation and Disbursement

- a. SANBAG shall allocate Measure I funds in accordance with Measure I 2010 – 2040, which may be amended from time to time by SANBAG, but which currently provides that 8% of the revenues collected in the San Bernardino Valley shall fund Senior and Disabled Transit Service, and that at least 2% of the Valley Measure I revenue will be directed to the operation of the CTSA.

- b. By March of every year, SANBAG shall provide an estimate of the amount of revenue to be allocated to VTrans for the next fiscal year starting July 1st for use by VTrans in budgeting. SANBAG shall have no liability or responsibility for the accuracy of the estimate. If the actual amount of funds received in any fiscal year is less than the amount projected by SANBAG, SANBAG shall incur no liability to provide any additional funds to VTrans. VTrans shall bear full responsibility to adjust operating plans and/or expenditures to address the difference between projections and actual receipts.

Except as otherwise provided herein, Measure I revenues during the term of this Contract shall be conveyed monthly as a pass-through from SANBAG to VTrans based on actual Valley Measure I revenue received. The pass-through payments shall equal 2% of the actual amount of Valley Measure I revenue received from the California State Board of Equalization (BOE) after deduction of a pro-rata share of the costs of collection, including the BOE's fees, and are subject to revenue corrections or adjustments as determined by the State. In no event shall VTrans be entitled to receive any funding until after actual receipt by SANBAG.

In the event that Measure I revenues exceeding the amounts required under the Measure I Ordinance are provided to VTrans in error, SANBAG shall notify VTrans of the error in writing. Within 30 days of such notice, VTrans shall return such funds to SANBAG, or, at SANBAG's sole discretion (or in the event VTrans fails to promptly return such funds after such notice), the amount of any overpayment may be deducted and withheld from one or more future payments to VTrans.

- c. The Measure I funds disbursed by SANBAG to VTrans shall be used or spent only for VTrans' qualifying operating purposes in accordance with the Measure I ordinance and expenditure plan, and VTrans' annual budget and 5 Year Business Plan as approved by SANBAG under paragraph d below,
- d. VTrans has adopted a 5 Year Business Plan, which SANBAG approved pursuant to the Original Contract C11174. This 5 Year Business Plan was updated and the update approved by SANBAG in September of 2012. It shall continue to be updated every two years and submitted to SANBAG for review and approval prior to the commencement of the next fiscal year, with the next update due to be submitted for review and approval not less than 60 days prior to the commencement of Fiscal Year 2015-2016. Not less than 60 days prior to the beginning of each fiscal year, VTrans shall submit to SANBAG its annual budget. SANBAG staff will review the use of Measure I revenue in the VTrans Budget for consistency with the latest approved business plan, SANBAG's Measure I Strategic Plan, and the Measure I Ordinance and expenditure plan and make a recommendation to the SANBAG Board of Directors concerning approval or disapproval. In the event that SANBAG staff determines that the budget is not consistent with the aforementioned documents, notice shall be given to VTrans in order to allow VTrans the opportunity to amend the budget to render it consistent. Failure to obtain

SANBAG Board of Directors' approval of the budget shall be a material breach of this agreement. Any amendments to the budget during the fiscal year and involving the change in use of Measure I funds as outlined in the original budget shall be provided to SANBAG within 30 days of approval by the VTrans Board of Directors and subject to the same review and approval process. Changes to the budget involving only revenue sources other than Measure I funds are not subject to this provision and shall not be the basis for a denial of approval by SANBAG's Board of Directors. In the event that VTrans fails to comply with the requirements of this paragraph or expends any Measure I funds in any manner inconsistent with this agreement SANBAG may withhold future funds until compliance is fully reinstated and demand repayment of any amounts improperly expended, which shall be repaid within thirty (30) days of such demand. Failure to make full and timely repayment and/or to fully reinstate compliance shall be a material breach of this agreement.

- e. VTrans shall, at all times, segregate all Measure I funds received from SANBAG and hold them in a separate, dedicated account. Interest earned on the funds held in such segregated account shall be retained in the segregated account and used by VTrans only on qualified expenditures consistent with the requirements of this agreement for expenditure of Measure I funds.

4. Reporting and Performance Review. Within 45 days after each calendar quarter, VTrans shall submit to SANBAG quarterly reports, on the attached form hereto as Exhibit "A" to this contract. At any time during the term of this Contract, and from time to time, but no more frequently than annually, VTrans shall provide such information and documents as the SANBAG Executive Director or designee (Executive Director) may request in order to conduct an evaluation of VTrans' performance in meeting the goals, objectives and purposes of the Ongoing Annual Programs. As part of such evaluation, the Executive Director may review the audits, along with the levels of expenditures of Measure I revenue made in prior fiscal years and projected for the upcoming fiscal year, and the amount of Measure I funds being held unexpended by VTrans. The Executive Director shall provide his or her findings to VTrans in writing. A substantial failure to meet such goals, objectives and purposes, or an excessive or unreasonable accumulation of unexpended Measure I revenue thus hindering the Ongoing Annual Programs shall be a material breach of this Contract and, in addition, may result in SANBAG withdrawing certification of VTrans as the CTSA and designation of another agency in that role. Decertification shall take place only after VTrans has been afforded not less than 60 days' notice and an opportunity to present evidence and be heard in a public hearing before the SANBAG Board of Directors. The finding of the SANBAG Board shall be final.

5. Audits. Annual audits of VTrans' use of the Measure I funds will be performed by an independent auditor contracted through SANBAG at SANBAG's expense. VTrans agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) and to segregate and separately account for Measure I

funds received and expended and to provide those records for review by SANBAG or its designee for audit purposes. Any expenditure of Measure I funds by VTrans that is determined to be unallowable is subject to repayment by VTrans to SANBAG. Disallowed amounts must be reimbursed to SANBAG within sixty (60) days unless SANBAG approves in writing an alternative repayment plan. Failure to fully or timely repay such amounts in accordance with this paragraph shall be a material breach of this agreement.

6. **Record Retention.** VTrans shall provide SANBAG, or other authorized representatives or agents of SANBAG, access to VTrans' records, which are directly related to this Contract for the purpose of inspection, auditing or copying. VTrans shall maintain each fiscal year's records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of four (4) years from the date of each fiscal year's final payment by SANBAG, except in the event of litigation or settlement of claims arising out of this Contract in which case VTrans agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. VTrans shall allow SANBAG or its representatives or agents to reproduce any materials upon request. This Section applies to all subcontractors at any tier that are performing work under this Contract.
7. **Signs.**
 - a. Vehicles purchased or operated with Measure I funds shall display signs clearly visible to riders indicating the vehicle is funded through Measure I funding.
 - b. Signage must conform with approved Measure I signage and be approved by the SANBAG Executive Director.
 - c. Capital projects constructed by VTrans using Measure I funds shall also have Measure I signage approved by the SANBAG Executive Director.
8. **Term.** The term of this Contract shall end on June 30, 2018, unless extended by further written agreement or terminated in accordance with Section 9 below.
9. **Termination.** Should SANBAG determine that VTrans has violated a material provision of this Contract, it shall have the right to serve on VTrans a notice of default and intention to terminate the Contract. Upon receipt of such notice to terminate, VTrans shall have 30 days in which to cure the stated violation(s) and to provide to SANBAG sufficient evidence that the violations have been cured. If, after 30 days after the notice has been served on VTrans, VTrans has not cured and has not provided sufficient evidence of such to SANBAG, SANBAG may stop making payments under the Contract, terminate the Contract, and/or revoke the Entity's designation as the CTSA for the San Bernardino Valley. Should VTrans be dissolved, or should SANBAG elect to terminate the Contract or revoke VTrans' designation as the CTSA for the San Bernardino Valley, any unobligated Measure I funds held by VTrans at that time shall be returned to SANBAG.

10. Indemnity and Hold Harmless. To the fullest extent permitted by law, VTrans agrees to save, indemnify, defend, and hold harmless SANBAG and its respective officers, employees, volunteers, contractors and agents, from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of this Contract, the performance of this Contract, or out of the acts or omissions of VTrans or any of its officers, employees, volunteers, contractors or agents in carrying out the design, construction, operation, maintenance or use any of VTrans' operations, projects, activities, programs, vehicles, properties or facilities of any nature. The indemnification obligation of VTrans hereunder does not apply to claims, actions, losses, damages, and/or liability arising out of SANBAG's sole negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

11. Insurance.

VTrans shall, at its sole expense procure and maintain in full force, insurance with carriers and with terms and conditions acceptable to SANBAG through the entire term of this Contract. The policies shall be written by a carrier authorized to do business in the State of California with a recent A.M. Best rating of A-VII or better, and shall be written with a least the following limits of liability:

- Workers' Compensation – Worker's Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with \$1,000,000 per occurrence covering all persons providing labor or services on behalf of VTrans and all risks to such persons under this Contract.
- Employer's Liability – Employer's Liability insurance shall include coverage in the amount of \$1,000,000 for Bodily injury per accident, a policy limit of \$1,000,000 Bodily Injury by Disease and \$1,000,000 Bodily Injury by Disease for each employee.
- Commercial General Liability – Commercial General Liability insurance shall include coverage for Premises and Operations, Contractual Liability, Products/Completed Operations Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 in the aggregate written on an occurrence form. Also included shall be \$1,000,000 in the aggregate for Personal/Advertising, \$100,000 for Damages to Rented Premises and \$10,000 for Medical Expenses. For products and completed operations a \$2,000,000 aggregate shall be provided. Commercial General Liability insurance shall be primary and non-contributory with any insurance carried or administered by SANBAG.
- Automobile Liability – To include owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 combined single limit.

- Excess Liability – To include \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

VTrans shall furnish SANBAG with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article. If the insurance company elects to cancel or non-renew coverage for any reason, VTrans will provide SANBAG thirty (30) days prior written notice of cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium VTrans will provide SANBAG ten (10) days written notice. VTrans shall maintain such insurance for the entire term of this Contract. The certificate(s) of insurance are to include the Contract number and Project Manager's name on the face of the certificate(s) and shall be submitted directly to SANBAG's Contract Administrator.

Additional Insured – All policies, except for Worker's Compensation, shall contain endorsements naming San Bernardino Associated Governments and all of its associated entities and capacities, including the San Bernardino County Transportation Authority, San Bernardino County Transportation Commission, San Bernardino Congestion Management Agency, San Bernardino County Service Authority for Freeway Emergencies and their officers, employees, contractors, agents, and volunteers as additional insured parties. The additional insured endorsements shall not limit the scope of coverage for SANBAG to vicarious liability but shall allow coverage for SANBAG to the full extent provided by the policy.

- 12. Incorporation of Recitals.** The recitals set forth above are true and correct and incorporated herein by this reference.
- 13. Notices.** All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested, or by facsimile transmission with a confirmation copy to be sent by mail. Any such notice shall be effective as of the date it is transmitted and mailed or delivered, if transmitted by facsimile transmission on or before 5:00 p.m., Pacific Time; or on the following day if transmitted after 5:00 p.m., Pacific Time. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To SANBAG: Executive Director
 1170 W. 3rd Street, 2nd Floor
 San Bernardino, California 92410
 Facsimile No.: (909) 885-4407

To VTrans: Chief Executive Officer
 299 W. Foothill Blvd. Ste. 202
 Upland, CA 91786

- 14. Assignment.** VTrans may not assign or transfer this Contract or any of the rights under it without the prior written consent of SANBAG in SANBAG's sole discretion.

15. **Attorney Fees.** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees.
16. **Waivers.** No waiver of any breach of any covenant or provision in this Contract shall be deemed a waiver of any breach of any other covenant or provision in this Contract or of the same covenant or provision at a later time, and no waiver shall be valid unless in writing and executed by the waiving party.
17. **Construction.** Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Contract. The singular form shall include the plural and vice versa. This Contract shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Contract.
18. **Integration.** This Contract contains the entire agreement between the parties and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting the Contract.
19. **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together will constitute one and the same instrument.
20. **Exhibits.** Exhibit A is incorporated in this Contract by this reference.
21. **Amendment.** This Contract may not be amended or altered except by a written instrument executed by the parties to this Contract.
22. **Partial Invalidity.** Any provision of this Contract that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforceability of this Contract shall be of no effect, but all the remaining provisions of this Contract shall remain in full force.
23. **Authority of Parties.** All persons executing this Contract on behalf of any party to this Contract warrant that they have the authority to execute this Contract on behalf of that party.
24. **Governing Law.** The validity, meaning, and effect of this Contract shall be determined in accordance with California laws.
25. **Effective Date.** The Effective Date of this Contract is the date of execution by SANBAG.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as provided herein

**VALLEY TRANSPORTATION
SERIVCES**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Dennish Hansberger
Board Chair

By: _____
Janice Rutherford
Board President

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Miller & Owen
Vtrans Counsel

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

Exhibits are attached for reference only

Exhibit "A" - Quarterly Financial Report Format

SAMPLE PROFIT AND LOSS STATEMENT

	Mar 11	Budget	\$ Over Budget	% of Budget	Jul '10 - Mar 11	YTD Budget	\$ Over Budget	% of Budget	Annual Budget
Income									
401001 - Fares Revenue									
406003 - Advertising Revenue									
407006 - Gain on Sale of Assets									
407007 - Other Income									
409002 - Measure I OP Revenue									
409005 - ADA Operating Revenue									
409007 - JARC/New Freedoms Operating Rev									
409101 - TDA Article 4.5 Capital Revenue									
409102 - Measure I Capital Revenue									
414001 - Interest Income									
464001 - Section 5310 Revenue									
Total Income									
Expense									
501001 - Payroll									
502100 - Payroll Taxes									
502002 - Workers Comp									
502003 - Medical Expense									
502004 - Dental Expense									
503001 - Professional Services									
5030011 - Consulting Services									
5030012 - Accounting Services									
5030013 - Legal Services									
Total 503001 - Professional Services									
503002 - Outside Services									
503003 - Temporary Services									
503004 - Equipment Repair									
503005 - Facility Repair									
503006 - Community Service									
504001 - Maintenance - Fleet									
504002 - Fuel									
504008 - Office Supplies									
504009 - Postage									
504010 - Dues & Publications									
505001 - Telephone									
505002 - Utilities									
506001 - Insurance Premiums									
506021 - Computer Supplies and Software									
506052 - Minor Office Furniture & Eqpt									
507001 - Tax/License/Dues/Permits									
509001 - Travel									
509002 - Professional Development									
509003 - Uniforms									
509006 - Fines and Penalties									
511001 - Interest Expense									
512001 - Space Rent									
512002 - Equipment Rental									
513001 - Depreciation-Grant Equipment									
513002 - Depreciation-Non Grant Equip									
Total Expense	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%	0.00
Net Income	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%	0.00

SAMPLE BALANCE SHEET

	Mar 25, 11
ASSETS	
Current Assets	
Checking/Savings	
101001 · Checking-Bank of the West	
101002 · Savings	
101003 · Payroll Checking Account	
Total Checking/Savings	
Accounts Receivable	
102001 · Accounts Receivable	
102901 · Grants Receivable	
102998 · Allowance for Doubtful Accounts	
Total Accounts Receivable	
Other Current Assets	
12000 · Undeposited Funds	
103001 · Inventory-Fuel	
103003 · Inventory-Parts and Supplies	
105002 · Work In Progress	
Total Other Current Assets	
Total Current Assets	
Fixed Assets	
111001 · Grant Equipment-Transportation	
111002 · Non-Grant Equipment	
111003 · Acc Depr Grant Equipment	
111004 · Acc Depr Non-Grant Equipment	
Total Fixed Assets	
Other Assets	
151001 · Prepaid Expense	
Total Other Assets	
TOTAL ASSETS	

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Accounts Payable

201001 · Trade Accounts Payable

Total Accounts Payable

Credit Card Payable

Other Current Liabilities

202001 · Workers' Compensation Payable

202002 · Accrued Vacation and Sick Leave

202003 · Accrued Payroll Payable

203001 · Sales Tax Payable

203004 · Payroll Taxes Payable

204001 · Non-Capital Debt-Short Term

204002 · Capital Debt-Short Term

205004 · TSA Payable

211001 · Deferred Rev-TDA & Other

211002 · Deferred Rev-Meas I

Total Other Current Liabilities

Total Current Liabilities

Long Term Liabilities

221001 · Long-Term Lease/Notes Payable

Total Long Term Liabilities

Total Liabilities

Equity

300000 · Opening Balance Equity

304000 · Net Assets Invested in Capital

304001 · Contributed Capital

305100 · Retained Earnings

320000 · Unrestricted Net Assets

Net Income

Total Equity

TOTAL LIABILITIES & EQUITY