

## AGENDA

### Board of Directors Metro Valley Study Session

May 9, 2013

\*\*\*\* Start Time: 9:00 a.m. \*\*\*\*

#### Location:

**SANBAG Offices**

*The Super Chief Room*

**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410**

#### *Board of Directors*

##### Valley Representatives

##### Study Session Chair

Dick Riddell, Council Member  
City of Yucaipa

##### Study Session Vice-Chair

Michael Tahan, Council Member  
City of Fontana

Dennis Yates, Mayor  
City of Chino

Ed Graham, Vice Mayor  
City of Chino Hills

Frank Navarro, Council Member  
City of Colton

Walt Stanckiewicz, Mayor  
City of Grand Terrace

Larry McCallon, Mayor  
City of Highland

Rhodes "Dusty" Rigsby, Mayor  
City of Loma Linda

Paul M. Eaton, Mayor  
City of Montclair

Alan Wapner, Council Member  
City of Ontario

L. Dennis Michael, Mayor  
City of Rancho Cucamonga

Pete Aguilar, Mayor  
City of Redlands

Deborah Robertson, Mayor  
City of Rialto

Pat Morris, Mayor  
City of San Bernardino

Ray Musser, Mayor  
City of Upland

##### Mountain/Desert Representatives

Cari Thomas, Mayor  
City of Adelanto

Curt Emick, Mayor  
Town of Apple Valley

Julie McIntyre, Mayor  
City of Barstow

Bill Jahn, Council Member  
City of Big Bear Lake

Mike Leonard, Council Member  
City of Hesperia

Edward Paget, Mayor  
City of Needles

Jim Harris, Council Member  
City of Twentynine Palms

Ryan McEachron, Mayor  
City of Victorville

George Huntington, Council Member  
Town of Yucca Valley

##### County Board of Supervisors

Robert Lovingood, First District  
Janice Rutherford, Second District

James Ramos, Third District  
Gary Ovitt, Fourth District

Josie Gonzales, Fifth District

##### SANBAG

Ray Wolfe, Executive Director  
Eileen Teichert, SANBAG Counsel

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

**Board of Directors  
Metro Valley Study Session**

**May 9, 2013  
9:00 a.m.**

**LOCATION:  
Santa Fe Depot  
*The Super Chief Room***

**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino**

**CALL TO ORDER – 9:00 a.m.**  
*(Meeting chaired by Mayor Dick Riddell.)*

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

**1. Possible Conflict of Interest Issues for the SANBAG Board of Directors Metro Valley Study Session Meeting May 9, 2013. Pg. 8**

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. 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 Board member request. Items pulled from the consent calendar will be brought up at the end of the agenda.

- 2. Board of Directors Metro Valley Study Session Attendance Roster Pg. 14**  
A quorum shall consist of a majority of the membership of the SANBAG Board of Directors.
- 3. Construction Contract Change Orders to on-going SANBAG Pg. 16**  
**Construction Contracts with Ortiz Enterprises Inc., Skanska/Rados A Joint Venture, Beador Construction Company, Inc., Skanska USA Civil West, C.C. Myers, Inc., Riverside Construction Company, Inc. and Brutoco Engineering and Construction.**

Review and ratify change orders. Garry Cohoe

***Notes/Action***

**Discussion Calendar**

**Project Delivery**

- 4. Major Projects Status Briefing** Pg. 19  
Receive the Major Projects Status Briefing Garry Cohoe  
**This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee.**
- 5. Informational Briefing on the Interstate 15/Interstate 215 Interchange (Devore) Project** Pg. 21  
Receive presentation on the current status of the Devore Interchange Project. Dennis Saylor  
**This item is also scheduled for review by the Mountain/Desert Policy Committee on May 17, 2013.**
- 6. Replacement of De-Obligated Transportation Enhancement Funds** Pg. 22  
That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board of Directors meeting:  
Approve replacing receivable of \$80,000 of Transportation Enhancement funds with MSI 1990 – Major Project funds. Garry Cohoe  
**This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee.**
- 7. Option Agreement with the City of Colton to transfer the City’s vacant substation property for the Laurel Street Grade Separation Project** Pg. 24  
That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:  
Approve Option Agreement No. C10106 with the City of Colton to transfer real property held in fee title by the City of Colton to Mr. Thomas Hayward, property owner of Thermal Combustion Innovators, as mitigation for the Laurel Street Grade Separation Project. Garry Cohoe  
**This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee. SANBAG Contract Administrator and outside Right-of-Way Legal Counsel have reviewed this item and a draft of the contract.**

**Discussion Items Continued.....**

**Project Delivery (Cont.)**

**8. Amendment to Project Management Contract with Chad Costello Pg. 35**

That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board of Directors meeting:

Approve Amendment No. 2 to Contract No. C10006, a sole source contract, with Mr. Chad Costello for the continuation of Project Management Services, for an additional \$315,000 in a revised not-to-exceed amount of \$915,000.00, and to extend the contract term for an additional two years to terminate on August 31, 2015. **Garry Cohoe**

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

**9. Interstate 15 Base Line Road Interchange Improvements Pg. 41**

That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:

1. Approve Advance Expenditure Agreement No. R13030 with the City of Rancho Cucamonga for the construction phase of the Interstate 15 Base Line Road Interchange Improvement Project, SANBAG's share not to exceed \$19,406,000; and

2. Approve Cooperative Agreement No. R13028 with the City of Rancho Cucamonga for the construction phase of the Interstate 15 Base Line Road Interchange Improvement Project; and

3. Approve Cooperative Agreement No. C13148 with the City of Rancho Cucamonga and the State of California, acting through its Department of Transportation, for the Interstate 15 Base Line Road Interchange Improvement Project; and

4. Approve Plans, Specifications, and Estimate and authorize advertising Invitation for Bids for construction of the Interstate 15 Base Line Road Interchange Improvement Project; and

5. Approve taking the recommendation for award of the construction contract directly to the Board without prior Board Metro Valley Study Session review. **Paula Beauchamp**

**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 Agreements.**

**Discussion Items Continued.....****Transportation Fund Administration****10. Railroad Grade Separation Project Funding Agreements in the City of Ontario Pg. 95**

That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board of Directors meeting:

1. Approve Amendment No. 3 to Construction Cooperative Agreement No. R10195 with the City of Ontario for construction of the North Milliken Grade Separation Project which includes shifting repayment of \$3,120,955 of Development Impact Fees from the North Vineyard Grade Separation project to the South Milliken Grade Separation project.
2. Approve Funding Agreement No. C13104 with the City of Ontario for Construction of the South Milliken Avenue Grade Separation project which includes a total public share contribution of \$46,691,045.
3. Approve Funding Agreement No. C13105 with the City of Ontario for Construction of the North Vineyard Avenue Grade Separation project which includes a total public share contribution of \$35,025,800.

**Philip Chu**

**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 drafts of the contracts and of the amendment.**

**Transit and Rail****11. License Agreement to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Time Warner Cable Pacific West LLC and a right-of-entry agreement with Optimum, Inc. Pg. 122**

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

1. Approve Contract No. R13144 with Time Warner Cable Pacific West LLC granting a license agreement on the Redlands Subdivision railroad right-of-way, San Bernardino Mile Post 7.6
2. Approve Contract No. R13124 with Optimum, Inc. granting a right-of-entry agreement on the Redlands Subdivision railroad right-of-way, Redlands Mile Post 7.6. **Monica Morales**

**This item is not scheduled for review by any other policy or technical advisory committee. SANBAG General Counsel and Contract Administrator have approved this item and drafts of the Contracts.**

**Public Comments**

**Additional Items from Committee Members**

**Director's Comments**

**Brief Comments by General Public**

**Additional Information**

**Acronym Listing**

**Pg. 165**

**ADJOURNMENT**

**The next Board of Directors Metro Valley Study Session will be:  
June 13, 2013**

Complete packages of this agenda are available for public review at the SANBAG offices and our website: [www.sanbag.ca.gov](http://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. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

**Agendas** – All agendas are posted at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> 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. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov).

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

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

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

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

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

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

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

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

**Basic Agenda Item Discussion.**

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

**The Vote as specified in the SANBAG Bylaws.**

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

**Amendment or Substitute Motion.**

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

**Call for the Question.**

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

**The Chair.**

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

**Courtesy and Decorum.**

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

*Adopted By SANBAG Board of Directors January 2008*



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

**Minute Action**

AGENDA ITEM   1  

**Date:** May 9, 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 SANBAG 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, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
3-A	C12224	Ortiz Enterprises, Inc. <i>Patrick A. Ortiz</i>	Alcorn Fence Company Bithell, Inc. Cal-Stripe, Inc. CGO Construction Cooper Engineering Coral Construction

\*

*Approved*  
 Board Metro Valley Study Session

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.  
 MVSS1305z-gc

3-A (Cont.)	C12224		Coreslab Structures Diversified Landscape Griffith Company Harber Companies Hardy & Harper Hydro Sprout Integrity Rebar Placers L. Johnson Lincoln Pacific Mahaffey Companies Rogan Concrete Coring & Sawing SRD Engineering, Inc. Statewide Traffic Safety & Signs Superior Gunitite Truesdell Corporation West Coast Welding, Inc.
3-B	C09196	Skanska/Rados Joint Venture <i>Chad Mathes</i>	All American Asphalt Anderson Drilling CGO Construction Chrisp Company Coffman Specialties Cleveland Wrecking CMC Fontana Steel D C Hubbs Dywidag-Systems Int. Elmore Pipe Jacking Foundation Pile Inc. Gerco Contracting Giken America Corp. Robert B. Longway Malcolm Drilling Co, Inc. Merli Concrete Pumping Modern Alloy

3-B (Cont.)	C09196		MSL Electric Inc. Olivas Drilling Pacific Restoration Group Penhall Pomeroy Reycon Construction, Inc. Southwest V-ditch Statewide Safety & Sign Steve Bubalo Construction Valley Concrete Placing, Inc. VP Vertical Earthwork
3-C	C12196	Ortiz Enterprises, Inc. <i>Patrick Ortiz</i>	A.C. Dike Company ACL All America Asphalt CGO Construction Company, Inc. Chrisp Company Cindy Trump, Inc. Coral Construction Company DC Hubbs Company Diversified Landscape Company EBS Gernal Engineering, Inc. Foundation Pile, Inc. Hard Rock Equipment High Light Electric, Inc. Integrity Rebar Placers KEC Engineering Malcomb Drilling Company R.J. LaLonda, Inc. SRD Engineering Statewide Traffic Safety & Signs

3-D	C10190	Beador Construction <i>David Beador</i>	Cooper Engineering Cal-Stripe, Inc. CGO Construction Bay Area Drill Golden State Boring United Steel Placers Diversified Landscape DC Hubbs Competitive Edge Electrical Murphy Industrial Coatings Sun Quest General Engineering V-Ditch Construction
3-E	C11184	Skanska <i>Tim Wilson</i>	Ace Fence Company Anderson Drilling Empire Steel J P Striping Inc. J.V. Land Clearing Marina Landscape, Inc. MSL Electric Municon Consultants Reycon Construction Inc. Statewide Safety & Signs Tipco Engineering
3-F	C11004	C.C. Myers Inc. <i>Daniel E. Himick</i>	Alcorn Fence Company Cal-Stripe Foundation Pile, Inc. Integrity Rebar Ecologic Landscape Elite Bobcat Services MSE Retaining Systems

3-F (Cont.)	C11004		Murphy Industrial Coatings  Sierra Pacific Electrical  Visual Pollution Technologies
3-G	C12010	Riverside Construction Inc. <i>Donald M. Pim</i>	Alcorn Fence Company Anderson Drilling Avar Construction Cal-Stripe Coral Construction Diversified Landscape, Inc. Foundation Pile Hardy & Harper Integrity Rebar Placers L. Johnson Construction Lincoln Park Surina Construction
3-H	C12036	Brutoco Engineering and Construction, Inc. <i>Andy Acosta</i>	A.C. Dike Company ACL Construction, Inc. Alcorn Fence Company All American Asphalt AVAR Construction Systems, Inc. Cal-Stripe, Inc. Castle Walls LLC CGO Construction Company, Inc. Coffman Specialties, Inc. Cooper Engineering, Inc. C.P. Construction Company, Inc. Diversified Landscape Company Dywidag Systems International G & F Concrest Cutting Griffith Company Harber Companies, Inc.

3-H (Cont.)	C12036		Integrity Rebar Placers KEC Engineering KRC Safety Co., Inc. LaLonde Equipment Rental Leinaia's Transportation S.D. Precast Concrete, Inc. dba Pomeroy South Coast Sweeping Sully-Miller Contracting Company Treesmith Enterprises, Inc. Truesdale Corporation of California Visual Pollution Technologies West Coast Boring, Inc.
8	C10006-02	Chad Costello <i>Chad Costello</i>	None
11	R13144	Time Warner Cable Pacific West, LLC <i>Estella Garcia</i>	None
11	R13145	Optimum, Inc. <i>Louis LaBarge</i>	None

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

**Reviewed By:** This item is prepared monthly for review by SANBAG Board and Committee members.

**BOARD OF DIRECTORS METRO VALLEY STUDY SESSION ATTENDANCE RECORD – 2013**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Gary Ovitt</b> Board of Supervisors	X	X										
<b>James Ramos</b> Board of Supervisors	X	X			X							
<b>Janice Rutherford</b> Board of Supervisors	X	X			X							
<b>Josie Gonzales</b> Board of Supervisors					X							
<b>Robert Lovingood</b> Board of Supervisors	X	X										
<b>Cari Thomas</b> City of Adelanto												
<b>Curt Emick</b> Town of Apple Valley												
<b>Julie McIntyre</b> City of Barstow												
<b>Bill Jahn</b> City of Big Bear Lake	X	X										
<b>Dennis Yates</b> City of Chino	X	X										
<b>Ed Graham</b> City of Chino Hills	X	X			X							
<b>Frank Navarro</b> City of Colton		X			X							
<b>Michael Tahan</b> City of Fontana	X	X			X							
<b>Walt Stanckiewicz</b> City of Grand Terrace	X	X			X							
<b>Mike Leonard</b> City of Hesperia		X										
<b>Larry McCallon</b> City of Highland	X	X			X							

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X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.

**BOARD OF DIRECTORS METRO VALLEY STUDY SESSION ATTENDANCE RECORD – 2013**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Rhodes 'Dusty' Rigsby</b> City of Loma Linda	X	X			X							
<b>Paul Eaton</b> City of Montclair	X				X							
<b>Edward Paget</b> City of Needles												
<b>Alan Wapner</b> City of Ontario		X			X							
<b>L. Dennis Michael</b> City of Rancho Cucamonga		X			X							
<b>Pete Aguilar</b> City of Redlands		X			X							
<b>Deborah Robertson</b> City of Rialto												
<b>Patrick Morris</b> City of San Bernardino	X	X			X							
<b>Jim Harris</b> City of Twentynine Palms		X			X							
<b>Ray Musser</b> City of Upland		X			X							
<b>Ryan McEachron</b> City of Victorville		X										
<b>Dick Riddell</b> City of Yucaipa	X	X			X							
<b>George Huntington</b> Town of Yucca Valley												

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X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.



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

*Minute Action*

AGENDA ITEM: 3

**Date:** May 9, 1013

**Subject:** Construction Contract Change Orders to on-going SANBAG Construction Contracts with Ortiz Enterprises Inc., Skanska/Rados A Joint Venture, Beador Construction Company, Inc., Skanska USA Civil West, C.C. Myers, Inc., Riverside Construction Company, Inc. and Brutoco Engineering and Construction.

**Recommendation:\*** Review and ratify change orders.

**Background:** Of SANBAG's fifteen on-going Construction Contracts, eight have had Construction Change Orders (CCO's) approved since the last reporting to the Board Metro Valley Study Session. The CCO's are listed below.

- A. CN C12224 with Ortiz Enterprises, Inc. for the construction of the I-10 Cherry Avenue Interchange project: CCO No. 4 (\$30,000.00 increase for temporary traffic stripe, pavement markers, construction signs and asphalt pavement to coordinate with staging to provide better truck turning onto westbound on ramp and decrease backup of traffic onto freeway lanes eastbound I-10 auxiliary lane).
- B. CN C09196 with Skanska/Rados A Joint Venture for the construction of the I-215 Segments 1 and 2 project: CCO No. 104 Supplement 1 (no cost/no credit for revisions to the layout of the transverse and longitudinal joint location for the approach slab for the Redlands Loop OH Widening); CCO No. 136 Supplement 2 (\$42,000.00 for increase of Bid Item No. 10 Temporary Construction Entrance to maintain conformance with the current National Pollutant Discharge Elimination

\*

*Approved*  
 Board Metro Valley Study Session

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

System); CCO No. 157 Supplement 1 (\$30,000.00 increase to provide labor, equipment and materials to revise bent cap and deck reinforcement steel placement at Bents 2, 3, 4 and 5 of 16<sup>th</sup> Street OC/OH); CCO No. 164 (\$2,775.15 increase to revise the G2 inlet for Drainage System 71 for better alignment with toe of slope ditch flow line); CCO No. 165 (\$13,203.00 increase for additional G2 inlet and 18 meters of 600 mm pipe to intercept existing box culvert under the BNSF right of way, not shown on the plans, and tie into Drainage System 103) and CCO No. 169 (\$12,000.00 decrease for the elimination of Bid Item No. 183 Clean and Paint Structural Steel planned for the temporary 3<sup>rd</sup> Street Undercrossing as approved by Caltrans Office of Structures Construction and Materials Engineering and Testing).

- C. CN C12196 with Ortiz Enterprises, Inc. for the construction of the I-10 Tippecanoe Interchange, Phase 1 project: CCO No. 12 Supplement 1 (\$16,000.00 increase of additional funds due to unforeseen work required to maintain existing Highway Planting and Irrigation Systems as required by the Special Provisions.); CCO No. 15 (\$137,620.00 increase for excavation of the roadbed to provide a location to bury excess Aerially Deposited Lead (ADL) soil); CCO No. 15 Supplement 1 (\$10,000.00 increase funding to provide for two Changeable Message Signs for maintaining traffic due to added excavation of roadway for burial of ADL soil) and CCO No. 16 (\$72,240.00 increase for excavation and structural backfill required below Retaining Wall 194 not shown on the plans but required by the Geology Report).
- D. CN C10190 with Beador Construction Company, Inc. for construction of the I-10 West Bound Lane Addition project: CCO No. 21 Supplemental 1 (\$5,000.00 increase to provide additional funds to maintain existing electrical systems in accordance with the contract Special Provisions) and CCO No. 34 (\$32,760.00 increase for furnishing and installing welded wire fabric in the concrete slope protection above Retaining Wall 151 as requested by the Caltrans).
- E. CN C11184 with Skanska USA Civil West for the construction of the Hunts Lane Grade Separation project: CCO No. 17 (\$12,700 increase for installation of an additional water main vault and 60 linear feet of 12" lateral water line for tie-in to 16" water main providing for minimal impact to traffic and ease of installation during staged construction).
- F. CN C11004 with C.C. Myers, Inc. for the construction of the N. Milliken Avenue Grade Separation project: CCO No. 16 (\$25,000.00 increase for relocation of existing water main blow-off valves, erroneously shown on the plans as standard valves, which need to be located out of the roadway).

- G. CN C12010 with Riverside Construction Company, Inc. for the construction of the I-15 La Mesa/Nisqualli Interchange project: CCO No. 42 (\$62,060.00 increase for additional modifications to Stor America property required including deletion of temporary parking lot, replace business sign, added emergency driveway, sandblast existing block wall to match new block walls, concrete paving, cap existing fire hydrant and raise water vault. Changes were requested by the City of Victorville).
- H. CN C12036 with Brutoco Engineering and Construction, Inc. for the construction of the I-10 Citrus Avenue Interchange project: CCO No. 9 (\$18,645.00 increase for replace traffic signal loop detection on both eastbound and westbound ramps with video detection system. Video detection is preferred by both the City of Fontana and Caltrans and will eliminate multiple installation of loop due to stage construction) and CCO No. 15 (\$1,500.00 increase to compensate the contractor for Right-of-Way delays due to adjacent auto dealership refusing to move vehicles from Temporary Construction Easement after receiving prior notification).

**Financial Impact:** This item imposes no financial impact, as all CCOs are within previously approved contingency amounts. Task No's. 0826, 0838, 0842, 0862, 0870, 0882 and 0888.

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

**Responsible Staff:** Garry Cohoe, Director of Project Delivery



- 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:** May 9, 2013

**Subject:** Major Projects Status Briefing

**Recommendation:**\* Receive the Major Projects Status Briefing

**Background:** The Major Projects Status Briefing for the period through March, 2013, is a high level summary of relevant project information. SANBAG staff would like to highlight the following projects for this period.

**1. Interstate 215 Bi-County HOV Gap Closure Project:** Construction started on this project in February, 2013. This project will add a High Occupancy Vehicle (HOV) lane in each direction of Interstate 215 from the SR-60/SR-91/I-215 Interchange in Riverside County to the Orange Show Road interchange in the City of San Bernardino. This work will consist of reconstruction the inside and outside shoulders of the freeway and restriping the mainline to provide an HOV lane and three mixed flow lanes in each direction through this corridor. Construction is anticipated to last approximately two years.

**2. Palm Avenue Grade Separation Project:** The design phase for this project was completed and the right of way was certified for this project on March 1, 2013. State Trade Corridor Improvement Funds (TCIF) of \$4.6 million were allocated for construction of the project at the March 5, 2013 California Transportation Commission (CTC) meeting. Upon obligation of federal funding,

\*

*Approved*  
 Board Metro Valley Study Session

Date: May 9, 2013

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

this project will be advertised for construction. This project will grade separate existing Palm Avenue and the BNSF railway tracks in the City of San Bernardino. Construction is anticipated to start in the second half of this year and take about 18 months to complete.

**3. Interstate 10/Cherry Avenue Interchange Reconstruction Project:** A construction notice to proceed was given on this project in November, 2012. This project will replace the existing 5 lane bridge with a new 8 lane bridge, add one lane to each ramp, and provide additional operational improvements on the adjacent city streets in Fontana. Construction is anticipated to last about two years.

**Financial Impact:** No financial impact, information only.

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

**Responsible Staff:** Garry Cohoe, Director of Project Delivery



- 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:** May 9, 2013

**Subject:** Informational Briefing on the Interstate 15/Interstate 215 Interchange (Devore) Project

**Recommendation:**\* Receive presentation on the current status of the Devore Interchange Project

**Background:** The Devore Interchange project is an ongoing design build project. SANBAG is providing funding on the project along with State and Federal funds. Caltrans is the overall lead agency for the design build phase and SANBAG is the implementing agency for the right of way phase. A contract was awarded by Caltrans to a design-builder in November, 2012 and design work is ongoing. Construction is anticipated to start in June, 2013. Staff will provide an overview of the current status of the project as well as the most current design by the design builder.

**Financial Impact:** This item is for informational purposes only.

**Reviewed By:** This item is also scheduled for review by the Mountain/Desert Policy Committee on May 17, 2013.

**Responsible Staff:** Dennis Saylor, Project Manager

\*

*Approved*

*Board Metro Valley Study Session*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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*Check all that apply.*



- 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:** May 9, 2013

**Subject:** Replacement of De-Obligated Transportation Enhancement Funds

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board of Directors meeting:

Approve replacing receivable of \$80,000 of Transportation Enhancement funds with MSI 1990 – Major Project funds.

**Background:** On October 28, 2010, SANBAG received notice from the Caltrans District Local Assistance Engineer that Transportation Enhancement (TE) funding on two landscape projects was unilaterally de-obligated and closed by FHWA due to inactivity.

**1. SR 210 Highway Planting Plan Segment 3:** This project consisted of planting and construction of irrigation systems on SR 210 from Cucamonga Creek Channel to Hermosa Avenue overcrossing in the city of Rancho Cucamonga. The project was awarded to Diversified Landscape Company Inc. on July 5, 2006 and was the construction was accepted as complete by SANBAG on March 9, 2009. A three year plant establishment period commenced upon acceptance of the contract.

**2. SR-210 Highway Planting Plan Segment 4:** This project consisted of planting and construction of irrigation system on SR 210 from Hermosa Avenue Overcrossing to east of Milliken Avenue overcrossing in the City of Rancho

\*

*Approved*  
 Board Metro Valley Study Session

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

Cucamonga. The project was awarded to Tony's Multi Service Firm Inc. on July 5, 2006 and was accepted as complete by SANBAG on September 16, 2009. A three year plant establishment period commenced upon acceptance of the contract.

As a condition of the TE Funding Agreement, the final reimbursement of \$40,000 would not be paid until the project was complete, and the plant establishment period ended.

On October 28, 2010, Caltrans advised that FHWA had unilaterally de-obligated the remaining \$40,000 balance on both projects due to inactivity. Staff has requested re-obligation the funds, as the invoices were not eligible for payment until the plant establishment period ended, however FHWA indicated that the TE funds are not eligible for re-obligation.

Staff requests authorization to replace the de-obligated TE funds with Measure I 1990-Major Projects funding in order to finalize the completion package and close out these projects.

**Financial Impact:** Replace receivable of \$80,000 of Transportation Enhancement funds with Measure I-1990 Major Project funds.

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

**Responsible Staff:** Garry Cohoe, Director of Project Delivery



- 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:** May 9, 2013

**Subject:** Option Agreement with the City of Colton to transfer the City's vacant substation property for the Laurel Street Grade Separation Project

**Recommendations:\*** That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:

Approve Option Agreement No. C10106 with the City of Colton to transfer real property held in fee title by the City of Colton to Mr. Thomas Hayward, property owner of Thermal Combustion Innovators, as mitigation for the Laurel Street Grade Separation Project.

**Background:** The Laurel Street Grade Separation Project will improve safety and reduce traffic delays along Laurel Street by separating pedestrians and vehicles from train traffic on six tracks along the BNSF Railway Company (BNSF) rail line. San Bernardino Associated Governments (SANBAG) is the lead agency for the design, right-of-way, and construction phases according to a funding agreement (C12053) between SANBAG, the City of Colton, Union Pacific Railroad (UPRR), and BNSF, and Construction Cooperative Agreement No. C12037 between SANBAG and the City of Colton.

Because the project will depress Laurel Street underneath the BNSF rail line, street access from Laurel Street to an existing business, Thermal Combustion

\*

*Approved*  
 Board Metro Valley Study Session

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.

MVSS1305a-pm

Attachment: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C10106.doc>

Innovators (TCI), will be affected. The Project team developed a design alternative that will maintain access to TCI through an adjacent property; however, this alternative impacts several parking spaces on the TCI property. TCI is a medical waste handling business with a high level of activity and a large volume of truck traffic. The loss of parking spaces could be detrimental to the operations of the business, and a medical waste handling business would be difficult and potentially be very costly to relocate. Staff has identified the use of an adjacent electric substation property owned by the City of Colton (City substation property) just north of the TCI property as possible mitigation for the loss of parking spaces. The City's electric substation is no longer in operation and was abandoned in the early 1990's.

In March 2013, SANBAG and TCI entered into mediation for the terms of a Right-of-Way agreement. At the mediation, Thomas Hayward, the TCI property owner, indicated that the City substation property would mitigate damages to allow them to remain at this site. The mitigation also includes parking lot improvements on the City substation property. Option Agreement No. C10106 with the City of Colton provides the mechanism to allow the City to transfer the City substation property to TCI when the Right-of-Way agreement with TCI has been executed.

The City of Colton has agreed to transfer the City substation property to TCI at no cost to the Project with the condition that any hazardous waste remediation required for the transfer would be a Project cost. In late 2012, a Phase I hazardous waste investigation was initiated for the City substation property. A record search and a visual inspection of the site were performed. The record search did not reveal historical records of contamination or other uses of the property that may be of concern and based on the visual inspection, there were no physical signs of spills or contamination. Under the project funding agreement (Agreement No. C12053), project costs are shared between SANBAG, the City of Colton, Union Pacific Railroad, and BNSF.

At the October 2012, November 2012, and February 2013, Board of Directors meetings, discussions were held regarding the price and terms for acquisition of the City substation property

The terms of Option Agreement C10106 are summarized as follows:

- At SANBAG's option, City will transfer the City substation property to TCI at no cost.
- City will remove all equipment above the ground surface including the electrical transformers and ancillary equipment, surface debris, and the storage shed.

- Hazardous waste clean-up that is required to allow the transfer of the property to TCI or required by the regulatory agencies will be a project cost.
- SANBAG, as a project cost, will be responsible for any improvements beyond the City's responsibilities to remove equipment as described above. This includes the removal of the concrete foundations, and grading and paving of the property.

As mitigation for the loss of parking spaces on the TCI property and avoid potentially large business damage claims, Staff recommends approval of Option Agreement No. C10106 for the transfer of the City substation property to TCI.

**Financial Impact:** Agreement No. C10106 does not have a direct financial commitment. This item has no direct impact on the adopted SANBAG Fiscal Year 2012/2013 budget. Task No. 0884.

**Reviewed By:** This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee. SANBAG Contract Administrator and outside Right-of-Way Legal Counsel have reviewed this item and a draft of the contract.

**Responsible Staff:** Garry Cohoe, Director of Project Delivery



# CONTRACT SUMMARY SHEET

Contract No. C 10106 Amendment No. \_\_\_\_\_

By and Between

San Bernardino County Transportation Commission and City of Colton

Contract Description Laurel Street Grade Separation; Option Agreement to Transfer Real Property

**Board of Director's Meeting Date:** June 9, 2013

**Overview of BOD Action:** Approve Agreement No. C10106 with the City of Colton which will provide an option to request transfer of property held in fee title by the City of Colton as mitigation for the Laurel Street Grade Separation Project

Is this a Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$ 0	Original Contingency Amount	\$ 0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$ 0	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$ 0
Current Amendment Amount	\$ 0	Contingency Amendment	\$ 0
<b>TOTAL CONTRACT VALUE</b>	<b>\$ 0</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$ 0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 0</b>

Contract Start Date June 9, 2013	Current Contract Expiration Date December 31, 2014	Revised Contract Expiration Date
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Has the contract term been amended?  No  Yes - please explain.

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0884.

A Budget Amendment is required.

How are we funding current FY? There is no direct cost associated with this agreement

Federal Funds  
  State Funds  
  Local Funds  
  TDA Funds  
  Measure I Funds

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

Payable  Receivable Neither payable nor receivable; There is no direct cost associated with this agreement

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

PAUL MELOWTON		4/29/13
Project Manager (Print Name)	Signature	Date
		4/29/13
Task Manager (Print Name)	Signature	Date
Andrea Kueck		4/30/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

ASSESSOR PARCEL NO.: 0160-241-45  
PARCEL NO.: 45  
TITLE REPORT NO:  
PROJECT: Laurel Grade Separation Project

### OPTION TO ACQUIRE REAL PROPERTY

THIS OPTION AGREEMENT (hereinafter called "Agreement") is entered into by and between the San Bernardino County Transportation Commission, a public agency of the State of California, (hereinafter called "Commission"), and the City of Colton (hereinafter called "City") for the transfer of certain real property hereinafter set forth for the construction of the Laurel Street Grade Separation Project (hereinafter called the "Project").

#### RECITALS

WHEREAS, Commission and City are working as cooperative partners on the Project;

WHEREAS, it is the intent of Commission and City to transfer the property described and depicted below to Mr. Thomas William Hayward, property owner of Thermal Combustion Innovators, (hereinafter called "Hayward") as part of negotiations to offset potential damages Hayward may claim as a result of the Project;

WHEREAS, Commission reserves the right to not exercise this option if it determines the property is not needed for negotiating a resolution with Hayward.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **SUBJECT PROPERTY.** City owns that certain real property identified as Assessor Parcel Number 0160-241-45 located in the City of Colton, County of San Bernardino, State of California, legally described and depicted as follows (hereinafter called the "Property"):

SEE EXHIBIT "A" ATTACHED HERETO  
AND BY THIS REFERENCE MADE A PART HEREOF

2. **OPTION TO ACQUIRE.** Commission shall have the right, but not the obligation, to exercise this option requiring the transfer of the Property to Hayward. The term of this Option Agreement is eighteen (18) months commencing on the Effective Date. If Commission does not exercise this option during the term of the Agreement, then City will remain the owner of the Property and neither party will have any further obligations under this Agreement.
3. **CONVEYANCE OF TITLE.** Upon Commission's exercise of the option, City shall execute the Quit claim Deed attached hereto as Exhibit "B" and incorporated herein by this reference and deliver the Deed to Hayward. City represents that, at the time of execution

and delivery of the Deed to Hayward, that it is the lawful owner of the Property and has good, clear title to the Property.

4. **REMOVAL OF EQUIPMENT.** City agrees, at its own cost, to remove from the Property all equipment above the ground surface, including the electrical transformers and ancillary equipment, surface debris and the storage shed within 90 days upon Commission's request.
5. **HAZARDOUS WASTE.** Commission, as a Project cost and at its discretion, will perform any hazardous waste investigation needed to evaluate the clean-up of the Property. Commission, as a Project cost, will be responsible for paying the cost of remediating any hazardous waste that is required by a government agency with jurisdiction over such remediation, other than City, to be remediated to allow the transfer of the Property to Hayward. Commission's obligation to pay the cost of remediation herein is limited to covering only the costs the City would otherwise be obligated to pay. It is not intended for Commission to take responsibility for costs a prior owner or waste generator might have to pay under the law.
6. **ADDITIONAL IMPROVEMENTS.** Commission, as a Project cost, will be responsible for any improvements beyond City's responsibilities set forth above. This includes the removal of concrete foundations and could include grading and paving of the Property.
7. **PROJECT COSTS.** Commission and City agree that Project costs will be allocated in accordance with the existing cooperative agreement between Commission and City.
8. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.
9. **JURISDICTION AND VENUE.** This Agreement shall be governed by and constructed in accordance with the laws of the State of California. The parties consent to the jurisdiction of the California courts with venue in the County of San Bernardino.
10. **ASSIGNMENT.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto. Commission may freely assign any or all of its interests or rights under this Agreement without the consent of City.
11. **ENTIRE AGREEMENT, WAIVER AND MODIFICATION.** This Agreement is the entire Agreement between the parties with respect to the subject matter of this Agreement. It supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
12. **CONSTRUCTION.** Section headings in this Agreement are solely for the convenience of

the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.

13. **AUTHORITY.** Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

14. **EFFECTIVE DATE.** This Agreement is effective on the date executed by Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth below.

**CITY OF COLTON**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Sarah S. Zamora  
Mayor

Dated: \_\_\_\_\_

**SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
Janice Rutherford  
President, Board of Directors

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
COMMISSION'S COUNSEL  
Craig G. Farrington  
Alyson C. Suh

**CONCURRENCE:**

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

The parties and each of them shall not be bound by the terms of this Agreement until the parties have signed and exchanged copies of this Agreement. This Agreement shall be binding on the parties only if it is signed by each of them in the presence of the other party.

ARTICLE III. Each party shall execute this Agreement in duplicate, and each party shall retain one copy. The original of this Agreement shall be kept by the party who prepared it. The parties shall be bound by the terms of this Agreement from the date of its execution.

**EXHIBIT A  
PARCEL MAP**

SECTION 1. This Agreement is subject to the parcel map attached hereto.

IN WITNESS WHEREOF, the parties have signed and affixed their seals to this Agreement on the day and date first above written.

BUYER'S COPY

By \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

SELLER'S COPY  
[Signature]

Date: \_\_\_\_\_

By \_\_\_\_\_  
[Signature]

ATTEST: \_\_\_\_\_

By \_\_\_\_\_  
[Signature]

EXHIBIT B

By \_\_\_\_\_  
[Signature]

THIS MAP IS FOR THE PURPOSE  
OF AS VALUING IMMOVABLE REALTY

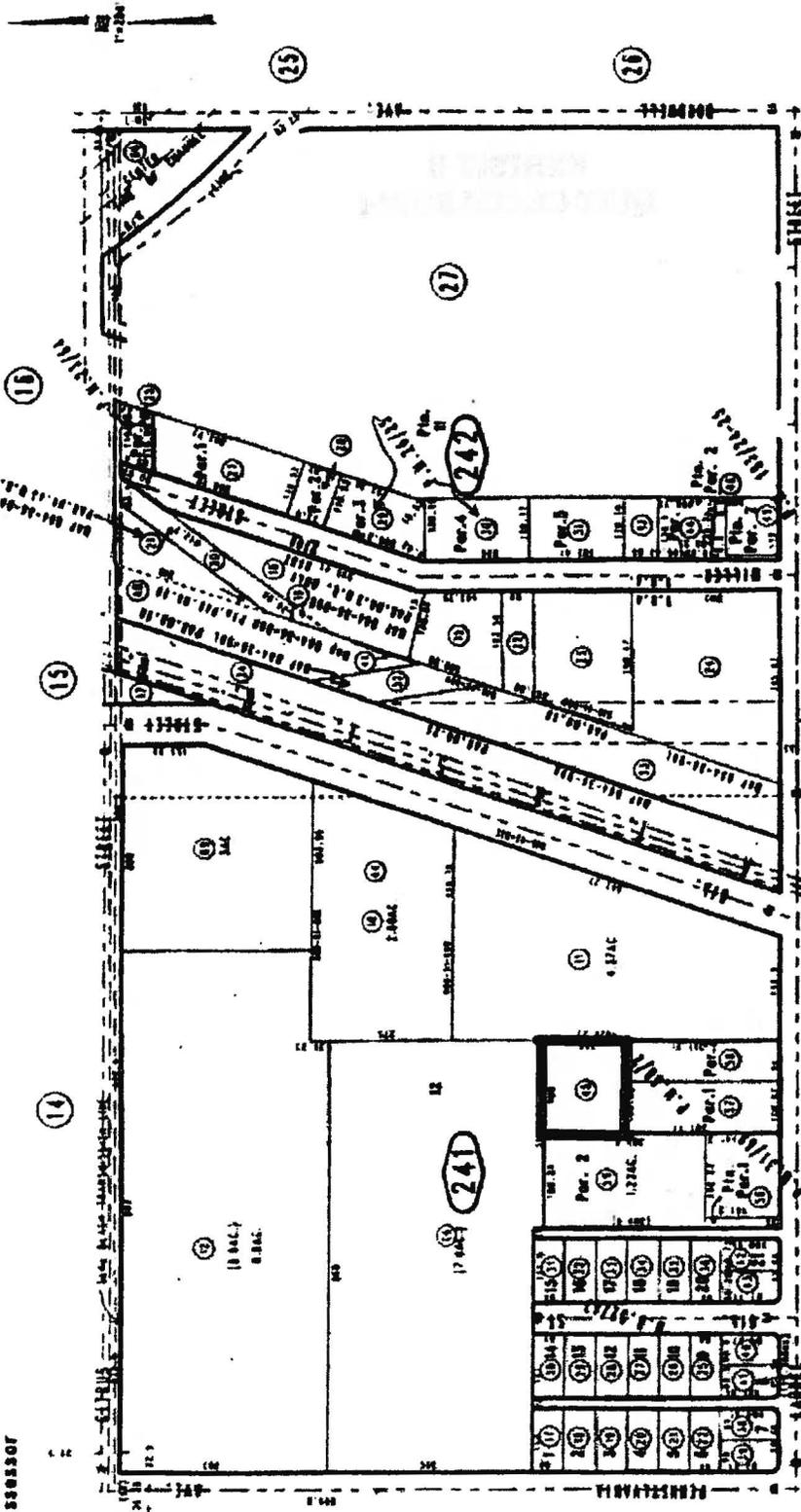
BILL POSTMUS, Assessor



Pin. Colton Land & Water Co. Sub'n  
M.B.1/40

City Of Colton  
Tax Rate Area  
2100, 2153

0160 - 24



- Parcel Map No. 15688, P. M. 10/1/24-25
- Parcel Map No. 2088, P. M. 6672
- Plat. Parcel Map No. 3600, P. M. 31/68
- Parcel Map No. 2021, P. M. 16/25
- Parcel Map No. 2788, P. M. 23/84
- Tract No. 4168 M. B. 57/87

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Assessor's Map  
Book 0160 Page 24  
San Bernardino County

October 2003

**EXHIBIT B  
QUIT CLAIM FORM**



CITY OF COLTON  
650 N. La Cadena Drive  
Colton, CA 92324

**QUIT CLAIM DEED CERTIFICATION**  
California Government Code 27281

This is to certify that the real property conveyed by the attached instrument dated \_\_\_\_\_, 20\_\_ from the City of Colton, a municipal corporation, as Grantor to Thermal Combustion Innovators, Inc., as Grantee, is hereby accepted by Thomas Hayward, a duly authorized officer of said grantee.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thermal Combustion Innovators, Inc.  
Thomas Hayward  
President



- 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:** May 9, 2013

**Subject:** Amendment to Project Management Contract with Chad Costello

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board of Directors meeting:

Approve Amendment No. 2 to Contract No. C10006, a sole source contract, with Mr. Chad Costello for the continuation of Project Management Services, for an additional \$315,000 in a revised not-to-exceed amount of \$915,000.00, and to extend the contract term for an additional two years to terminate on August 31, 2015.

**Background:** **This is an existing contract.** Mr. Costello began assisting with the Major Projects Program when Fluor was unable to recruit the required staff. Mr. Costello entered into a Purchase Order contract with San Bernardino Associated Government (SANBAG). He was assigned to Interstate 10/ Tippecanoe Avenue Interchange, Hunts Lane Railroad Grade Separation, and to assist in the Alternative Finance project. Mr. Costello's knowledge and experience successfully aided in moving these projects forward.

In June 2009, Parsons Transportation Group, Inc. (Parsons) was awarded the Program Management Contract for the Major Projects Program. At that time, Parsons was performing work on several existing environmental and design contracts with SANBAG. Staff viewed it as a conflict of interest for Parsons to perform concurrently on both the SANBAG project management oversight and

\*

*Approved*  
 Board Metro Valley Study Session

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

MVSS1305c-pb

Attachment: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared Documents/C10006-02.docx>

the design and environmental services for a project. As a means for avoiding this conflict for Parsons, the Board of Directors in August of 2009, approved the sole source contract for Mr. Costello, and independent consultant, for the project management of the environmental subject projects at an hourly rate of \$120 for a not-to-exceed amount of \$300,000; a duration of two years ending August 5, 2011. It was subsequently amended to increase the contract value by \$300,000, without rate increase, and to extend the duration of the contract through August 31, 2013. The Board of Directors recently approved an extension to the Parsons' Program Management Contract so the need to avoid a conflict of interest in having Parsons perform project management oversight and the design and environmental services for a project continues. The approval of the amendment to Mr. Costello's contract would preclude the conflict of interest for Parsons and allow continuity on his current assignments.

Mr. Costello's assignments under this contract include the project management of Interstate 10 (I-10) Cherry Avenue and I-10 Citrus Avenue Interchanges, both funded in part with Trade Corridor Improvement Fund (TCIF). He has and continues to aggressively manage the projects to meet the baseline agreements so as not to risk the TCIF funds and to deliver both projects to construction. In addition, Mr. Costello is managing the I-10 Corridor project. He successfully managed this project toward approximately 65% completion of the Project Approval and Environmental Document milestone. In tandem, he has assisted in the procurement and management of Alternative Financing projects on both I-10 and I-15. For I-10 preliminary toll feasibility studies have been completed and a workshop to the Board of Directors Alternative Finance team presented with the outcome of these studies. Subsequently procurement was secured and management of Level Two Traffic and Revenue Toll Feasibility Studies and Level Two Finance Toll Feasibility Studies are underway.

Other accomplishments by Mr. Costello include the drafting and management of various Requests for Proposals (RFP) leading to contract procurement. Mr. Costello effectually led the procurement process resulting in SANBAG's first on-call right-of-way services contract. This task proved to be rather intensive because of the broad scope of services involved in the right-of-way phase of project delivery. For this task, Mr. Costello was required to address each facet within the RFPs. The resultant right-of-way services contract provides resource support for various Major Projects and assists in maintaining schedules.

Mr. Costello has foregone escalation and has continued to bill SANBAG at the same rate since 2008. For this subject contract amendment, staff compared Mr. Costello's hourly billing rate with other consultant project managers. A random sampling of project managers' rates from four companies and five different contracts yielded fully burdened hourly rates ranging from \$164.88 to \$287.44,

with an average of \$214.75 per hour. Taking these hourly rates into consideration, Mr. Costello's success in delivering projects, a 5% increase was negotiated. This increases his hourly rate from \$120.00 to \$126.00

If Amendment No. 2 is approved, this Contract with Mr. Costello will remain in effect until August 31, 2015, at an hourly rate of \$126.00 with no additional escalation, for a revised not-to-exceed amount of \$915,000.00. Mr. Costello's experience and vast knowledge of project management, delivery methods, Caltrans Local Assistance, TCIF and FHWA funding obligation procedures, and SANBAG experience, has brought further success to delivery within the Major Projects Program. Staff recommends approval of this Amendment No. 2 in order to provide for the continuity in completing his current assignments and to avoid the conflict of interest with Parsons.

**Financial Impact:** This item is consistent with the current budget and the Fiscal Year 2013/2014 budget. TN 0825, 0826, 0850.

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

**Responsible Staff:** Garry Cohoe, Director of Project Delivery

## CONTRACT SUMMARY SHEET

Contract No. C 10006 Amendment No. 2

By and Between

Chad Costello

and

San Bernardino Associated Governments/San Bernardino County Transportation Authority

Contract Description Project Management Services

**Board of Director's Meeting Date:** June 5, 2013  
**Overview of BOD Action:** August 2009, C10006 Approved; June 2011, C10006-01 Approved

**Is this a Sole-Source procurement?**  Yes  No

Mr. Costello, an independent consultant, provides PM services for projects where Parsons is on contract for PA&ED services and is in conflict for SANBAG Program Management services. In addition, he has project history and is successful in project delivery.

### CONTRACT OVERVIEW

Original Contract Amount	\$	300,000.00	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	600,000.00	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	315,000.00	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>915,000.00</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 915,000.00</b>

Contract Start Date 8/5/09	Current Contract Expiration Date 8/31/13	Revised Contract Expiration Date 8/31/15
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Has the contract term been amended?  No  Yes - please explain.  
 An additional two years was added to the current term.

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 825, 826, 850.

A Budget Amendment is required.

How are we funding current FY? Measure I Valley Fund-Freeway Project and Freeway Interchange

Federal Funds  State Funds  Local Funds  TDA Funds  Measure I Funds

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

Measure I Valley Fund-Freeway Project and Freeway Interchange

Payable  Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

Paula Beauchamp  
Project Manager (Paula Beauchamp)

Paula Beauchamp  
Signature

4/19/13  
Date

Garry Cohoe  
Task Manager (Garry Cohoe)

Garry Cohoe  
Signature

4/22/13  
Date

Andrea Turcotte  
Dir. of Fund Admin. & Programming (Print Name)

Andrea Turcotte  
Signature

4/22/13  
Date

Jeffery Hill  
Contract Administrator (Print Name)

Jeffery Hill  
Signature

4/22/13  
Date

W. JAWORSKI  
Chief Financial Officer (Print Name)

W. JAWORSKI  
Signature

4/23/13  
Date

**AMENDMENT NO. 2 TO**

**CONTRACT NO. C10006**

**BY AND BETWEEN**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS, ACTING IN ITS CAPACITY AS  
THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CHAD COSTELLO**

This AMENDMENT No. 2 to CONTRACT No. C10006 between Chad Costello, sole proprietor (hereafter called CONSULTANT) and the San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Authority (hereafter called AUTHORITY):

**RECITALS**

- A. WHEREAS, AUTHORITY, under Contract No. C10006 ("Contract"), has engaged the services of CONSULTANT to provide project management services; and
- B. WHEREAS, the parties hereto desire to amend the Contract to increase the contract amount and to extend the term of the Contract for an additional two years.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, CONSULTANT and AUTHORITY do hereby agree to amend the Contract as follows:

- 1. Delete Article 2. "TERM" and replace with the following:  
"This Contract will commence on August 5, 2009, and remain in effect until August 31, 2015 or as terminated as thereafter provided."
- 2. Delete Article 4. "COMPENSATION", Subsection A.2. and replace with the following:  
"2. CONTRACTOR shall be paid at the rate of \$126 for each hour of service under this Contract. Total compensation under this Contract is limited to a Not-to-Exceed amount of \$915,000. This payment shall constitute full compensation to CONTRACTOR."
- 3. The Contract is incorporated into this Amendment.

4. Except as amended by this Amendment No. 2, all other provisions of the Contract shall remain in full force and effect.
5. This Amendment No. 2 is effective on the date executed by AUTHORITY.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 2 below.

**CONSULTANT**

**AUTHORITY**

---

Chad Costello  
Consultant

---

Janice Rutherford  
President, Board of Directors

**APPROVED AS TO FORM**

---

Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE**

---

Jeffery Hill  
Contract Administrator



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

*Minute Action*

AGENDA ITEM: 9

**Date:** May 9, 2013

**Subject:** Interstate 15 Base Line Road Interchange Improvements

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:

1. Approve Advance Expenditure Agreement No. C13030 with the City of Rancho Cucamonga for the construction phase of the Interstate 15 Base Line Road Interchange Improvement Project, SANBAG's share not to exceed \$19,981,000; and
2. Approve Construction Cooperative Agreement No. R13028 with the City of Rancho Cucamonga for the construction phase of the Interstate 15 Base Line Road Interchange Improvement Project; and
3. Approve Construction Cooperative Agreement No. C13148 with the City of Rancho Cucamonga and the State of California, acting through its Department of Transportation, for the Interstate 15 Base Line Road Interchange Improvement Project; and

\*

*Approved*  
*Board Metro Valley Study Session*

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

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

Check all that apply.

MVSS1305b-bf

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared Documents/R13028.docx>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared Documents/C13030.doc>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13030%20Attachment%20B.pdf>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13148.docx>

4. Approve Plans, Specifications, and Estimate and authorize advertising Invitation for Bids for construction of the Interstate 15 Base Line Road Interchange Improvement Project; and
5. Approve taking the recommendation for award of the construction contract directly to the Board without prior Board Metro Valley Study Session review.

***Background:***

**These are new agreements and approvals required for the construction phase of the I-15 Base Line Road Interchange.**

Staff has been working with the City of Rancho Cucamonga through a Project Development Team to complete the design of the Interstate 15 Base Line Road Interchange Improvement Project. This project will widen Base Line Road and East Avenue, modify the four diamond interchange ramps, construct a new southbound loop on-ramp, highway planting, plant establishment, and extended plant maintenance (PROJECT) in the Cities of Rancho Cucamonga and Fontana. The City of Rancho Cucamonga is the lead agency for the design phase and right-of-way acquisition which is nearing completion. The City has requested that SANBAG take the lead on management and oversight of the construction phase of the project. For this effort, CALTRANS has delegated authority to SANBAG to Advertise, Award, and Administer (AAA) the construction phase of this project.

**Recommendation Nos. 1 and 2:** This project is included in the SANBAG Development Mitigation Nexus Study, is priority number seven in the Measure I 2010-2040 Valley Freeway Interchange Program and is eligible to receive Measure I 2010-2040 Valley Freeway Interchange Program Funds. To advance the project, the City has requested approval of Advance Expenditure Agreement C13030 which will allow the City to use its own funds to begin the construction phase of the project in advance of an allocation of Measure I funds, with the understanding that SANBAG will reimburse the City at a later date for SANBAG's share of eligible project expenditures. SANBAG's share is \$19,981,000 as shown in the Summary of Project Costs (Estimate) and Funding Table below.

**Summary of Project Costs (Estimate) and Funding:**

Phase	Total Cost (\$1,000)	Cost Incurred after 4/5/2006 <sup>1</sup> (\$1,000)	Federal Earmarks (\$1,000)	State Funds (\$1,000)	Remaining Balance <sup>2</sup> (\$1,000)	Local Agency Share <sup>3</sup> (\$1,000)	Authority Share <sup>4</sup> (\$1,000)
						City of Rancho Cucamonga	
<b>Preconstruction</b>							
PA/ED	1,178	1,000	752		248	124	124
PS&E	4,630	4,630	419		4,211	2,106	2,106
Right of Way	7,200	954			954	477	477
<b>Subtotal</b>	<b>13,008</b>	<b>6,584</b>	<b>1,171</b>	<b>0</b>	<b>5,413</b>	<b>2,707</b>	<b>2,707</b>
<b>Construction</b>							
Design Const. Support	700	700			700	350	350
Const. Management <sup>5</sup>	7,300	7,300			7,300	3,650	3,650
Const. Capital <sup>6</sup>	34,150	34,150	6,602	1,000	26,548	13,274	13,274
SANBAG Management & Oversight	600	600			600	600	
<b>Subtotal</b>	<b>42,750</b>	<b>42,750</b>	<b>6,602</b>	<b>1,000</b>	<b>35,148</b>	<b>17,874</b>	<b>17,274</b>
<b>Total Project Cost</b>	<b>55,758</b>	<b>49,334</b>	<b>7,773</b>	<b>1,000</b>	<b>40,561</b>	<b>20,581</b>	<b>19,981</b>

<sup>1</sup> Only costs incurred after 4/5/2006 are eligible for reimbursement.

<sup>2</sup> Remaining balance is the dollar amount remaining after the Federal Earmarks are subtracted from the "cost incurred after 4/5/2006".

<sup>3</sup> Local Share is 50% of Remaining Balance; Rancho Cucamonga share is 66.6% of Local Agency Share and the City of Fontana share is 33.4% of Local Agency Share. By separate agreement, the City of Rancho Cucamonga is responsible for collection of the City of Fontana share of costs for project expenses.

<sup>4</sup> Authority Share is 50% of Remaining Balance.

<sup>5</sup> Construction Management includes \$250,000 for Source Inspection.

<sup>6</sup> Construction Capital includes \$1,000,000 for utility relocation, \$44,000 for Caltrans Mix Design (HMA JMF and Concrete Mixes), \$300,300 for State Furnished Materials, and \$750,000 for 3 years of plant establishment within the project limits plus another 3 years of maintenance within Caltrans right of way.

The City and SANBAG need to enter into a Construction Cooperative Agreement R13028 concurrently with the Advance Expenditure Agreement, whereby AUTHORITY agrees to be the construction phase lead agency and the City agrees

to pay to SANBAG for actual construction costs, and for SANBAG management and oversight expenses.

Staff is requesting the Metro Valley Study Session recommend Board approval of the Advance Expenditure Agreement C13030 and the Construction Cooperative Agreement R13028.

**Recommendation No. 3:** The City, SANBAG, and CALTRANS need to enter into a 3-party Construction Cooperative Agreement C13148. The Agreement identifies CALTRANS' responsibility to provide Independent Quality Assurance for the portions of the work within the existing and proposed State Highway System right of way; identifies the City's responsibility to obtain, renew, and amend the environmental permits; and identifies SANBAG's responsibility to advertise, award, and administer the construction contract. Staff is requesting the Metro Valley Study Session recommend Board approval of the 3-party Construction Cooperative Agreement C13148.

**Recommendation No. 4:** The Plans, Specifications, and Estimate (PS&E) for the project have been completed and the bid package is being prepared. Staff is requesting the Board Metro Valley Study Session recommend Board approval of the PS&E and authorization for advertisement of the bid package for construction of this project.

**Recommendation No. 5:** Staff anticipates advertising this project for bid in August of 2013, with bid opening six to seven weeks after the start of advertising. After evaluation of the bid package, this construction contract will be recommended for approval based on verification of the lowest responsive/responsible bid in accordance with established criteria. Since the award of the contract is based on the lowest responsive/responsible bidder, it is recommended that the award of the construction contract proceed directly to the Board without prior Metro Valley Study Session review. This will allow the execution of the contract and start of construction to occur at the earliest possible date and ensure timely use of Federal and State funding. Staff is requesting approval to take the award of the construction contract directly to the Board without prior Board Metro Valley Study Session review.

Staff recommends approval of all recommendations included in this item.

**Financial Impact:** The budget is consistent with the Fiscal Year 2012/2013 budget. Task No. 0892, I-15 and Base Line Road Interchange

**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 Agreements.

**Responsible Staff:** Paula Beauchamp, Project Delivery Manager

Item #	Description	Start Date	End Date	Status
1	Sanbag General Counsel			Reviewed
2	Contract Administrator			Reviewed
3	Project Delivery Manager			Responsible
4	Sanbag General Counsel			Reviewed
5	Contract Administrator			Reviewed
6	Project Delivery Manager			Responsible
7	Sanbag General Counsel			Reviewed
8	Contract Administrator			Reviewed
9	Project Delivery Manager			Responsible
10	Sanbag General Counsel			Reviewed
11	Contract Administrator			Reviewed
12	Project Delivery Manager			Responsible
13	Sanbag General Counsel			Reviewed
14	Contract Administrator			Reviewed
15	Project Delivery Manager			Responsible
16	Sanbag General Counsel			Reviewed
17	Contract Administrator			Reviewed
18	Project Delivery Manager			Responsible
19	Sanbag General Counsel			Reviewed
20	Contract Administrator			Reviewed
21	Project Delivery Manager			Responsible
22	Sanbag General Counsel			Reviewed
23	Contract Administrator			Reviewed
24	Project Delivery Manager			Responsible
25	Sanbag General Counsel			Reviewed
26	Contract Administrator			Reviewed
27	Project Delivery Manager			Responsible
28	Sanbag General Counsel			Reviewed
29	Contract Administrator			Reviewed
30	Project Delivery Manager			Responsible



## CONTRACT SUMMARY SHEET

Contract No. C 13030 Amendment No. 0

By and Between

San Bernardino Transportation Authority and City of Rancho Cucamonga

Contract Description Advance Expenditure Agreement

<b>Board of Director's Meeting Date:</b> 6/5/2013	
<b>Overview of BOD Action:</b> Approve Advance Expenditure Agreement C13030. City and Authority are entering into Coop whereby City agrees to pay for construction costs. City and Authority are entering into AE Agreement whereby Authority agrees to reimburse City for Authority's share at a later date.	
<b>Is this a Sole-Source procurement?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW					
Original Contract Amount	\$	19,981,000.00	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>19,981,000.00</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>				<b>\$</b>	<b>19,981,000.00</b>

<b>Contract Start Date</b> 6/5/2013	<b>Current Contract Expiration Date</b> 12-5-2017	<b>Revised Contract Expiration Date</b> 
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0892</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY?				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
<i>Provide Brief Overview of the Overall Funding for the duration of the Contract:</i> SANBAG reimburses City with Meas. I VF Interchange Program funds at a later date, not to exceed \$19.981M.				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

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

<u>Barbara Fortman</u>	<u>Barbara Ft</u>	5.2.13
Project Manager (Print Name)	Signature	Date
<u>Garry Coloe</u>	<u>Garry Coloe</u>	5.2.13
Task Manager (Print Name)	Signature	Date
<u>Andrea Zureick</u>	<u>Andrea Zureick</u>	5/2/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

**ADVANCE EXPENDITURE AGREEMENT NO. C13030**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF RANCHO CUCAMONGA**

**FOR**

**INTERSTATE 15 BASE LINE ROAD INTERCHANGE IMPROVEMENTS  
IN THE CITIES OF RANCHO CUCAMONGA AND FONTANA**

This Advance Expenditure Agreement (“AGREEMENT” or “AEA”) is made and entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the CITY of Rancho Cucamonga (hereinafter referred to as “CITY”) for AUTHORITY reimbursement of CITY expenditures on all phases of the Interstate 15 Base Line Road Interchange Improvement Project to include: Base Line Road and East Avenue widening, modification of the four diamond interchange ramps, and construction of the southbound loop on-ramp, highway planting, plant establishment, and extended plant maintenance. The Effective Date of this AGREEMENT shall be the date upon which AUTHORITY executes this AGREEMENT.

**RECITALS**

WHEREAS, the Measure I 2010-2040 (“Measure I”) Expenditure Plan and the SANBAG Development Mitigation Nexus Study dated November 2, 2011 (“Nexus Study”), identified freeway interchange projects eligible for partial funding from Measure I revenues; and

WHEREAS, this AGREEMENT is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan as adopted by AUTHORITY; and

WHEREAS, AUTHORITY and CITY (the “Parties”) intend to construct Interstate 15 Base Line Road Interchange Improvements to include: Base Line Road and East Avenue widening, modification of the four diamond interchange ramps; and construction of the southbound loop on-ramp (“PROJECT”) in the Cities of RANCHO CUCAMONGA and FONTANA; and

WHEREAS, AUTHORITY has determined that this PROJECT and expenditure phase are included in the SANBAG Development Mitigation Nexus Study and are eligible to receive Measure I 2010-2040 Valley Freeway Interchange Program funds; and

WHEREAS, CITY wishes to begin the PROJECT prior to Measure I funds being available for this PROJECT; and

WHEREAS, CITY has agreed to be the lead agency for preconstruction activities, consisting of the environmental, design, and right-of-way phases, and has agreed to pay 100% of the cost of the preconstruction activities as set forth in Attachment A to this AGREEMENT; and

WHEREAS, CITY and AUTHORITY are entering into a Construction Cooperative Agreement (Contract No. R13028) concurrently with this AGREEMENT, whereby AUTHORITY agrees to be the construction phase lead agency and CITY agrees to pay to AUTHORITY for actual construction costs, and for AUTHORITY management and oversight expenses as set forth in Attachment A to this AGREEMENT; and

WHEREAS, AUTHORITY and CITY are entering into this AGREEMENT with the understanding that AUTHORITY will reimburse CITY for AUTHORITY's share of eligible PROJECT expenditures incurred after April 5, 2006, with Measure I 2010-2040 Valley Freeway Interchange Program funds or other funds under AUTHORITY control according to Measure I Strategic Plan Policy 40002, revision 1 (POLICY) included as Attachment B; and

WHEREAS, since revenue from Measure I 2010-2040 is limited, AUTHORITY and CITY are entering into this AGREEMENT, which will allow CITY to use its own funds to implement the PROJECT in advance of an allocation of Measure I funds, with the understanding that AUTHORITY will reimburse CITY at a later date for AUTHORITY's share of eligible PROJECT expenditures incurred after April 5, 2006, in accordance with the Advance Expenditure Agreement (AEA) reimbursement policy in the POLICY, as applicable; and

WHEREAS, CITY is responsible for collection of the City of Fontana share of costs for project expenses and CITY will provide AUTHORITY with a copy of any agreement between CITY and City of Fontana regarding City of Fontana payment of its share of project expenses; and

WHEREAS, AUTHORITY and CITY recognize that the position of the PROJECT is number seven (7) on the AUTHORITY interchange priority list for purposes of receiving reimbursement from AUTHORITY.

NOW, THEREFORE, AUTHORITY and CITY agree to the following:

## SECTION I

### AUTHORITY AGREES:

1. To reimburse CITY for those eligible PROJECT expenses that are incurred by CITY for the PROJECT, as set forth in Attachment A to this Agreement and as governed by the POLICY in the Measure I 2010-2040 Strategic Plan, in effect as of this AGREEMENT's Effective Date.
2. To reimburse CITY, subject to Article 1 of this Section I, in accordance with the POLICY and after CITY submits to AUTHORITY an original and an electronic copy of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by CITY.
3. Except as provided below in Section II Article 8, when conducting an audit of the costs claimed under the provisions of this AGREEMENT, to rely to the maximum extent possible on any prior audit of CITY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to AUTHORITY when planning and conducting additional audits.

## SECTION II

### CITY AGREES:

1. That only eligible PROJECT expenses, as set forth in Attachment A to this AGREEMENT, that conform to the SANBAG Development Mitigation Nexus Study will be eligible for Measure I reimbursement. CITY agrees that it will only request reimbursement for eligible PROJECT activities and that reimbursement will occur based on timelines governed by the policies for the Advance Expenditure Process in Policy 4002.
2. To submit to AUTHORITY an original and an electronic copy of signed invoices for reimbursement of eligible preconstruction PROJECT expenses no later than PROJECT acceptance. CITY further agrees and understands that AUTHORITY will not reimburse CITY for any PROJECT expenditures that are inconsistent with the Measure I 2010-2040 Strategic Plan. The Final Report of Expenditures must state that these PROJECT funds were used in conformance with this AGREEMENT and for those PROJECT activities described in Attachment A.
3. To repay to AUTHORITY any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within ninety (90) days of

CITY receiving notice of audit findings, which time shall include an opportunity for CITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and CITY fail to reimburse moneys due AUTHORITY within ninety (90) days of audit finding, or within such other period as may be agreed between both parties hereto, the SANBAG Board reserves the right to withhold future payments due CITY from any source under AUTHORITY's control.

4. To provide a share of total eligible PROJECT expenses as defined in Attachment A, which represents the development share.
5. To provide both CITY portion and the City of Fontana portion of the development share for the PROJECT under this AGREEMENT. CITY and City of Fontana may develop an additional agreement whereby the City of Fontana will compensate CITY for its development share at a later date under terms agreeable to both parties and approved by city councils of both jurisdictions. AUTHORITY shall be consulted on any subsequent agreement between the cities that proposes the trade of development shares between the PROJECT and another interchange project. A copy of any agreement between the cities that is related to this AEA with AUTHORITY shall be provided to AUTHORITY within 30 days after its execution, for purposes of documentation and future reference.
6. To maintain all copies of all consultant/contractor invoices, source documents, books and records connected with performance under this AGREEMENT for a minimum of five (5) years from the date of the Final Report of Expenditures or until audit resolution is achieved, whichever is later.
7. To establish and maintain an accounting system and internal controls conforming to Generally Accepted Accounting Principles (GAAP) to support CITY's request for reimbursement, payment vouchers and invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by CITY.
8. To allow for the preparation of a PROJECT audit to be completed by CITY or by AUTHORITY, at AUTHORITY's option and expense, and to cooperate in the audit as described in Section I Article 3 upon completion of the PROJECT. The audit must find that all funds expended on the PROJECT were used in conformance with this AGREEMENT.

### SECTION III

IT IS MUTUALLY AGREED:

Page 4 of 8

1. To abide by all applicable federal, state and local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this AGREEMENT.
2. AUTHORITY's financial responsibility for the PROJECT shall not exceed the AUTHORITY share listed in Attachment A unless amended by both Parties. Reimbursement for the PROJECT shall be limited to the AUTHORITY share of the estimated cost of the PROJECT for which funds have been allocated by the AUTHORITY Board, or to the AUTHORITY share of the actual cost, whichever is less.
3. This agreement can be amended when agreed upon by both Parties.
4. CITY will use its own funds to implement the PROJECT in advance of an allocation of Measure I funds, with the understanding that AUTHORITY will reimburse CITY for AUTHORITY share of eligible PROJECT expenditures at a later date in accordance with the AEA reimbursement policy in the POLICY.
5. Eligible PROJECT reimbursements shall include only those costs incurred by CITY for PROJECT activities that are described in this AGREEMENT and shall not include escalation or interest.
6. If State or federal funds are used for PROJECT costs, application of those funds shall be consistent with AUTHORITY Policy 40001/VS-30.
7. CITY shall defend, indemnify, and hold harmless AUTHORITY, its officers and employees, from and against any and all actions, claims, injuries, damages, liabilities, demands, losses, judgments, penalties, expenses and costs including attorney's fees for staff attorneys and outside counsel (collectively "Liabilities") arising out of or in any way connected with anything done or omitted to be done by CITY, its officers, employees, agents, contractors, consultants, subcontractors and subconsultants of any level, in connection with the PROJECT or under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. CITY's obligations under this Article apply to AUTHORITY's "passive" and "active" negligence, but do not apply to AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
8. AUTHORITY shall defend, indemnify, and hold harmless CITY, its officers and employees, from and against any and all actions, claims, injuries, damages, liabilities, demands, losses, judgments, penalties, expenses and costs including attorney's fees for staff attorneys and outside counsel (collectively

“Liabilities”) arising out of or in any way connected with anything done or omitted to be done by AUTHORITY, its Board of Directors, employees, agents, contractors, consultants, subcontractors and subconsultants of any level, in connection with the PROJECT or under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this AGREEMENT. AUTHORITY’s obligations under this Article apply to CITY’s “passive” and “active” negligence, but do not apply to CITY’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

9. CITY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers’ Compensation and warrants that through its programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
10. AUTHORITY is a public entity with Professional Liability, General Liability and Automobile Liability insurance policies of \$10,000,000 each and Workers’ Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
11. This AGREEMENT is expressly subordinate to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by AUTHORITY.
12. This AGREEMENT will be considered terminated upon reimbursement of eligible costs by AUTHORITY. The AGREEMENT may also be terminated by AUTHORITY, in its sole discretion, in the event the PROJECT construction work described in Attachment A has not been initiated within twenty-four (24) months of the date of execution of this agreement.
13. The terms of this AGREEMENT represent the consent of the CITY to provide the full development share for the PROJECT required by the SANBAG Development Mitigation Nexus Study and that failure to contribute the development share according to the terms of this AGREEMENT does not obligate AUTHORITY to provide supplemental funds or otherwise remedy that failure. AUTHORITY may terminate or modify this AGREEMENT if the CITY fails to perform according to the terms of this AGREEMENT and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.
14. Notice given under or regarding this AGREEMENT shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return

receipt requested), fax or private courier including overnight delivery services. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to AUTHORITY: Garry Cohoe, Director of Project Delivery  
1170 West 3<sup>rd</sup> Street, Second Floor  
San Bernardino, CA 92410-1715  
(909) 885-4407

If to CITY: John Gillison, City Manager  
10500 Civic Center Drive  
P.O. Box 807  
Rancho Cucamonga, CA 91729-0807  
(909) 477-2700

15. The Recitals stated above are true and correct and are incorporated by this reference into the AGREEMENT.
16. Attachments A (Interstate 15 Base Line Road Interchange Improvement Project: Project Scope, Cost and Schedule), and B (Measure I Strategic Plan Policy 40002, revision 1) are attached to and incorporated into this AGREEMENT.

**SIGNATURES ON FOLLOWING PAGE:**

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT below.

**San Bernardino County  
Transportation Authority**

**City of Rancho Cucamonga**

By: \_\_\_\_\_  
Janice Rutherford  
President, SANBAG Board of  
Directors.

By: \_\_\_\_\_  
L. Dennis Michael  
Mayor, City of Rancho  
Cucamonga

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
SANBAG General Counsel

By: \_\_\_\_\_  
James Markman  
CITY Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CONCURRENCE:

ATTEST:

By: \_\_\_\_\_  
Jeffery Hill,  
Contract Administrator

By: \_\_\_\_\_  
Janice C. Reynolds  
City Clerk

**Attachment A**  
**Interstate 15 Base Line Road Interchange Improvement Project:**  
**Project Scope, Cost, and Schedule**

**Proposed Project Work:**

I-15 Base Line Road Interchange Improvement Project will include Base Line Road and East Avenue widening, modification of the four diamond interchange ramps, and construction the southbound loop on-ramp, highway planting, plant establishment, and extended plant maintenance (PROJECT). Reimbursed work will cover expenses related to all phases of the aforementioned PROJECT subject to the Measure I 2010-2040 Strategic Plan Policy.

**Summary of Project Costs (Estimate) and Funding:**

Phase	Total Cost (\$1,000)	Cost Incurred after 4/5/2006 <sup>1</sup> (\$1,000)	Federal Earmarks (\$1,000)	State Funds (\$1,000)	Remaining Balance <sup>2</sup> (\$1,000)	Local Agency Share <sup>3</sup> (\$1,000)	Authority Share <sup>4</sup> (\$1,000)
						City of Rancho Cucamonga	
<b><u>Preconstruction</u></b>							
PA/ED	1,178	1,000	752		248	124	124
PS&E	4,630	4,630	419		4,211	2,106	2,106
Right of Way	7,200	954			954	477	477
<b>Subtotal</b>	<b>13,008</b>	<b>6,584</b>	<b>1,171</b>	<b>0</b>	<b>5,413</b>	<b>2,707</b>	<b>2,707</b>
<b><u>Construction</u></b>							
Design Const. Support	700	700			700	350	350
Const. Management <sup>5</sup>	7,300	7,300			7,300	3,650	3,650
Const. Capital <sup>6</sup>	34,150	34,150	6,602	1,000	26,548	13,274	13,274
SANBAG Management & Oversight	600	600			600	600	
<b>Subtotal</b>	<b>42,750</b>	<b>42,750</b>	<b>6,602</b>	<b>1,000</b>	<b>35,148</b>	<b>17,874</b>	<b>17,274</b>
<b>Total Project Cost</b>	<b>55,758</b>	<b>49,334</b>	<b>7,773</b>	<b>1,000</b>	<b>40,561</b>	<b>20,581</b>	<b>19,981</b>

<sup>1</sup> Only costs incurred after 4/5/2006 are eligible for reimbursement.

<sup>2</sup> Remaining balance is the dollar amount remaining after the Federal Earmarks are subtracted from the "cost incurred after 4/5/2006".

<sup>3</sup> Local Share is 50% of Remaining Balance; Rancho Cucamonga share is 66.6% of Local Agency Share and the City of Fontana is 33.4% of Local Agency Share. By separate agreement, the City of Rancho Cucamonga is responsible for collection of the City of Fontana share of costs for project expenses.

<sup>4</sup> Authority Share is 50% of Remaining Balance.

<sup>5</sup> Construction Management includes \$250,000 for Source Inspection.

<sup>6</sup> Construction Capital includes \$1,000,000 for utility relocation, \$44,000 for Caltrans Mix Design (HMA JMF and Concrete Mixes), \$300,300 for State Furnished Materials and \$750,000 for 3 years of plant establishment within project limits plus another 3 years of maintenance within Caltrans right of way.

**Attachment B**

**Proposed Project Schedule (milestone delivery dates):**

**Estimated construction start date: November 2013**

**Estimated completion date: November 2015**

Activity	Start Date	End Date	Duration	Predecessors	Successors	Notes
Site Preparation	11/01/13	11/30/13	30		Foundation	
Foundation	11/01/13	01/31/14	91	Site Preparation	Structural Steel	
Structural Steel	11/01/13	03/31/14	91	Foundation	Roofing	
Roofing	11/01/13	05/31/14	91	Structural Steel	Interior Finishes	
Interior Finishes	11/01/13	08/31/14	91	Roofing	Final Inspection	
Final Inspection	11/01/13	11/30/14	91	Interior Finishes		



## CONTRACT SUMMARY SHEET

Contract No. R 13028 Amendment No. 0

By and Between

San Bernardino Transportation Authority and City of Rancho Cucamonga

Contract Description Construction Coop Agreement

<b>Board of Director's Meeting Date:</b> 6/5/2013	
<b>Overview of BOD Action:</b> Approve Const. Coop with City whereby City funds Project in advance of Meas. I funds. Authority reimburses City at a later date. City share includes \$100,000 advance deposit for CM constructability review.	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	\$35,448,000	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>\$35,448,000</b>	<b>TOTAL CONTINGENCY VALUE</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 35,448,000</b>

Contract Start Date 6/5/13	Current Contract Expiration Date 12-31-2017	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION	
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0892</u> .	
<input type="checkbox"/> A Budget Amendment is required.	
How are we funding current FY? City of Rancho Cucamonga	
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds <input checked="" type="checkbox"/> Local Funds <input type="checkbox"/> TDA Funds <input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: \$6.602 DEMO and IM, \$1.0M SLPP, \$35.448M City of Rancho Cucamonga	
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable	

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

Barbara Fortman  
Project Manager (Barbara Fortman)

Garry Cohoe  
Task Manager (Garry Cohoe)

\_\_\_\_\_  
Dir. of Fund Admin. & Programming (Print Name)

\_\_\_\_\_  
Contract Administrator (Print Name)

\_\_\_\_\_  
Chief Financial Officer (Print Name)

Barbara Fortman 4.30.13  
Signature Date

Garry Cohoe 5-1-13  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**CONSTRUCTION COOPERATIVE AGREEMENT NO. R13028**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF RANCHO CUCAMONGA**

**FOR**

**INTERSTATE 15 BASE LINE ROAD INTERCHANGE IMPROVEMENTS IN THE  
CITIES OF RANCHO CUCAMONGA AND FONTANA**

THIS COOPERATIVE Agreement (“AGREEMENT”) is made and entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the CITY of Rancho Cucamonga (hereinafter referred to as “CITY”). (AUTHORITY and CITY are each a “Party” and collectively “Parties”). The Effective Date of this AGREEMENT shall be the date upon which AUTHORITY executes this AGREEMENT.

**RECITALS**

WHEREAS, AUTHORITY prepared a study referred to herein as the Development Mitigation Nexus Study dated November 2, 2011 (“Nexus Study”) in accordance with the Measure I 2010-2040 Expenditure Plan, in which freeway interchange, major street, and rail-highway grade separation projects are identified as eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, the Parties intend to construct Interstate 15 Base Line Road Interchange Improvements to include: Base Line Road and East Avenue widening, modification of the four diamond interchange ramps, and construction of the southbound loop on-ramp, highway planting, plant establishment, and extended plant maintenance (PROJECT), in the Cities of RANCHO CUCAMONGA and FONTANA; and

WHEREAS, the PROJECT is identified in both the Measure I 2010-2040 Expenditure Plan and the Nexus Study as an eligible project; and the Parties desire to complete the PROJECT in accordance with the policies of the Measure I 2010-2040 Strategic Plan (“Strategic Plan”), including the use of Development Impact Fees by CITY to pay its share of PROJECT costs; and

WHEREAS, Parties are entering into an ADVANCED EXPENDITURE AGREEMENT (“AEA”) C13030 concurrently with this AGREEMENT, wherein CITY will front all costs of the PROJECT and will be reimbursed at a later date by AUTHORITY for the public share of costs in accordance with Strategic Plan Policy 40002 (“POLICY”).

WHEREAS, the Parties wish to enter into this AGREEMENT for Advertisement, Award, and Administering contracts including but not limited to the management and oversight of construction and construction support services necessary to manage and construct the PROJECT hereinafter referred to as "PROJECT CONSTRUCTION WORK"; and

WHEREAS, this AGREEMENT is intended to delineate responsibilities of the Parties for the PROJECT in connection with funding, contracting, construction and project administration; and

WHEREAS, the Parties agree that AUTHORITY will act as lead agency for the PROJECT CONSTRUCTION WORK; and

WHEREAS, it is anticipated that a future amendment to this AGREEMENT will be necessary to reconcile any outstanding payments and each Party's overall contribution for all phases of work.

NOW, THEREFORE, the Parties agree to the following:

#### SECTION I

##### AUTHORITY RESPONSIBILITIES:

1. To be the lead agency for the PROJECT CONSTRUCTION WORK.
2. To set up an escrow account between the Parties.
3. To prepare and submit to the Escrow Agent, as defined in Section III below, an original and two copies of signed invoices for reimbursement of eligible costs for PROJECT CONSTRUCTION WORK expenses. Invoices shall be submitted monthly to Escrow Agent.
4. To establish and maintain an accounting system and internal controls conforming to Generally Accepted Accounting Principles (GAAP) to support AUTHORITY's request for reimbursement, payment vouchers and invoices which segregate and accumulate costs of PROJECT CONSTRUCTION WORK elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by AUTHORITY.
5. To obligate federal and/or allocate State funds secured for PROJECT CONSTRUCTION WORK and to seek reimbursement of PROJECT CONSTRUCTION WORK expenses from Caltrans in a timely manner so that funds are not at risk of loss.
6. To prepare a final accounting of expenditures, including a final invoice for the actual PROJECT CONSTRUCTION WORK costs. The final accounting and invoice shall be

submitted to CITY no later than one hundred and twenty (120) calendar days following the final payment to the construction contractor for PROJECT close out and completion of work. The invoice shall include a statement that these PROJECT funds were used in conformance with this AGREEMENT and for those PROJECT CONSTRUCTION WORK activities.

7. To cooperate in having a PROJECT audit completed by CITY, at its option, upon completion of the PROJECT CONSTRUCTION WORK. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this AGREEMENT.
8. To repay CITY any reimbursement for costs that are determined by subsequent audit to be unallowable within ninety (90) calendar days of AUTHORITY receiving notice of audit findings, which time shall include an opportunity for AUTHORITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and AUTHORITY fails to reimburse monies due CITY within ninety (90) calendar days of audit finding, or within such other period as may be agreed between both Parties hereto, the City Council reserves the right to withhold future payments due AUTHORITY from any source under CITY's control.
9. To invite CITY to PROJECT meetings, if and when such meetings are held, and related communications on PROJECT progress as well as to provide monthly construction updates including expenditures, change orders, and notice of potential claims to CITY.
10. To act as the PROJECT Manager including the selection and retention of consultants, construction managers and contractors to perform the work on the PROJECT and to include the CITY in the consultant selection process. Performance of services under these contracts shall be subject to the technical direction of AUTHORITY's Director of Project Delivery, or his designee, with input and consultation from CITY.
11. Upon completion of construction of PROJECT, AUTHORITY shall deliver to CITY and CALTRANS a complete set of reproducible "as-built" plans of the PROJECT in accordance with CALTRANS standards.
12. AUTHORITY shall notify CITY of the bids received and the amounts thereof. Within ten (10) days thereafter, AUTHORITY shall determine the construction cost of the PROJECT. If the construction cost is over the capital costs shown in Attachment A, Project Costs and Funding Table for the Construction Phase, the Parties agree to meet and confer in good faith to determine how to resolve any potential cost overruns beyond the respective program funding limits.
13. AUTHORITY shall serve as the Legally Responsible Person (LRP) for the project per the Statewide Construction General Permit Order No. 2009-009-DWQ, NPDES No. CAS000002, Appendix 5. As the construction of the PROJECT is being administered by AUTHORITY the control of the contract by AUTHORITY does not make

CALTRANS or CITY eligible to be the LRP to sign the Notice of Intent or their related documents identified in the General Construction Permit (GCP). This Condition qualifies as a special circumstance under the CGP, and CALTRANS and CITY LRP may authorize the controlling agency to be the LRP for the PROJECT. The CITY's LRP authorizes a representative of AUTHORITY to be designated the "Legally Responsible Person" as noted in Appendix 5 of the General Construction Permit.

14. To be responsible for providing all information to the public regarding the PROJECT's construction in accordance with a mutually acceptable Public Outreach Program established for construction of PROJECT. AUTHORITY will provide the necessary information as needed to keep the public informed of the status, progress, and closures, with coordination with CITY.

## SECTION II

### CITY RESPONSIBILITIES:

1. To use CITY funds to implement the PROJECT in advance of an allocation of Measure I funds, with the understanding that AUTHORITY will reimburse CITY at a later date for AUTHORITY's share of eligible PROJECT expenditures in accordance with the AEA C13030 and the POLICY.
2. To deposit \$100,000 into a joint escrow account with AUTHORITY prior to award of a construction management contract for this project, and to deposit the remaining advancement amount of PROJECT funds as shown in Attachment A prior to advertisement of a construction contract and as further described below in Section III.
3. To deposit into a joint escrow account with AUTHORITY, as further described below in Section III, additional PROJECT funds identified in amendments to AGREEMENT resulting from cost increases for increased bid prices, change orders, or arising from unforeseen site conditions, including Utility relocation, and additional work requested by CITY, within ten (10) days of execution of the amended AGREEMENT.
4. To acquire the necessary right-of-way needed for the construction of the PROJECT and to allow access to such acquired property to AUTHORITY and its designees for PROJECT CONSTRUCTION WORK purposes.
5. To secure all design, right-of-way and environmental certifications and permits, and other permits as appropriate and satisfy requirements of said permits in accordance with the terms outlined in the respective permits. The contractor(s) shall obtain and pay fees for all other non-environmental and non-City permits required for the construction of the PROJECT.

To approve AUTHORITY to serve as the LRP for the PROJECT per the Statewide Construction General Permit Order No. 2009-009-DWQ, NPDES No. CAS000002, Appendix 5.

6. To pay all costs of additional work that is requested by CITY and that is beyond the scope of the original PROJECT.
7. To provide the PROJECT construction bid package and Resident Engineer Files, - including the plans, special provisions, and engineer's estimate (PS&E) to AUTHORITY. CITY design consultants shall be responsible for the professional quality, technical accuracy, and coordination of all PS&E services. Design consultants may be liable for PROJECT costs resulting from errors or deficiencies, fines, penalties, and damages in services furnished.
  - a. When a modification to a construction contract is required because of an error or deficiency in the PS&E services provided by CITY, AUTHORITY (with the advice of technical personnel and legal counsel) shall consider the extent to which the design consultant is responsible.
  - b. CITY shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the PROJECT's interest.
8. To provide and be responsible for all design and environmental consultant(s) Construction Support services costs as required, City will be reimbursed in accordance with the AEA.
9. To participate in consultant selection for construction management services for this project.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. The PROJECT CONSTRUCTION WORK costs have been estimated as identified in Attachment A.
2. Eligible PROJECT CONSTRUCTION WORK reimbursements shall include only those costs incurred by AUTHORITY for PROJECT CONSTRUCTION WORK activities that are described in this Agreement and Attachment A and shall not include escalation or interest.
3. Within the cost estimate in Attachment A, the AUTHORITY, with the CITY's concurrence, may assign additional resources to the PROJECT CONSTRUCTION WORK to facilitate its timely completion.

4. In the event AUTHORITY determines PROJECT CONSTRUCTION WORK exceeds the not to exceed amounts identified in this Agreement by 110% or less, AUTHORITY can award the construction contract. If the construction bids come in greater than 110% of the not to exceed amounts, AUTHORITY will inform CITY of this determination and a source of additional funds will be identified prior to award of the construction contract. In both cases, the Parties shall work together in an attempt to agree upon an amendment. The Parties may agree to fund the contribution amounts identified in the amendment, or to terminate this AGREEMENT and not award the construction contract. In no event, however, shall any of the Parties be responsible for PROJECT CONSTRUCTION WORK costs in excess of the contribution amounts identified in this AGREEMENT absent a written amendment that is approved by all Parties.
5. CITY and AUTHORITY shall open an escrow (the "Escrow") with an escrow holder for the deposit, handling and disbursement of CITY's funds. CITY and AUTHORITY, acting through its Executive Director or his designee, agree to execute a joint escrow Agreement. CITY and AUTHORITY further agree that the primary purposes of the Escrow are:
  - a. To accept and hold CITY's funds.
  - b. To disburse the funds to AUTHORITY when escrow holder receives from AUTHORITY and CITY an original of the signed invoices, including back up information, in the proper form covering those actual eligible PROJECT CONSTRUCTION WORK expenditures that were incurred by AUTHORITY.
6. Neither AUTHORITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AUTHORITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT.
7. Neither CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY and under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless CITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code

Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this AGREEMENT.

8. CITY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
9. AUTHORITY is a public entity with Professional Liability, General Liability and Automobile Liability policies of \$10,000,000 each and Workers' Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
10. This AGREEMENT is expressly subordinate to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by AUTHORITY.
11. Prior to entering into a joint escrow Agreement, as described in Section II, Article 3, the City may terminate this Agreement without penalty to either party. The City shall provide at least 30 days notice of its intent to terminate this Agreement. Any outstanding expenses incurred will be paid or reimbursed in accordance with the AEA.
12. This AGREEMENT shall continue in full force and effect through the later of December 31, 2018 or the termination of the construction contract. In no event may either party terminate this AGREEMENT once a construction contract is awarded by the AUTHORITY.
13. All Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that, by so executing this AGREEMENT, the Parties hereto are formally bound to this AGREEMENT.
14. Except on subjects preempted by Federal law, this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, county and federal laws and ordinances with respect to performance under this AGREEMENT.
15. The Parties agree that each Party and any authorized representative, designated in writing to the Parties, and upon reasonable notice, shall have the right during normal business hours to examine all Parties' financial books and records with respect to this AGREEMENT. The Parties agree to retain their books and records for a period of five (5) years from the later of; (a) the date on which this AGREEMENT terminates; or (b) the date on which such book or record was created.

16. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the remainder of this AGREEMENT shall not be affected but shall remain in full force and effect.
17. This AGREEMENT can be amended with a written amendment when agreed upon and duly authorized to be executed by both Parties.
18. In the event of litigation arising from this AGREEMENT, each Party to this AGREEMENT shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 6 and 7 of this Section.
19. This AGREEMENT may be signed in counterparts, each of which shall constitute an original.
20. Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this AGREEMENT shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below.
21. All contract change orders for CONSTRUCTION WORK shall be approved by AUTHORITY. With respect to a change order exceeding \$210,000, AUTHORITY agrees to first provide such change order to CITY to review and reasonably concur prior to AUTHORITY approval of the change orders. Such CITY approval shall not be unreasonably withheld or delayed. Claims from Contractors will be resolved using AUTHORITY's procedures. AUTHORITY will consult with CITY prior to settling any claims, and CITY shall be responsible for funding 100% of CONSTRUCTION WORK costs for all settled claims and change orders for the PROJECT. Reimbursement shall be in accordance with the AEA.
22. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

CITY, independent of PROJECT, is responsible for any HM-1 found outside of State right-of-way and within the PROJECT limits.. AUTHORITY will undertake HM-1 management activities with minimum impact to PROJECT schedule. CITY will pay all costs associated with HM-1 management activities. These expenses are a CONSTRUCTION WORK cost for which AUTHORITY shall reimburse CITY in accordance with the AEA.

If HM-2 is found within the limits of PROJECT, AUTHORITY will be responsible for HM-2 management activities and any management activity cost associated with HM-2 will be a CONSTRUCTION WORK cost to be paid by the CITY and reimbursed by AUTHORITY in accordance with the AEA.

Management activities associated with either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.

23. AUTHORITY is not responsible for maintenance of any facilities constructed as part of this AGREEMENT upon completion of the construction contract.
24. Notice given under or regarding this AGREEMENT shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to AUTHORITY:       Garry Cohoe, Director of Project Delivery  
1170 West 3<sup>rd</sup> Street, Second Floor  
San Bernardino, CA 92410-1715  
(909) 885-4407

If to CITY:             John Gillison, City Manager  
10500 Civic Center Drive  
P.O. Box 807  
Rancho Cucamonga, CA 91729-0807  
(909) 477-2700

25. The Recitals stated above are true and correct and are incorporated by this reference into the AGREEMENT.
26. Attachment A (Project Costs and Funding Table for the Construction Phase) is attached to and incorporated into this AGREEMENT.

**SIGNATURES ON FOLLOWING PAGE:**

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT below.

**San Bernardino County  
Transportation Authority**

**City of Rancho Cucamonga**

By: \_\_\_\_\_  
Janice Rutherford, President  
SANBAG Board of Directors

By: \_\_\_\_\_  
L. Dennis Michael, Mayor  
City of Rancho Cucamonga

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
SANBAG General Counsel

By: \_\_\_\_\_  
James Markman  
City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CONCURRENCE:

ATTEST:

By: \_\_\_\_\_  
Jeffery Hill,  
Contract Administrator

By: \_\_\_\_\_  
Janice C. Reynolds  
City Clerk

**Attachment A**

**Project Costs and Funding Table for the Construction Phase**

**I-15 Base Line Road Interchange PROJECT CONSTRUCTION Costs & Funding**

<b>Construction Component</b>	<b>Cost</b>	<b>City &amp; Federal Participation</b>	<b>Authority Participation*</b>
Construction Management <sup>1</sup>	\$ 7,300,000	\$7,300,000	\$0
Construction Capital <sup>2</sup>	\$ 34,150,000	\$ 34,150,000	\$0
SANBAG Management and Oversight	\$600,000	\$600,000	\$0
Design Support Services	\$700,000	\$700,000	\$0
<b>Total Construction Costs</b>	<b>\$ 42,750,000</b>	<b>\$ 42,750,000</b>	<b>\$0</b>

<b>Construction Funding</b>	<b>Funding Source</b>
Federal Funds for Construction	\$6,602,000
State Funds for Construction	\$1,000,000
City Funds for Construction (Amount to be Deposited in Escrow)	\$35,148,000
<b>Total Construction Funding</b>	<b>\$42,750,000</b>

\* AUTHORITY share and reimbursement for all phases of the project is addressed in AEA C13030.

<sup>1</sup> Construction Management includes \$250,000 for Source Inspection

<sup>2</sup> Construction Capital includes \$1,000,000 for utility relocation, \$44,000 for Caltrans Mix Design (HMA JMF and Concrete Mixes), \$300,300 for State Furnished Materials and \$750,000 for 3 years of plant establishment within project limits plus another 3 years of maintenance within Caltrans right of way.



## CONTRACT SUMMARY SHEET

Contract No. C 13148 Amendment No. \_\_\_\_\_

By and Between

SANBAG

and State of California and City of Rancho Cucamonga

Contract Description Construction Coop Agreement

<b>Board of Director's Meeting Date:</b> 6/5/2013	
<b>Overview of BOD Action:</b> Approve Cooperative Agreement C13148 with the City of Rancho and the Caltrans. Identifies \$300,300 State Furnished Material and \$44,000 Job Mix Formula – payable to State.	
<b>Is this a Sole-Source procurement?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	344,300	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>344,300</b>	<b>TOTAL CONTINGENCY VALUE</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 344,300</b>

<b>Contract Start Date</b> 6/5/2013	<b>Current Contract Expiration Date</b> 12/5/2017	<b>Revised Contract Expiration Date</b>
Has the contract term been amended? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0892</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? SANBAG (from Escrow Acct. with City of Rancho Cucamonga funds)				
<input checked="" type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the <b>Overall Funding</b> for the duration of the Contract: \$6.62M DEMO and IM, \$1.0M SLPP, \$36.14M City of Rancho Cucamonga				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

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

Barbara Fortman	Barbara Fort 4.26.13
Project Manager (Print Name)	Signature Date
Gary Colver	Gary Che 5.1.13
Task Manager (Print Name)	Signature Date
Dir. of Fund Admin. & Programming (Print Name)	Signature Date
Contract Administrator (Print Name)	Signature Date
Chief Financial Officer (Print Name)	Signature Date

## **COOPERATIVE AGREEMENT**

This Agreement, effective on \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

San Bernardino County Association of Governments, a Council of Governments, referred to hereinafter as SANBAG

City of Rancho Cucamonga a political subdivision of the State of California, referred to as CITY.

### **RECITALS**

1. CALTRANS, SANBAG and CITY are herein after collectively referred to as PARTNERS. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this Agreement, construction of the Interstate 15 (I-15) and Base Line Road Interchange improvements: widen Base Line Road to 6 lanes between I-15 southbound and northbound ramps, widen ramps and install signal, in the city of Rancho Cucamonga, will be referred to hereinafter as PROJECT.
3. All responsibilities assigned in this Agreement to complete the following PROJECT COMPONENTS will be referred to hereinafter as OBLIGATIONS:
  - CONSTRUCTION SUPPORT
  - CONSTRUCTION CAPITAL
4. Prior to this Agreement:
  - City of Rancho Cucamonga developed the Project Report and Environmental Document (Cooperative Agreement 08-1254 and 08-1254 A/1); and the Plans, Specifications and Estimate and the Right of Way Certification (Cooperative Agreement 08-1455).

5. CALTRANS signed and approved the Negative Declaration pursuant to CEQA and the Findings of No Significant Impact pursuant to NEPA on September 30, 2011.
6. In this Agreement capitalized words represent defined terms and acronyms.
7. CALTRANS approves all Hot Mix Asphalt (HMA) Job Mix Formula (JMF) and concrete mixes to be used on the SHS. CALTRANS will be compensated for all costs associated with these tasks in the amount of \$44,000.
8. PARTNERS hereby set forth the terms, covenants, and conditions of this Agreement, under which they will accomplish OBLIGATIONS.

### **RESPONSIBILITIES**

9. SANBAG is SPONSOR for 100% of PROJECT.
10. The FUNDING PARTNER(S) and the details of the funding commitments are documented in the latest FUNDING SUMMARY.
11. SANBAG is IMPLEMENTING AGENCY for CONSTRUCTION.
12. CALTRANS is the CEQA and NEPA?lead agency for PROJECT.
13. SANBAG is the CEQA and NEPA?responsible agency for PROJECT.
14. CALTRANS will provide Independent Quality Assurance (IQA) for the portions of WORK within existing and proposed SHS right of way.
15. SANBAG and CITY may provide IQA for the portions of the WORK outside existing and proposed SHS right of way.

### **SCOPE**

#### **Scope: General**

16. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
17. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS. Per NEPA delegation and CEQA statutes, CALTRANS will perform its QC/QAP process review for environmental documentation.

18. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN. The CALTRANS District Construction Division, with input from Structure Construction must approve the QMP before the encroachment permit for construction is issued.
19. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
20. Each PARTNER will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
21. IMPLEMENTING AGENCY shall retain consultants and shall invite CALTRANS to participate in the selection and retention of consultants that participate in OBLIGATIONS. At least one representative from the Construction Division of CALTRANS shall participate in the selection process. A construction management firm shall not be selected without the approval of the selection team.
22. If WORK is done under contract (not completed by a PARTNER's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)), that PARTNER will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.
23. IMPLEMENTING AGENCY for each PROJECT COMPONENT included in this Agreement will be available to help resolve WORK related problems generated by that component for the entire duration of PROJECT.
24. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right of way.  
  
Contractors and/or agents, and utility owners will not perform activities within the SHS right of way without an encroachment permit issued in their name.
25. If any PARTNER, their agent or employee, discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.

26. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.

27. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will mutually consent to the release of any public documents related to the PROJECT.
28. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
29. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
30. If HM-1 is found within PROJECT limits and outside the existing SHS right of way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. SANBAG, in concert with the local agency having land use jurisdiction over the parcel(s), will ensure that HM MANAGEMENT ACTIVITIES related to HM-1 are undertaken with minimum impact to PROJECT schedule.
31. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
32. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
33. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this Agreement.
34. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written quarterly progress reports during the implementation of OBLIGATIONS in that component.

35. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.  
  
CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right of way.
36. IMPLEMENTING AGENCY for a PROJECT COMPONENT will accept, reject, compromise, settle, or litigate claims of any non-Agreement parties hired to do WORK in that component.
37. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this Agreement in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
38. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
39. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds, each PARTNER will comply, and will ensure that any party hired to participate in OBLIGATIONS, and party's subcontractors, will comply with the federal cost principles of 2 CFR, Part 225, and administrative requirements outlined in 49 CFR, Part 18. These principles and requirements apply to all funding types included in this Agreement.
40. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this Agreement.
41. PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
42. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards. A 15 day notice shall be given to request the audited PARTNER.  
  
CALTRANS, the state auditor, FHWA (if PROJECT utilizes federal funds), SANBAG and CITY will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to mediation. Mediation will follow the process described in the General Conditions section of this Agreement.

43. If FUNDING PARTNERS fund any part of PROJECT with state or federal funds, each FUNDING PARTNER will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.
44. If FUNDING PARTNERS fund any part of PROJECT with federal funds, any PARTNER that hires another party to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*, unless a post-award is approved.
45. PARTNERS will not incur costs beyond the funding commitments in this Agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.
46. If WORK stops for any reason, IMPLEMENTING AGENCY will place PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
47. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this Agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
48. Each PARTNER accepts responsibility to complete the activities that it selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this Agreement.
49. Contract administration procedures shall conform to CALTRANS' Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.
50. If the Resident Engineer is not also a registered Landscape Architect, SANBAG will furnish, at SANBAG expense and subject to approval of CALTRANS Landscape Architecture, a registered Landscape Architect to perform work related to architecture treatment and landscaping and to perform the function of an Assistant Resident Engineer/Inspector who is responsible for both daily on-site inspection and final decisions including, but not limited to, any highway planting and the irrigation systems that comprise a portion of the PROJECT work, consistent with any

applicable measures in the environmental commitments record. Final decisions shall continue to be subject to the satisfaction and approval of CALTRANS.

**Scope: Environmental Permits, Approvals and Agreements**

51. Each PARTNER identified in the Environmental Permits table below accepts the responsibility to complete the assigned activities. If PARTNERS later determine that an environmental permit, approval or agreement is necessary PARTNERS will amend this Agreement to ensure completion and implementation of all environmental permits, approvals, and agreements.

ENVIRONMENTAL PERMITS						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
404 USACOE	CITY	CITY	CITY	SANBAG	CITY	CITY
401 RWQCB	CITY	CITY	CITY	SANBAG	CITY	CITY
1602 DFG	CITY	CITY	CITY	SANBAG	CITY	CITY

**Scope: Construction**

52. SANBAG will not employ any firm to perform PROJECT construction management that prepared PROJECT plans, specifications, and estimate and SANBAG will ensure that any such firm will not be employed by or under contract to the PROJECT construction contractor. However, PARTNERS may retain such a firm to check shop drawings, do soil foundation tests, test construction materials, and perform construction surveys.
53. SANBAG will advertise, open bids, award, approve, and administer the construction contract in accordance with the California Public Contract Code and the California Labor Code.

SANBAG will not advertise the construction contract until CALTRANS completes or accepts the final plans, specifications, and estimate package; CALTRANS approves the Right of Way Certification; and SPONSOR verifies full funding of CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL.

By accepting responsibility to advertise and award the construction contract, SANBAG also accepts responsibility to administer the construction contract.

54. PARTNERS agree that SANBAG is designated as the Legally Responsible Person and the approved Signatory Authority pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person and the Approved Signatory authority as mandated by Construction General Permit.

55. SANBAG will provide a RESIDENT ENGINEER, licensed to practice Civil Engineering in the State of California, and CONSTRUCTION SUPPORT staff that are independent of the design engineering company and construction contractor.
56. SANBAG will implement changes to the construction contract through contract change orders (CCOs). PARTNERS will review and concur on all CCOs over \$50,000.

CALTRANS must approve all CCOs affecting public safety or the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS *Construction Manual* prior to implementing the CCO.

57. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds SANBAG will use a CALTRANS-approved construction contract claims process, will administer all claims through said process, and will be available to provide advice and technical input in any claims process.
58. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, all PARTNERS must be involved in determining how to proceed. If FUNDING PARTNERS do not agree in writing on a course of action within 15 working days, the IMPLEMENTING AGENCY shall not award the construction contract.
59. SANBAG will require the construction contractor to furnish payment and performance bonds naming SANBAG as obligee, and CALTRANS and CITY as additional obligees, and to carry liability insurance in accordance with CALTRANS specifications.
60. SANBAG will prepare a QMP which will include a description of how source inspection will be performed, and will submit the QMP to CALTRANS for review and approval by the State Materials Engineer.

CALTRANS will issue the parent permit to SANBAG upon submittal of a complete encroachment permit application. The parent permit will cite approval of the QMP by CALTRANS as a condition of issuing a double permit.

CALTRANS will issue the double permit to the contractor upon submittal of a complete encroachment permit application and all conditions cited in the parent permit have been met.

SANBAG will provide, or cause to provide, source inspection services.

61. SANBAG may request CALTRANS to complete portions of WORK as engineering services. Should CALTRANS agree to perform the requested services, PARTNERS will document the arrangement in writing. Such an arrangement does not change the responsibilities as documented in the SCOPE SUMMARY.
62. As IMPLEMENTING AGENCY for construction, SANBAG is responsible for maintenance within PROJECT limits as part of the construction contract.

63. CALTRANS, SANBAG and CITY having land use jurisdiction adjacent to the PROJECT limits will develop and execute a new or amended maintenance agreement prior to OBLIGATION COMPLETION.
64. SANBAG will furnish CALTRANS, within 180 calendar days after the Construction Contract Acceptance (CCA) date, a complete set of electronic "As-built" plans, including Contract Change Orders (CCOs), (with the resident engineer's name printed on each plan sheet, and signature on the title sheet) including any changes authorized by CALTRANS. SANBAG will submit all plans in Microstation .dgn format, version 7.0 or later. In addition, SANBAG will submit to CALTRANS one set of plans and addenda in .TIF. SANBAG will submit all plans on a CD ROM compliant with CALTRANS' CADD Users Manual, Section 4.3, Plans Preparation Manual, Section 2.3 and, Construction Manual, Section 5-104.
65. SANBAG will submit to CALTRANS, within sixty (60) calendar days following the Final Estimate or Resolution of Construction Claims (if any) the complete Project History File (PHF). SANBAG will assure that the PHF is prepared and submitted in compliance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM(s) in PDF format.

### COST

#### **Cost: General**

66. PARTNERS will document specific funding, billing, and payment details in a FUNDING SUMMARY. The FUNDING SUMMARY is incorporated and made an express part of this Agreement.

A valid FUNDING SUMMARY must be in place at all times until OBLIGATION COMPLETION.

PARTNERS will create a new FUNDING SUMMARY each time the funding, billing and payment details of PROJECT change. The FUNDING SUMMARY is only valid after PARTNERS sign and date the FUNDING SUMMARY. The most current fully executed FUNDING SUMMARY supersedes any previous FUNDING SUMMARY created for this Agreement.

Replacement of the FUNDING SUMMARY will not require an amendment to the body of this Agreement unless the rules of the new funds require it.

Each PARTNER will designate a legally authorized representative to sign the FUNDING SUMMARY on its behalf.

67. PARTNERS may invoice the appropriate FUNDING PARTNER according to the terms documented in the FUNDING SUMMARY.

68. If SANBAG has received Electronic Funds Transfer (EFT) certification from CALTRANS then SANBAG will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
69. Unless otherwise documented in the FUNDING SUMMARY, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.
70. Unless otherwise documented in the FUNDING SUMMARY, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
71. After PARTNERS agree that all WORK is complete for a PROJECT COMPONENT, CALTRANS will submit a final accounting for all OBLIGATIONS costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this Agreement.
72. If FUNDING PARTNERS fund OBLIGATIONS with American Recovery and Reinvestment Act (ARRA) funds, PARTNERS will adopt the terms, conditions, requirements, and constraints of the American Recovery and Reinvestment Act of 2009.
73. If FUNDING PARTNERS fund OBLIGATIONS with Proposition 1B Bond funds, PARTNERS will meet the requirements of Government Code Section 8879.20 et al. (Proposition 1 legislation), the governor's Executive Order 2007-S-02-07, and the California Transportation Commission (CTC) program guidelines for the applicable account.  
  
Right of way purchased using Proposition 1B Bond funds will become the property of CALTRANS, and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.
74. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost.
75. CALTRANS, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
76. Independent of PROJECT, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside the existing SHS right of way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.
77. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
78. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS cost.

79. The cost of any legal challenges to the CEQA environmental process or documentation is an OBLIGATIONS cost.
80. Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.

Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its QC/QAP process review for environmental documentation.

81. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
82. Fines, interest, or penalties levied against a PARTNER will be paid, independent of OBLIGATIONS cost, by the PARTNER whose actions or lack of action caused the levy.
83. If federal funds are used on PROJECT while this Agreement is active CALTRANS will administer all federal subvention funds documented on the FUNDING SUMMARY.
84. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS cost only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this Agreement.

If SANBAG invoices for rates in excess of DPA rates, SANBAG will fund the cost difference and reimburse CALTRANS for any overpayment.

85. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds are subject to the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
86. If CALTRANS reimburses SANBAG for any costs later determined to be unallowable, SANBAG will reimburse those funds.
87. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
88. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this Agreement to place PROJECT right of way in a safe and operable condition, the appropriate IMPLEMENTING

AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this Agreement.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

89. If there are insufficient funds in this Agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER implementing commitments or conditions accepts responsibility to fund these activities, as they apply to each PARTNER's responsibilities, until such time as PARTNERS amend this Agreement.

Each PARTNER may request reimbursement for these costs during the amendment process.

90. Except as otherwise provided in this Agreement, PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

**Cost: Environmental Permits, Approvals and Agreements**

91. The cost of coordinating, obtaining, complying with, implementing, including renewing and amending resource agency permits, agreements, and approvals is an OBLIGATIONS cost.

**Cost: Construction Support**

92. The cost of source inspection is an OBLIGATIONS cost.
93. The cost of engineering services provided by CALTRANS is an OBLIGATIONS cost. CALTRANS will be reimbursed for engineering services.

Reimbursable costs for Construction Engineering and testing are identified in the SPENDING SUMMARY, which is included as part of the FUNDING SUMMARY.

94. The cost to maintain the SHS within PROJECT limits is an OBLIGATIONS cost until PARTNERS execute a separate maintenance agreement.

**Cost: Construction Capital**

95. The cost of all SFM is a CONSTRUCTION CAPITAL cost.

**SCHEDULE**

96. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

**GENERAL CONDITIONS**

97. PARTNERS understand that this Agreement is in accordance with and governed by the Constitution and laws of the State of California. This Agreement will be enforceable in the State of California. Any PARTNER initiating legal action arising from this Agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this Agreement resides, or in the Superior Court of the county in which PROJECT is physically located.
98. All OBLIGATIONS of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
99. When CALTRANS performs IQA activities it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA activities.
100. Neither SANBAG nor CITY nor any officer or employee thereof are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that CALTRANS, to the extent permitted by law, will fully defend, indemnify, and save harmless SANBAG and CITY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS under this agreement.

101. Neither CALTRANS nor SANBAG nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon SANBAG under this agreement.

It is understood and agreed that CITY, to the extent permitted by law, will fully defend, indemnify, and save harmless CALTRANS and SANBAG and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this agreement.

102. Neither CALTRANS nor CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority, or jurisdiction conferred upon SANBAG under this agreement.

It is understood and agreed that SANBAG, to the extent permitted by law, will fully defend, indemnify, and save harmless CALTRANS and CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by SANBAG under this agreement.

103. PARTNERS do not intend this Agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. PARTNERS do not intend this Agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
104. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.
105. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
106. A waiver of a PARTNER's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.
107. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
108. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
109. PARTNERS will first attempt to resolve Agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director, the SANBAG executive officer, and the CITY executive officer will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this Agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this Agreement resides or in the Superior Court of the county in which PROJECT is physically located. The prevailing PARTNER will be entitled to an

award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this Agreement or to enforce the provisions of this article including equitable relief.

110. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
111. If any provisions in this Agreement are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other Agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.
112. PARTNERS intend this Agreement to be their final expression and supersedes any oral understanding or writings pertaining to OBLIGATIONS.
113. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this Agreement to include completion of those additional tasks.
114. Except as otherwise provided in the Agreement, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
115. Partners agree to sign a Cooperative Agreement Closure Statement to terminate this Agreement. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.
116. The following documents are attached to, and made an express part of this Agreement: SCOPE SUMMARY and FUNDING SUMMARY.

## **DEFINITIONS**

**ARRA** – American Recovery and Reinvestment Act of 2009

**CALTRANS** – The California Department of Transportation

**CALTRANS STANDARDS** – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

**CEQA (California Environmental Quality Act)** – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

**CFR (Code of Federal Regulations)** – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government

**CONSTRUCTION CAPITAL** – See PROJECT COMPONENT.

**CONSTRUCTION SUPPORT** – See PROJECT COMPONENT.

**COOPERATIVE AGREEMENT CLOSURE STATEMENT** – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this Agreement and in all amendments to this Agreement.

**FHWA** – Federal Highway Administration

**FHWA STANDARDS** – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at [www.fhwa.dot.gov/topics.htm](http://www.fhwa.dot.gov/topics.htm).

**FUNDING PARTNER** – A PARTNER, designated in the FUNDING SUMMARY, that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds it commits in this Agreement.

**FUNDING SUMMARY** – An executed document that lists the funding, billing, and payment commitments. Commitments include, but are not limited to, FUNDING PARTNER(S), fund source, fund type, payment method, invoice frequency, deposit amounts and PROJECT COMPONENT(S) in which funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

**GAAP (Generally Accepted Accounting Principles)** – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

**HM-1** – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

**HM-2** – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

**HM MANAGEMENT ACTIVITIES** – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

**IMPLEMENTING AGENCY** – The PARTNER is responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

**IQA (Independent Quality Assurance)** – Ensuring that IMPLEMENTING AGENCY's quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another PARTNER.

**OBLIGATION COMPLETION** – PARTNERS have fulfilled all OBLIGATIONS included in this Agreement, and all amendments to this Agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

**OBLIGATIONS** – All responsibilities included in this Agreement.

**OMB (Office of Management and Budget)** – This federal office oversees the preparation of the federal budget and supervises its administration in Executive Branch agencies.

**PARTNER** – Any individual signatory party to this Agreement.

**PARTNERS** – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER's individual actions legally bind the other PARTNER.

**PROJECT COMPONENT** – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.
- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

**PROJECT MANAGEMENT PLAN** – A group of documents used to guide a project's execution and control throughout that project's lifecycle.

**QMP (Quality Management Plan)** – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY's quality policy and how it will be used.

**QC/QAP (QUALITY CONTROL/QUALITY ASSURANCE PROGRAM)** - Caltrans quality control and quality assurance procedures for all environmental documents as described in the Jay Norvell Memos dated July 2, 2007 (available at <http://www.dot.ca.gov>). This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA Guideline requirements.

**RESIDENT ENGINEER** – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer must be independent of the design engineering company and the construction contractor.

**SCOPE SUMMARY** – The attachment in which each PARTNER designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

**SHS (State Highway System)** – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

**SPENDING SUMMARY** – A table, located within the FUNDING SUMMARY, which is used when a PARTNER who is not the IMPLEMENTING AGENCY is to perform specific WORK towards PROJECT. The SPENDING SUMMARY displays cost amounts that are fixed and not to be exceeded.

**SPONSOR** – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

**SFM (State Furnished Material)** – Any materials or equipment supplied by CALTRANS.

**WORK** – All scope activities included in this Agreement.

**CONTACT INFORMATION**

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary Agreement contact person for CALTRANS is:

Jamal Elsaleh, Project Management Office Chief  
464 W. 4th Street, 6<sup>th</sup> Floor, MS 1229  
San Bernardino, California 92401-1400  
Office Phone: (909) 383-6710  
Email: jamal\_elsaleh@dot.ca.gov

The primary Agreement contact person for SANBAG is:

Garry Cohoe, Project Delivery Director  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, California 92410-1715  
Office Phone: (909) 884-8276  
Email: Garry@sanbag.ca.gov

The primary agreement contact person for CITY is:

Jason Welday, Traffic Engineer  
10500 Civic Center Drive  
Rancho Cucamonga, California 92730  
Office Phone: (909) 477-2740  
Email: Jason.Welday@CityofRC.us

**SIGNATURES**

PARTNERS declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION

APPROVED  
Not for signatures at this time

By: \_\_\_\_\_  
Basem E. Muallem, P.E.  
District Director

CERTIFIED AS TO FUNDS:

By: \_\_\_\_\_  
Lisa Pacheco  
Budget Manager

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS

APPROVED  
Not for signatures at this time

By: \_\_\_\_\_  
Janice Rutherford  
Board President

ATTEST

By: \_\_\_\_\_  
Vickie Watson  
Board Clerk

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

CONCURRENCE

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

CITY OF RANCHO CUCAMONGA

By: \_\_\_\_\_  
L. Dennis Michael  
Mayor

Attest: \_\_\_\_\_  
Janice C. Reynolds  
City Clerk

**SCOPE SUMMARY**

4	5	6	7	8	Description	CALTRANS	SANBAG	CITY	N/A
3	265				Awarded and Approved Construction Contract		X		
		50			Contract Ready for Advertising		X		
		55			Advertised Contract		X		
		60			Bids Opened		X		
		65			Contract Award		X		
		70			Executed and Approved Contract		X		
		75			Independent Assurance		X		
5	270				Construction Engineering and General Contract Administration		X		
		10			Construction Staking Package and Control		X		
			10		Construction Staking Package		X		
			20		Project Control for Construction		X		
		15			Construction Stakes		X		
			15		Slope Stakes		X		
			25		Rough Grade Stakes		X		
			30		Final Grade Stakes		X		
			35		Drainage and Minor Structure Stakes		X		
			50		Miscellaneous Stakes		X		
			55		Photogrammetric Product for Construction		X		
			60		Ground Stakes for Major Structure		X		
			65		Superstructure Stakes for Major Structure		X		
		20			Construction Engineering Work		X		
			05		Resident Engineer's File Review		X		
			10		Project Plans, Special Provisions, and Estimate Review		X		
			15		Contract Pay Quantities		X		
			20		Lines and Grades Control		X		
			25		Contractors' Falsework Submittals Review		X		
			30		Contractors' Trenching and Shoring Submittals Review		X		
			35		Shop Plans Review		X		
			40		Cost Reduction Incentive Proposals Review		X		
			45		Contractors' Water Pollution Control Program Review		X		
			50		Technical Support		X		
			99		Other Construction Engineering Products		X		
		25			Construction Contract Administration Work		X		
			05		Secured Lease for Resident Engineer Office Space or Trailer		X		

		10	Set Up Construction Project Files	X	
		15	Pre-Construction Meeting	X	
		20	Progress Pay Estimates	X	
		25	Weekly Statement of Working Days	X	
		30	Construction Project Files and General Field Office Clerical Work	X	
		35	Labor Compliance Activities	X	
		40	Approved Subcontractor Substitutions	X	
		45	Coordination	X	
		50	Civil Rights Contract Compliance	X	
		99	Other Construction Contract Administration Products	X	
	30		Contract Item Work Inspection	X	
		05	Photographed Jobsite and Contractors' Operations	X	
		10	Inspection of Contractors' Work for Compliance	X	
		15	Contractors' Operations Relative to Safety Requirements Documentation	X	
		20	Daily Diary of Contract Operations	X	
		25	Punch List	X	
	35		Construction Material Sampling and Testing	X	
		05	Materials Sampling and Testing for Quality Assurance	X	
		10	Plant Inspection for Quality Assurance	X	
		15	Independent Assurance Sampling and Testing	X	
		20	Source Inspection	X	
	40		Safety and Maintenance Reviews	X	
	45		Relief From Maintenance Process	X	
	55		Final Inspection and Acceptance Recommendation	X	
	60		Plant Establishment Administration	X	
	65		Transportation Management Plan Implementation During Construction	X	
	75		NOTE: This WBS element is address in the text of this cooperative agreement. Resource Agency Permit Renewal and Extension Requests	X	
	80		Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract	X	
	99		Other Construction Engineering and General Contract Administration	X	
5	275		Construction Engineering and General Contract Administration of Structures Work	X	
		10	Office Administration Work for Structures	X	
		20	Field Administration Work for Structures	X	
		30	Contract Change Order Inspection for Structures Work	X	
		40	Safety Tasks for Structures Work	X	
5	285		Contract Change Order Administration	X	
		05	Contract Change Order Process	X	
		05	Need for Contract Change Order Determination	X	
		10	Draft Contract Change Order	X	
		15	Contract Change Order Approval	X	
		20	Payments for Contract Change Order Work	X	
		10	Functional Support	X	

			05	Field Surveys for Contract Change Order		X	
			10	Staking for Contract Change Order		X	
			15	Other Functional Support		X	
5	290			Resolve Contract Claims		X	
			05	Analysis of Notices of Potential Claims		X	
			10	Supporting Documentation and Responses to Notices of Potential Claims		X	
			15	Reviewed and Approved Claim Report		X	
			20	District Claim Meeting or Board of Review		X	
			25	Arbitration Hearing		X	
			30	Negotiated Claim Settlement		X	
			35	Technical Support		X	
5	295			Accept Contract, Prepare Final Construction Estimate, and Final Report		X	
			05	Processed Estimate After Acceptance		X	
			10	Proposed Final Contract Estimate		X	
			15	As-Built Plans		X	
			20	Project History File		X	
			25	Final Report		X	
			30	Processed Final Estimate		X	
			35	Certificate of Environmental Compliance		X	
			40	Long Term Environmental Mitigation/Mitigation Monitoring After Construction Contract Acceptance		X	
			45	Post-Construction Traffic Operations Activities		X	
			05	Speed Survey Records		X	
			05	Speed Survey		X	
			10	Signed Speed Survey		X	
			10	Commission TMS Elements		X	
			99	Other Accept Contract/ Prepare Final Construction Estimate and Final Report		X	
4	300			FINAL RIGHT OF WAY ENGINEERING		X	
			05	Right of Way Monumentation		X	
			05	Right of Way Monumentation Survey		X	
			10	Filed Monumentation Record of Survey		X	
			10	Trial Exhibits and Testimony		X	
			25	Relinquishment and Vacation Maps		X	
			30	Deed Package for Excess Land Transactions		X	
			35	Right of Way Record Map		X	

**FUNDING SUMMARY Number 1**

Project Number: 0800000789

CALTRANS Agreement: 08-1549

**Part 1 - FUNDING SUMMARY table**

Funding Source	Funding Partner	Fund Type	CON Capital*	Con Support**	Totals by Fund Type
<b>IMPLEMENTING AGENCY</b>			<b>SANBAG/CITY</b>		
STATE	SANBAG	State and Local Partnership Plan	\$ 1,000,000		\$1,000,000
FEDERAL	SANBAG	DEMONSTRATION	\$ 3,599,600		\$3,599,400
FEDERAL	SANBAG	Interstate Maintenance HR4818	\$ 3,002,000		\$3,002,000
LOCAL	SANBAG/CITY	Local *	\$ 27,148,400	\$8,000,000	\$35,148,000
Totals by Component			\$ 34,749,600	\$8,000,000	\$42,749,600

\* Con Capital includes \$44,000 for HMA JMF and Concrete Mixes and \$300,300 for State Furnished Materials.

\*\*Con Support includes \$250,000 for Source Inspection, \$700,000 for Design Support during construction and \$7,000,050 for Construction Management

This table represents full funding of each PROJECT COMPONENT in Agreement 08-1549.

Billing and payment details follow.



City of Ontario (City) to define the roles and responsibilities of the agencies for the construction of the North Milliken Avenue Grade Separation project. The Cooperative Agreement defines the various funding sources, with 80% of the cost being the responsibility of SANBAG and 20% the responsibility of the City. Additionally, as a result of excess public share funds being available for the project which could not be utilized on another project, an amendment to the agreement was approved that reduced the City's nexus share contribution to the North Milliken project by \$6,241,910 and applied it equally to the South Archibald Grade Separation project and North Vineyard Grade Separation project. In order to maximize the amount of State Proposition 1B funds that can be applied to the North Vineyard project, staff is recommending an amendment to Agreement No. R10195 which would shift repayment of \$3,120,955 from North Vineyard Grade Separation project to the South Milliken project.

**Recommendation No. 2:** South Milliken Avenue is a north/south corridor east of the Ontario Airport, between State Route 60 and Interstate 10. This corridor carries an estimated 19,500 vehicles per day, including heavy trucks. Separating the existing at-grade Union Pacific railroad crossing at the South Milliken Avenue location just north of Mission Boulevard increases travel reliability for both the community and truck traffic; improves air quality by decreasing vehicle stacking and idling time; eliminates potential conflicts between vehicular and train traffic; and eliminates gate down time. The South Milliken Avenue Grade Separation project is a Nexus Study project with an 80% SANBAG public share and 20% City DIF share.

Agreement C13104 will define the project and funding responsibilities for the construction phase of the project. The City of Ontario has been the lead agency for all pre-construction activities and will be the lead agency for construction. The funding for the South Milliken Avenue Grade Separation project is shown in Table 1 and has been previously approved by the SANBAG Board. Award of the construction contract is scheduled for September 2013.

**Recommendation No. 3:** North Vineyard Avenue is a north/south corridor north of the Ontario Airport, running from I-10 to the airport and to Ontario's Foreign Trade Zone (FTZ) No. 50-1 (an extension of the Port of Long Beach's FTZ No. 50). It carries an estimated 11,400 vehicles per day (25,000 vehicles per day by 2030). Heavy duty trucks are estimated to comprise 20% of daily traffic. Separating the railroad crossing from North Vineyard Avenue, which is a key location along the Alameda Corridor East, will mitigate community impacts of goods movement and provide more reliable truck access to the logistics complex and the air cargo facilities at the airport. The North Vineyard Avenue Grade Separation project is a Nexus Study project with an 80% SANBAG public share and 20% City DIF share.

Agreement C13105 will define the project and funding responsibilities for the construction phase of the project. The City of Ontario has been the lead agency for all pre-construction activities and will be the lead agency for construction. Table 2 summarizes the Project funding which has been previously approved by the SANBAG Board. Award of the construction contract is scheduled for September 2013.

**Table 1 – South Milliken Avenue Grade Separation Funding Summary**

Phase	City DIF Share 20% plus additional for R10195		Authority Share 80%			UPRR	Total
	City	City (R10195)	TCIF	Measure I	SLPP		
PA&ED	150,000			600,000			750,000
PS&E	949,000			3,796,000			4,745,000
ROW	1,044,200			4,176,800			5,221,000
CON*	12,453,000	3,120,955	25,052,000	10,819,545	10,819,500	3,835,000	66,100,000
Total	14,446,200	3,120,955	25,052,000	19,542,345	10,819,500	3,835,000	76,816,000

\*UPRR amount is still being finalized. The proportional share of the individual fund types will need to be revised once the UPRR contribution amount is finalized

**Table 2 – North Vineyard Avenue Grade Separation Funding Summary**

Phase	City DIF Share 20%	Authority Share 80%			UPRR	Total
	Local	TCIF	Measure I	SLPP		
PA&ED	250,000		500,000			750,000
PS&E	609,000		2,436,000			3,045,000
ROW	120,000		480,000			600,000
CON*	8,756,200	6,884,000	14,070,900	14,070,900	3,618,000	47,400,000
Total	9,716,000	6,884,000	17,497,000	14,070,900	3,618,000	51,795,000

\*UPRR amount is still being finalized. The proportional share of the individual fund types will need to be revised once the UPRR contribution amount is finalized.

**Financial Impact:** This item is consistent with the adopted Fiscal Year 2012/2013 budget.

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

**Responsible Staff:** Philip Chu, Transportation Planning Analyst



**CONTRACT SUMMARY SHEET**

Contract No. C 13104 Amendment No. 0

By and Between SANBAG and City of Ontario

Contract Description South Milliken Grade Separation Construction Funding Agreement

**Board of Director's Meeting Date:** June 5, 2013  
**Overview of BOD Action:** Approve Funding Agreement No. C13104 with the City of Ontario for Construction Services

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW					
Original Contract Amount	\$	10,819,545	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount			Contingency Amendment	\$	
<b>TOTAL CONTRACT VALUE</b>	\$	10,819,545	<b>TOTAL CONTINGENCY VALUE</b>	\$	
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>				\$	10,819,545

<b>Contract Start Date</b> May 1, 2013	<b>Current Contract Expiration Date</b> 6/30/18	<b>Revised Contract Expiration Date</b>
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Has the contract term been amended?  No  Yes - please explain.

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0876</u> . <input type="checkbox"/> A Budget Amendment is required. How are we funding current FY? City will fund 12/13				
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: Construction is funded as follows: The City is the Lead Agency and will directly fund \$12,453,000. The City will invoice TCIF \$25,052,000; SLPP \$10,819,545; UPRR \$3,835,000 directly. SANBAG will proportionately fund \$10,819,545 Measure I, Valley Major Street Bond Fund. Total contract cost : \$66,100,000				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

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

<u>Paula Bon</u> Project Manager (Print Name)	 Signature	<u>4/10/13</u> Date
<u>Andrea Zwick</u> Task Manager (Print Name)	 Signature	<u>4/10/13</u> Date
<u>Dir. of Fund Admin. &amp; Programming (Print Name)</u>	 Signature	<u>4/25/13</u> Date
<u>Jeffery Hill</u> Contract Administrator (Print Name)	 Signature	<u>4/25/13</u> Date
Chief Financial Officer (Print Name)	Signature	Date

**PROJECT FUNDING AGREEMENT C13104**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF ONTARIO**

**FOR**

**THE CONSTRUCTION PHASE OF THE SOUTH MILLIKEN AVE GRADE  
SEPARATION PROJECT CITY OF ONTARIO**

**THIS PROJECT FUNDING AGREEMENT (“Agreement”)** is made and entered into as of the Effective Date identified herein by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the City of Ontario (hereinafter referred to as “CITY”).

**RECITALS:**

**WHEREAS**, the Measure I 2010-2040 Expenditure Plan, the AUTHORITY Nexus Study, and planning conducted by the rural Mountain/Desert subareas identified freeway interchange, Major Local Highway Program arterial road, and rail-highway grade separation projects eligible for partial funding from Measure I 2010-2040 revenues; and

**WHEREAS**, AUTHORITY and CITY (the “Parties”) intend to construct a grade separation at South Milliken Ave and the Union Pacific railways (UP) (hereinafter referred to as the “PROJECT”); and

**WHEREAS**, the PROJECT is identified in the Measure I 2010-2040 Expenditure Plan and is included in the AUTHORITY Nexus Study and will be carried out in accordance with the policies of the Measure I 2010-2040 Strategic Plan; and

**WHEREAS**, the Parties desire to proceed with construction of the PROJECT, which includes both the construction capital contract and the construction management of such, hereinafter referred to as “CONSTRUCTION” or “CONSTRUCTION Phase”; and

**WHEREAS**, this Agreement is intended to delineate the duties, and funding responsibilities of the Parties for the CONSTRUCTION Phase of the PROJECT; and

**WHEREAS**, CITY wishes to be the lead agency to complete the CONSTRUCTION Phase of the PROJECT; and

NOW, THEREFORE, AUTHORITY and CITY agree to the following:

**SECTION I**

**AUTHORITY AGREES:**

1. In accordance with the Measure I 2010-2040 Strategic Plan ("Strategic Plan"), to be responsible for 80% of the total eligible CONSTRUCTION Phase expenses that are incurred by CITY for an amount not to exceed \$66,100,000, subject to Section III., paragraphs 3, 4, 7 and 8. See Attachment A.
2. In accordance with Measure I Strategic Plan Policy 40006, Measure I Valley Fund Major Street Program, to advance 10% of public share of the total project cost estimate at \$6,145,000 to CITY after the opening of construction bids and prior to the award of the construction contract.
3. To reimburse CITY, subject to Section I., paragraph 2 and Section III. paragraphs 5 through 7 within 30 calendar days after CITY submits to AUTHORITY an original and two copies of the signed invoices in the proper form covering those actual allowable CONSTRUCTION Phase expenditures that were incurred by CITY, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to AUTHORITY as frequently as monthly and adhere to the Local Assistance Procedures Manual Chapter 17. The final invoice shall be marked "FINAL" and will be submitted after any and all closeout documents are submitted to AUTHORITY. Invoices shall be submitted to AUTHORITY as follows:

**San Bernardino Associated Governments  
1170 W 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410-1715  
Contract No. C-13104  
Attention Mary Brown**

4. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of CITY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to AUTHORITY when planning and conducting additional audits.
5. AUTHORITY agrees to participate in the review of the procurement documents for a construction management consultant and participate in the selection process for such consultant, if CITY desires to utilize the services of a construction management consultant beyond its own staff.

6. AUTHORITY's financial responsibility shall be 80% of actual construction cost as outlined in Attachment A, which represents the public share, subject to the provisions of Section III., paragraphs 6 through 8. An estimate of costs for the CONSTRUCTION Phase is provided in Attachment A. AUTHORITY's financial contribution includes \$25,052,000 in Proposition 1B Trade Corridor Improvement Funds and \$10,819,500 in Proposition 1B State Local Partnership Program.

## SECTION II

### CITY AGREES:

1. Subject to Section I., paragraph 1, that only eligible PROJECT-specific work activities that conform to the AUTHORITY Nexus Study, will be eligible for Measure I reimbursement.
2. To be the implementing agency for the CONSTRUCTION Phase of the PROJECT. Implementation shall include, but not be limited to, the construction management and administration of the construction work through CITY staff or in combination with the procurement and utilization of a consultant construction management firm. CITY shall involve AUTHORITY in the selection process of a construction management firm through review of the procurement documents and participation in the selection team. CITY will also advertise, administer, and award the construction capital contract.
3. To prepare and submit to AUTHORITY an original and two copies of signed invoices per Section I., paragraph 2 for reimbursement of those eligible PROJECT expenses.
4. To submit invoices for Measure I funding, which is the AUTHORITY share less additional CITY's contribution, TCIF and SLPP funds, to AUTHORITY as frequently as monthly. These invoices will request reimbursement proportional between funding sources and overall costs incurred to date on the PROJECT and proportioned as outlined in Attachment A.
5. As lead agency, to prepare and submit an allocation request to the California Transportation Commission for Proposition 1B Trade Corridor Improvement Funds and Proposition 1B State Local Partnership Program Funds allocated to the project and to prepare and submit reimbursement invoices for these funds. These funds will be reimbursed directly from the State of California and will not be invoiced to AUTHORITY. CITY should also submit quarterly status report to Caltrans via the LA-ODIS system.

6. To repay to AUTHORITY any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within ninety (90) calendar days of CITY receiving notice of audit findings, which time shall include an opportunity for CITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and CITY fail to reimburse moneys due AUTHORITY within ninety (90) days of audit finding, or within such other period as may be agreed between both parties hereto, the AUTHORITY Board reserves the right to withhold future payments due CITY from any source under AUTHORITY's control.
7. To provide 20% share of total eligible CONSTRUCTION Phase expenses which represents the development share as outlined in Attachment A.
8. To provide an additional \$3,120,955 of total eligible CONSTRUCTION Phase funding which represents the unexpended share of the CITY's contribution towards North Milliken Ave. Grade Separation Project Construction phase (per cooperative agreement R10195).
9. If CITY requests additional work that is beyond the scope of the original PROJECT, said work will be paid solely by the CITY.
10. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of three (3) years from the date of the Final Report of Expenditures submittal to AUTHORITY or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of AUTHORITY. Copies will be made and furnished by CITY upon request.
11. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY's request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by CITY.
12. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Report and invoice no later than 120 days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to AUTHORITY, must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.
13. To have a PROJECT-specific independent audit completed by CITY, at AUTHORITY's option, upon completion of the PROJECT. The audit must

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state that all funds expended on the PROJECT were used in conformance with this Agreement.

14. To include AUTHORITY in Project Construction meetings, if and when such meetings are held, and related communications on project progress and to provide at least quarterly schedule updates to AUTHORITY. AUTHORITY shall assign a project liaison for the purpose of attending and monitoring PROJECT progress.
15. As an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of San Bernardino Associated Governments and CITY.
16. To be responsible for providing all information to the public regarding the PROJECT's construction in accordance with a mutually acceptable Public Outreach Program established for construction of PROJECT. CITY will provide the necessary information as needed to keep the public informed of the status, progress, and closures, with coordination with AUTHORITY.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. To abide by all applicable federal, state and local laws and regulations pertaining to the CONSTRUCTION Phase, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the date of execution of this agreement.
2. That AUTHORITY and CITY expect Union Pacific Railroad (UPRR) to contribute an estimated amount of \$3,835,000 towards the PROJECT, but acknowledge that if UPRR does not fund all or a portion of this amount that AUTHORITY and CITY will bear its proportional share of this amount in accordance with this Agreement. The final agreed to funding commitment from UPRR will reduce the estimated PROJECT cost by that amount. The AUTHORITY public share and the CITY development share, both as defined herein, will be based on the total PROJECT cost less the final UPRR funding commitment.
3. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional eligible costs resulting from increased bid/contract prices or change orders arising from unforeseen conditions, including Utility relocation, over the estimated total of the PROJECT cost of \$66,100,000, shall be borne by each Party in proportion to the public and development shares, as part of the Parties' respective obligations to pay the cost for the CONSTRUCTION Phase, subject to Section III, paragraphs 6 through 8.

4. Prior to the award of the construction contract, in the event CITY determines PROJECT CONSTRUCTION WORK may exceed the not to exceed amounts identified in this Agreement, CITY shall inform AUTHORITY of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to this Agreement. The Parties may agree to fund the contribution amounts identified in the amendment, or to terminate this AGREEMENT and not award the construction contract. In no event, however, shall any of the Parties be responsible for PROJECT CONSTRUCTION WORK costs in excess of the contribution amounts identified in this AGREEMENT absent a written amendment that is approved by all Parties subject to Section III., paragraphs 6 through 8.
5. The CITY shall seek concurrence by AUTHORITY on all contract change orders for PROJECT CONSTRUCTION WORK. With respect to a change order exceeding \$100,000, CITY agrees to first provide such change order to AUTHORITY to review and approve prior to CITY approval of the change orders. Such AUTHORITY approval shall not be unreasonably withheld or delayed. Claims from Contractors will be resolved using CITY's procedures. CITY will consult with AUTHORITY prior to settling any claims. Funding of claims will be in accordance with Section III, paragraphs 3 and 7.
6. If, upon opening of bids/negotiation of contract or change orders for the CONSTRUCTION Phase, it is found that a cost overrun of the estimated CONSTRUCTION Phase costs will occur, CITY may award the construction capital contract or settle claims, however, AUTHORITY shall not be responsible for any cost in excess of the estimated CONSTRUCTION Phase cost, unless AUTHORITY's Board of Directors approves an additional allocation.
7. Eligible PROJECT reimbursements shall include only those costs incurred by CITY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.
8. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AUTHORITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
9. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring or arising by reason of anything done or

omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless CITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or an account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.

10. In the event, the CITY and/or the AUTHORITY is found to be comparatively at fault for any claim action, loss or damage which results from their respective obligations under this Agreement, the CITY and/or AUTHORITY shall indemnify the other to the extent of its comparative fault. Furthermore, if the CITY or AUTHORITY attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the CITY and AUTHORITY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
11. CITY and AUTHORITY are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.
12. AUTHORITY is a public entity with Professional Liability, General Liability and Automobile Liability policies of \$10,000,000 each and Workers' Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
13. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by AUTHORITY.
14. This Agreement will be considered terminated upon reimbursement of eligible costs by AUTHORITY or by June 30, 2018, whichever occurs first. The Agreement may also be terminated by AUTHORITY, in its sole discretion, in the event the project work described in Attachment A has not been initiated or let by CITY within twelve (12) months of the date of execution of this Agreement.
15. The terms of this Agreement represent the consent of the CITY to provide the full development share for the PROJECT required by the AUTHORITY Nexus Study and that failure to contribute the development share according to the terms of this agreement does not obligate AUTHORITY to provide

supplemental funds or otherwise remedy that failure. AUTHORITY may terminate this agreement if the CITY fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

- 16. The Recitals are incorporated into the body of this Agreement.
- 17. Attachment A is incorporated into this Agreement by this reference.
- 18. This Agreement may be signed in counterparts, each of which shall constitute an original. The Effective Date as defined herein is the date on which the AUTHORITY executed this Agreement.

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**CITY OF ONTARIO**

By: \_\_\_\_\_  
Janice Rutherford  
President, Board of Directors

By:  \_\_\_\_\_

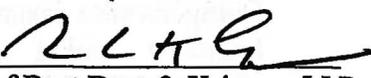
Date: \_\_\_\_\_

Date: April 16, 2013

APPROVED AS TO FORM AND  
PROCEDURE:

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

By:  \_\_\_\_\_  
of Best Best & Krieger, LLP  
CITY Attorney

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**Attachment A**

**Project Cost, and Funding for South Milliken Grade Separation Project**

**Proposed Project Phase Work:      Construction Capital and Support**

Summary of Construction Phase Funding

	City Share	Authority Share**				Estimated Railroad Contribution	Total
	20%	80% = 49,812,000				UPRR*	
	DIF	City contribution per R10195	TCIF Prop 1B	Measure I	SLPP Prop 1B	UPRR*	
Construction Share	\$12,453,000	\$3,120,955	\$25,052,000	\$10,819,545	\$10,819,500	\$3,835,000	\$66,100,000
Percentage of Fund Source*	18.8%	4.7%	37.9%	16.4%	16.4%	5.8%	100%

\*The UPRR amount identified here is an estimate. The proportional share of the individual fund types will need to be revised once the UPRR contribution amount is finalized. UPRR funds buy down the total cost after which the Authority's share and City's share is applied, (i.e.any UPRR funds shall be shared between CITY and AUTHORITY, with CITY receiving 20% of the funds and AUTHORITY receiving 80% of the funds. Any UPRR funds received by CITY and AUTHORITY shall be deducted from each party's share of its total eligible CONSTRUCTION Phase expenses).

\*\*AUTHORITY's share can be from sources under control of AUTHORITY including but not limited to Measure I Valley Major Street Rail-Highway Grade Separation Sub-program, Proposition 1B Trade Corridor Improvement Funds and State Local Partnership Program Funds without necessitating an amendment of this agreement.



## CONTRACT SUMMARY SHEET

Contract No. R 10195 Amendment No. 3

By and Between

San Bernardino County Transportation Authority and City of Ontario

Contract Description Construction of North Milliken Avenue/UPRR Grade Separation Project

**Board of Director's Meeting Date:** June 5, 2013  
**Overview of BOD Action:** Approve Amendment No. 3 to Contract No. R10195 with City of Ontario for construction of the North Milliken Grade Separation Project.

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW					
Original Contract Amount	\$	15,027,000	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	9,388,163	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	0	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>9,388,163</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 9,388,163</b>

Contract Start Date 5/12/2010	Current Contract Expiration Date 12/31/2013	Revised Contract Expiration Date 4/3/2018
Has the contract term been amended? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		
Contract expires upon "fulfillment of all responsibilities" so estimated completion date has been changed		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0882</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? STIP/RIP and City of Ontario Funds				
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract:				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable				

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

Paula Beauchamp		4/11/13
Project Manager (Print Name)	Signature	Date
Andrea Teweide		4/10/13
Task Manager (Print Name)	Signature	Date
Jeffery Hill		4/25/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

**AMENDMENT NO. 3 TO  
COOPERATIVE AGREEMENT NO. R10195**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**THE CITY OF ONTARIO**

**FOR**

**CONSTRUCTION OF NORTH MILLIKEN AVENUE/UPRR ALHAMBRA  
SUBDIVISION GRADE SEPARATION PROJECT ("PROJECT")**

This Amendment No. 3 to COOPERATIVE AGREEMENT R10195 is by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, hereinafter referred to as "AUTHORITY" and the CITY OF ONTARIO, hereinafter referred to as "CITY," and sometimes individually referred to as "Party" or collectively referred to as "PARTIES."

**RECITALS:**

- A. WHEREAS, in April 2010, the California Transportation Commission (CTC) allocated to AUTHORITY \$45,089,000 in State Transportation Improvement Program/Regional Improvement Program (STIP/RIP) funds for construction of PROJECT; and
- B. WHEREAS, on May 12, 2010, the PARTIES entered into Cooperative Agreement No. R10195 for the construction of the Milliken Avenue/UPPR Alhambra Subdivision Grade Separation Project (hereinafter referred to as the "PROJECT"); and
- C. WHEREAS, on September 27, 2010, the CITY secured a \$5,000,000 Section 190 Grade Separation Program grant from the State of California Division of Rail for construction of the PROJECT; and
- D. WHEREAS, on March 2, 2011, the PARTIES amended the terms and conditions and their respective roles and responsibilities during the construction of the PROJECT by entering into Amendment No. 1 to Cooperative Agreement R10195; and
- E. WHEREAS, on March 7, 2012, the PARTIES amended the agreement to maximize use of AUTHORITY's allocated STIP/RIP funds for construction of PROJECT, and apply as a credit, the City of Ontario's unexpended local nexus share of PROJECT construction costs toward AUTHORITY's share of construction costs in future construction

cooperative agreements for the South Archibald and Vineyard Ave. Grade Separation projects currently under development by the PARTIES; and

- F. WHEREAS, the PARTIES now aspire to apply the credit to be applied toward AUTHORITY's share of construction costs for the Vineyard Ave. Grade Separation project toward the AUTHORITY's share of construction costs for the South Milliken Ave. Grade Separation instead; and
- G. WHEREAS, the PARTIES will include the additional local nexus share in the South Milliken Ave. Grade Separation project's future construction cooperative agreement; and
- H. WHEREAS, the PARTIES desire to amend the terms and conditions of their respective roles and responsibilities during the construction of the PROJECT by entering into this Amendment No. 3 to Cooperative Agreement R10195.

NOW, THEREFORE, AUTHORITY and CITY agree to amend the Agreement in the following particulars only:

1. Under SECTION I, entitled "CITY AGREES", as previously amended by Amendment No. 2, paragraph 4 is hereby replaced in its entirety by the following:
  - "4. To repay the CITY's unexpended twenty percent (20%) share of the actual costs for CONSTRUCTION WORK up to a total amount of \$6,241,910 as identified in Table C-2 of the agreement, toward the future costs of construction of the South Archibald Ave. and South Milliken Ave. Grade Separation Projects. These funds will be in equal amounts for each project in addition to the CITY's nexus share of construction costs for each project."
2. The "Effective Date" of this Amendment No. 3 is the date executed by AUTHORITY.
3. The Contract is incorporated into this Amendment.
4. Except as amended by this Amendment, all other provisions of the Contract shall remain in full force and effect.

IN WITNESS THEREOF, the parties have duly executed this Amendment No. 3 below.

**CITY OF ONTARIO**

**AUTHORITY**

\_\_\_\_\_  
Chris Hughes, City Manager

\_\_\_\_\_  
Janice Rutherford  
President, Board of Directors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved as to Form:

\_\_\_\_\_  
Approved as to Form:

\_\_\_\_\_  
John Brown, City Attorney

\_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

\_\_\_\_\_  
Attested By:

\_\_\_\_\_  
Concurrence:

\_\_\_\_\_  
Mary E. Wirtes, City Clerk

\_\_\_\_\_  
Jeffery Hill  
Contract Administrator



**PROJECT FUNDING AGREEMENT C13105**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF ONTARIO**

**FOR**

**THE CONSTRUCTION PHASE OF THE NORTH VINEYARD AVE GRADE  
SEPARATION PROJECT CITY OF ONTARIO**

**THIS PROJECT FUNDING AGREEMENT (“Agreement”)** is made and entered into as of the Effective Date identified herein by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the City of Ontario (hereinafter referred to as “CITY”).

**RECITALS:**

- A. WHEREAS**, the Measure I 2010-2040 Expenditure Plan, the AUTHORITY Nexus Study, and planning conducted by the rural Mountain/Desert subareas identified freeway interchange, Major Local Highway Program arterial road, and rail-highway grade separation projects eligible for partial funding from Measure I 2010-2040 revenues; and
- B. WHEREAS**, AUTHORITY and CITY (the “Parties”) intend to construct a grade separation at North Vineyard Ave and the Union Pacific railways (UP) (hereinafter referred to as the “PROJECT”); and
- C. WHEREAS**, the PROJECT is identified in the Measure I 2010-2040 Expenditure Plan and is included in the AUTHORITY Nexus Study and will be carried out in accordance with the policies of the Measure I 2010-2040 Strategic Plan; and
- D. WHEREAS**, the Parties desire to proceed with construction of the PROJECT, which includes both the construction capital contract and the construction management of such, hereinafter referred to as “CONSTRUCTION” or “CONSTRUCTION Phase”; and

E. WHEREAS, this Agreement is intended to delineate the duties, and funding responsibilities of the Parties for the CONSTRUCTION Phase of the PROJECT; and

F. WHEREAS, CITY wishes to be the lead agency to complete the CONSTRUCTION Phase of the PROJECT; and

NOW, THEREFORE, AUTHORITY and CITY agree to the following:

## SECTION I

### AUTHORITY AGREES:

1. In accordance with the Measure I 2010-2040 Strategic Plan ("Strategic Plan"), to be responsible for 80% of the total eligible CONSTRUCTION Phase expenses that are incurred by CITY for an amount not to exceed \$35,025,800, subject to Section III., paragraphs 3, 4, 7, and 8. See Attachment A.
2. In accordance with Measure I Strategic Plan Policy 40006, Measure I Valley Fund Major Street Program, to advance 10% of public share of the total project cost estimated at \$4,143,000 to CITY after the opening of construction bids and prior to the award of the construction contract.
3. To reimburse CITY, subject to Section I., paragraph 2 and Section III. paragraphs 6 through 8 within 30 calendar days after CITY submits to AUTHORITY an original and two copies of the signed invoices in the proper form covering those actual allowable CONSTRUCTION Phase expenditures that were incurred by CITY, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to AUTHORITY as frequently as monthly and adhere to the Local Assistance Procedures Manual, Chapter 17. The final invoice shall be marked "FINAL" and will be submitted after any and all closeout documents are submitted to AUTHORITY. Invoices shall be submitted to AUTHORITY as follows:

**San Bernardino Associated Governments**  
**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor**  
**San Bernardino, CA 92410-1715**  
**Contract No. C-13105**  
**Attention: Mary Brown**

4. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of CITY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to AUTHORITY when planning and conducting additional audits.

5. AUTHORITY agrees to participate in the review of the procurement documents for a construction management consultant and participate in the selection process for such consultant, if CITY desires to utilize the services of a construction management consultant beyond its own staff.
6. AUTHORITY's financial responsibility shall be 80% of actual CONSTRUCTION cost as outlined in Attachment A, which represents the public share, subject to the provisions of Section III., paragraphs 6 through 8. An estimate of costs for the CONSTRUCTION Phase is provided in Attachment A. AUTHORITY's financial contribution includes \$6,884,000 in Proposition 1B Trade Corridor Improvement Funds and \$14,070,900 in Proposition 1B State Local Partnership Program Funds, which will be invoiced directly to the State of California for reimbursement per Section II., paragraph 5.

## SECTION II

### CITY AGREES:

1. Subject to Section I., paragraph 1, that only eligible PROJECT-specific work activities that conform to the AUTHORITY Nexus Study, will be eligible for Measure I reimbursement.
2. To be the implementing agency for the CONSTRUCTION Phase of the PROJECT. Implementation shall include, but not be limited to, the construction management and administration of the construction work through CITY staff or in combination with the procurement and utilization of a consultant construction management firm. CITY shall involve AUTHORITY in the selection process of a construction management firm through review of the procurement documents and participation in the selection team. CITY will also advertise, administer, and award the construction capital contract.
3. To prepare and submit to AUTHORITY an original and two copies of signed invoices per Section I., paragraph 3 for reimbursement of those eligible PROJECT expenses.
4. To submit invoices for Measure I funding, which is the AUTHORITY share less the TCIF and SLPP funds, to AUTHORITY as frequently as monthly. These invoices will request reimbursement proportional between funding sources and overall costs incurred to date on the PROJECT and proportioned as outlined in Attachment A.
5. As lead agency, to prepare and submit an allocation request to the California Transportation Commission for Proposition 1B Trade Corridor Improvement

Funds and Proposition 1B State Local Partnership Program Funds allocated to the project and to prepare and submit reimbursement invoices for these funds. These funds will be reimbursed directly from the State of California and will not be invoiced to AUTHORITY. CITY should also submit quarterly status reports to Caltrans via the LA-ODIS system.

6. To repay to AUTHORITY any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within ninety (90) calendar days of CITY receiving notice of audit findings, which time shall include an opportunity for CITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and CITY fail to reimburse moneys due AUTHORITY within ninety (90) days of audit finding, or within such other period as may be agreed between both parties hereto, the AUTHORITY's Board reserves the right to withhold future payments due CITY from any source under AUTHORITY's control.
7. To provide a 20% share of total eligible CONSTRUCTION Phase expenses which represents the development share as outlined in Attachment A.
8. If CITY requests additional work that is beyond the scope of the original PROJECT, said work will be paid solely by the CITY.
9. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of three (3) years from the date of the Final Report of Expenditures submittal to AUTHORITY or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of AUTHORITY. Copies will be made and furnished by CITY upon request.
10. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY's request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by CITY.
11. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Report and invoice no later than 120 days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to AUTHORITY, must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.
12. To have a PROJECT-specific independent audit completed by CITY, at AUTHORITY's option, upon completion of the PROJECT. The audit must state

that all funds expended on the PROJECT were used in conformance with this Agreement.

13. To include AUTHORITY in Project Construction meetings, if and when such meetings are held, and related communications on project progress and to provide at least quarterly schedule updates to AUTHORITY. AUTHORITY shall assign a project liaison for the purpose of attending and monitoring PROJECT progress.
14. As an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of San Bernardino Associated Governments and CITY.
15. To be responsible for providing all information to the public regarding the PROJECT's construction in accordance with a mutually acceptable Public Outreach Program established for construction of PROJECT. CITY will provide the necessary information as needed to keep the public informed of the status, progress, and closures, with coordination with AUTHORITY.

### **SECTION III**

#### **IT IS MUTUALLY AGREED:**

1. To abide by all applicable federal, state and local laws and regulations pertaining to the CONSTRUCTION Phase, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the date of execution of this Agreement.
2. That AUTHORITY and CITY expect Union Pacific Railroad (UPRR) to contribute an estimated amount of \$3,618,000 towards the PROJECT but acknowledge that if UPRR does not fund all or a portion of this amount that AUTHORITY and CITY will bear its proportional share of this amount in accordance with this Agreement. The final agreed to funding commitment from UPRR will reduce the estimated PROJECT cost by that amount. The AUTHORITY public share and the CITY development share, both as defined herein, will be based on the total PROJECT cost less the final UPRR funding commitment.
3. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional eligible costs resulting from increased bid/contract prices or change orders arising from unforeseen conditions, including Utility relocation, over the estimated total of the PROJECT cost of \$47,400,000, shall be borne by each Party in proportion to the public and development shares, as part of the Parties' respective obligations to pay the cost for the CONSTRUCTION Phase, subject to Section III, paragraphs 6 through 8.

4. Prior to the award of the construction contract, in the event CITY determines PROJECT CONSTRUCTION WORK may exceed the not to exceed amounts identified in this Agreement, CITY shall inform AUTHORITY of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to this Agreement. The Parties may agree to fund the contribution amounts identified in the amendment, or to terminate this AGREEMENT and not award the construction contract. In no event, however, shall any of the Parties be responsible for PROJECT CONSTRUCTION WORK costs in excess of the contribution amounts identified in this AGREEMENT absent a written amendment that is approved by all Parties subject to Section III., paragraphs 6 through 8.
5. The CITY shall seek concurrence by AUTHORITY on all contract change orders for PROJECT CONSTRUCTION WORK. With respect to a change order exceeding \$100,000, CITY agrees to first provide such change order to AUTHORITY to review and approve prior to CITY approval of the change orders. Such AUTHORITY approval shall not be unreasonably withheld or delayed. Claims from Contractors will be resolved using CITY's procedures. CITY will consult with AUTHORITY prior to settling any claims. Funding of claims will be in accordance with Section III, paragraphs 3 and 7.
6. CITY shall notify AUTHORITY of the CONSTRUCTION Phase bids/proposals received and the amounts thereof. Within ten (10) days thereafter, CITY and AUTHORITY shall determine the cost of the CONSTRUCTION Phase.
7. If, upon opening of bids/negotiation of contract or change orders for the CONSTRUCTION Phase, it is found that a cost overrun of the estimated CONSTRUCTION Phase costs will occur, CITY may award the construction capital contract or settle claims, however, AUTHORITY shall not be responsible for any cost in excess of the estimated CONSTRUCTION Phase cost, unless AUTHORITY's Board of Directors approves an additional allocation.
8. Eligible PROJECT reimbursements shall include only those costs incurred by CITY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.
9. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AUTHORITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

10. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless CITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.
11. In the event, the CITY and/or the AUTHORITY is found to be comparatively at fault for any claim action, loss or damage which results from their respective obligations under this Agreement, the CITY and/or AUTHORITY shall indemnify the other to the extent of its comparative fault. Furthermore, if the CITY or AUTHORITY attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the CITY and AUTHORITY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
12. CITY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation insurance and warrants that through its programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.
13. AUTHORITY is a public entity with Professional Liability, General Liability and Automobile Liability policies of \$10,000,000 each and Workers' Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
14. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by AUTHORITY.
15. This Agreement will be considered terminated upon reimbursement of eligible costs by AUTHORITY or by June 30, 2018, whichever occurs first. The Agreement may also be terminated by AUTHORITY, in its sole discretion, in the event the project work described in Attachment A has not been initiated or let by CITY within twelve (12) months of the date of execution of this Agreement.
16. The terms of this Agreement represent the consent of the CITY to provide the full development share for the PROJECT required by the AUTHORITY Nexus Study and that failure to contribute the development share according to the terms of this agreement does not obligate AUTHORITY to provide supplemental funds or otherwise remedy that failure. AUTHORITY may terminate this agreement if the

CITY fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

- 17. The Recitals are incorporated into the body of this Agreement.
- 18. Attachment A is incorporated into this Agreement by this reference.
- 19. This Agreement may be signed in counterparts, each of which shall constitute an original. The Effective Date as defined herein is the date on which the AUTHORITY executed this Agreement.

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**CITY OF ONTARIO**

By: \_\_\_\_\_  
Janice Rutherford  
President, Board of Directors

By:  \_\_\_\_\_

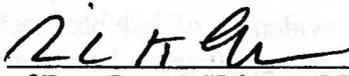
Date: \_\_\_\_\_

Date: April 16, 2013

APPROVED AS TO FORM AND  
PROCEDURE:

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

By:  \_\_\_\_\_  
of Best Best & Krieger, LLP  
CITY Attorney

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**Attachment A**

**Project Cost, and Funding for North Vineyard Grade Separation Project**

**Proposed Project Phase Work:      Construction Capital and Support**

Summary of Construction Phase Funding:

	City Share	Authority Share**			Estimated Railroad Contribution	Total
	20%	80% = \$35,025,800				
	DIF	TCIF Prop 1B	Measure I	SLPP Prop 1B	UPRR*	
Construction Share	\$8,756,200	\$6,884,000	\$14,070,900	\$14,070,900	\$3,618,000	\$47,400,000
Percentage of Fund Source*	18.5%	14.5%	29.7%	29.7%	7.6%	100.0%

\*The UPRR amount identified here is an estimate. The proportional share of the individual fund types will need to be revised once the UPRR contribution amount is finalized. UPRR funds buy down the total cost after which the Authority's share and City's share is applied (i.e.any UPRR funds shall be shared between CITY and AUTHORITY, with CITY receiving 20% of the funds and AUTHORITY receiving 80% of the funds. Any UPRR funds received by CITY and AUTHORITY shall be deducted from each party's share of its total eligible CONSTRUCTION Phase expenses).

\*\*AUTHORITY's share can be from sources under control of AUTHORITY including but not limited to Measure I Valley Major Street Rail-Highway Grade Separation Sub-program, Proposition 1B Trade Corridor Improvement Funds and State Local Partnership Program Funds without necessitating an amendment of this agreement.



- 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:** May 9, 2013

**Subject:** License Agreement to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Time Warner Cable Pacific West LLC and a right-of-entry agreement with Optimum, Inc.

**Recommendation:\*** That the following be reviewed and recommended for approval by the Board of Director's, acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:

1. Approve Contract No. R13144 with Time Warner Cable Pacific West LLC granting a license agreement on the Redlands Subdivision railroad right-of-way, San Bernardino Mile Post 7.6
2. Approve Contract No. R13145 with Optimum, Inc. granting a right-of-entry agreement on the Redlands Subdivision railroad right-of-way, Redlands Mile Post 7.6

**Background:** Between 1991 and 1993, San Bernardino Associated Governments (SANBAG) acquired the Baldwin Park branch line, the Pasadena Subdivision, and the Redlands branch line, all railroad rights-of-way, for its commuter rail program. Following the acquisition of these rail assets, in 1994, SANBAG contracted with

\*

*Approved*  
 Board Metro Valley Study Session

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

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

Check all that apply.  
 MVSS 1305d-mmm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13144.pdf>  
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13145.pdf>

the Los Angeles County Metropolitan Transportation Authority (LACMTA) to provide property management services. During 2011, SANBAG went through a procurement process to bid the services provided by the LACMTA and on May 4, 2011, the Board awarded Contract No. C11206 to Epic Land Solutions.

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

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

The license with Time Warner Cable Pacific West, LLC to be granted per this item will be for an overhead crossing of SANBAG's right-of-way property commonly known as the Redlands Subdivision, near the intersection of West Colton Avenue and West Redlands Boulevard in the City of Redlands. The approximate area needed for the crossing is 2,800 square feet.

The right-of-entry with the Optimum, Inc. to be granted per this item will be for an overhead crossing on SANBAG's right-of-way commonly known as the Redlands Subdivision, near the intersection of West Colton Avenue and West Redlands Boulevard in the City of Redlands. The approximate area needed for the crossing is 2,800 square feet, for the installation of one overhead fiber optic cable crossing at two locations.

Each license does allow SANBAG to terminate the license with thirty (30) days prior written notice. Additionally, both the Time Warner Cable Pacific West, LLC and Optimum, Inc. will provide \$1,500 in administrative fees to Epic for preparation of the license agreements.

It is necessary to refine the boiler-plate license agreements. Staff is currently working with General Counsel to develop a policy governing future licenses,

leases and agreements for SANBAG's right-of-way and property. Options would likely include a range from continuing to present each new or amended agreement to the Board for action or by creating boilerplate documents approved by the Board that could be executed by the Executive Director or his designee.

**Financial Impact:** Approval of this item will result in the payment of \$1,500 by the Time Warner Cable Pacific West LLC and \$1,500 by Optimum, Inc. both as a one-time (1) administrative fee to Epic Land Solutions, Inc. Additionally Time Warner Cable Pacific West LLC will be charged an annual license fee of \$4,000. All fees will be collected by Epic 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 systems/assets.

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

**Responsible Staff:** Monica Morales, Transit Specialist

## CONTRACT SUMMARY SHEET

Contract No. R 13144 Amendment No. \_\_\_\_\_

By and Between

San Bernardino Associated Governments acting and Time Warner Cable Pacific West LLC  
as the San Bernardino County Transportation Authority and the San Bernardino Transportation  
Commission

**Contract Description** License Agreement to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way

**Board of Director's Meeting Date:** 6/5/13  
**Overview of BOD Action:** Approve Contract No. R13144 with Time Warner Cable granting a license agreement on the Redlands Subdivision railroad right-of-way, San Bernardino Mile Post 7.6

**Is this a Sole-Source procurement?**  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	5,500	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>5,500</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 5,500</b>

<b>Contract Start Date</b> 6/5/13	<b>Current Contract Expiration Date</b> 6-30-18	<b>Revised Contract Expiration Date</b>
--------------------------------------	--	---

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

<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
--	--------------------------------------	---	------------------------------------	--

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

Payable  Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

Ultonica Ulloa  
Project Manager (Print Name)

Whitely A. Helesman  
Task Manager (Print Name)

Andrea Woreick  
Dir. of Fund Admin. & Programming (Print Name)

Jeffery Hill  
Contract Administrator (Print Name)

W. J. V. Arslan  
Chief Financial Officer (Print Name)

<u>Ultonica Ulloa</u>	4.9.13
Signature	Date
<u>M. A. Adams</u>	4/9/13
Signature	Date
<u>Andrea Woreick</u>	4/9/13
Signature	Date
<u>[Signature]</u>	4/14/13
Signature	Date
<u>[Signature]</u>	4/26/13
Signature	Date

**CONTRACT NO: C/R R13144**

**By and Between**

**San Bernardino Associated Governments**

**And**

**TIME WARNER CABLE PACIFIC WEST LLC**

---

**For**

**License Agreement**

**Redlands Subdivision Mile Post 7.6**

**LICENSE AGREEMENT**

This LICENSE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2013 by and between the SAN BERNARDINO ASSOCIATED GOVERNMENTS, a public agency existing under the authority of the laws of the State of California ("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:**  
Two overhead crossing facilities located on the SANBAG commonly known as the Redlands Subdivision near the intersection of West Colton Avenue and West Redlands Boulevard in the City of Redlands, County of San Bernardino at Mile Post 7.6  
Approximate area:  
Two Thousand Eight Hundred Square Feet (2,800 Sq. Ft.) (§1.1)
  
2. **Use of License Property:**  
Licensee may use the License Property only for:  
Installation, operation, maintenance and repair of two overhead transverse crossing facilities for fiber optic containing up to One Hundred Forty four (144) count fiber each only, and no other uses (§1.1, §10)
  
3. **Commencement Date:**  
May 1, 2013, or on approval from SANBAG Board of Directors and signatures (§1.2)
  
4. **Term (check one):**  
 A. Month-to-month  
 B. N/A months, ending N/A 20 N/A, unless canceled by SANBAG as provided in Section 1.2 on 30 days' notice (§1.2)
  
5. **License Fees: (check one):**  
 A. **Base License Fee:**  
 a. \$ 4,000.00 per year, payable annually in advance  
 b. \$ \_\_\_\_\_ per month, payable monthly in advance (§2.1)

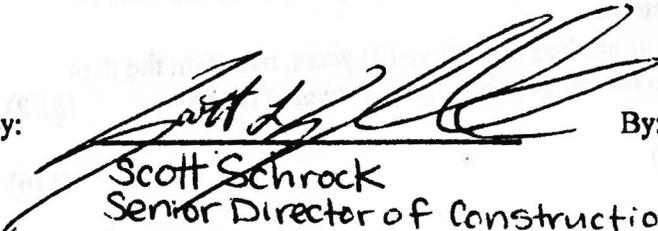
- B. Additional License Fee:
- a. One-time Administrative fee: \$1,500.00  
 b. Other fees: \$N/A (S2.1)
- C. Base License Fee Adjustment Dates (Circle, if applicable)
- a. Annually, effective on the anniversary of the Commencement Date, based on the published Consumer Price Index (or its successor) ("CPI") as defined in paragraph 2.2.1 of the General License Provisions.  
 b. At intervals of not less than three (3) years, based on the then current fair market rental value of the License Property (S2.2)
6. Insurance Amount (See Exhibit "B") (S16)
7. SANBAG's Address:  
SAN BERNARDINO ASSOCIATED GOVERNMENTS  
1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715 (S24.1)
8. Licensee's Address:  
TIME WARNER CABLE PACIFIC WEST LLC  
550 N. Continental Boulevard, Suite 250  
El Segundo, California 90245 (S24.1)  
Attn: Estella Garcia  
951-547-3816
9. Facility:  
Two overhead transverse crossing facilities for fiber optic containing up to One Hundred Forty four (144) count fiber each. (S1.1)

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement 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

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS

By:   
Scott Schrock  
Senior Director of Construction  
PAC WEST Region

By: \_\_\_\_\_  
Janice Rutherford  
President, Board of Directors

Date: MARCH 27, 2013

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE**

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**INDEX TO LICENSE AGREEMENT - PART II**

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Exhibits:

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

## PART II - GENERAL LICENSE PROVISIONS

### 1. GRANT OF LICENSE/TERM

1.1 Grant of License. SANBAG hereby grants a non-exclusive revocable 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 and necessary 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 officers, directors, partners, 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 checked, 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 checked, 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 pursuant to paragraph 24.15 below. 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 by executing this Agreement, accepts the License Property in its present condition as suitable for the use for which this Agreement is granted, without any representation or warranty of any kind by SANBAG.

### 2. PAYMENTS

2.1 License Fee. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the License Fees specified in Item 5 of the Basic License Provisions, as adjusted as set forth in Section 2.2. If Item 5.B.a of the Basic License Provisions is checked, 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 checked, 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 checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provision of Section 2.2, shall be due and payable, without demand, annually in advance on or before the anniversary of the Commencement Date 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 checked, 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. 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 checked, 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 there has been no prior Adjustment, 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 checked, 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 as of thirty (30) days after written notice from SANBAG to Licensee of such adjustment, or the date specified in such written notice, whichever is later. If no adjustment is made at any three (3) year interval, 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 determine. 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, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests.

#### 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 Work activities or operations of Licensee, 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 any and all such obligations and claims 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 or Licensee's Parties 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, and/ 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

14.1. 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 affiliated entities, subsidiaries, officers, directors, employees, agents, contractors, 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.

14.2. 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.

14.3. Claims against the Indemnites by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnites 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.

14.4. The indemnification and defense obligations of Licensee set forth in this section shall survive the termination of this Agreement.

#### 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 expressly 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 in, and meeting all other requirements set forth in, 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**

18.1. 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 Environmental Law which is now or may hereafter become applicable to Licensee or the License Property. As used herein, "Environmental Law" means any federal, state or local environmental health and /or safety-related law, regulation, standard, decision of a court, permit or conditions, currently existing or as amended or adopted in the future. Except for any 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, including any mixture or solution, which by virtue of its properties or effects, is potentially harmful to health, safety or property, or which is now or becomes in the future listed, defined or regulated in any manner under any Environmental Law as hazardous or dangerous material or substance.

18.2. 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.

18.3. 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.

18.4. 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**

19.1. 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.

19.2. 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, 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, regardless of any effect or impact on the Facility. Licensee shall bear all costs and losses it incurs associated with any modifications to

the Facility necessary to accommodate SANBAG's exercise of any right hereunder. 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 by another governmental agency (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 of the same covenant or condition in another instance.

**24.9 Effective Date/Nonbinding Offer.** Submission of this License for examination or signature by Licensee does not constitute an offer or option for a 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 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. No amendments, changes, revisions or discharges of this Agreement in whole or in part, or at any time, shall be binding upon the parties unless the same shall be in writing and executed by both 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 a material breach of this Agreement, which give SANBAG the right to immediately terminate this Agreement and seek all other available remedies for breach.

**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 by Licensee 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 Use.** In addition to any and all other termination rights of SANBAG and regardless of the Term set forth in the Basic License Provisions, 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/or other public uses (collectively and individually "Public Use"), and that Licensee's use of the License Property under this License is a temporary interim use as to which Licensee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such Public Use by thirty (30) days written notice to Licensee. Licensee expressly acknowledges and agrees that:

- (1) SANBAG may terminate this license for any Public Use, to be determined in SANBAG's sole and absolute discretion;
- (2) Licensee will **NOT** oppose any Public Use when planned or implemented on or adjacent to the License Property;
- (3) Licensee expressly assumes all risk of any future Public Use as determined by SANBAG and in the event SANBAG terminates this License and requires Licensee to vacate the License Property for any –



Public Use, Licensee shall not be entitled as a result of such termination and vacation of the License Property;

(a) 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) to any compensation under the eminent domain law.

**24.16 Modification, Relocation or Removal for Public Use.** If SANBAG shall at any time, or from time to time, determine in its sole and absolute discretion, that there is a need for the License Property or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Facility, Licensee shall reconstruct, alter, modify, relocate or remove its Facility as required by SANBAG, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG.

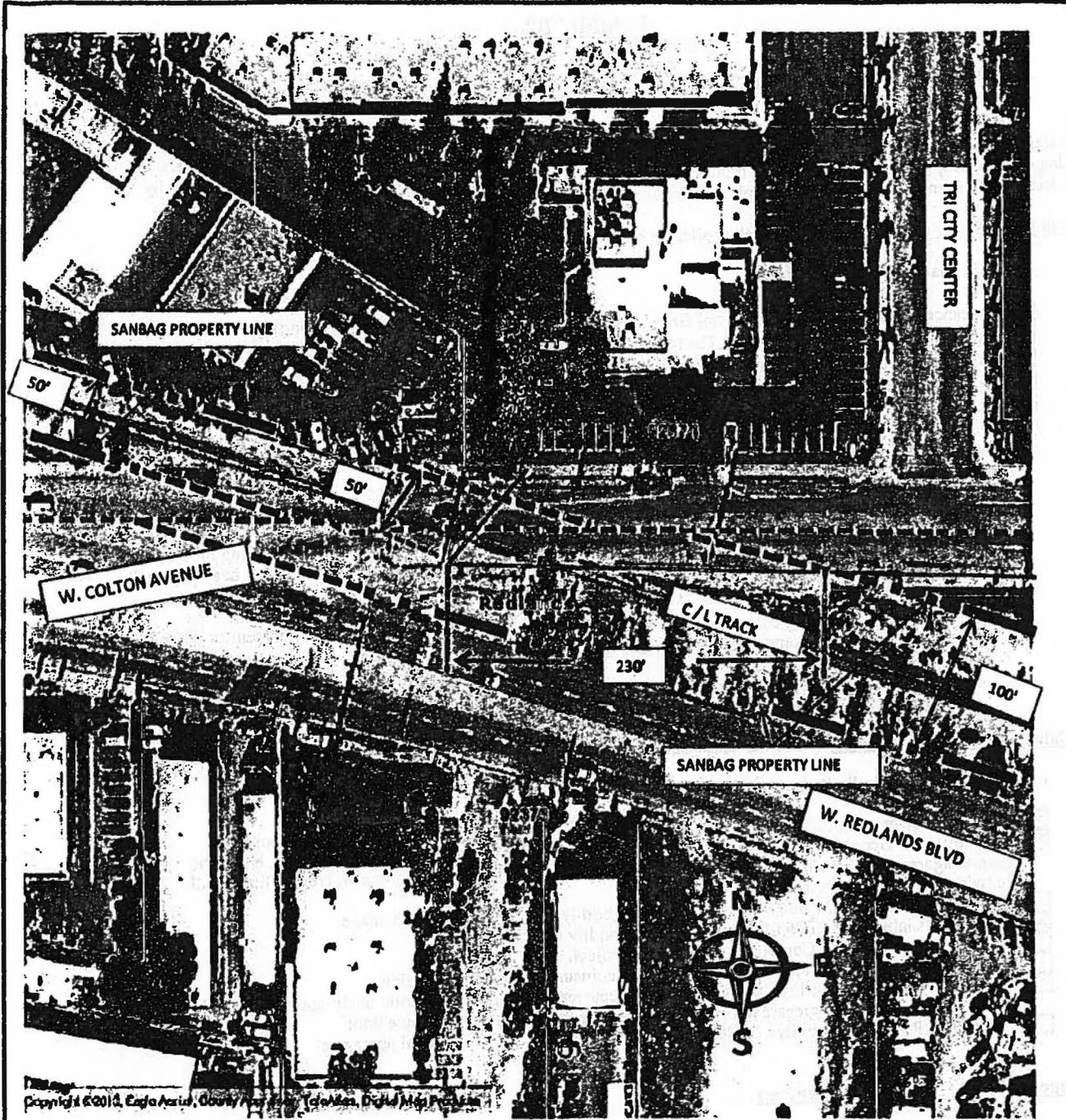
**24.17 Time of Essence.** Time is of the essence of this Agreement.

**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 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"



ONE OVERHEAD FIBER OPTIC CABLE CONTAINING UP TO 144 FIBERS

APN: 0169-391-02

Date 3/15/2013

Branch/Line <b>REDLANDS</b>	Mile Post <b>7.6</b>	Lessee/Licen <b>TIME WARNER CABLE PACIFIC WEST LLC</b>
County <b>SAN BERNARDINO</b>	Nearest Cross Street <b>W. COLTON AVE</b>	SANBAG File Number <b>RRND007675</b>
Area <b>2,800 SQ FT</b>	City <b>REDLANDS</b>	Scale <b>1"=100'</b>
Map Reference <b>RND 3</b>	Use <b>OH FIBER</b>	Thomas Guide Grid <b>607 H6</b>



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

**Exhibit "B"**

**INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS**

Licensee 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 Licensee, 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)

Licensee 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, employees, contractors and agents; or the Licensee 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, employees, contractors and agents are to be covered as insured parties as respects: liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee; and automobiles owned, leased, hired or borrowed by the Licensee. 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 Licensee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials, employees, contractors and agents. Any insurance or self-insurance maintained by SANBAG, its subsidiaries, officials and employees shall be excess of the Licensee'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, employees, contractors and agents.
4. The Licensee'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 of subrogation against SANBAG.

### Acceptability of Insurers

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

### Verification of Coverage

Licensee shall furnish SANBAG with original endorsements and certificates of Insurance evidencing coverage required by this Exhibit "B". 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 Licensee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

### Contractors and Subcontractors

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

**Exhibit "C"**

**Permitted Hazardous Materials**

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

## Exhibit "D-1"

### Additional Provisions

1. **Importation of Soil/Fill Dirt.** Licensee shall not bring upon or use any Import Soil on the Premises in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a certified hazardous waste testing laboratory and the test results have been approved by SANBAG's Environmental Consultant. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as Clean Soil to the reasonable satisfaction of SANBAG's Environmental Consultant.
2. **Maintenance of Premises.** Licensee shall keep the Premises free and clear of weeds, trash, vegetation, unauthorized vehicle parking, and graffiti and from occupancy by transients/homeless persons or individuals. Licensee shall be fully responsible for ALL maintenance and maintenance of adjoining SANBAG property 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 on 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 and at the sole cost of the Licensee and subject to SANBAG's prior review and approval, which may be withheld in SANBAG's sole and absolute discretion. 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, and Licensee assumes all risks as to zoning, visibility, traffic count or any other factors which may effect Licensee's intended use of 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, and 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 are permitted unless such signs were requested and approved under Licensee's original proposal and covered by the required insurance.

**Exhibit "D-2"**

**SANBAG General Notes**

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

License	SANBAG
<i>[Signature]</i> 32713	

Initials

## CONTRACT SUMMARY SHEET

Contract No. R 13145 Amendment No. \_\_\_\_\_

By and Between

San Bernardino Associated Governments acting and Optimum, Inc  
 as the San Bernardino County Transportation  
 Authority and the San Bernardino Transportation  
 Commission

Contract Description Right-of-Entry Agreement to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way

**Board of Director's Meeting Date:** 6/5/13  
**Overview of BOD Action:** Approve Contract No. R13124 with Optimum, Inc. granting a right-of-entry agreement on the Redlands Subdivision railroad right-of-way, Redlands Mile Post 7.6  
 Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW			
Original Contract Amount	\$	1,500	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>1,500</b>	<b>TOTAL CONTINGENCY VALUE</b>
<b>TOTAL BUDGET AUTHORITY</b> (contract value + contingency)			<b>\$ 1,500</b>

Contract Start Date 6/5/13	Current Contract Expiration Date N/A	Revised Contract Expiration Date <b>5-10-18</b>
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

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

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

Ulonica Ulorales  
 Project Manager (Print Name)  
Walter W. Halderman  
 Task Manager (Print Name)  
Andrea Zureick  
 Dir. of Fund Admin. & Programming (Print Name)  
Jeffrey Hill  
 Contract Administrator (Print Name)  
W. SWARSKI  
 Chief Financial Officer (Print Name)

Ulonica Ulorales 4.9.13  
 Signature Date  
M. N. Adams 4/9/13  
 Signature Date  
Andrea Zureick 4/9/13  
 Signature Date  
[Signature] 4/16/13  
 Signature Date  
[Signature] 4/26/13  
 Signature Date

**CONTRACT NO: R13145**

**By and Between**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**AND**

**OPTIMUM, INC.**

**For**

**Right of Entry Permit on the Redlands Subdivision  
Mile Post 7.6**

**CONTRACTOR RIGHT-OF-ENTRY PERMIT**

THIS PERMIT (Permit) is made and entered into as of \_\_\_\_\_ 20\_\_\_\_ and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, a public agency existing under the authority of the laws of the State of California, hereinafter referred to as "SANBAG" and OPTIMUM, INC., a Corporation of the State of California, hereinafter referred to as "Permittee".

**PART I**

**BASIC PERMIT PROVISIONS**

1. Description of Premises:  
Two portions of the SANBAG property commonly known as the Redlands Subdivision measuring 10'x 50' and 10'x 230' to be used for an overhead facility, easterly of the intersection of Redlands Boulevard and Colton Avenue in the City of Redlands, County of San Bernardino, Mile Post 7.6  
Approximate area:  
Two Thousand Eight Hundred Square Feet (2,800 Sq. Ft.) (§1)
2. Premises Address:  
Easterly of the intersection of Redlands Boulevard and Colton Avenue in the City of Redlands, California (§1)
3. Commencement Date:  
May 1, 2013, or upon approval of License Agreement RRND007675 for Time Warner Cable Pacific West, LLC, by the SANBAG Board of Directors and signatures. (§2)
4. Term:  
Ten (10) days only, provided however, that SANBAG may revoke this Permit in accordance with the provisions of Part II, Section 2 of this Permit. Unless otherwise revoked, this Permit automatically terminates at close of business on May 10, 2013 (§2)
5. Use of Premises:  
Installation of one (1) overhead fiber optic cable crossing the Right of Way at two (2) locations, containing up to One Hundred Forty Four (144) fibers only, and no other uses  
Permitted Hours of Use:  
7:00AM to 5:00PM (§3)

6. **Payments:**

- A. \$1,500.00 One Time fee, payable in advance (\$4)
- B. N/A percent (N/A%) of the gross revenues from the use of the Premises during the term of this Permit (\$4)

7. Security Deposit: \$N/A (\$5)

8. Insurance Amount: (See Exhibit "B") (\$11)

9. SANBAG's Address:

San Bernardino Associated Governments  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715  
Attn: Director of Transit and Rail Programs (\$15.1)

10. Permittee's Address:

Optimum, Inc.  
215 S. Western  
Hemet, California 92543  
Attn: Louis LaBarge  
951-652-7155 (\$15.1)

Permittee's Contact Information:

Business: 951-213-2233  
Cell: 951-652-7155  
Fax: 951-213-2234  
E-Mail: optimumlou@la.twcbc.com

11. Contractor's State License Number: 817291 (\$15.17)  
Expiration Date: 02/28/2015

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.

**OPTIMUM, INC.**

**SAN BERNARDINO ASSOCIATED  
GOVERNMENTS**

By:   
Louis LaBarge  
Vice President

By: \_\_\_\_\_  
Janice Rutherford  
President, Board of Directors

Date: 3/27/13

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE**

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**INDEX TO PERMIT - PART II**

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**Exhibits:**

- “A” Site Plan of Premises
- “B” Insurance Requirements
- “C” Permitted Hazardous Materials
- “D” Additional Provisions

## PART II - GENERAL PERMIT PROVISIONS

The parties hereto agree as follows:

### 1. PERMIT TO USE

SANBAG hereby permits Permittee to occupy certain premises (the "Premises") described and consisting of approximately the area shown in Item 1 of the Basic Permit Provisions. The location of the Premises is described in Item 2 of the Basic Permit Provisions and is shown on the map or site plan attached hereto as Exhibit "A". The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

### 2. TERM

The term of this Permit shall commence upon the "Commencement Date" specified in Item 3 of the Basic Permit Provisions and shall continue for the number of days provided in Item 4 of the Basic Permit Provisions; provided, however, that SANBAG may revoke this Permit without cause by providing Permittee with 24 hours' prior notice and may revoke this Permit immediately and without notice upon any breach of this Permit by Permittee.

### 3. USE; CONDITION OF PREMISES

The Premises shall be occupied and used only for the purposes specified in Item 5 of the Basic Permit Provisions and for such other lawful purposes as may be directly incidental thereto. Permittee acknowledges that it has inspected and accepts the Premises in their present condition as suitable for the specified uses. Use of the Premises by Permittee shall be conclusive to establish that the Premises are in good and satisfactory condition upon entry of Permittee. Permittee shall not permit the Premises to be used for any purpose or in any manner which would render the insurance thereon void or the insurance risk more hazardous than that covered by the terms of this Permit.

### 4. PAYMENTS

4.1 Basic Payments. The sums specified to be paid by Permittee in Item 6 of the Basic Permit Provisions shall constitute "Payments." Upon execution of this Permit, Permittee shall pay to SANBAG such sums as are specified in Item 6.A of the Basic Permit Provisions, if any. If Item 6.B of the Basic Permit Provisions is circled, a business operating statement showing all gross revenues and certified by Permittee as being correct, together with the outstanding amount of the Payment required hereunder shall be delivered to SANBAG by Permittee at the address set forth in Item 9 of the Basic Permit Provisions no later than five (5) days after the expiration or earlier termination of this Permit.

4.2 Late Charge. Permittee acknowledges that late payment by Permittee of any Payment owed to SANBAG under this Permit will cause SANBAG to incur costs not contemplated by this Permit, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any Payment due from Permittee is not received by SANBAG within five (5) days of when due, Permittee 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 Permittee. Acceptance of any late payment charge shall not constitute a waiver of Permittee'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 Permit, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 15.4.

### 5. SECURITY DEPOSIT

Upon execution of this Permit and in addition to the Payment described in Section 4 above, Permittee shall pay to SANBAG a security deposit ("Security Deposit") in the amount set forth in Item 7 of the Basic Permit Provisions, which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Permittee of all of the terms, covenants and conditions of this Permit. If at any time Permittee fails to keep and perform all of the term, covenants, and conditions of this Permit, including making any Payment required hereunder, SANBAG may, at its sole option, apply all or any portion of said security deposit to any overdue Payment and/or any loss or damage incurred by SANBAG by reason of Permittee's default or breach. Within a reasonable time

after termination of this Permit and the Permittee has vacated the Premises, SANBAG shall return without interest, said deposit or portion remaining, if any, after deductions for an amount equal to any unpaid Payment and loss and damage sustained by SANBAG due to any breach or default by Permittee.

## 6. COMPLIANCE WITH LAWS

Permittee shall not commit, suffer or permit any acts to be done upon the Premises in violation of any laws or ordinances, and will permit the SANBAG or its agents to enter said Premises at any reasonable time to inspect the same. Permittee shall, at its sole cost and expense, obtain all required permits or licenses required by any governmental authority for the use of the Premises for the time and use set forth above. Sale and consumption of alcohol is prohibited on the Premises.

## 7. TAXES

Permittee agrees to pay all lawful possessory interest taxes, assessments, or charges which at any time may be levied as a result of this Permit. This Permit may create a possessory interest subject to property taxation and Permittee may be subject to the payment of property taxes levied on such interest.

## 8. MAINTENANCE AND REPAIR

**8.1 General Condition.** Permittee, at Permittee's sole expense, shall maintain the Premises in a first-class condition during the term of this Permit and shall perform all maintenance and clean-up of the Premises as necessary to keep the Premises in good order and condition. Permittee shall not suffer or permit any dangerous condition to be created, exist or continue on the Premises. Permittee shall pay all costs of any utility services or appurtenances provided or installed for Permittee to or at the Premises. At the expiration of this Permit, Permittee shall remove, at Permittee's sole expense, any and all improvements placed or constructed by Permittee or any other person, shall repair all damage caused to the Premises during the term of this Permit and shall surrender possession of said Premises to SANBAG in as good order and condition as the Premises was delivered to the Permittee.

**8.2 Liens.** Permittee shall have no authority to create or place any lien or encumbrance of any kind or nature whatsoever upon the interest of SANBAG or Permittee in the Premises. Permittee covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed by Permittee on the Premises. Permittee shall discharge of record by payment, bonding or otherwise any claim of lien or stop notice filed against the Premises on account of any labor performed or materials furnished in connection with any work performed by Permittee on the Premises immediately upon the filing of any claim of lien or stop notice. Permittee shall indemnify and hold SANBAG harmless from any and all loss, cost or expense based on or arising out of asserted claims, liens or stop notice against the leasehold estate or against the right, title and interest of SANBAG in the Premises or this Permit arising from the act or agreement of Permittee. Permittee agrees to give SANBAG immediate written notice of the placing of any lien or stop notice or encumbrance against the Premises. SANBAG shall have the right, at SANBAG's option, of paying and discharging the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and applicable late charge, shall be immediately due and payable upon rendition of a bill therefore.

## 9. INDEMNIFICATION

Permittee, 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 Permittee, or its officers, directors, affiliates, employees, agents, customers, visitors, invitees, licensees and contractors or anyone directly or indirectly employed by or for whose acts Permittee is liable (collectively, "Personnel") or invitees of Permittee in connection with the Premises or arising from the presence upon or performance of activities by Permittee or its Personnel with respect to the Premises, (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 Permittee or its Personnel, or (iii) non-performance or breach by Permittee or its Personnel of any term or condition of this Permit, in each case whether occurring during the term of this Permit 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 Permit; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit. Upon request of SANBAG, Permittee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Permit.

Claims against the Indemnitees by Permittee or its Personnel shall not limit the Permittee'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 Permittee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

#### 10. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Permittee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Premises and any other property of, or under the control or custody of, Permittee, which is on or near the Premises. Permittee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Premises, accident or fire or other casualty on the Premises, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the Premises. 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. Permittee, on behalf of itself and its Personnel (as defined in Section 9) as a material part of the consideration for this Permit, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Permittee and/or its Personnel. In that connection, Permittee 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 Permit.

#### 11. INSURANCE

Permittee, at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Permit 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 Permit, to review and change the amount and type of insurance coverage it requires in connection with this Permit or work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any work or maintenance on the Premises, Permittee 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 Permittee can demonstrate assets and retention funds meeting SANBAG's self-insurance requirements, SANBAG may permit Permittee 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 Permittee under this Permit.

#### 12. TESTS AND INSPECTIONS

SANBAG shall have the right at anytime to inspect the Premises so as to monitor compliance with this Permit. If, in SANBAG's sole judgment, any installation on, or use or condition of the Premises may have an adverse effect on the Premises, 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 Premises, as it determines to be necessary or useful to evaluate the condition of the Premises. Permittee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Permittee 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.

### 13. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Permittee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises 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 Permittee or the Premises ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "C", Permittee shall not cause or permit, or allow any of Permittee's employees, agents, customers, visitors, invitees, licensees or contractors to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the Premises. 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.

Permittee shall indemnify, defend (by counsel acceptable to SANBAG and hold harmless the Indemnitees (as defined in Section 9) 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) Permittee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Premises or contamination of the Premises or adjacent property (i) which occurs due to the use and occupancy of the Premises by Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors, or (ii) which is made worse due to the act or failure to act of Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors.

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 Permit; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit.

In addition, in the event of any release on or contamination of the Premises, Permittee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the Premises 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.

### 14. PERMITTEE'S COVENANTS

Permittee shall:

(a) Deliver, at least five (5) days prior to any entry onto the Premises, written notice to SANBAG of its intention to enter the Premises, the proposed date and time of such entry and the nature, specific location and scope, of any proposed activity upon the Premises. Permittee may enter only on the dates and times specified in such notices.

(b) Enter upon and use the Premises in such manner and at such time as shall not endanger or interfere with SANBAG's operations and in accordance with the regulations of SANBAG and instructions of SANBAG's representative. Permittee shall submit to SANBAG for approval all construction or work details and incidentals insofar as they affect SANBAG.

(c) Maintain, at Permittee's expense, competent flagmen to protect and control movement of vehicles and equipment of Permittee while upon the Premises.

(d) Notify SANBAG within three (3) days after all entry onto the Premises hereunder is completed.

(e) Keep all equipment, tools and materials stored at least twenty (20) feet from the center line of any operable track. Explosives or other highly inflammable substances will not be stored on the Premises without the prior approval of SANBAG's representative.

(f) Reimburse SANBAG for all cost and expense incurred by SANBAG in connection with said entry onto the Premises, including without limitation the expense of furnishing such inspectors, watchmen and flagmen as SANBAG deems necessary and installation and removal of falsework beneath tracks.

## 15. GENERAL PROVISIONS

15.1 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 Items 9 or 10 of the Basic Permit Provisions, as the case may be. 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.

15.2 Governing Law. This Permit shall be governed by the laws of the State of California.

15.3 Severability. If any term, covenant, condition or provision of this Permit, 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 Permit, 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.

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

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

15.6 Survival of Obligations. All obligations of Permittee hereunder not fully performed as of the expiration or earlier termination of the term of this Permit shall survive the expiration or earlier termination of this Permit, including without limitation, all payment obligations and all obligations concerning the condition of the Premises.

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

15.8 Binding Effect. The terms, provisions and covenants and conditions contained in this Permit shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. If more than one person executes this Permit as Permittee, then each shall be jointly and severally liable for all obligations of Permittee hereunder.

15.9 Assignment. This Permit is personal to Permittee and Permittee shall not assign or transfer (whether voluntary or involuntary) this Permit 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 discretion. Any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Permit.

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

15.11 Nondiscrimination. Permittee 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 Premises 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.

15.12 Further Acts. Permittee 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 Permit.

15.13 Termination for Public Project. Permittee hereby expressly recognizes and agrees that the Premises 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 Permittee's use of the Premises 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 public Project. Permittee expressly acknowledges and agrees that: (1) SANBAG may terminate this license for any public project; (2) Permittee will NOT oppose any Project when planned or implemented on or adjacent to the Premises; and (3) in the event SANBAG terminates this License and requires Permittee to vacate the Premises for any public Project, Permittee (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 Premises.

Permittee RR
SANBAG

15.14 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

15.15 Time of Essence. Time is of the essence.

15.16 No Recording. Permittee shall not record or permit to be recorded in the official records of the county where the Premises is located any memorandum of this Permit or any other document giving notice of the existence of this Permit.

15.17 Entire Agreement; Amendments. This Permit 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 Permit may be amended at any time by the written agreement of SANBAG and Permittee. All amendments, changes, revisions, and discharges of this Permit 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.

15.18 Broker's Fees. Permittee represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the brokerage firm specified in Item 11 of the Basic Permit Provisions, if any, and Permittee agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Permittee with regard to this leasing transaction.

15.19 Security Measures. Permittee hereby acknowledges that the Payments payable to SANBAG hereunder does not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Permittee assumes all responsibility for the protection of Permittee, Permittees' subsidiaries, partners, officers, employees, and agents and their property from acts of third parties.

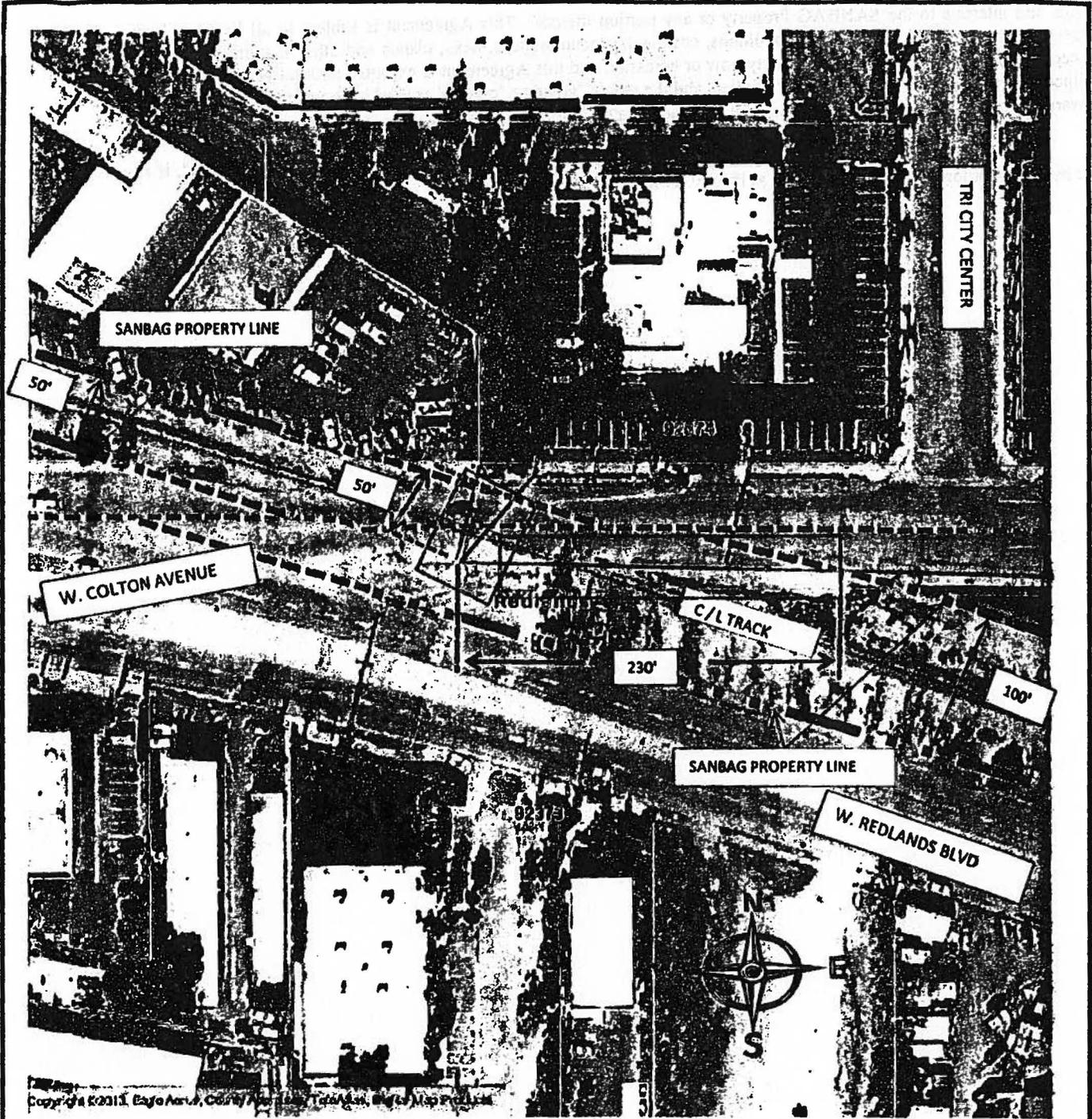
15.20 Effective Date/Nonbinding Offer. Submission of this Permit for examination or signature by Permittee does not constitute an offer or option for permit and it is not effective as a permit or otherwise until executed and delivered by both SANBAG and Permittee. Each individual executing this Permit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

15.21 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 or any portion thereof 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, operate, maintain, use and/or relocate 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 or any portion thereof, and in connection therewith the right to grant and convey to others,

rights and interests to the SANBAG Property or any portion thereof. This Agreement is subject to all licenses, leases, easements, reservations, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the Property now or hereafter, and this Agreement is executed and delivered by SANBAG without any warranty of title, express or implied, and the words "grant" or "convey" as used herein shall not be construed as a warranty of title or as a covenant against the existence of any such title exceptions

15.22 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"



ONE OVERHEAD FIBER OPTIC CABLE CONTAINING UP TO 144 FIBERS  
 APPROXIMATE WORK AREA FOR INSTALLATION

APN: 0169-391-02

Date 3/20/2013

Branch/Line	Mile Post	Lessee/Licensee
REDLANDS	7.6	OPTIMUM, INC.
County	Nearest Cross Street	SANBAG File Number
SAN BERNARDINO	W. COLTON AVE	RRND007676
Area	City	Scale
2,800 SQ FT	REDLANDS	1"=100'
Map Reference	Use	Thomas Guide Grid
RND 3	OH FIBER	607 H6

**Governments**  
**SANBAG**  
 Working Together

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

**Exhibit "B-1"**

**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-2"

### 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 Premises**

**Exhibit "D-1"**

**Additional Provisions**

**Entry Onto Right-of-Way** No verbal approvals will be granted. The Contractor shall not enter onto the Right-of-Way unless Contractor has arranged for Railroad safety training as well as protective services and has paid all charges and fees. A fully executed copy of this Right-of-Entry must be in the possession of the contractor at the job site and must be produced by Contractor upon request by SANBAG, a law enforcement officer or Member Agency's representative. If said Agreement is not produced, SANBAG has the right to suspend work in the Right-of-Way until Contractor demonstrates possession of Agreement at the job site.

The Contractor's ability to enter the SANBAG Right-of-Way is subject to the absolute right of SANBAG to cause the Contractor's work on the SANBAG Right-of-Way to cease if, in the sole opinion of SANBAG or its representative, the Contractor's activities create a hazard to the SANBAG Right-of-Way, or SANBAG employees, or SANBAG operations, or any combination thereof.

At the request of SANBAG, Contractor shall remove from the Right-of-Way any employee or other individual who has not completed safety training or otherwise fails to conform to the instructions of SANBAG's representative in connection with the work on the Right-of-Way. Any right of Contractor to enter upon the Right-of-Way shall be suspended until such requests of SANBAG are met. Contractors shall defend, indemnify and hold harmless SANBAG and its representative against any claim arising from the removal of any such employee or other individual from the Right-of-Way.

**Return of Property** The Contractor agrees to return the Property to a condition substantially the same as before the construction, including replacement, repair, or reinstalling of railroad signs and property. Railroad signs include but are not limited to "No Trespassing", "Speed Limit", "Milepost", "Station Stop", and "Fiber Optics".

**Facilities** The Contractor may not move, relocate, remove, obstruct, or otherwise interfere with any railroad tracks, signals, cables, signs, flags or other railroad facilities, or any service or connection to any railroad facility.

**Completion of Work** The Contractor agrees to notify SANBAG or its Agent, in writing and orally, when use of the Right-of-Way or work is completed. Under no circumstances shall the temporary right of entry provided for under this Agreement be construed as granting to the Contractor or its Subcontractors and agents any right, title or interest of any kind or character in, on or about any Property.

**Emergency Phone Numbers** The Contractor must immediately contact SCRRA and its representative in case of accidents, personal injury, defect in track, bridge or signals or any unusual condition that may affect the safe operation of the railroads. The following are SANBAG's emergency numbers:

Epic Land Solutions  
BNSF Railroad

951-321-1800  
909-386-4061

Exhibit "D-2"

SANBAG General Notes

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

Permittee	SANBAG
	

Initials

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 21 <sup>st</sup> Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

# ***San Bernardino Associated Governments***



## **MISSION STATEMENT**

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

- Improve cooperative regional planning
- Develop an accessible, efficient, multi-modal transportation system
- Strengthen economic development efforts
- Exert leadership in creative problem solving

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

Approved June 2, 1993  
Reaffirmed March 6, 1996