



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

AGENDA
Board of Directors Meeting
June 5, 2013

*******Start Time: 10:00 a.m. (CLOSED SESSION)*******
1170 W. 3rd Street, 2nd Floor (The Super Chief)

******Convene Regular Meeting at 10:30 a.m.******
1st Floor Lobby

LOCATION
San Bernardino Associated Governments
Santa Fe Depot - SANBAG Lobby 1st Floor
1170 W. 3rd Street, San Bernardino, CA

Board of Directors

President

Janice Rutherford, Supervisor
County of San Bernardino

Vice-President

Mike Leonard, Council Member
City of Hesperia

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

Dennis Yates, Mayor
City of Chino

Ed Graham, Vice Mayor
City of Chino Hills

Frank Navarro, Council Member
City of Colton

Michael Tahan, Council Member
City of Fontana

Walt Stanckiewicz, Mayor
City of Grand Terrace

Larry McCallon, Mayor
City of Highland

Rhodes "Dusty" Rigsby, Mayor
City of Loma Linda

Paul Eaton, Mayor
City of Montclair

Edward Paget, Mayor
City of Needles

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

Patrick Morris, Mayor
City of San Bernardino

Jim Harris, Council Member
City of Twentynine Palms

Ray Musser, Mayor
City of Upland

Ryan McEachron, Mayor Pro Tem
City of Victorville

Dick Riddell, Council Member
City of Yucaipa

George Huntington, Council Member
Town of Yucca Valley

Robert A. Lovingood, Supervisor
County of San Bernardino

James Ramos, Supervisor
County of San Bernardino

Gary Ovitt, Supervisor
County of San Bernardino

Josie Gonzales, Supervisor
County of San Bernardino

Basem Muallem, Caltrans
Ex-Officio Member

Ray Wolfe, *Executive Director*

Eileen Teichert, *SANBAG Counsel*

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

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

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

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

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

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

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

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

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

AGENDA

**Board of Directors
June 5, 2013**

*****10:00 a.m. (CLOSED SESSION)***
1170 W. 3rd Street, 2st Floor (The Super Chief)
San Bernardino, CA**

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Existing litigation pursuant to Government Code Section 54956.9, subdivision (a), with respect to the following matters:

SANBAG sbX Parcel #	Case Name and Number
B-239	<u>SANBAG v. Orange Show Road Properties, LLC, et al.,</u> San Bernardino County Superior Court Case No. CIVDS 1104962
B-243	<u>SANBAG v. World Oil Marketing Company,</u> San Bernardino County Superior Court Case No. CIVDS 1104963

**** Convene Regular Meeting at 10:30 a.m. ****
1170 W. 3rd Street, 1st Floor Lobby, San Bernardino

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional meeting procedures and agenda explanations are attached to the end of this agenda.

Call to Order 10:30 a.m. by Supervisor Janice Rutherford

- I. Pledge of Allegiance
- II. Attendance
- III. Announcements:
 - Calendar of Events (Pg. 15)
- IV. Agenda Notices/Modifications – Vicki Watson

1. **Possible Conflict of Interest Issues for the Board Meeting of June 5, 2013** Pg. 16

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

Consent Calendar

Items listed on the Consent Calendar are expected to be routine and non-controversial. These items have been discussed at SANBAG Policy Committee meetings and made available for public review as noted in the agenda. The Consent Calendar will be acted upon as a single motion. Items on the Consent Calendar may be removed for discussion by Board Member Request. Items pulled from the consent calendar will be brought up under Agenda Item 19.

Administrative Matters

2. **Board of Directors Attendance Roster** Pg. 18

3. **April 2013 Procurement Report** Pg. 22

Receive April 2013 Procurement Report. **William Stawarski**

This item was received by the General Policy Committee on May 8, 2013.

4. **Lease of Unit No. 140 at the San Bernardino Santa Fe Depot** Pg. 27

Approve Lease Agreement C13126 with Southern California Association of Governments in the amount of \$101,232 for Unit No. 140, approximately 1800 square feet at the San Bernardino Santa Fe Depot. **Duane Baker**

This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel and Contract Administrator have approved this item and Contract as to form.

5. **Change the SANBAG Friday Public Business Hours** Pg. 48

Approve a change in public business hours on Fridays from 8:00 a.m.-5:00 p.m. to 8:00 a.m. – 4:00 p.m. **Duane Baker**

This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013.

6. **Replace SANBAG Owned Smartphones with a Communications Technology Stipend** Pg. 50

Authorize the Executive Director to replace the issuance of SANBAG owned smartphones with a communications technology stipend not to exceed \$41.54/pay period (which is equivalent to \$90/month) and to be adjusted each year to reflect changes in the monthly cost of an unlimited talk, text and 1 gigabyte of data plan to essential staff approved by the Executive Director. **Duane Baker**

This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013.

Consent Calendar Continued....

Administrative Matters (Cont.)

7. **Executive Director Employment Contract Amendment** Pg. 52
Approve Amendment No. 1 to Employment Contract No. C12222 with Executive Director, Raymond W. Wolfe. **Janice Rutherford**
This item is scheduled for review by the Board of Directors on June 5, 2013, and has not had prior policy committee review.

Air Quality/Traveler

8. **Award Contract for Call Box Maintenance Services** Pg. 55
Award Contract No. C13142, to CASE Systems, Inc., for call box maintenance services, for a three-year period, not to exceed \$1,895,620. Two one-year options are included in the contract as well and as outlined in the Financial Impact Section. **Duane Baker**
This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the contract.

Regional/Subregional Planning

9. **National Bike Month (May) and status report on SANBAG Active Transportation activities** Pg. 74
Receive information on National Bike Month and a status report on SANBAG Active Transportation activities. **Steve Smith**
This item was received by the General Policy Committee on May 8, 2013.

Project Delivery

10. **Option Agreement with the City of Colton to transfer the City's vacant substation property for the Laurel Street Grade Separation Project** Pg. 85
That the Board of Directors, acting as the San Bernardino County Transportation Commission approve Option Agreement No. C13106 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 was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. SANBAG Contract Administrator and outside Right-of-Way Legal Counsel have reviewed this item and the contract.

Consent Calendar Continued....

Project Delivery (Cont.)

11. Replacement of De-Obligated Transportation Enhancement Funds Pg. 96

Approve replacing receivable of \$80,000 of Transportation Enhancement funds with Measure I 1990 – Major Project funds.
Garry Cohoe

This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013.

12. Right-of-Way Signatory and Approval Authority Policy Pg. 98

Acting as the San Bernardino County Transportation Commission approve new Policy 34509 to establish right-of-way signatory and approval authority for the Measure I Program, Commuter Rail/Transit and non-Measure I funded projects. **Paula Beauchamp**

This item was reviewed by the Right-of-Way Ad hoc Committee on March 27, 2013 and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel has reviewed this item and Policy 35409.

13. Lenwood Road Grade Separation Project Pg. 106

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

1. Approve award of Contract No. C13032 with Simon Wong Engineering for Construction Management services for the Lenwood Road Grade Separation Project in an amount not-to-exceed \$2,493,341.00, provided that the award of the contract and the authorization to execute the contract are contingent upon Caltrans' issuance of a Conformance Letter and correction of any noted deficiencies, as required by Caltrans' Local Assistance Procedures Manual.

2. Approve a contingency amount for Contract No. C13032 of \$249,334.00 and authorize the Executive Director or designee to release contingency as necessary for the project.

3. Approve issuance of a Purchase Order in the amount of \$50,000.00 to cover the cost of the preconstruction services so that work can commence prior to the issuance of the federal funds for construction.
Garry Cohoe

This item was reviewed and unanimously recommended for approval by the Mountain/Desert Policy Committee on May 17, 2013. SANBAG General Counsel and Contract Administrator have approved this item and the contract.

Consent Calendar Continued....

Transit/Rail

14. **Amendment No. 1 for Contract No. C11174 Valley Transportation Services** Pg. 157

Approve Amendment No. 1 to Contract No. C11174 with Valley Transportation Services. **Mitch Alderman**

This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel, Contract Administrator and Fund Administration have approved this item and the Amendment.

15. **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. 172

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. **Mitch Alderman**

This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. SANBAG General Counsel and Contract Administrator have approved this item and the Contracts.

Transportation Fund Administration

16. **Eastern California Transportation Planning Partnership Memorandum of Understanding** Pg. 215

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

Approve an Amendment to the Eastern California Transportation Planning Partnership Memorandum of Understanding to include support for future State Regional Improvement Program funding for the State Route 58 Corridor from Interstate 5 to Interstate 40. **Andrea Zureick**

This item was reviewed and unanimously recommended for approval by the Mountain/Desert Committee on May 17, 2013. SANBAG General Counsel has approved this item and the Memorandum of Understanding.

Consent Calendar Continued....

Transportation Fund Administration (Cont.)

17. **Cooperative Agreement C13147 for the US395 Widening Project** Pg. 221

That the Board, acting in its capacity as the San Bernardino County Transportation Commission, approve Cooperative Agreement C13147 with the California Department of Transportation in the amount of \$6,015,354 for the US395 Widening Project Design Phase.
Andrea Zureick

This item was reviewed and unanimously recommended for approval by the Mountain/Desert Committee on May 17, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Cooperative Agreement.

18. **Allocation of Project Development/Traffic Management System Funds to the City of Hesperia** Pg. 249

That the Board, acting in its capacity as the San Bernardino County Transportation Authority, allocate \$40,000 in Measure I Victor Valley Project Development/Transportation Management System funds for the City of Hesperia's Main Street Traffic Light Synchronization Project, contingent on allocation of Proposition 1B fund to the project.
Andrea Zureick

This item was reviewed and unanimously recommended for approval by the Mountain/Desert Committee on May 17, 2013.

Consent Calendar Items Pulled for Discussion

19. Items pulled from the consent calendar shall be taken under this item in the order they were presented on the calendar.

DISCUSSION ITEMS

Council of Governments

20. **Update on Court Closure Issue in San Bernardino County** Pg. 252

Receive a presentation from San Bernardino County Superior Court Presiding Judge Marsha Slough on recent activity related to court funding and court closures throughout the County. **Duane Baker**

(10 Min.)

This item has not received prior policy committee or technical advisory committee review.

Discussion Items Continued.....

Council of Governments (Cont.)

21. **Resolution of Intention to Modify the Home Energy and Renovation Opportunity (HERO) Program Report to Add the Town of Apple Valley and the Cities of Needles, Redlands, and Upland and to Set a Public Hearing on the Matter** Pg. 254

1. Adopt Resolution No. 13-086 that declares SANBAG's intention to modify the SANBAG HERO Program Report so as to expand the program area within which contractual assessments may be offered.

2. Set a public hearing for Wednesday, July 3, 2013 at 10:30 a.m. at the regularly scheduled Board of Directors meeting to consider the proposed modifications to the HERO Program Report and the expansion of the program area and to take public testimony.
Duane Baker

This item has not received prior policy committee or technical advisory committee review.

Administrative Matters

22. **SANBAG 2013/2014 Proposed Budget** Pg. 258

1. Conduct the Public Hearing for the proposed Fiscal Year 2013/2014 budget; and

2. Adopt the SANBAG Fiscal Year 2013/2014 budget.
William Stawarski

This item was reviewed by the General Policy Committee on May 8, 2013, in conjunction with the Board of Directors Budget Workshop. All four (4) of the SANBAG policy committees have reviewed task descriptions and budgets for activities under their purview during the past month.

23. **Appropriations Limitation for Fiscal Year 2013/2014** Pg. 260

Adopt Resolution 13-084 to establish an appropriations limit at \$1,003,154,656. **William Stawarski**

The item was not available for review by the General Policy Committee on May 8, 2013; therefore, the Committee approved bringing this item directly to the Board of Directors meeting on June 5, 2013, in conjunction with the adoption of the Fiscal Year 2013/2014 budget.

Discussion Items Continued.....

Administrative Matters (Cont.)

24. Announcement of Vacancies and Appointments on Regional Committees Pg. 263

1. Note the Presidential appointment of Needles Mayor Edward Paget to the Southern California Association of Governments (SCAG) Community, Economic and Human Development Committee.

2. Note one vacancy on the SCAG Energy and Environment Committee. **Duane Baker**

This item has not received prior policy committee or technical advisory committee review.

Project Delivery

25. Amend Agreement for lease of construction field office space for Interstate 215 (I-215) Segments 1 & 2 Freeway Project Pg. 265

That the Board acting in its capacity as the San Bernardino County Transportation Authority approve Amendment No. 2 to SANBAG Contract C06049 between SANBAG and the Mountain Business Park extending the duration of the agreement until April 30, 2014, at current rental rate of \$6,419.56 and establish \$10,000 contingency be added to address any unforeseen demobilization costs. **Garry Cohoe**

This item has not had prior Policy Committee or Technical Advisory Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item and Agreements.

26. Award Construction Contract No. C13002 for State Route 210 Freeway Segment 11 Landscaping Project Pg. 270

That the San Bernardino County Transportation Authority:

1. Reject as non-responsive the apparent low bid from YAKAR for failure to provide required Disadvantaged Business Enterprise documentation as required by the Invitation for Bids , and

2. Award Construction Contract No. C13002 to Kasa Construction, Inc. as the lowest responsive and responsible bidder for the State Route 210 Freeway Segment 11 Landscaping Project in the amount of \$3,807,318.30, and

3. Approve Allowances/Contingency for Contract No. C13002 on the State Route 210 Freeway Segment 11 Landscaping Project in the amount of \$445,031.83 and authorize the Executive Director or designee to release as necessary for the project. **Garry Cohoe**

This item has not had prior Policy Committee or Technical Advisory Committee review. At the October 2012, Board meeting, the Board approved taking award of Contract No. 13002 directly to the Board without prior Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.

Discussion Items Continued.....

Project Delivery (Cont.)

27. Interstate 15 Base Line Road Interchange Improvements

Pg. 309

That the Board of Directors:

1. Acting as the San Bernardino County Transportation Authority 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, with SANBAG's share not to exceed \$20,481,000, and waive the five-year contract term limits of SANBAG Policy No. 11000 Art. V (F) for this contract that terminates upon reimbursement of eligible costs by Authority; and

2. Acting as the San Bernardino County Transportation Authority, 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 waive the five-year contract term limits of SANBAG Policy No. 11000 Art. V (F) for this contract that terminates the later of December 31, 2018, or the termination of the construction contract; and

3. Acting as the San Bernardino County Transportation Authority, authorize the Executive Director or his designee to execute an escrow agreement, that is consistent with the requirements of Agreement No. R13028 and is approved as to form by General Counsel, for escrow of construction funds deposited by the City of Rancho Cucamonga pursuant to Agreement No. R13028; and

4. Acting as the San Bernardino County Transportation Commission, 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. Acting as the San Bernardino County Transportation Commission, approve taking the recommendation for award of the construction contract directly to the Board without prior Board Metro Valley Study Session review. **Garry Cohoe**

This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013, however, subsequent to the meeting, funding changes occurred and generated the need to update the recommendations. SANBAG General Counsel and Contract Administrator have reviewed this item and Agreements.

Discussion Items Continued.....

Project Delivery (Cont.)

28. **Amendment to Project Management Contract with Chad Costello** Pg. 342

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 was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Amendment.

Transportation Fund Administration

29. **Railroad Grade Separation Project Funding Agreements in the City of Ontario** Pg. 348

That the San Bernardino County Transportation Authority:

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.

4. Approve a public share contribution of up to \$51,933,000 for the construction of the South Milliken Avenue Grade Separation project, based on current construction cost estimates.

5. Approve a public share contribution of up to \$38,981,000 for the construction of the South Milliken Avenue Grade Separation project, based on current construction cost estimates. **Andrea Zureick**

Recommendations 1, 2, and 3 were reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. Recommendations 4 and 5 have not been reviewed by a policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item, the contracts and the amendment.

Discussion Items Continued....

Transit/Commuter Rail

30. Federal Transit Administration (FTA) Section 5310 Grant Applications Pg. 376

That the Board, acting as the County Transportation Commission:

1. Adopt prioritization of applications received from Omnitrans and OPARC
2. Approve amending the Federal Transportation Improvement Program (FTIP) to include projects applied for by San Bernardino County entities; and
3. Adopt Resolution No. 13-085 certifying the projects recommended for funding are consistent with the Regional Transportation Plan. **Mitch Alderman**

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

Administrative Matters

31. Adoption of Proposed Amended Bylaws Pg. 381

Adopt the San Bernardino Associated Governments (SANBAG) Amended Bylaws to be effective immediately June 5, 2013. **Rhodes (Dusty) Rigsby, Eileen Monaghan Teichert**

Proposed amended Bylaws were provided by the Bylaws Ad Hoc Committee to the Board of Directors February 14, 2013, and reviewed and discussed by the Board of Directors on April 11, 2013, and May 1, 2013. This item and the proposed Amended Bylaws have been reviewed and approved as to legal form by SANBAG's General Counsel.

32. Results of Caucus Meetings to Select the Board Nominating Committee and Election of the Board President and Vice President Pg. 399

Report the results of the subarea caucus meetings to select members to the Board of Directors Nominating Committee; note the nominations for Board President and Vice President as submitted by the Nominating Committee; and conduct election for President and Vice President of the SANBAG Board of Directors for 2013/2014. **Duane Baker**

This item has not received prior policy committee or technical advisory committee review.

Discussion Items Continued....

Council of Governments

33. Legislative Update Pg. 401

1. Receive State update from SANBAG's State Advocate, Mark Watts
2. Receive Legislative Bill Matrix and adopt the following positions on State Legislation:
 - a. Support in Concept AB 268 (Holden, D-Pasadena)
 - b. Support AB 466 (Quirk-Silva, D-Fullerton)
 - c. Support AB 574 (Lowenthal, D-Long Beach)
 - d. Oppose AB 431 (Mullin, D-San Francisco)
3. Receive summary of California Air Resources Board (CARB) Cap and Trade Investment Plan
4. Receive Federal Update
 - a. Support H.R. 1676 (Cook, R-Yucca Valley)

Wendy Strack

This item was presented at the General Policy Committee on May 8, 2013.

Comments from Board Members

Brief Comments from Board of Directors

Executive Director's Comments

Brief Comments from the Executive Director

Public Comment

Brief Comments by the General Public

ADJOURNMENT

Additional Information

Agency Reports/Committee Memberships

South Coast Air Quality Management Report Pg. 449

Mayor Dennis Yates

Mobile Source Air Pollution Reduction Review Committee

Mayor Larry McCallon (*No Report This Month*)

SCAG Committees

Pg. 452

SCAG Regional Council

SCAG Policy Committees

Community, Economic and Human Development

Energy and Environment

Transportation and Communications

SANBAG Policy Committees

Pg. 453

Acronym List

Pg. 459

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

Meeting Procedures and Rules of Conduct

Meeting Procedures

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

Accessibility

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

Agendas – All agendas are posted at 1170 W. 3rd Street, 2nd Floor, San Bernardino at least 72 hours in advance of the meeting. Complete packages of this agenda are available for public review at the SANBAG offices and our website: www.sanbag.ca.gov. Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

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 SANBAG Clerk prior to the Board's consideration of the item. A “Request to Speak” form must be completed for *each* item when 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. The time limits established in “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

Important Dates to Remember...

June 2013

SANBAG Meetings – Cancelled: None

SANBAG Meetings – Scheduled:

General Policy Committee	June 12	9:00 am	The Super Chief
Metro Valley Board Study Session	June 13	9:00 am	The Super Chief
Commuter Rail & Transit Committee	June 20	10:00 am	The Super Chief
Mountain/Desert Committee	June 21	9:30 am	Town of Apple Valley

Other Meetings/Events:

Interstate 10 Westbound Widening Project Dedication Ceremony	June 14	10:00 am	Park n' Ride Lot at Yucaipa Blvd. WB On-ramp
SANBAG 3 rd Annual General Assembly	June 20	6:00-8:30 pm	Ontario Convention Center
I-15/I-215 Devore Interchange Groundbreaking Ceremony	June 28	10:00 am	Near Devore bridge over I-215

REMINDER: NO SANBAG Committee Meetings in July.

For additional information, please call SANBAG at (909) 884-8276



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

Minute Action

REVISED AGENDA ITEM: 1

Date: June 5, 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:

Closed Session #1 – Conference with Legal Counsel – Existing Litigation

<u>PARCEL</u>	<u>POTENTIAL CONFLICTS OF INTEREST</u>
B-239	ORANGE SHOW ROAD PROPERTIES, LLC, a California limited liability company; SB OIL, INC., a California corporation
B-243	WORLD OIL MARKETING COMPANY, a California corporation (Officers/Directors: Bernard B. Roth; Toshiko G. Chan; Robert S. Roth; Florence Roth; Richard N. Roth; Steven F. Roth)

Consent/Discussion Calendar Items

Item No.	Contract No.	Principals & Agents	Subcontractors
7	C12222-01	Raymond W. Wolfe	None
8	C13142	CASE Systems, Inc. Sebastian Gutierrez	N/A

*Approved
Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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Check all that apply
 BRD1306z-aa

Consent/Discussion Calendar Items

Item No.	Contract No.	Principals & Agents	Subcontractors
13	C13032	Simon Wong Engineering <i>Marc McIntyre</i>	DHS Consulting, Inc. Dynamic Engineering Services, Inc. CHJ Consultants Leighton Consulting, Inc. Towill Inc.
14	C11174-01	Valley Transportation Services <i>Beth Kranda</i>	None
15	R13144	Time Warner Cable Pacific West, LLC <i>Estella Garcia</i>	None
15	R13145	Optimum, Inc. <i>Louis LaBarge</i>	None
25	C06049-02	Mountain Business Park <i>Greg Cullen</i>	None
26	C13002	Kasa Construction, Inc. <i>Diana Kasbar</i>	Turboscape, Inc. MSL Electric, Inc. Quality Hydroseeding Treesmith Enterprises, Inc.
28	C10006-02	Chad Costello	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 ATTENDANCE RECORD – 2013

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

X = member attended meeting. * = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.
brdatt12 Page 1 of 2

BOARD OF DIRECTORS ATTENDANCE RECORD – 2013

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

X = member attended meeting. * = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.
 brdatt12 Page 2 of 2

BOARD OF DIRECTORS ATTENDANCE RECORD – 2012

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Gary Ovitt Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	
Brad Mitzelfelt Board of Supervisors	X	X		X	X		X	X			X	
James Ramos Board of Supervisors												X
Janice Rutherford Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X
Josie Gonzales Board of Supervisors	X	X		X	X	X	X	X		X		X
Neil Derry Board of Supervisors		X	X	X	X		X					
Robert A. Lovingood Board of Supervisors												X
Cari Thomas City of Adelanto	X	X	X	X	X	X	X	X	X	X	X	X
Rick Roelle Town of Apple Valley	*	X	X	X	X		X	X	X	X	*	*
Julie McIntyre City of Barstow	X	X	X		X		X	X	X	X	X	X
Bill Jahn City of Big Bear Lake	X	X	X	X	X			X		X		X
Dennis Yates City of Chino	X	X	X	X	X	X	X	X	X	X		X
Ed Graham City of Chino Hills	X	X	X	X	X	X	X	X	X	X	X	X
Sarah Zamora City of Colton	X	*	X	X	X	X	X	X	X	X	*	X
Michael Tahan City of Fontana	X	X		X	X	X		X	X	X	X	X
Walt Stanckiewicz City of Grand Terrace	X	X	X	X	X	X			X	X	X	X
Mike Leonard City of Hesperia	X	X	X	X	X	X	X	X		X	X	X

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 ATTENDANCE RECORD – 2012

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Larry McCallon City of Highland	X	X	X	X	X	X		X		X	X	*
Rhodes 'Dusty' Rigbsy City of Loma Linda	X	X	X	X	X	X	X	X	X	X	X	X
Paul Eaton City of Montclair	X	X	X		X	X	X		X	X	X	X
Edward Paget City of Needles	X	X	X	X	X	X	X	X	X			X
Alan Wapner City of Ontario	X	X	X	X	X	X	X	X		X	X	X
L. Dennis Michael City of Rancho Cucamonga	X	X	X	*	X	X		X	X	*	X	X
Pete Aguilar City of Redlands	X	X	X	X	X	X	X	X	X	X	X	X
Ed Scott City of Rialto	X	X	X	X	X	X	X	X	X			
Patrick Morris City of San Bernardino	X	X	X	X	X	X		X	X	X	X	X
Jim Harris City of Twentynine Palms	X	X	X	X	X	X	X	X		X	X	X
Ray Musser City of Upland	X	X	X	X	X	X	X	X	X	X	X	X
Ryan McEachron City of Victorville	X	X		X	X	X		X	X	X	X	X
Dick Riddell City of Yucaipa	X	X	X	X	X	X	X	X	X	X	X	X
George Huntington Town of Yucca Valley	X	X	X	X	X	X	X	X	X	X	X	X
Ray Wolfe Ex-Official Member	X	X	X	X								
Syed Raza Ex-Official Member					X							
Basem Muallem Ex-Official Member												
						X	X	X	Syed Raza	X	X	Robert So

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: June 5, 2013
Subject: April 2013 Procurement Report
Recommendation:* Receive April 2013 Procurement Report

Background: The Board of Directors adopted the Contracting and Procurement Policy (Policy No. 11000) on January 3, 1997, and approved the last revision on March 6, 2013. On February 6, 2013, the Board of Directors authorized the Executive Director, or designee, to approve: a) contracts and purchase orders up to \$100,000; b) amendments with a zero dollar value; c) amendments to exercise the option term if the option term was approved by the Board of Directors in the original contract; and d) amendments that cumulatively do not exceed 50% of the original contract value or \$100,000, whichever is less and to release Request For Proposal (RFP), Request For Quote (RFQ) and Invitation For Bid (IFB) for proposed contracts from which funding has been approved in San Bernardino Associated Governments (SANBAG's) Annual Budget, and which are estimated not-to-exceed \$1,000,000. SANBAG staff has compiled this report that summarizes all contract actions approved by the Executive Director, or designee.

On July 11, 2012, the Board of Directors authorized SANBAG's General Counsel to award and execute legal services contracts up to \$50,000 with outside counsel as needed on behalf of SANBAG and its authorities organized under the umbrella of the Council of Governments. Also, periodically notify the Board after exercising such authority.

*Approved
 Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

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

BRD1306a-wws

Attachment: <http://portal.sanbag.ca.gov/mgmt/committee/gpc/gpc2013/gpc1305/AgendaItems/BRD1306a1-wws.docx>
<http://portal.sanbag.ca.gov/mgmt/committee/gpc/gpc2013/gpc1305/AgendaItems/BRD1306a2-wws.docx>

A list of all Contracts and Purchase Orders that were executed by the Executive Director and/or General Counsel during the month of April is presented herein as Attachment A, and all RFPs and IFBs are presented in Attachment B.

Financial Impact: This item imposes no impact on the Fiscal Year 2012/2013 budget. Presentation of the monthly procurement report demonstrates compliance with the Contracting and Procurement Policy (Policy No. 11000).

Reviewed By: This item was received by the General Policy Committee on May 8, 2013.

Responsible Staff: William Stawarski, Chief Financial Officer

Attachment A
April 1-24 Contract/Purchase Order Actions

Contracts Executed:

Contract No.	Description of Specific Services	Vendor Name	Dollar Amount	Description of Overall Program
C13131	On-line legal research database	LexisNexis	\$19,764.00	Research tool for general legal requirements
			Total	\$19,764.00

Contract Amendments Executed:

Contract No. & Amendment No.	Reason for Amendment	Vendor Name	Dollar Amount of Amendment	Amended Contract Total
C13047 Amendment No. 1	Increase contract amount to fully cover I-10 Westbound Construction Project	Steve's Towing	\$94,815.00	\$386,375.00
C09179 Amendment No. 2	Increase amount will allow Advantec to deliver as-built drawings based on red-line drawings	Advantec Consulting Engineering	\$9,000.00	\$2,671,549.00
C10183 Amendment No. 1	Contract extension and amend billing rate schedule	Hernandez, Kroone and Associates	\$0.00	\$3,576,641.00
			Total	\$6,634,565.00

Attachment A

April 1-24 Contract/Purchase Order Actions

Purchase Orders:

PO No.	PO Issue Date	Vendor Name	Description of Services	Dollar Amount
4000916	02/27/13	BNSF Railway Company	Revised purchase order to provide flag protection for the Metrolink Eastern Maintenance Facility Expansion Project. Initial purchase order amount was for \$50,000. Due to result of unforeseen subsurface conditions; the cost of flagging has increased to \$100,000. Conditions included conflicts and relocation thereof a Sprint fiber optic line conflicting with shoring, subsurface debris causing additional drilling, and a perched water table causing over-sized drilling, slurry back-fill, and re-drilling.	\$100,000.00
4000988	03/29/13	COGENT Communications	Internet service provider – 12 months and base monthly fee.	\$17,824.00
4000990	04/15/13	Real Estate Consulting & Services, Inc.	Services to board up residential and commercial structures.	\$13,498.00
4000991	04/15/13	Willdan Engineering	Vendor is sole source from the City of San Bernardino's pre-approved outside plan check consultants. Willdan will perform plan check required for the San Bernardino Transit Center and also for the San Bernardino Passenger Rail Project.	\$28,050.00
4000989	04/08/13	Sigmanet, Inc.	Purchase Cisco network equipment to replace firewall thru Sigmanet to ensure internet performs well, is protected, and can handle additional bandwidth.	\$8,448.28
<i>*Note: Sole Source justification is noted in the Purpose statement, if applicable.</i>				Total
				\$167,820.28

Attachment B
April 1-24 RFPs and IFBs

Release of RFP's and IFB's

Release Date	RFP/IFB No.	Description of Services	Anticipated Dollar Amount	Anticipated Award Date	Description of Overall Program and Program Budget
04/08/2013	13074	Construction Management Services	\$225,500.00	July 3, 2013	Construction Management Services for the I-10 Riverside Ave Interchange Landscaping Maintenance Project.
				Total	\$225,500.00



- 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: June 5, 2013

Subject: Lease of Unit No. 140 at the San Bernardino Santa Fe Depot

Recommendation: Approve Lease Agreement C13126 with Southern California Association of Governments in the amount of \$101,232 for Unit No. 140, approximately 1800 square feet at the San Bernardino Santa Fe Depot.

Background: San Bernardino Associated Governments acting as the San Bernardino County Transportation Commission, (SANBAG) and the City of San Bernardino (CITY), as co-owners of the San Bernardino Santa Fe Depot (DEPOT) as Tenants-in-Common, share the responsibilities for the DEPOT as written in Cooperative Agreement A04040. Pursuant to the Agreement, the CITY has delegated to SANBAG all authority to enter into leases at the DEPOT.

Southern California Association of Governments (SCAG) has been a tenant at the DEPOT since April 2009. The original four year Lease Agreement No. C09181 between SANBAG and SCAG expired on February 28, 2013. It is SCAG's desire to continue using the location as its regional office. Having SCAG located in the same building as SANBAG has been beneficial to the agencies that we both serve and to each other.

CityCom, the DEPOT property manager, has prepared a new lease agreement for the Board's approval. The terms of the lease are generally:

1. Premises – Unit No. 140, approx. 1800 sf.
2. Term –Five years with two 1-year options to extend

*Approved
 Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG	CTC	x	CTA	SAFE	CMA
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Check all that apply.

3. Base rent - \$1,620 per month for the first year with an annual rent increase of 3%.
4. Common Area Maintenance (CAM) – SCAG will pay 4.1% of the total estimated common area expenses reconciled to actual expenses annually. CAM expenses include general maintenance, maintenance of landscaping and parking lot, utilities to the common area, and security. It is estimated that the CAM cost will be \$1,267 per month in the first year.
5. Rent and CAM Abatement – Base Rent and CAM charges to be abated for the first two months in exchange for SCAG performing their own tenant improvements. Improvements include demolishing pony wall partitions, adding/moving phone and data drops, additional lighting, carpet and drywall repair, doorbell installation, room divider installation, and interior window installations.
6. Parking - Nine reserved parking spaces.

Financial Impact: This item is consistent with the SANBAG Fiscal Year 2012/2013 budget. All revenue collected under this lease will be retained by CityCom who is responsible for the administration of all leases at the DEPOT. The lease revenue of \$101,232 will be deposited with other lease revenue received from leasing space at the DEPOT and used to offset expenses incurred related to the property management of the DEPOT. The estimated \$73,486 for CAM maintenance will be applied against the DEPOT common area expenses.

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel and Contract Administrator have approved this item and Contract as to form.

Responsible Staff: Duane A. Baker, Director of Management Services



CONTRACT SUMMARY SHEET

Contract No. C 13128 Amendment No. _____

By and Between

San Bernardino County Transportation Commission and Southern California Association of Governments

Contract Description Lease Agreement - Santa Fe Depot Unit No. 140

Board of Director's Meeting Date: June 5, 2013
 Overview of BOD Action: Approval of five year lease agreement with two 1-year options to extend

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW			
Original Contract Amount	\$	101,232.00	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	0	Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$	0	Contingency Amendment
TOTAL CONTRACT VALUE	\$	101,232.00	TOTAL CONTINGENCY VALUE
			\$ 0
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 101,232.00

Contract Start Date 8/5/13	Current Contract Expiration Date 5/31/18	Revised Contract Expiration Date
Has the contract term been amended? <input type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0805.
 A Budget Amendment is required.

How are we funding current FY?

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

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

All revenue collected under this lease will be administered by the depot property management firm hired by SANBAG. The combined lease and CAM revenue are estimated to be \$174,718 and will be used to offset expenses incurred related to the property management of the Depot and common area expenses.

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

Colleen Franco
Project Manager (Print Name)

Duane A. Saker
Task Manager (Print Name)

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

Jeffery Hill
Contract Administrator (Print Name)

W. STANBURN
Chief Financial Officer (Print Name)

Colleen E Franco 4/23/13
Signature Date

Duane A. Saker 4-23-13
Signature Date

Andrea Zureick 4/25/13
Signature Date

Jeffery Hill 4/25/13
Signature Date

W. Stanburn 4/23/13
Signature Date

CONTRACT NO: C13126

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

AND

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

C13126

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1. Summary of Lease Provisions

1.01 **Parties:** This Lease, dated, for reference purposes only, June 5, 2013, is made by and between San Bernardino County Transportation Commission (SANBAG) (herein called "Landlord") and Southern California Association of Governments (SCAG) (herein called "Tenant").

1.02 **Premises:** Unit Number(s) 140, consisting of 1,800 rentable square feet, more or less, as defined in Section 2 (the "Premises").

1.03 **Building:** Commonly described as being located at 1170 West 3rd Street in the City of San Bernardino, County of San Bernardino, State of California.

1.04 **Term:** Five (5) years, commencing June 1, 2013 ("Commencement Date") and ending May 31, 2018, as defined in Section 5.

1.05 **Base Rent:** \$.90 per rentable square foot of Premises per month, payable on the first calendar day of each month, per Section 6.

1.06 **Base Rent Increase:** Annually, the monthly Base Rent payable under Section 1.05 shall be adjusted as provided in Section 7.

1.07 **Late Charges:** 8% if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord within five (5) business days after the first day of each month.

1.08 **Security Deposit:** \$0.00.

1.09 **Tenant's Share of Common Area Operating Expenses:** 4.1% as defined in Section 8.

1.10 **Parking:** Any available unreserved and unassigned vehicle parking spaces for Tenant's visitors (who shall not utilize any spaces reserved for other occupants of the Depot), and nine (9) reserved parking spaces for Tenant's employees, as provided for in Section 4.

1.11 **Use:** SCAG Regional Offices.

1.12 **Utilities:** Provided by Landlord (subject to reimbursement as may be provided for in this Lease): Water/Sewer/Gas/Trash Provided by Tenant: Electricity/Phone/Data, as further defined and subject to the provisions in Section 11.

1.13 **Maintenance & Repairs:** Interior of Premises maintained by Tenant; Exterior of Building maintained by Landlord subject to and in accordance with Section 10.

1.14 **Insurance:** \$1,000,000 liability policy required to be carried by Tenant prior to Occupancy - see Section 13.

1.15 **Options to Extend:** Tenant has two (2) Options to Extend the term of this Lease for a period of one (1) year each, as provided for in Section 25.

1.16 **Tenant Improvements:** (check one)

- Tenant to accept Premises in as-is condition.
- Landlord to provide Tenant Improvements as provided for in Paragraph ____.
- Tenant to provide Tenant Improvements as provided for in Paragraph 28.

1.17 **Notices:**

To Landlord:

San Bernardino County Transportation
Commission (SANBAG)
c/o City Commercial Management
10722 Arrow Route - Suite 500
Post Office Box 548
Rancho Cucamonga, CA 91729-0548
Telephone: (909) 948-1662
FAX : (909) 948-1340

To Tenant:

Southern California
Association of Governments
Attn: Basil Banas, CFO
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

(213) 236-1800
(213) 236-1825 fax

2. Premises.

Landlord hereby leases to Tenant for the term, at the rental, and upon all of the conditions set forth herein, the Premises as defined in Section 1.02. The Premises, the Building(s), the Common Areas, and the land upon which the same are located, are collectively referred to as the "Depot" (as per the attached Site Plan). It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Landlord and Tenant agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises.

Tenant hereby accepts the Premises and the Depot in their condition existing as of the Lease

1 | Page

Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that it has satisfied by its own independent investigation that the Premises are suitable for its intended use, and that neither Landlord nor Landlord's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Depot for the conduct of Tenant's business.

3. Common Areas.

"Common Areas" are defined as all areas outside the confines of the Premises, including but not limited to parking areas, loading and unloading zones, trash enclosures, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas, and that are within the Depot that are provided and designated for the general non-exclusive use of Landlord, Tenant, and all other Tenants of the Depot. Tenant, Tenant's employees, visitors, and invitees hereby agree to abide by and conform to all rules and regulations, which Landlord shall have the right in its sole reasonable discretion to modify from time to time. Landlord shall have the exclusive control and management of the Common Areas; however, Landlord shall not be responsible for the non-compliance of said rules and regulations by other tenants, employees, and invitees to the Depot. Landlord shall have the right in its sole discretion to (1) make changes to the Building exterior and/or Common Areas; (2) close temporarily any of the Common Areas for maintenance purposes so long as reasonable access remains available; and (3) to add additional improvements to the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

4. Parking.

Tenant shall be entitled to use the vehicle parking spaces as provided for in Section 1.10 on those portions of the Common Areas designated by Landlord for parking. Tenant shall not use more spaces than said maximum number, and spaces shall be used only for vehicles no larger than full-sized passenger vehicles, pick-up trucks, or sport utility vehicles. Any vehicle loading or unloading shall only be permitted in areas and at times designated by Landlord for such activities. Landlord shall have the right, without notice, to tow any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors) that are in violation of any parking rules and regulations, the cost of which shall be the sole responsibility of Tenant.

For Tenant's reserved parking spaces as identified in Section 1.10 of this Lease, five stalls shall be marked "SCAG Only" along the front (south) side of the Depot, and four stalls shall be marked as "SCAG or SANBAG Only" in the parking lot to the east side of the Depot.

5. Term.

"Possession" of the Premises shall be deemed tendered to Tenant when (1) improvements, if any, are substantially completed, and (2) Tenant has been given reasonable access to the Premises, including delivery by Landlord of keys to the Premises. If for any reason Landlord cannot deliver possession of the Premises on the Commencement Date as provided for in Section 1.04, the Commencement Date and ending dates shall be correspondingly extended in relation to the Term of this Lease, and Landlord shall not be subject to any liability, nor shall such delay in commencement affect the validity of this Lease or the obligations of Tenant hereunder (except that Tenant shall not be obligated to pay rent until possession of the Premises has been delivered as provided for herein). However, there shall be no abatement of rent or adjustment of the Commencement Date if such delays are caused by actions of Tenant, Tenant's agents or contractors.

6. Rent.

Rent and Base Rent. Any and all amounts from time to time payable to Landlord by Tenant hereunder shall be referred to herein as Rent, including, but not limited to, Base Rent, and shall be paid in full when due without right of offset, setoff or deduction. Tenant shall pay to Landlord the Base Rent for the Premises as provided of in Section 1.05. Base Rent for any period less than one month shall be prorated based upon the actual number of days in the calendar month involved. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to any such other persons or at any such other places as Landlord may designate in writing.

Common Area Maintenance Expenses ("CAM"). Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share as provided for in Section 1.09 and hereinafter defined, of all Common Area Maintenance Expenses, as herein defined, during each calendar year, also referred to as "CAM Charges", in accordance with the following provisions:

(a) "Common Area Maintenance Expenses" are defined, for purposes of this Lease, as all costs incurred by Landlord, relating to the ownership and operation of the Depot, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, of the following:

(aa) The Common Areas, including parking areas, loading and unloading areas, trash

areas, public restrooms, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, escalators, and roof;

- (bb) Exterior signs and any tenant directories.
- (cc) Fire detection (including monitoring costs) and sprinkler systems.
- (ii) The cost of water, gas, electricity, and telephone to service the Common Areas.
- (iii) Trash disposal, property management, security services, association fees, and the costs of any environmental inspections.
- (iv) Reserves set aside for maintenance and repair of Common Areas.
- (v) Real Property Taxes (as defined in Section 14) for the Building and the Common Areas.
- (vi) The cost of the premiums for the insurance policies maintained by Landlord under Section

13.

- (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
- (viii) Any other services to be provided by Landlord that are stated elsewhere in this Lease to be a Common Area Maintenance Expense.

(ix) Any management fees incurred by Landlord in connection with the operation of the Depot or, at Landlord's option, in lieu of any such management fees, 15% of CAM Charges as computed without regard to this clause (ix).

(b) Any Common Area Maintenance Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Depot or to the operation, repair, and maintenance thereof, shall be allocated entirely to the building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair, and maintenance thereof, shall be equitably allocated by Landlord to all buildings in the Depot.

(c) The inclusion of the improvements, facilities, and services set forth in this Section shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Depot already has the same or Landlord already provides the services.

(d) Tenant's Share of Common Area Operating Expenses (CAM Charges) shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to Landlord by Landlord's agent. At Landlord's option, however, an amount may be estimated by Landlord from time to time of Tenant's Share of annual CAM Charges and the same shall be payable monthly or quarterly, as Landlord shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Landlord shall deliver to Tenant within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual CAM Charges incurred during the preceding year (the "Reconciliation"). If Tenant's payments during said preceding year exceed Tenant's Share as indicated on said Reconciliation, Landlord shall be credited the amount of such overpayment against Tenant's Share of CAM Charges next becoming due. If Tenant's payments during said preceding year were less than Tenant's Share as indicated on said Reconciliation, Tenant shall pay to Landlord the amount of the deficiency within ten (10) days after delivery by Landlord to Tenant of said Reconciliation.

7. Rent Increase.

On each anniversary date of this Lease, the Base Rent shall be increased by CPI Adjustment (see subsection "A" below) or fixed rental adjustment (see subsection "B" below).

~~A. CPI Rental Adjustment ("CPI"): At the times set forth in paragraph 1.06 of the Base Lease Provisions, the monthly Base Rent shall be adjusted by the increase, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers, (1982-84=100), "All Items", for the City nearest the location of the Building, herein referred to as "CPI", since the date of this Lease. The monthly Base Rent shall be calculated as follows: the Base Rent payable for the first month of the term of this Lease shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month during which the adjustment is to take effect, and the denominator of which shall be the CPI for the calendar month in which the original Lease term commences. The sum so calculated shall constitute the new monthly Base Rent hereunder, but, in no event, shall such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the date for the rent adjustment. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculations. Tenant shall continue to pay the rent at the rate previously in effect until the increase, if any, is determined. Within ten (10) days following the date on which the increase is determined, Tenant shall make such payment to Landlord as will bring the increased rental current. Thereafter the rental shall be paid at the increased rate.~~

B. Fixed Rental Adjustment ("FRA"): The Base Rent shall be adjusted by increasing the monthly Base Rent by three percent (3%) each year over the rent for the preceding term.

Months	Monthly Base Rent
*3 - 12	\$.90 per rentable square foot
13 - 24	\$.93 per rentable square foot
25 - 36	\$.95 per rentable square foot
37 - 48	\$.98 per rentable square foot
49 - 60	\$ 1.01 per rentable square foot

* NOTE: MONTHS ONE AND TWO OF BASE RENT AND CAM SHALL BE ABATED IN FULL IN ACCORDANCE WITH SECTION 28 HEREIN.

8. Security Deposit

Tenant shall deposit with Landlord upon execution hereof the Security Deposit set forth in paragraph 1.08 of the Basic Lease Provisions as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount then required of Tenant. If the monthly rent shall, from time to time, increase during the term of this Lease, Tenant shall, at the time of such increase, at Landlord's option, deposit with Landlord additional money as a security deposit so that the total amount of the security deposit held by Landlord shall at all times bear the same proportion to the then current Base Rent as the initial security deposit bears to the initial Base Rent. If Tenant performs all of Tenant's obligations hereunder, said deposit, or so much thereof as has not heretofore been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) at the expiration of the term hereof, and after Tenant has vacated the Premises and delivered possession to Landlord. No trust relationship is created herein between Landlord and Tenant with respect to said Security Deposit. Landlord shall not be required to segregate such deposit from other Landlord moneys and shall not be required to pay any interest thereon.

9. Use.

The Premises shall be used and occupied only for the purpose as provided for in Section 1.11 and for no other purpose. Tenant shall conduct its business in a lawful manner (including obtaining and maintaining any required governmental permits and licenses) and shall not use or permit use of the Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Depot.

10. Maintenance and Repairs.

Landlord's Obligations: Landlord shall keep the Depot foundations, exterior walls, exterior doors and windows, roof, fire sprinkler system and fire/smoke detection equipment, and common areas (as defined above), in good condition and repair; provided, however Landlord shall not be obligated to repair or replace any interior windows, doors or plate glass of the Premises. There shall be no abatement of rent or liability of Tenant on account of any injury or interference with Tenant's business with respect to any improvements, alterations, or repairs made by Landlord to the Depot or any part thereof.

Tenant's Obligations: Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition, and repair (whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements, or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, electrical, lighting facilities, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord. Tenant, in keeping the Premises in good order, condition, and repair, shall exercise and perform good maintenance practices. Tenant's obligations shall include restorations, replacements, or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition, and state of repair. Tenant shall also, at Tenant's sole cost and expense, procure and maintain a contract, with copies to Landlord, in customary form and substance for and with a contractor specializing and experienced in the inspection, maintenance, and service of the heating, air conditioning, and ventilation system for the Premises. However, Landlord reserves the right to procure and maintain the contract for the heating, air conditioning, and ventilation systems, and if Landlord so elects, Tenant shall reimburse Landlord, upon demand, for the cost thereof.

If Tenant fails to perform its obligations under this Section, Landlord may enter upon the Premises after ten (10) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the Premises in good order, condition, and repair.

Hazardous Substances. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material, or waste whose presence, nature, quantity, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety, or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Tenant shall not engage in any activity in or about the Premises which constitutes a use of Hazardous Substances without the express written consent of Landlord and compliance in a timely matter (at Tenant's sole cost and expense) with all governmental requirements (including but not limited to compliance with all laws, rules, regulations, ordinances, directives, covenants, easements, and restrictions of record, permits, and the requirements of any applicable fire insurance underwriter or rating bureau). Landlord may (but without any obligation to do so) condition its consent, if granted, to Tenant's use of any Hazardous Substance upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises, and the environment against damage, contamination, or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises and/or the deposit of an additional Security Deposit. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including, without

limitation, through the plumbing or sanitary sewer system).

Tenant shall indemnify, protect, defend, and hold Landlord, its agents, employees, lenders, and ground Landlord, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of and involving and Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations under this subsection shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration, and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation, or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

11. Utilities & Services.

Landlord shall be responsible for the payment of the following utilities and services that serve the Premises, subject to reimbursement of same as provided for herein (check those that apply):

- Electricity
- Gas
- Water/Sewer
- Telephone & Data Service
- Trash
- Security Alarm Monitoring
- Janitorial Service & Supplies

Tenant shall be responsible for the direct payment or reimbursement to Landlord of the following utilities and services that serve the Premises (check those that apply):

- Electricity
- Gas
- Water/Sewer
- Telephone & Data Service
- Trash
- Security Alarm Monitoring
- Janitorial Service & Supplies

In the event any of Tenant's afore-mentioned utilities are not separately metered to the Premises, Tenant shall pay at Landlord's option, either Tenant's Share or a reasonable proportion to be determined by Landlord of all charges jointly metered with other Premises in the Building.

There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption, or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair, or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

12. Alterations and Additions.

Tenant shall not without Landlord's prior written consent make any alterations, improvements, additions, or repairs (hereinafter collectively referred to as "Alterations") in, on or about the Premises or the Depot. Should Landlord permit Tenant to make its own Alterations, Tenant shall use only contractors that are properly and adequately licensed and insured, and Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's and materialmen's liens and to ensure completion of the work. Any Alterations in or about the Premises or the Depot that Tenant shall desire to make shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent to making such Alteration, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from the applicable governmental agencies, furnishing of a copy thereof to Landlord prior to the commencement of the work, and compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises, the Building, or the Depot, or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in the Premises by Tenant, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Building as provided by law.

All Alterations which may be made on the Premises by Tenant shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be the property of Landlord and shall remain upon and be surrendered with the Premises at the expiration of the Lease term, unless Landlord requires their removal pursuant to Section 18.

13. Insurance and Indemnity.

Liability and Property Insurance - Tenant: Tenant shall provide a certificate of self insurance to Landlord of not less than \$1,000,000 per occurrence of bodily injury and property damage, or Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive General Liability insurance in an amount of not less than \$1,000,000 per occurrence of bodily injury and property damage combined or in a greater amount as reasonably determined by Landlord and shall insure Tenant with Landlord as additional insured against liability arising out of the use, occupancy, or maintenance of the Premises. Compliance with the above requirement shall not, however, limit the liability

of Tenant hereunder. Tenant shall also maintain insurance coverage on all of Tenant's personal property, trade fixtures, and alterations and improvements in, on, or about the Premises similar in coverage to that carried by Landlord (such insurance shall be full replacement cost coverage with a deductible not to exceed \$2,500 per occurrence, and the proceeds from any such insurance shall be used exclusively for the replacement of personal property and the restoration of trade fixtures, alterations, and improvements). Tenant shall deliver to Landlord certificates evidencing the existence and amounts of such insurance within seven (7) days after the Commencement Date of this Lease, and shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals thereof.

The cost of the premiums for the insurance policies maintained by Landlord hereinafter shall be a Common Area Operating Expense.

Liability Insurance - Landlord: Landlord shall obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Broad Form Property Damage Insurance, plus coverage against such other risks Landlord deems advisable from time to time, insuring Landlord, but not Tenant, against liability arising out of the ownership, use, occupancy, or maintenance of the Depot in an amount not less than \$1,000,000 per occurrence.

Property Insurance: Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Depot improvements, but not Tenant's personal property, fixtures, equipment, or tenant improvements, in an amount of the full replacement cost thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, plate glass, and such other perils as Landlord deems advisable or may be required by a lender having a lien on the Depot. In addition, Landlord shall obtain and keep in force, during the term of this Lease, a policy of rental value insurance covering a period of one year, with loss payable to Landlord, which insurance shall also cover all Operating Expenses for said period. Tenant shall not be named in any such policies carried by Landlord and shall have no right to any proceeds therefrom. In the event that the Premises shall suffer any insured losses, the deductible amounts under the applicable insurance policies shall be deemed an Operating Expense. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies carried by Landlord. Tenant shall pay the entirety of any increase in the property insurance premium for the Depot over what it was immediately prior to the commencement of the term of this Lease if the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy or any act or omission of Tenant.

Waiver of Subrogation: Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors, and/or invitees.

Indemnity: Tenant shall indemnify and hold harmless Landlord and its agents, Landlord's master or ground Landlord, partners and lenders, from and against any and all claims for damage to the person or property of anyone or any entity arising from Tenant's use of the Depot, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims, costs and expenses arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, employees, or invitees, and from and against all costs, attorney's fees, expenses and liabilities incurred by Landlord as the result of any such use, conduct, activity, work, things done, permitted or suffered, breach, default, or negligence, and in dealing reasonably therewith, including but not limited to the defense or pursuit of any claim or any action or proceeding involved therein; and in case any action or proceeding be brought against Landlord by reason of any such matter. Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified.

Exemption of Landlord from Liability: Tenant hereby agrees the Landlord shall not be liable to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage results from conditions arising upon the Premises or upon other portions of the Depot, or from other sources or places, or from new construction or the repair, alteration, or improvement of any part of the Depot, or of the equipment, fixtures, or appurtenances applicable thereto, and regardless of whether the cause of such damage or the means or repairing the same is inaccessible. Landlord shall not be liable for any damages arising from any act or neglect of any other Tenant, occupant or user of the Depot, nor from the failure of Landlord to enforce the provisions of any other lease of any other Tenant of the Depot.

14. Property Taxes.

Real Property Taxes: Landlord shall pay real property taxes and associated assessments applicable to the Depot, subject to reimbursement as a Common Area Operating Expense by Tenant in accordance with the provisions of Sections 1.09 and 6. Tenant shall also pay to Landlord the entirety of any increase in real property tax if assessed solely by reason of additional improvements placed upon the Premises by Tenant or at Tenant's request. Real property taxes shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Depot or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agriculture, sanitary, fire, street, drainage or other improvement district thereof.

Personal Property Taxes: Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere.

15. Assignment & Subletting.

Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, without Landlord's prior written consent, which Landlord shall not unreasonably withhold (however, Landlord reserves the right to condition any approval to assign or sublet upon Landlord's determination that (a) the proposed assignee or subtenant shall conduct a business on the Premises of a quality substantially equal to that of Tenant and consistent with the general character of the other occupants of the Depot and not in violation of any exclusives or rights then held by other tenants, and (b) the proposed assignee or subtenant be at least as financially responsible as Tenant was expected to be at the time of the execution of this Lease or of such assignment or subletting, whichever is greater). Regardless of Landlord's consent, no assignment or subletting shall release Tenant of Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent and other sums due Landlord hereunder including Tenant's Share of Operating Expense Increase, and to perform all other obligations to be performed by Tenant hereunder. If Tenant's obligations under this Lease have been guaranteed by third parties, then an assignment or sublease, and Landlord's consent thereto, shall not be effective unless said guarantors give their written consent to such sublease and the terms thereof. The consent by Landlord to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Tenant or to any subsequent or successive assignment or subletting by the subtenant. Landlord shall be a party to, and have the right to review, any proposed subleases and associated documents. If Tenant shall request the consent of Landlord for a proposed assignment or subletting, then Tenant shall pay Landlord's reasonable costs and expenses incurred in connection therewith, including attorneys', architects', engineers', or other consultants' fees.

In the event of any default under this Lease, Landlord may proceed directly against Tenant, any guarantors or anyone else responsible for the performance of this Lease, including the subtenant, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord or Tenant. The discovery of the fact that any financial statement relied upon by Landlord in giving its consent to an assignment or subletting was materially false shall, at Landlord's election, render Landlord's said consent null and void.

16. Default; Breach; Remedies.

Tenant's Default/Breach: The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

(a) The breach by Tenant of any of the covenants, conditions or provisions contained within this Lease, where such breach is of an incurable nature.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, and as when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(c) The failure of Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, where such failure is curable in nature and continues for a period of three (3) business days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than three (3) business days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said three (3) business day period and thereafter diligently pursues such cure to completion. Such three (3) business day notice shall constitute the sole and exclusive notice required to be given to Tenant under applicable Unlawful Detainer statutes.

(d) The discovery by Landlord that any financial statement given to Landlord by Tenant, or its successor in interest or by any guarantor of Tenant's obligation hereunder, was materially false.

Landlord's Default/Breach: Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than three (3) business days after written notice by Tenant to Landlord; provided, however, that if the nature of Landlord's obligation is such that more than three (3) business days are required for performance then Landlord shall not be in default if Landlord commences performance within such three (3) business day period and thereafter diligently pursues the same to completion.

Remedies: In the event of any material default or breach of this Lease by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, recapture of any inducement such as abated rent periods, reasonable attorneys' fees, and any real estate commission actually paid; the worth at the time of award of the court having jurisdiction thereof the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

Late Charges: Tenant hereby acknowledges that the late payment by Tenant to Landlord of Base Rent, Tenant's Share of Operating Expense Increase or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five business (5) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

17. Estoppel Certificate.

Each party (as "responding party") shall at any time upon not less than ten (10) days' prior written notice from the other party ("requesting party") execute, acknowledge, and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Depot or of the business of Tenant. At the requesting party's option, the failure to deliver such statement within such time shall be conclusive upon such party that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Landlord is the requesting party, not more than one month's rent has been paid in advance.

18. Surrender; Move-out.

On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord, which shall include the return of all keys and access control devices, in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by reasonable maintenance practices by Tenant. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, alterations, furnishings and equipment, and shall leave the HVAC equipment, power panels, electrical distribution systems, lighting fixtures and lamps, window coverings, wall and floor coverings, ceilings, plumbing fixtures, and all other building systems in the Premises in good operating condition.

19. Holding Over.

If Tenant, with Landlord's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, except that the rent payable shall be 125% of the rent immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

20. Substituted Premises.

~~Landlord reserves the right, upon not less than sixty (60) days prior written notice to Tenant, to substitute for the Premises some other premises within the Building having substantially equivalent net rentable area as the Premises, subject to a 15% variation, provided that Landlord shall pay all expenses reasonably incurred in relocating Tenant's property to such new location, and upon the expiration of such written notice, such other premises shall be substituted for the Premises for all purposes under this Lease. Landlord shall not be obligated to Tenant for any losses resulting from the substitution of Premises, and Tenant agrees to hold Landlord harmless against any such losses.~~

21. Landlord's Access.

Landlord and Landlord's agents shall have the right to enter the Premises at reasonable time for the purpose of inspecting the same, performing any services required of Landlord, showing the same to prospective purchasers, lenders, or tenants, making such alterations, repairs, improvements, or additions to the Premises or to the Depot as Landlord may reasonably deem necessary or desirable and the erecting, using, and maintaining of utilities, services, pipes, and conduits through the Premises and/or other premises as long as there is no unreasonable interference with Tenant's property or business use of the Premises. Landlord may at any time place on or about the Premises or the Building any ordinary "For Sale" signs and Landlord may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All activities of Landlord pursuant to this paragraph shall be without abatement of rent, nor shall Landlord have any liability to Tenant for the same.

Landlord shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults, and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. This Section shall in no event constitute a waiver of Tenant's right to quiet enjoyment of the Premises.

22. Security.

Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Depot. Tenant assumes all responsibility for the protection of Tenant, its agents, and invitees and the property of Tenant and of

Tenant's agents and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Depot or any part thereof, in which event the cost thereof shall be included within the definition of Common Area Operating Expenses.

Tenant shall not permit anyone, except in emergency or with Landlord's prior approval, to go upon the roof of the building nor to access electrical, utility, elevator, machinery or equipment rooms.

23. Signs.

Tenant shall not place any sign upon the Premises or the Depot without Landlord's prior consent. Under no circumstances shall Tenant place a sign on any roof of the Depot. Lettering on directory or monument signs, if applicable and which must be expressly approved herein, shall be provided by Landlord Tenant, and shall conform to the Depot sign criteria. In the event Tenant is permitted signage on the Building exterior, such signage shall be subject to the Depot sign criteria and in accordance with applicable codes, requirements, and governmental approval of the City in which the Building is located. The installation, maintenance, repair, and removal (including any underlying damage caused by removal) of such exterior signage shall be provided by Tenant, at Tenant's sole cost and expense. Failure to maintain such signage shall, at Landlord's option, result in forfeiture of the sign position(s) and removal of existing signage (at Tenant's cost).

24. Subordination.

This Lease, and any Option or first refusal granted hereby, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Depot. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless otherwise terminated pursuant to its terms. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder without further notice to Tenant or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

25. Options.

As used in this paragraph the word "Option" has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease; (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other space within the Depot or the right of first offer to lease other space within the Depot; (3) the right or option to purchase the Premises or the Depot, or the right of first refusal to purchase the Premises or the Depot, or the right of first offer to purchase the Premises or Depot.

Each Option granted to Tenant in this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises. In the event that Tenant has multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised. All rights of Tenant under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, during the term of this Lease, (i) Tenant fails to pay Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Tenant fails to commence to cure any curable default or breach of the provisions of this Lease within thirty (30) days after the date that Landlord gives notice to Tenant of such default and/or Tenant fails thereafter to diligently prosecute said cure to completion, or (iii) Landlord gives to Tenant three or more notices of default for the non-payment of rent, whether or not the defaults are cured, or (iv) if Tenant has committed any non-curable breach or is otherwise in default of any of the terms, covenants, and conditions of this Lease.

Any and all Options granted to Tenant, if any, are hereby prescribed as follows:

Provided Tenant is not in default or has not committed a default during the term of this Lease, Landlord hereby grants Tenant the right to extend the term of this Lease for two (2) additional periods of one (1) year each. In order to exercise such Options, Tenant must notify Landlord, in writing, no later than ninety (90) days prior to the expiration of the original or preceding term, of its intent to exercise this Option to Extend. Failure to notify Landlord as stipulated shall, at Landlord's discretion, automatically cancel Tenant's rights hereby granted under this Option. The monthly Base Rent for these Option periods granted herein, if exercised, shall be increased by three percent (3%) initially and annually thereafter over the preceding period.

26. Damage or Destruction.

In the event the Premises sustains damages of less than fifty percent (50%) of its then replacement value, then Landlord shall repair such damage (except for Tenant's improvements, trade fixtures and equipment) as soon as reasonably possible, and this Lease shall continue in full force and effect, and Rent and other charges shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. In the event such damages are uninsured, Landlord may elect not to restore and repair the Premises, in which case this Lease shall be terminated. In either case, if such damages or destruction was caused by a negligent or willful act of Tenant, then Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent.

In the event the Premises sustains damages of more than fifty percent (50%) of its then replacement value, (unless caused by a negligent or willful act of Tenant in which case Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent), this Lease shall terminate effective on the date of such damage or

destruction.

27. Eminent Domain.

Eminent domain proceedings resulting in the condemnation of part of the Premises herein that leave the remaining portion usable by Tenant for purposes of the business for which the Premises are leased will not terminate this Lease. If Tenant determines that the remaining portion is not reasonably usable, Tenant may terminate this Lease by giving written notice of termination to Landlord no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should Tenant not terminate this Lease, will be to terminate this Lease as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Rent and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall belong to Landlord (including damages for the bonus value of Tenant's leasehold improvements), except to the extent that part of the award is allocated as damages to fixtures of the Depot which were furnished by Tenant, or expenses for Tenant's relocation.

28. General Lease Terms:

Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

Additional Rent. All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to Tenant's Share of Operating Expense Increase and any other expenses payable by Tenant hereunder shall be deemed to be rent.

Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter, including but not limited to Letters of Intent, Proposals to Lease, and other documentation associated with the negotiation of this tenancy, shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker on this transaction nor the Landlord or any employee or agents of any said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Premises or the Depot and Tenant acknowledges that Tenant assumes all responsibility regarding the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease, including but not limited to the Occupational Safety Health Act and the Americans with Disabilities Act ("ADA"); However, Tenant shall not be responsible for ADA and/or CAL OSHA related requirements which may or may not have been addressed prior to the initiation of this Lease.

Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Tenant or to Landlord at the address noted in Section 1.17. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

Waivers. No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjusted that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as if it was not legally required to pay under the provisions of this Lease.

Covenants and Conditions. Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

Binding Effect; Jurisdiction. This Lease shall bind the parties, their personal representatives, successors, and assigns. This Lease shall be governed by the laws of the State where the Depot is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Depot is located.

Attorney's Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal thereon, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit, and whether or not such action is pursued to decision or judgment. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notice of default (including but not limited to notices required under the Unlawful Detainer statutes) and

consultations in connection therewith, whether or not a legal transaction is subsequently commenced in connection with such default. The costs, salary and expenses of the City Attorney and members of his office in enforcing this contract on behalf of the City of San Bernardino shall be considered as "attorney's fees" for the purposes of this paragraph".

Consents. Wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld or delayed.

Guarantor. In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Tenant under this Lease.

Authority. The individuals executing this Lease on behalf of the Landlord represent and warrant to Tenant that they are fully authorized and legally capable of executing this Lease on behalf of Landlord and that such execution is binding upon all parties holding an ownership interest in the Depot. If Tenant is a corporation, trust, or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity represent and warrant that such individual is duly authorized to execute and deliver this Lease on behalf of such entity.

Conflict. Any conflict between the printed provisions, Exhibits, or Addenda of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

Multiple Parties. If more than one person or entity is named as either Landlord or Tenant herein, except as otherwise expressly provided herein, the obligations of the Landlord or Tenant herein shall be the joint and several responsibility of all persons or entities named herein as such Landlord or Tenant, respectively.

ATTACHMENTS:

Attached hereto are the following documents which constitute a part of this Lease:

- Exhibit "A" - Rules and Regulations
- Exhibit "B" - [Intentionally omitted]
- Exhibit "C" - Site Plan

ADDITIONAL TERMS:

28. Condition of Premises. Tenant hereby accepts Premises in as-is condition, and any improvements or modifications to the Premises, if any, will be completed by Tenant at Tenant's sole cost and expense. Any improvement that would involve any structural modification or actual reconfiguration of the walls or ceiling must be approved by Landlord in advance. Any such work must be performed by a lawfully licensed and adequately insured contractor, and Tenant shall be required to obtain and comply with the necessary City permits. Notwithstanding the above, Tenant shall make improvements to the Premises, and in exchange, shall receive two (2) months of abated Rent and CAM Charges. Tenant is authorized to make the following improvements, subject to change and final approval by Tenant, so long as the value of such improvements performed by Tenant shall equate to a minimum of approximately \$6,224.00:

1. Demolish pony walls at two existing workstations, and purchase/install two new mobile cubicles;
2. Replace existing roll-up partition at the reception window with glass, and reinstall door at existing door opening in reception area;
3. Install interior window with etched/frosted glass at southeast office;
4. Add new lighting fixtures in corner office and above copier area;
5. Move or add telephone & data connections to serve new cubicles;
6. Install built-in room divider (location to be determined);
7. Install doorbell/buzzer inside the Premises reception area;
8. Replace carpeting with commercial grade carpet, repair drywall, and repaint interior walls.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE REAL ESTATE BROKERS, OR ANY OF THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVISE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

Southern California Association of Governments

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: *Basil Panas*
Name Basil Panas CFO
Title

By: _____
Janice Rutherford
President, Board of Directors

Date: 4/22/13

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

EXHIBIT "A" RULES AND REGULATIONS

GENERAL RULES

1. Tenant shall not suffer or permit the obstruction of any Common Areas.
2. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Depot or its occupants.
3. Tenant shall not make or permit any noise or odors that annoy or interfere with other Tenants or persons having business within the Depot.
4. Tenant shall not keep animals or birds within the Depot (unless a part of approved use as per Section 9 of this Lease), and shall not bring bicycles, motorcycles, or other vehicles into areas not designated as authorized for same.
5. Tenant shall not make, suffer, or permit litter except in appropriate receptacles for that purpose. All garbage and refuse shall be placed in containers designated for refuse collection, and such items must fit entirely within the receptacles. All large boxes and other refuse shall be broken down prior to placing in the containers. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord.
6. Tenant shall not alter any exterior lock or install new or additional locks or bolts on exterior doors without providing Landlord copies of same.
7. Tenant shall not deface the walls, partitions, or other surfaces of the premises or the Depot.
8. Tenant shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Landlord.
9. Tenant shall return all keys, including duplicates, at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
10. No window coverings, shades, or awnings shall be installed or used by Tenant without Landlord's prior approval.
11. No Tenant, employee, or invitee shall go upon the roof of the Building without Landlord's prior approval.
12. Smoking shall be restricted to designated smoking areas, if any, and then not near, doors, windows, or other entrances, exits, or openings to other units within the Depot.
13. Tenant shall not install, maintain, or operate any vending machines upon the Premises without Landlord's written consent.
14. The premises shall not be used for lodging or manufacturing, cooking, or food preparation, except as an approved Use per Section 9 of this Lease.
15. Tenant shall comply with all safety, fire protection, and evacuation regulations established by Landlord or any applicable governmental agency.
16. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular Tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Tenant.
17. Tenant assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
18. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Depot and its occupants. Tenant agrees to abide by these and such rules and regulations.
19. Signs shall conform to sign criteria established by Landlord and shall not exceed the quantity or dimensions authorized by Landlord. No signs (other than signs that strictly conform to sign criteria), placards, pictures, advertisements, names, or notices shall be inscribed, displayed, painted, or affixed on or to any part of the outside or inside of the Building or within the Common Areas of the Depot. Landlord shall have the right to remove any such non-conforming signs without notice to Tenant, at the expense of Tenant.
20. Tenant shall not disturb, solicit, or canvass any other Tenant within the Depot.
21. Tenant, its contractors, employers, or invitees, shall not loiter in the Common Areas of the Depot or in any way obstruct the entrances and driveways.
22. No antenna, aerial, discs, satellite dishes, or other such device shall be erected on the roof or exterior walls of the Building without Landlord's express consent.

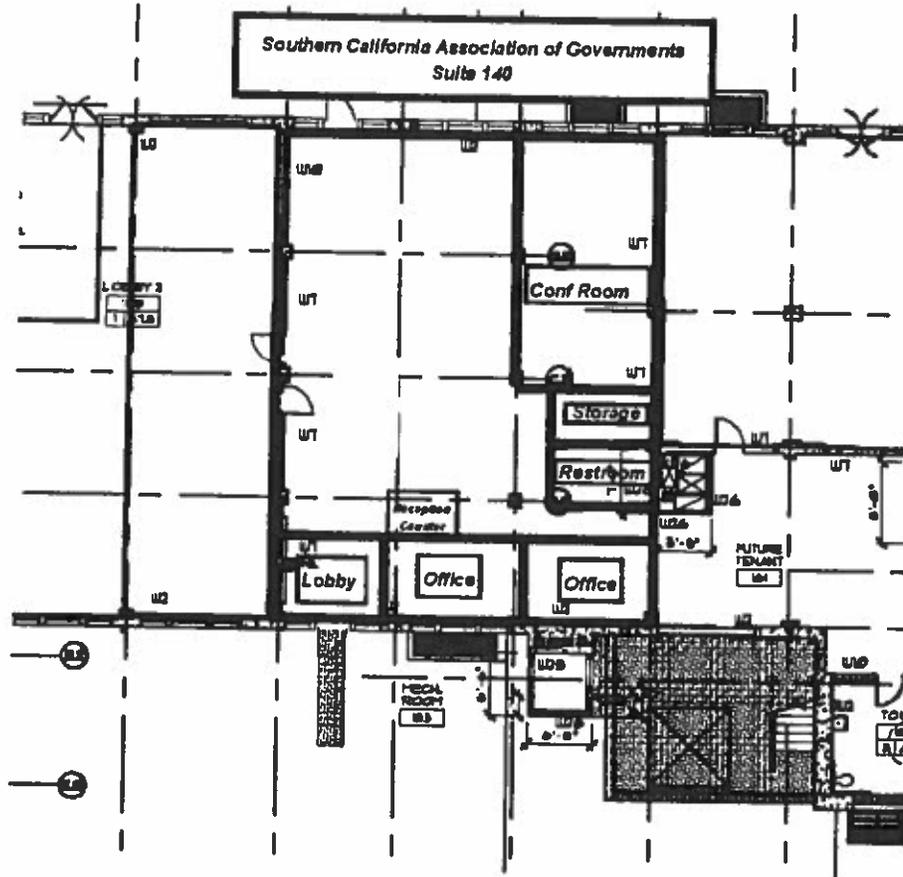
PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles, non-commercial pick-up trucks, and sport utility vehicles herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles".
2. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities.
3. Parking stickers or identification devices shall be the property of Landlord and be returned to Landlord by the holder thereof upon termination of the holder's parking privileges. Tenant will pay such replacement charge as is reasonably established by Landlord for the loss of such devices.
4. Landlord reserves the right to refuse the sale or issuance of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws, and/or agreements.
5. Landlord reserves the right to relocate all or a part of parking spaces, and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances, and regulations.
6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons, or loss of property, all of which risks are assumed by the party using the parking area. No overnight parking shall be permitted.

8. The maintenance, washing, waxing, or cleaning of vehicles in the parking structure or Common Areas is prohibited.
9. Tenant shall be responsible for seeing that all of its employees, agents, and invitees comply with the applicable parking rules, regulations, laws, and agreements.
10. Landlord reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
12. Violation of any of the parking rules or regulations may result, without notice, in the towing of any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors), the cost of which (including impound fees) shall be the sole responsibility of Tenant.

EXHIBIT "B"
[Intentionally omitted]

EXHIBIT "C"





- 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: June 5, 2013

Subject: Change the SANBAG Friday Public Business Hours

Recommendation: Approve a change in public business hours on Fridays from 8:00 a.m. - 5:00 p.m. to 8:00 a.m. - 4:00 p.m.

Background: Currently SANBAG's public office hours, the hours that the doors are open to the public and the switchboard is answered, are Monday through Friday from 8:00 a.m. until 5:00 p.m. While those are the public hours, SANBAG staff work flexible schedules with some staff participating in 9/80 plans and others working the traditional 5/40 plans. This means that even though the doors are locked and switchboard is unanswered before 8:00 a.m. and after 5:00, staff are still working and conducting business.

One of the flexible schedules that we offer to staff includes a ½ hour lunch. However, this schedule is not available to the employees that work the front desk because of the need for them to be at the front desk at 8:00 a.m. and until 5:00 p.m. This is not an issue Monday through Thursday as there is coverage available. However, on Fridays, because some staff members are on a flex day off due to their 9/80 schedule, the same coverage is not available.

The call volume coming into the general SANBAG line late on Friday afternoons is extremely low and the general public walking through the doors is generally non-existent. SANBAG's usual contact is with our member agencies and the

Approved
Board of Directors

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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Check all that apply.
 BRD1306d-dab

contracting community. That work continues as needed regardless of the status of the public counter and switchboard. Because of the minimal impact to the general public and the flexibility and equity to offer alternative work schedules to all of our staff, including the reception staff, it is recommended that this change be approved.

Financial Impact: It is not anticipated that this item will have a financial impact.

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013.

Responsible Staff: Duane A. Baker, Director of Management Services



- 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: June 5, 2013

Subject: Replace SANBAG Owned Smartphones with a Communications Technology Stipend

Recommendation:* Authorize the Executive Director to replace the issuance of SANBAG owned smartphones with a communications technology stipend not to exceed \$41.54/pay period (which is equivalent to \$90/month) and to be adjusted each year to reflect changes in the monthly cost of an unlimited talk, text and 1 gigabyte of data plan to essential staff approved by the Executive Director.

Background: Currently, SANBAG issues smartphones to essential staff to enable them to stay in contact with the office through phone and e-mail while away at meetings, in the field, traveling, or at home. To comply with IRS regulations, the Finance Department requires each employee issued a SANBAG owned smartphone to review the monthly bill, identify any personal calls, and then reimburse SANBAG for those personal calls. This creates a burden on our Finance staff.

Rather than continue this practice, SANBAG would like to start a practice used by other jurisdictions to provide a communications technology stipend. The proposed amount would be \$41.54/pay period and would be sufficient to offset the voice and data needs of the staff that use smartphones for SANBAG business. In addition, staff would be authorized to adjust the amount of the stipend annually at the end of the fiscal year to reflect any changes up or down in the cost of an unlimited talk, text and 1 gigabyte data plan. The benchmark that

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*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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Check all that apply.
 BRD1306e-dab

will be used are the plans offered by Verizon Wireless as that is the plan of current SANBAG owned phones being replaced by this stipend.

Currently, there are 19 staff that are authorized to be issued a SANBAG smartphone. The total monthly cost to provide all 19 phones would be a little less than \$1,100 and would vary slightly depending on usage. On an individual basis the monthly amount for voice and data varies greatly from approximately \$85.00 to \$52.00 depending on usage. In some months some users have higher charges than others.

By comparison, providing the monthly stipend to the same staff would have a fixed total monthly cost of \$1,710. The amount of the stipend was selected based on the cost of an individual paying the monthly access charge for a smartphone with a 1 GB data plan.

While there is some additional cost to SANBAG month-to-month with the stipend, the savings that SANBAG would realize would outweigh the cost. SANBAG would no longer be responsible for buying or replacing smartphones for staff. The cost for purchasing 19 smartphones is over \$4,000. Also, SANBAG staff would no longer need to review phone bills, keep track of personal calls and process reimbursements to SANBAG. The cost for this effort is estimated at almost \$3,000 for the year. Finally, Finance staff would no longer need to spend time processing the monthly invoice and ensuring that reimbursements for personal use are received by SANBAG. The cost savings from this are estimated at approximately \$1,300 for the year. This time could be used for other tasks more aligned with our core activities.

Staff recommends approval of this change to save staff time and for the added convenience of employees selecting and maintaining their own phones for both personal and business use.

Financial Impact: This item will have an annual cost of \$20,520. This cost will be offset by savings to SANBAG from 1) not having to buy smartphones in the future at a cost of approximately \$4,787 every three years; 2) from not having to pay monthly wireless bills estimated at \$13,200/year; and 3) from staff savings of approximately \$4,300/ year to be used in support of core functions.

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013.

Responsible Staff: Duane A. Baker, Director of Management Services



- 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: June 5, 2013

Subject: Executive Director Employment Contract Amendment

Recommendation:* Approve Amendment No. 1 to Employment Contract No. C12222 with Executive Director, Raymond W. Wolfe.

Background: On March 7, 2012, the SANBAG Board of Directors approved a three year contract with Raymond W. Wolfe to serve as the SANBAG Executive Director. The contract provides for the Board to review and evaluate the performance of the Executive Director during the month of April 2013 and annually thereafter, and to review his salary level compensation and possible extension of the contract.

In recognition of the Executive Director's exemplary performance, the Board desires to amend his contract to: increase his annual salary by \$17,283, provide him with such cost of living increases as are granted to Professional/Administrative employees of SANBAG, and extend his contract term by one year each year the Board assigns him a performance rating of four or more on a scale of one to five with five being the highest rating.

Financial Impact: This action does not require any amendments to the Fiscal Year 2012/2013 SANBAG budget.

Reviewed By: This item is scheduled for review by the Board of Directors on June 5, 2013, and has not had prior policy committee review.

Responsible Staff: Janice Rutherford, SANBAG President

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Approved
 Board of Directors

Date: _____

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

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

BRD1306a-jr

<http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1306/AgendaItems/BRD1306aI-jr.docx>

**FIRST AMENDMENT TO SAN BERNARDINO ASSOCIATED GOVERNMENTS
EXECUTIVE DIRECTOR EMPLOYMENT CONTRACT NO. C12222 (C12222-01)**

This First Amendment to the Executive Director Employment Contract No. C12222 (Contract) is made and entered into this fifth day of June, 2013, by and between Raymond W. Wolfe (Employee) and San Bernardino Associated Governments, a Joint Powers Authority, acting in its capacity as a Joint Powers Authority, the San Bernardino County Transportation Commission, San Bernardino County Transportation Authority and the Service Authority for Freeway Emergencies, (SANBAG or Employer).

A. On March 7, 2012, the SANBAG Board of Directors approved an Employment Contract with Employee.

B. The Contract provides that the Board shall annually review Employee's performance and his salary compensation level and may consider extending the Contract.

C. In recognition of Employee's performance the Board desires to amend Employee's Contract to adjust his salary, provide for future cost of living adjustments and extend his Contract when certain performance rating scores are achieved.

NOW THEREFORE, in consideration of the foregoing recitals that are incorporated herein, the Parties desire to amend the Contract as follows:

1. Section 1 of the Contract is amended and restated as follows:

"SECTION 1. TERM

The term of this Agreement shall be for four years commencing on April 9, 2012, subject to extensions as provided in Section 8, and subject to the early termination provisions as provided in Section 9. As provided in the Joint Powers Authority Agreement and SANBAG's Personnel Rules, Employee serves at the pleasure of SANBAG's Board of Directors."

2. Section 3 of the Contract is amended and restated as follows:

"SECTION 3. SALARY AND COMPENSATION

A. For the services rendered under this Agreement, Employee's annual salary shall be \$227,283.00, effective June 5, 2013, which shall be paid in the same manner and at the same time as all other salaries of SANBAG employees.

B. Employer agrees to modify the salary base of Employee by not more or less than the same percentage and amounts, and at the same time and in the same manner, as the cost of living salary adjustments given to other Professional/Administrative employees of SANBAG."

3. Section 8 of the Contract is amended and restated as follows:

“SECTION 8. PERFORMANCE EXPECTATIONS AND EVALUATION

A. Employer’s Board of Directors shall review and evaluate the performance of the Employee during the month of October 2012, and again during the month of April 2013, and each subsequent April during the term of this Agreement. Said review and evaluation shall be in accordance with criteria approved by the Board after consultation with Employee. Said criteria may be added to or deleted as the Board of Directors may from time to time determine, in consultation with Employee. Further, the President of the SANBAG Board shall provide an adequate opportunity for the Employee to discuss his evaluation with the Board of Directors in closed session. As part of the evaluation and performance of Employee, the Board shall review the salary level compensation of Employee.

B. The Board shall assign a rating to Employee’s performance on a scale of one to five with five being the highest rating. For each year that the Board assigns Employee a performance rating of four or more, the term of this Agreement shall be extended by one year.”

4. The Contract is incorporated into this First Amendment.

5. All other terms and conditions of the Contract not expressly amended by this First Amendment shall remain the same.

6. This First Amendment is the full and complete understanding of the Parties regarding the rights and obligations of the Parties with respect to Employee’s provision of services.

This First Amendment is duly executed by the Parties on the dates indicated below.

SANBAG/EMPLOYER

EMPLOYEE

Janice P. Rutherford

Raymond W. Wolfe

Date:

Date:

APPROVED AS TO FORM

Eileen Monaghan Teichert
General Counsel



- 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: June 5, 2013

Subject: Award Contract for Call Box Maintenance Services

Recommendation: Award Contract No. C13142, to CASE Systems, Inc., for call box maintenance services, for a three-year period, not to exceed \$1,895,620. Two one-year options are included in the contract as well and as outlined in the Financial Impact Section.

Background: The San Bernardino County Service Authority for Freeway Emergencies (SAFE) operates approximately 1,224 call boxes on freeways and highways throughout the County. Each call box is a battery-powered, solar-charged roadside terminal with a microprocessor and a built-in digital cellular telephone. The network has assisted more than 1.4 million callers since inception.

The last procurement process for a maintenance provider was conducted in the summer of 2004. A Request for Proposal (RFP) was released to upgrade the system from an analog to a digital cellular signal, to provide improvements anticipated to bring the system into compliance with the Americans with Disabilities Act, and to provide routine corrective and preventative maintenance.

As a result of this RFP process, in November of 2004, Comarco Wireless Technologies (CWT) was selected as the call box maintenance provider and awarded Agreement No. 05-006 through June 30, 2010. In July 2008, the SAFE

*Approved
Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG		CTC		CTA		SAFE	X	CMA	
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Check all that apply.

BRD1306a-nm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13142.docx>

Board approved CWT's assignment to CASE Systems, Incorporated (CASE), and CASE's assumption of CWT's rights and obligations under Agreement No. 05-006. In May 2010, the SAFE Board approved a twelve-month extension of the CASE agreement term to June 30, 2011, and in June 2011, approved a six-month extension of the CASE agreement term to December 31, 2011. Subsequently, an additional three-month extension was approved on November 2, 2011, taking the term through March 31, 2012. On April 4, 2012, the Board approved another extension to January 31, 2013. Finally, as staff continued to review, research and resolve a number of State related items, and in order to have our agreement with CASE end on the same date as Riverside County Transportation Commission's (RCTC) contract for similar services with CASE, on January 9, 2013, the SAFE Board extended the agreement to June 30, 2013.

In order to maximize resources, RCTC and the SAFE decided to issue a joint RFP for call box maintenance services, with RCTC taking the lead. The procurement for call box maintenance was conducted by RCTC. RCTC released a competitive-based call box maintenance RFP on March 4, 2013 with proposals due on April 1, 2013. As a result, two call box maintenance service proposals were submitted. The Proposers included (in alphabetical order): CASE Systems, Inc., and Siemens.

An Evaluation Team to review the proposals consisted of representatives from RCTC, San Bernardino Associated Governments (SANBAG) and Orange County Transportation Authority (OCTA). After the initial review, the Evaluation Team awarded the contract based on the following criteria:

1. Qualification of the Firm – experience in performing call box maintenance services and similar work.
2. Experience and Qualifications of Key Staff – qualifications of the individuals, subconsultants, and/or suppliers that will be providing services.
3. Understanding and Approach – demonstration of an understanding of the Statement of Work and its components.
4. Cost – reasonableness of the total price and competitiveness of this amount with other proposals received and the basis on which the prices are quoted.

As a result of the proposal reviews, the Evaluation Team ranked each proposer. The Evaluation Team did not conduct interviews due to the large margin in scoring of the two proposals with the higher scoring proposal being provided by the incumbent vendor. The following is a summary of the proposer ranking:

Ranking	Vendor
1	CASE Systems, Inc.
2	Siemens

CASE Systems, Inc., was ranked as number 1 and was deemed overall best suited to perform the services for a variety of reasons including, experience with call box maintenance, price structure, approach to services, and staffing and resources dedicated to the program.

SANBAG has also discussed the installation of satellite call boxes with CASE Systems, Inc. Satellite call boxes would be ideal for remote areas where the signal was lost when call boxes were converted from analog to digital. Locations are currently being identified. Satellite call boxes are not ADA compliant due to the fact that they are not compatible with TTY technology and there is no expectation that they will be in the future. Installation of the satellite boxes is still considered beneficial due to the fact that some degree of being able to contact emergency services would be provided in locations previously not covered by digital call box technology. The not-to-exceed budget amount includes installation, monthly maintenance, air time and other costs associated with the installation and maintenance of 20 satellite call boxes over the three year initial contract term. If the initial satellite call box installations are effective, staff may bring contract amendments forward in subsequent years for additional satellite call box installations.

Attached is the scope of work to Contract C13142. Upon Board approval, the Contract will be executed and will be effective July 1, 2013, and there will be no service disruption.

Financial Impact: Funds for call box maintenance services have been programmed into the FY 2013/2014 Budget. Future funding will be programmed into the respective fiscal year budgets. The funding source is DMV SAFE under Task 0702.

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the contract.

Responsible Staff: Duane A. Baker, Director of Management Services



CONTRACT SUMMARY SHEET

Contract No. C 13142 Amendment No. _____

By and Between
SANBAG and CASE Systems, Inc.

Contract Description Call box maintenance services

Board of Director's Meeting Date: 6/5/13
Overview of BOD Action: Approve Contract C13142 for call box maintenance services for a three year period through 6/30/16, with two one year options, in a not to exceed amount of \$1,895,620.

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW			
Original Contract Amount	\$	1,895,620	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
TOTAL CONTRACT VALUE	\$	1,895,620	TOTAL CONTINGENCY VALUE
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 1,895,620

Contract Start Date 7/1/13	Current Contract Expiration Date 6/30/16	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. 0702.
 A Budget Amendment is required.

How are we funding current FY? Through the California DMV \$1 per vehicle annual fee.

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract:
 The California Department of Motor Vehicles collects the annual \$1 vehicle registration fee from vehicles registered in San Bernardino County for use in maintaining and operating the Call Box Program.

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

Nikki Miller
 Project Manager (Print Name)

DIANE A. BAKER
 Task Manager (Print Name)

Andrea Zureick
 Dir. of Fund Adm'n. & Programming (Print Name)

Jeffrey Hill
 Contract Administrator (Print Name)

[Signature]
 Chief Financial Officer (Print Name)

Nikki Miller 4/8/13
 Signature Date

Diene A. Baker 4-9-13
 Signature Date

Andrea Zureick 4/9/13
 Signature Date

Jeffrey Hill 4/11/13
 Signature Date

[Signature] 4/16/13
 Signature Date

ATTACHMENT A - STATEMENT OF WORK

CALL BOX SYSTEM MAINTENANCE SERVICES

The San Bernardino Service Authority for Freeway Emergencies (SB SAFE) motorist aid call box system requires extensive year-round maintenance, repairs, and other related fieldwork to ensure the proper functioning and appearance of the call box system. Routine maintenance is conducted monthly but some repairs may require immediate attention depending on the nature of the damages to the call box. To efficiently manage the maintenance of the call box system, a computerized maintenance system is required to notify the Consultant of repairs needed and to view, track, and record every repair made to the call box system.

I. GENERAL CONDITIONS

A. Work to be Done

Consultant shall perform all work necessary to maintain the motorist aid call box system in a satisfactory manner as detailed in this Scope of Work. No tasks under this RFP shall be performed by a subcontractor without the written consent from SAFE project manager. Unless otherwise provided, Consultant shall furnish all materials, equipment, tools, labor, and incidentals necessary to complete the services for the specified flat fee. Instructions for accessing a list of call box location information are available upon request. All work shall be in compliance with the CHP/Caltrans Call Box and Motorist Aid Guidelines, Caltrans requirements, American with Disabilities Act (ADA) regulation, as well as all applicable federal, state, and local laws.

Consultant is alerted to and is responsible for complying with all applicable prevailing wage laws as further set forth in Article 41 of the Contract.

Consultant shall facilitate at its own cost all transition tasks with the previous maintenance provider, if applicable including, but not limited to, transfer of call box materials, swapping of call box data, and other related tasks. Consultant is expected to start repairs immediately at start of contract period with the appropriate staffing levels and materials necessary. It is the responsibility of the Consultant to account for repairs that may not be completed or have not been started by the previous maintenance consultant. The call box system shall be handed over to the Consultant in an "as-is" condition.

B. Plans and Specifications

Consultant shall keep at the field office a copy of all plans and specifications to which SAFE shall have access to at all times. Any additional documentation or specifications for new equipment or processes (i.e. transceiver, TTY) shall also be kept by Consultant in the field office and be available for review by the SAFE Project Manager or other SAFE designated representative(s). Any call box specification plans the successful Consultant does not have shall be created by Consultant as part of an administrative task and may be facilitated by the SAFE Project Manager.

C. Rights of Entry and Permits

Consultant shall be responsible for obtaining all rights of entry, encroachment permits, and other licenses or permits required to perform the work hereunder.

D. Materials and Workmanship

All materials, parts, and equipment furnished by Consultant shall be of high grade and free from defects. Enclosures shall not be replaced with others of lesser quality as measured by paint brightness and coating integrity. Quality of work shall be in accordance with generally accepted standards. Materials and work quality shall be subject to the SAFE Project Manager's or a designated representative's approval.

E. Labor

Only competent workers shall be employed for tasks under this Agreement. Any person found by SAFE to be incompetent, disorderly, working under the influence of alcohol or controlled substances, unsafe, or otherwise objectionable shall be removed by Consultant and not re-employed for services under the contract resulting from this RFP.

F. Inspection

All performance (including services, materials, supplies, and equipment furnished or utilized) shall be subject to inspection and approval by the SAFE Project Manager or a designated representative. Any SAFE authorized representative shall have access to the field office.

G. Condition of Site

Throughout the term of the Contract, Consultant shall keep call box sites clean and free of rubbish and debris (including removed pad material). All unnecessary materials and equipment shall be removed from the call box site immediately or as soon as the materials, tools, and equipment are no longer needed.

H. Reuse of Parts:

Consultant shall reuse parts that have been damaged or replaced assuming Consultant has repaired the parts, and ensures that functionality is not degraded and the integrity of the component is not compromised.

I. Reserve Inventory

Consultant is required to maintain a sufficient quantity of call box equipment, parts, and materials in stock in their local (within Riverside and/or San Bernardino County) field office to fulfill the requirements of this Statement of Work and its attachments. Replenishing the call box equipment stock is the sole responsibility and at the cost of the Consultant. The SAFE acknowledges any materials purchased by the Consultant that remain unused at the end of the contract are the property of the Consultant.

J. Storage of Materials

Consultant shall be responsible for storing and maintaining materials in a manner that preserves their quality and fitness for future use. Consultant shall store call box housings, electronics, poles, and other appurtenances within their warehouse. Consultant shall relinquish any and all remaining SAFE owned materials upon termination of the contract.

K. Communication

Consultant shall ensure that the lead field technician and staff have the necessary communication devices for interacting efficiently with the SAFE Project Manager, other designated representatives, and partner agencies. The devices to be provided by the Consultant must include, but are not limited to, a cell phone, office phone, fax machine, and email services with the capability to send and receive Microsoft Access® database or equivalent files.

II. CALL BOX MAINTENANCE SYSTEM

A maintenance system is currently in place to monitor the SAFE call box system whose information may need to be transferred to the awarded Consultant's maintenance system. SAFE is responsible for obtaining all call box data and providing it to the successful Consultant to be inputted into their maintenance system. The Consultant shall facilitate such transfer by working with SAFE to format data accordingly. The Consultant will not be compensated for maintenance tasks until the maintenance system is fully operational. SAFE retains ownership of all files containing call box related data provided to the Consultant. All such data including newly inputted data related to the tasks performed by the selected consultant shall be turned over to SAFE at the termination of the contract resulting from this RFP.

The Consultant's maintenance system shall be made compatible with the SAFE call box communication devices. It is the Consultant's responsibility to upgrade their maintenance system in order to perform the necessary maintenance tasks described in this section with the SAFE call boxes and the overall system. Consultant shall not change any devices in the call boxes to make them compatible with their maintenance system. Any changes and/or upgrades to the maintenance system shall be at the cost of the Consultant. All SAFE call boxes shall be monitored by a maintenance system and each box shall make one (1) call every three (3) days into the system for a diagnostic check up. The Consultant shall provide exception reports to the SAFE on the last day and 15th of each month outlining call boxes that have failed to report to the maintenance server after three (3) days.

In addition, the Consultant must record all work orders related to the call box system and other general information and specifications of each call box in the SAFE system as specified in a Microsoft Access® database. These work orders along with call box related general information must be easily retrievable and exportable into an Excel® spreadsheet or similar program. All information, including historical data, within the electronic database system must be accessible to the SAFE staff at any time via Internet connection or equivalent means acceptable to the SAFE Project Manager. The SAFE staff monitors all repairs done each month, the timeliness of such repairs, and the number of times each call box calls into the maintenance system via the maintenance system.

Consultant shall meet with SAFE Project Manager immediately after award of contract to finalize the needs and the layout of the Call Box System Database and to determine appropriate access for SAFE staff.

III. CALL BOX MAINTENANCE TASKS

The Consultant shall perform the following tasks and administrative tasks routinely throughout the term of the contract. All special projects work will be initiated through SAFE-issued Task Orders as described in Task F. Compensation for all work is described in Attachment B, Price Proposal.

Some call box repairs and maintenance tasks listed hereafter may need to be performed immediately if the repair needed is presenting a potential hazard or if call box components are broken off and in the way of traffic. Should Consultant need to pick up broken off parts, Consultant shall also repair that damaged call box at the same time to minimize the number of trips needed to repair the call box, to the extent reasonable. An inoperable call box shall be bagged by the Consultant if left unattended to make such trips.

In addition, at the request of SAFE, Consultant shall remove call boxes permanently from the system (Task E). Such removals may be necessary throughout the term of the contract.

Task A. Corrective Maintenance

Consultant shall perform corrective maintenance as needed on all call boxes. Corrective maintenance includes all repairs to the call box associated with electronics, transceivers, power supply (battery and solar panel), and the interface with the cellular system or anything that affects the proper function of the call box. All equipment and materials used to perform repairs must be removed immediately after completion of the repair. Corrective maintenance requires that the Consultant be accessible to the call box call answering center (CAC), CHP, and the SAFE Project Manager to report non-operational call boxes.

Upon notification that a call box is out of service from CHP, CAC, SAFE, or the maintenance computer, Consultant shall determine the cause and if due to general failure of the call box, Consultant shall take the necessary action to restore it to a good operating condition, including the repair or replacement of parts, components, and mountings as needed. Activities falling within the definition of corrective maintenance shall be completed by 4 p.m. on the same day for events reported by 8 a.m. on a workday. For events reported after 8 a.m., the call boxes shall be operable by 4 p.m. on the following workday. For events reported on a holiday or weekend, the call box shall be repaired by 4 p.m. on the first workday following notification of the event. Consultant shall provide management and field staff sufficient to perform repairs on call boxes within the established time periods. Should the Consultant not be able to meet these specified timeframes, Consultant must notify the SAFE Project Manager in writing and the reasons why such repairs shall be delayed.

If Consultant is unable to put a call box back in service during the first visit to the box after notification of its failure to perform, Consultant shall cover and attach a bag with the words "Out of Service" to the box and/or mounting pole. Consultant shall remove the bag once the box is back in service.

Task B. Preventive Maintenance

Consultant shall perform the following preventive maintenance tasks at least two (2) times a year, at approximately six-month intervals as necessary to keep call boxes clean and operational. Call boxes with adjunct devices shall be maintained similarly.

Consultant shall report to the SAFE Project Manager any unusual findings made while performing preventive maintenance. Some preventive needs may be reported by the SAFE Project Manager or its designated representatives and shall be addressed by Consultant on preventive maintenance visits.

The preventive maintenance activities for all call boxes, shall include, but are not limited to the following tasks:

- Cleaning, sanding off rust, and painting of call box housings as necessary;
- Checking call box housing door, magnet, and spring;
- Replacement or addition of outdated, damaged, or missing instruction placards and vandalism stickers;
- Removal of items not part of call box such as stickers and garbage bags;
- Inspection and anti-corrosion treatment of external electrical connections;
- Operational check of call box controls and system operational sequence including:
 - Perform voice test calls on each call box;
 - Check outer door, handset, and illumination for proper operation;
 - Check call connect light;
 - Check hook switch; and
 - Check cellular antennae and cable.
- Minor cleaning of the surrounding area of the call box (includes minor pruning, pulling of weeds and debris removal, spraying for insects);
- Visual inspection of the solar panel orientation and cleaning of the solar panel collecting surface;
- Testing of the TTY screen for brightness and legibility and testing of the TTY keyboard for functionality and keeping both clean. In addition, Consultant shall make one (1) TTY test call to the Call Box Answer Center from two (2) call boxes for which preventive maintenance was performed each day.
- Inspection and repair of the pedestrian pad;
- Inspection of path for wear and tear or vandalism;
- Maintenance of the call box mounting pedestals or other devices used for mounting the call boxes on sound walls; and
- Replacement of faded call box blue sign and missing letter and number stickers.

Consultant shall use preventive maintenance visits to protect boxes from corrosion and fading. The color of all call boxes shall fall between Pantone® yellow no. FL100 and Pantone® yellow no. FL123. Consultant shall replace or repair any such defective enclosures in a timely and satisfactory manner. Consultant shall receive approval from the SAFE Project Manager prior to proceeding with replacement.

Task C. Knockdown and Vandalism Repairs

Once informed of damage, consultant shall perform maintenance repairs and/or replacements required as a result of damage by collisions, vandalism, or other willful acts, and other such causes (including insect intrusion). Consultant may become aware of damage to call boxes in various ways, including receiving notification from the SAFE, the CAC, or the CHP, by observing the damage, or by receiving a signal from the call box's built-in sensor that it is no longer perpendicular to the ground. The knockdown repair limit will be at ten percent (10%) of the system total for the Fiscal Year.

1. Knockdown Repairs

Knockdown repairs shall be defined as services conducted by Consultant to restore call boxes to full operability after being knocked down by vehicle collision or other such causes. Consultant shall make work orders and other related information on a knocked down call box readily available to SAFE and/or its designated representative to assist in knockdown recovery efforts.

2. Vandalism Repairs

Vandalism repairs shall be defined as services conducted by Consultant to repair call boxes, their sites or their components damaged as a result of vandalism, willful acts, or other such causes (including insect intrusion). Such tasks shall include but not be limited to: replacing broken outer door, repairing ripped handset, removing graffiti from signs, and repairing damaged site material (pads, retaining walls, etc.). Consultant shall salvage any or all parts of the damaged call box as long as the integrity of the component is not compromised.

If no foundation work is required, Consultant shall have the call box placed back in service by 4 p.m. on the same day for knockdown or vandalism events reported by 9 a.m. on a workday. For damages reported after 9 a.m., the consultant shall have the call box back in service by 4 p.m. on the following workday. If foundation work is required, Consultant shall have the call box placed back in service by 4 p.m. on the second workday following notification. For events reported on a holiday or weekend, the call box shall be repaired by 4 p.m. on the first workday if no foundation work is required or by 4 p.m. on the second workday following the notification of the event if foundation work is required.

In some cases, knockdown and vandalism repairs may be needed as soon as possible because of a potential hazard. The SAFE Project Manager shall notify Consultant of such events. Upon confirmation from Consultant of receipt of phone or email notification, the Consultant will respond within a four (4) hour period.

Task D. Temporary Removal and Reinstallation

1. Temporary Removals

At the request of SAFE, Consultant shall remove call boxes from existing locations on an as-needed basis to accommodate freeway construction and other projects that come into conflict with SAFE call boxes. Whenever possible, SAFE will give one (1) week advance notice to Consultant of upcoming temporary removal. In special cases removals may be required immediately. SAFE retains ownership of call boxes authorized for removal, and Consultant shall store removed boxes at their location and make all removed call boxes available for reinstallation at any time. Consultant shall coordinate the removal, de-activation of long term temporary removals, and storage of call boxes as requested by Caltrans or the SAFE Project Manager.

Consultant shall also maintain proper inventory documentation. In some cases, Consultant may need to pick up boxes that are temporarily removed by Caltrans or its consultant at off site locations. Coordination for pick up shall be the responsibility of the Consultant. Some call boxes may be temporarily removed for several years, depending on the nature of the construction project. The temporary removal and reinstallation limit will be at five percent (5%) of the system total for the Fiscal Year.

2. Reinstallation

Once the construction project is complete and the call box removal is no longer needed, Consultant shall coordinate reinstallation and deferred installation tasks including permitting, site approval, installation, and reactivation. Consultant shall get the call box back in service within three weeks of when Consultant is notified of reinstallation. Some construction projects may cause the call box to be permanently inaccessible. In such cases, Consultant shall recommend new locations for the call boxes to SAFE. In the discretion of the SAFE Project Manager, such locations may also be selected for permanent removal rather than relocation. Should the call boxes have new sign numbers or phone numbers due to relocation, Consultant shall notify the SAFE Project Manager, CAC, and CHP immediately and reflect changes in the maintenance system.

Task E. Permanent Removals

At the request of SAFE, Consultant shall remove call boxes permanently from the system in accordance with current CHP/ Caltrans Call Box and Motorist Aid Guidelines. Such removals may be necessary throughout the term of the contract. The SAFE reserves the right to reduce the number of Call Boxes at any time during the term of this agreement. Consultant shall be responsible for all permanent removal activity including the cancellation of phone numbers with service provider. Permanently removed call boxes shall be returned to the SAFE's inventory.

Consultant shall store the removed call box with enclosure, pole, signs, solar panel, and assemblies at one or more of the locations for storage noted in this RFP. The stored materials and parts may then be used by Consultant in performing maintenance tasks only for the county SAFE system from which the materials and parts originated, subject to acceptance by the SAFE of the credit per removed site offered by the Consultant for the right to so use them.

Task F. Special Projects

Consultant may be requested to conduct special projects throughout the term of the Contract. Special projects may include but are not limited to: installation of new call boxes for SAFE, partner agencies, and other entities; removal or relocation of call boxes due to special circumstances; landline conversion of some call boxes; and/or special site evaluations related to the call box system.

All tasks under this Section will be initiated through SAFE issued Task Orders.

IV. ADMINISTRATIVE TASKS

Consultant shall be responsible for the administrative tasks detailed below in order to perform maintenance tasks. These administrative tasks shall be included within the flat rate for maintenance proposed by the Proposer.

A. Meetings, Field Surveys, and Correspondences

Consultant shall be required to attend meetings that relate to the call box system as requested by the SAFE Project Manager. Consultant shall respond to written and email inquiries regarding the call box system submitted by the SAFE Project Manager. In addition, coordination with SAFE staff may be required to assist in producing a monthly report of call box statistical information. At the request of the SAFE Project Manager, plans, drawings, maps, and other documents shall be provided by the Consultant to SAFE at no additional cost to SAFE.

B. Encroachment Permits

Encroachment permits are required prior to doing work on Caltrans-owned right of way. Consultant shall be the primary point of contact for Caltrans permit issues related to the system and shall coordinate final field surveys and field review meetings to approve or modify call box locations with Caltrans, CHP, and SAFE. Consultant shall prepare and submit encroachment permit applications to Caltrans, as required. Consultant shall comply with all terms of the permits, in particular any requirements related to lane closures necessary to complete the tasks under this RFP.

C. Inventory and Supplies

Consultant shall be responsible for the general upkeep of the consultant provided SAFE call box storage including tracking inventory of supplies, disposing of obsolete and irreparable parts, and organizing of components within the storage facility. SAFE occasionally sells used call box supplies to other vendors and may request Consultant to coordinate sale and delivery of such supplies.

D. Maintenance System Management

Consultant shall maintain and frequently update the call box maintenance system to reflect changes in site location, site type, etc. Consultant shall also maintain an accurate, up to date database containing information on the entire call box system.

The Call Box System Database shall include all information relating to system components. This information includes, but is not limited to, controller card type, transceiver model and type, and TTY device type. Fairly recent digital call box pictures and complete latitude and longitude data shall also be included.

The Call Box System Database shall include, at a minimum, the following maintenance information on the call box system:

- Description of all corrective maintenance visits including the call box sign number, date and time of work issue date, date and time of visit, date and time work completed (if different from the first visit), and description of work performed;
- Description of preventive maintenance visits including the call box sign number, date and time of visit, and description of work performed if it deviates from the standard preventive maintenance requirements;
- Description of other site work including, but not limited to the following: knockdowns, vandalism, sign repair, other repairs, site repairs, CHP reported,

- removals, reinstallations, and pad replacements. These entries shall also include the work issue date and time (alarm date where applicable), site visit date and time, sign number, and date and time of completion.

The Consultant shall provide the following reports and data at the interval defined:

- Call Box System Database, monthly
- Call Box Maintenance Exception Report – a report of call boxes that have failed to report into the maintenance system after 3 days, twice a month
- Call Box PM Report, monthly – a report of the call boxes visited that month including the date and time and description of work completed
- Call Box CM Report, monthly – a report of call boxes visited that month including the date and time and description of work completed

Consultant shall furnish their own digital camera, GPS devices, and other devices or equipment necessary to provide the above information in the maintenance system. Consultant shall keep the maintenance system updated and current to prevent misinformation.

Some specifications of the Call Box System Database and overall maintenance system may be altered by Consultant with prior written approval from the SAFE Project Manager. At the request of the SAFE Project Manager, additional information in the Call Box System Database may be added or unnecessary information deleted.

As stated above, all information, including historical data, within the maintenance system must be accessible to the SAFE staff at any time via Internet connection or equivalent means acceptable to the SAFE Project Manager. The SAFE staff monitors all repairs each month, the timeliness of such repairs, and the number of times each call box calls into the maintenance system via the maintenance system.

E. RECOVERY SERVICES

Consultant shall keep the pricing sheet updated and submit the most up-to-date pricing sheet on a quarterly basis to SB SAFE and the Call Box Recovery Services consultant. In addition, each time the pricing sheet is updated the materials and equipment listed on the technician's work order must be submitted with the monthly invoicing and should be updated accordingly. Therefore, all materials and equipment listed on the work orders should have a corresponding item on the Cost Summary Sheet/Pricing Sheet.

Consultant is responsible for working collaboratively with the Call Box Recovery Services consultant and to respond to that consultant's inquiries within 72 hours in order to facilitate the timely cost recovery of damaged call boxes.

End of Statement of Work

ATTACHMENT B- PRICE FORMS

PP2.

CASE Systems Inc. Time and Material Costs for Various Site Types for Compliance with Motorist Aid Call Box Guidelines

Prices apply to both San Bernardino and Riverside SAFE.

Description of Improvements	Materials Cost	Labor Cost	Extended Price
Site 1 - Site Conversion- lower box on pole	\$ 0.00	\$ 325.00	\$ 325.00
Site 2 - Pad Replacement	\$ 650.00	\$ 250.00	\$ 900.00
Site 3 - Relocation of Call Box	\$ 335.00	\$ 380.00	\$ 715.00
Site 4 - Removal of Call Box	\$ 0.00	\$ 400.00	\$ 400.00
Site 5 - Removal of Backwall, Handrail	\$ 0.00	\$ 400.00	\$ 400.00

Prices include all costs: labor and material and tax to restore site including hauling waste (timber, pads, and handrail) from site.

Parts List For Site Compliance	Part #	Unit Price	
Pole - (blank for drill template)	5870-0067	\$ 473.00	ea
Pole - USED	5870-0067-99	\$ 132.00	ea
Non-auger foundation	5870-0004	\$ 277.00	ea
60" x 60" composite pad	5870-0070	\$ 650.00	ea
Rapidset concrete	7000-0068-1	\$ 15.90	ea
Mounting Hardware	3090-0058	\$ 11.57	ea

The CASE Systems Inc. Universal Call Box Parts Price List follows this page.

SPECIAL PROJECTS

Satellite call boxes/per unit \$8,500.00 ea
 Satellite charge per box/monthly \$ 35.00 ea
 Air time for satellite call box \$ 1.45 minute
 Cost for maintenance to satellite call box outside \$2,500.00 ea
 of corrective/preventive maintenance. \$2,500 represents a broad range of possible repair costs, with the expectation that none will exceed \$2,500. It is the understanding that some repair costs may be as little as \$100 for example, but none greater than \$2,500.

Paint entire call box housing \$ 75.00 ea

CALIFORNIA SAFE UNIVERSAL PRICE LIST

For San Bernardino and Riverside SAFE PROGRAMS

2013

New Call Box Assembly Purchases				
Digital Lexan Call Box Assembly			\$	2,898.37 ea
Digital TTY Lite Lexan Call Box Assembly			\$	4,243.17 ea
Solar Powered Satellite (non TTY) Call Box Assembly			\$	8,690.67 ea
AC Powered Wireline Call Box Assembly			\$	2,898.37 ea
BlueTOAD equipped Call Box Assembly			\$	6,990.37 ea
Multi Button Call Box			\$	3,153.98 ea
20W Solar Panel Assembly			\$	453.81 ea
Antenna Assembly w/ cable - dual band			\$	138.85 ea
Maintenance Items for Lexan Call Box Projects				
Site Material				
Pole - (blank for drill template) includes labor for drilling		5870-0067	\$	473.00 ea
Pole - USED		5870-00xx	\$	131.19 ea
Saddle (pole mounting) - NEW		5004-0087	\$	47.97 ea
Saddle (pole mounting) - USED		5004-0087-98	\$	19.18 ea
Wall mount pole (D-mount)		5870-0017	\$	295.65 ea
K-mount barrier saddle mount		5870-0013	\$	274.94 ea
Barrier mount pole (K-mount)		5870-0014 or 5870-0029	\$	478.34 ea
Hilti anchor bolts (set of 4 bolts)		6040-4081	\$	108.23 ea
Sign generic fiberglass (FRP) w/ reg numbers		3090-xxxx various	\$	101.41 ea
Sign Diamond FRP or Alum w/ HR numbers		3090-xxxx various	\$	193.75 ea
Sign Diamond & Anti-Graffiti w/ HR numbers		3090-xxxx various	\$	230.72 ea
Sign bracket wall mount		5004-0049	\$	105.87 ea
Solar bracket post wall mount		5870-0017	\$	239.47 ea
Installation kit		6040-4035	\$	133.89 ea
Mounting hardware		3090-0058 or 3090-0059	\$	11.83 ea
Sign hardware		6040-4037	\$	35.53 ea
Wind brackets		3090-0086	\$	22.17 ea
Auger foundation		5870-0015	\$	274.94 ea
Non-auger foundation		5870-0004	\$	274.94 ea
60" x 60" composite pad		5870-0070	\$	664.58 ea
Rapidset concrete		7000-0066-1	\$	16.26 ea
General purpose cement		7000-0066	\$	4.43 ea
Tapco handrail (V-Loc)		5870-0046	\$	209.11 ea
Conduit and fittings (wall mount)		6040-4051	\$	260.16 ea

CALIFORNIA SAFE UNIVERSAL PRICE LIST

For San Bernardino and Riverside SAFE Programs

2013

Call Box Parts				
Lock cover	5014-0036		\$	19.22 ea
Handset and armored cord	3090-0121		\$	128.61 ea
Yagi antenna - dual band	4210-0079		\$	181.82 ea
Corner reflector antenna	4210-0015		\$	228.86 ea
Tri-band Antenna	4210-0067		\$	103.37 ea
Mount for corner reflector or Yagi	5014-0022		\$	173.79 ea
10W solar panel with bracket - USED	6040-4063-98		\$	115.88 ea
20W solar panel with bracket	6040-4057		\$	453.81 ea
RF cable to antenna	6060-0436		\$	35.48 ea
Solar cable to solar panel	6060-0130		\$	35.48 ea
Misc other smaller cables and harnesses	6060-xxxx various		\$	35.49 ea
Main housing (assembly)	6040-4011 or -4011-09		\$	541.20 ea
Main housing (assembly) - USED repainted	6040-4011-98		\$	216.48 ea
Main housing with Front Door & Handset (pushbutton)	6040-4011-18		\$	862.94 ea
Main housing with Front Door & Handset (drilled for TTY)	6040-4011-20		\$	862.94 ea
Front door (assembly)	6040-4010		\$	193.13 ea
Front door (assembly) - USED Repainted	6040-4010-98		\$	56.97 ea
Back door (assembly)	6040-4026		\$	223.86 ea
Back door (assembly) - USED Repainted	6040-4026-98		\$	89.55 ea
Transceiver mounting plate	5004-0051		\$	36.95 ea
Handset and armored cord	3090-0311		\$	128.61 ea
17AH rechargeable battery	4240-0001		\$	82.79 ea
Battery bracket - 17A	5004-0048		\$	20.69 ea
Call Box Electronics				
Aurora Controller Board	6020-0300		\$	650.35 ea
Interface Board to Aurora Input/Output	6020-0449		\$	283.72 ea
Digital Radio - TC65 or M200 radio module	5203-0031 or 5204-0051		\$	373.59 ea
TTY Lite Controller Board	6020-0740		\$	624.19 ea
TTY Lite Illuminated LCD display assembly	6040-0246		\$	697.96 ea
TTY Keypad	6040-0251		\$	283.73 ea

CALIFORNIA SAFE UNIVERSAL PRICE LIST

For San Bernardino and Riverside SAFE Programs

2013

Call Box Upgrade Options (Single Unit Pricing)			
Controller Board Upgrade Kit			
CDMA M200 radio Upgrade kit	6000-0548	\$	918.33
GSM TC65 radio Upgrade kit	6000-0549-03	\$	729.41
Digital Upgrade — GSM	6000-0549-04	\$	551.00
Digital Upgrade — CDMA M200	6000-0448-10-1	\$	1,449.18 ea
Lexan TTY Lite Upgrade Kit	6000-0449-11	\$	1,449.18 ea
Combined Digital Upgrade and TTY Upgrade Kit	6000-0550-03	\$	1,344.81 ea
	various by kit number	\$	2,794.00 ea
Labor Rates			
Shop Labor Rate	7000-00XX	\$	99.08 hour
Field Labor Rate	7000-00XX	\$	99.08 hour

NOTES:

- Prices not valid for call boxes modified by third parties.
- All prices subject to CPI revision on an annual basis. These prices are valid through April 2014.
- CASE Systems reserves the right to adjust pricing in response to changes in requirements from customer and/or other agencies, etc.
- Prices exclusive of any special subcontracting requirements imposed by customer.
- Hourly rates exclude charges for special equipment.
- Special equipment (bucket truck, lane closures, etc.) when required will be billed separately
- Prices are FOB by project office located in CA and do not include any applicable Sales Tax.



- 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: June 5, 2013

Subject: National Bike Month (May) and status report on SANBAG Active Transportation activities

Recommendation:* Receive information on National Bike Month and a status report on SANBAG Active Transportation activities.

Background: May is National Bike Month, sponsored by the League of American Bicyclists and is celebrated in communities from coast to coast. Bike-to-Work Week is May 13-17 and Bike-to-Work Day is Friday, May 17. In recognition of Bike Month, SANBAG has upgraded its website to include additional material on both our own active transportation activities as well as links to other resources to encourage bicycle transportation. You may view the new material through the link on our SANBAG home page at www.sanbag.ca.gov.

With increased interest in healthy, sustainable and economic transportation options, the number of bicycle commuters in the U.S. grew significantly in recent years including in San Bernardino County. SANBAG and the member jurisdictions have supported bicycle commuters and recreational cyclists by working to create more bicycle

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*Approved
 Board of Directors*

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.
 BRD1306a-jl

friendly neighborhoods and providing partnership programs between community groups.

In recognition of National Bike Month, SANBAG would like to update the Committee on the status of non-motorized transportation or "Active Transportation" activities in San Bernardino County. As a note, SANBAG staff provided the Board members with a status update of the bicycle facility development in March, 2012. With the increased demand for bicycle facilities around the region, staff is committed to implementing active transportation policies outlined in the 2011 San Bernardino County Non-Motorized Transportation Plan, within available resources.

On April 6, 2011, the Board of Directors approved the 2011 update to the San Bernardino County Non-Motorized Transportation Plan (NMTP), which contains an extensive amount of information on current conditions and future plans for pedestrians and bicyclists. Specifically, the NMTP details plans for each jurisdiction, policies for encouraging active transportation, guidelines for developing non-motorized infrastructure, and implementation priorities for regional projects. It also identifies priority projects for each jurisdiction.

The network of projects in the NMTP was then incorporated into Southern California Association of Governments' (SCAG's) 2012 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). The RTP/SCS has a major emphasis on active transportation, with a projected investment of \$6 billion in regional bicycle, walking, and related infrastructure through 2035.

Since the adoption of NMTP and RTP/SCS, SANBAG has made significant progress toward the bicycle systems that these plans envision. In early 2011, San Bernardino County had 468 miles of existing Class I, II, and III bicycle facilities. Class I facilities are separated bicycle/pedestrian trails; Class II represent bicycle lanes; and Class III represent signed bicycle routes. Since the adoption of the NMTP, at least 30 miles have been added to bring the total to almost 500 miles.

The approximate share of SCAG's \$6 billion funding target for San Bernardino County, based on population, would be \$600 million through 2035, averaging about \$20 million per year, in nominal (inflated) dollars, over the 27-year life of the RTP/SCS. This is substantially above SANBAG's historical direct funding level for bicycle facilities. However,

when one considers the roadway construction and widening projects that include bicycle lanes or routes, the historical funding levels are more substantial. The next section of this item provides an overview of funding opportunities for bicycle facilities.

There are two main components of the SANBAG active transportation program. The first component is assisting and partnering with local jurisdictions with funding and delivery of the active transportation projects identified in the NMTP. The other component consists of active transportation planning and studies in partnership with various stakeholders from government agencies to community based organizations. SANBAG and the local jurisdictions in San Bernardino County are aggressively pursuing planning and construction of active transportation projects throughout the County.

Funding/Grant Opportunities

There are a number of funding sources available to plan and deliver active transportation projects. Some of the most significant funding sources potentially applicable to the planning, development, and construction of bicycle facilities in San Bernardino County include:

- California State Active Transportation Program (ATP)
- Transportation Development Act (TDA) Article 3
- Congestion Mitigation and Air Quality (CMAQ)
- Highway Safety Improvement Program (HSIP)
- SANBAG Measure I Funding
- SCAQMD AB2766 - Motor Vehicle Subvention Fund Program and Mobile Source Air Pollution Reduction Review Committee (MSRC)
- SCAG Sustainability Program (e.g. Compass Blueprint)
- Caltrans Transportation Planning Grant Program
- Private Funding Sources (e.g. Robert Wood Johnson Foundation, The California Endowment, and Kaiser Permanente)

California State Active Transportation Program (ATP):

Governor Brown has proposed an Active Transportation Program (ATP) that consolidates five existing programs currently managed by Caltrans' Division of Local Assistance:

1. Transportation Alternatives (federal MAP-21) \$72M
2. Safe Routes to School (state) \$24M
3. Safe Routes to School (federal MAP-21) \$21M
4. Bicycle Transportation Account (state) \$7M
5. Environmental Enhancement and Mitigation (state) \$10M

This proposal came out of a Department of Finance effort to achieve greater efficiencies in the grant application and administration process. From the perspective of advancing active transportation in the region, the consolidation of these programs into the ATP presents new opportunities and challenges for San Bernardino County as a region.

MAP-21 indicates that 50% of the funding would be distributed by the state to the Metropolitan Planning Organizations (MPOs), and the remaining 50% of the funds would be distributed by the state. SANBAG is working with other county transportation commissions to emphasize the need to preserve equity through the funding distribution process.

SANBAG hosted a highly successful workshop on funding for active transportation projects in February 2013, with particular emphasis on opportunities within the Caltrans bicycle grant programs.

Transportation Development Act Article 3 Funds

The TDA provides that 2% of the Local Transportation Funds (LTF) be made available to counties and cities for facilities for the exclusive use of pedestrians and bicyclists, known as TDA Article 3 Program. In August 1999, the SANBAG Board approved a policy that 20% of the Article 3 program would be made available for projects that improve access to transit stops for pedestrians and persons with disabilities. The remaining 80% would be available for other pedestrian and bicycle projects. Eligible expenditures on the 80% portion of pedestrian and bicycle projects include:

1. Preliminary engineering leading to construction of pedestrian or bicycle facility;
2. Right-of-way acquisition necessary for pedestrian or bicycle facility;
3. Construction or reconstruction of Class I, II and III bicycle facilities and sidewalks;
4. Provision of curbs, gutters and driveway ramp paving on a sidewalk project; and

5. Purchase and installation of bicycle lockers and/or racks at major employment centers, park-and-ride lots and transit terminals.

SANBAG receives approximately \$1.4 million in TDA Article 3 funding annually. Projects are identified through a periodic call-for-projects. In December 2011, the Board awarded \$3,775,514 for Pedestrian and Bicycle Projects. In 2013, a total of \$3,810,026 of Article 3 Bike and Pedestrian funds are estimated to be available for award. This amount includes two years of revenue plus other unused/returned funds. A call for projects for TDA Article 3 was made on March 6, 2013 and is due May 8, 2013.

Congestion Mitigation Air Quality (CMAQ) Funds

The CMAQ program was re-authorized in MAP-21. The purpose of the CMAQ Program is to fund transportation projects or programs that contribute to the attainment and maintenance of the National Ambient Air Quality Standards for ozone and carbon monoxide.

SANBAG has been using most of the county's CMAQ funding for regional highway and transit projects (i.e. high occupancy vehicle lanes, signal synchronization, and transit vehicle acquisition, etc.). Design, engineering, right-of-way acquisition and construction of bicycle facilities (Classes I, II or III) are eligible for CMAQ funding. SANBAG has historically received over \$20 million in CMAQ funding annually, but little has been used for bicycle facilities.

Highway Safety Improvement Program (HSIP)

The Safe, Accountable, Flexible, Efficient Transportation Equity Act established the Highway Safety Improvement Program (HSIP) as a core Federal-aid program. The overall purpose of this program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements.

Currently, Safe Routes to School (SRTS) program has been proposed to be eliminated as a separate funding source, and is now lumped into the overall program of ATP. However, there is a bill (AB1194) that would leave SRTS as separate funding program (estimated at \$46M/year). Due to this uncertainty, SRTS projects are now eligible for cycle 6 of the

HSIP as long as all criteria for HSIP's Benefit/Cost are established. SANBAG is making sure that the revised information is disseminated to the local jurisdictions.

Measure I Funds

The Measure I 2010-2040 Expenditure Plan identifies funding by subarea and program for highway and transit projects. Class II and Class III bicycle facilities may be incorporated into highway projects under the Valley Major Street, Mountain/Desert Major/Local Highways Programs, and any of the Local Street Programs. Pedestrian and bicycle-related access improvements may be incorporated into larger Measure I funded transit projects. In addition, the Traffic Management Systems (TMS) Programs in each subarea allow for funds to be used for planning and project development and for "projects which contribute to environmental enhancement associated with transportation facilities." While this does not explicitly list bicycle facilities, the planning, development, and matching funds for construction of such facilities can be viewed as a legitimate application of those funds. The TMS category receives 2% of Measure I funds in each subarea.

AB2766 - Motor Vehicle Subvention Fund Program and Mobile Source Air Pollution Reduction Review Committee (MSRC)

AB2766 is a Motor Vehicle Registration fee surcharge of \$6 per vehicle. It is collected by the Department of Motor Vehicles and subvented to the SCAQMD for disbursement. Since 1991, local governments have received AB 2766 funds to implement programs that reduce air pollution from motor vehicles.

Out of the \$6 collected, \$4 of the registration fee is divided into 40 percent for local governments (subvention portion), 30 percent to the Mobile Source Air Pollution Reduction Review Committee (MSRC), and 30 percent to the SCAQMD for its vehicle emission reduction programs. The AB 2766 Subvention Program provides a funding source for cities and counties to meet requirements of federal and state Clean Air Acts, and for implementation of motor vehicle emission reduction measures in the SCAQMD Air Quality Management Plan (AQMP).

Regarding active transportation, the subvention portion can be used for various bicycle related projects such as alternative mode signalization,

bike trail and bike path improvements, bicycle facilities, and non-motorized transportation research projects. The MSRC portion will be adding bicycle projects and programs for their next round of calls for projects.

Examples of AB 2766 funds spent on bicycle projects in San Bernardino County include:

- Chino Hills Fairfield Ranch Road Bike Path Lane Painting: \$38,210
- Fontana Pacific Electric Trail Segment 6: \$523,821
- Yucaipa 7th Street Curb, Gutter, Sidewalk: \$61,393
- Rancho Cucamonga Bike Lockers: \$19,309

SCAG Sustainability Program (e.g. Compass Blueprint)

The planning of active transportation projects is equally important, and the fund sources and grant programs for planning differ from those available for construction. Grants are a common funding source for active transportation planning projects. Although many local jurisdictions, as well as SANBAG, aggressively apply for various types of active transportation planning grants, the results are uncertain due to the competitive nature of the grants.

The primary regional planning grant program is the SCAG Sustainability Program, which now incorporates the popular Compass Blueprint program. The Sustainability Program combines the Compass Blueprint assistance for integrated land use and transportation planning with new Green Region initiative assistance aimed at local sustainability and Active Transportation assistance for bicycle and pedestrian planning efforts.

With the recent adoption of the region's first Sustainable Communities Strategy (SCS) and its emphasis on active transportation, the program will focus on voluntary efforts that will contribute to implementing the SCS, including active transportation projects. SANBAG will be submitting active transportation related applications such as bicycle route mapping phone application, complete streets implementation strategy, a regional safe routes to school inventory, and/or a regional way-finding study.

Caltrans Transportation Planning Grant Program

Another popular planning grant for active transportation is Caltrans Transportation Planning Grant program. This year, SANBAG and the cities of Rialto, Rancho Cucamonga, and Victorville have submitted a total of five applications to Caltrans. All of the submitted proposals have active transportation components built into the project.

Caltrans awards approximately \$9 million in funding through six planning grant programs annually. These programs provide monetary assistance for transportation planning projects to improve mobility and lead to the programming or implementation phase for jurisdictions. The Caltrans transportation planning grant program includes:

- Community-Based Transportation Planning
- Environmental Justice
- Partnership Planning
- Statewide or Urban Transit Planning Studies
- Rural or Small Urban Transit Planning Studies
- Transit Planning Student Internships

Examples of grants awarded to San Bernardino County jurisdictions for active transportation include:

City of Big Bear Lake: Community-Based Transportation Planning - Big Bear Valley Pedestrian, Bicycle, and Equestrian Master Plan

City of Ontario: Community-Based Transportation Planning - Holt Boulevard Corridor Pedestrian Mobility and Streetscape Strategic Plan

SANBAG: Statewide or Urban Transit Planning Studies - Improvement to Transit Access for Cyclists and Pedestrians. Note that SANBAG has recently been awarded the Planning Implementation Award for a Large Jurisdiction from the American Planning Association (APA) Inland Empire Chapter (May 2, 2013). It will move on to the next level of the competition with the California Chapter of APA in the same category.

Private Funding Sources (e.g. Robert Wood Johnson Foundation, The California Endowment, and Kaiser Permanente)

In recent years, due to the increased awareness of active transportation and its related benefits to public health, quality of life, safety, and economy, funding from the private foundations has also increased. Some of the cities in the County have taken full advantage of the relationship and have successfully leveraged funds toward this new partnership.

Public health practitioners have realized that people travel for work, school, shopping, or play, and how individuals and society travel has public health impacts that go far beyond the seemingly simple act of going from one place to another. This common trait provides an ideal partnership linkage for public health and transportation. In a time of tight budgets, limited resources, and growing health problems, creating opportunities for safe bicycling and walking can provide public health and transportation industries an opportunity to strive for a common goal.

With the adoption of RTP/SCS, SCAG is beginning to consider public health and active transportation together. SANBAG is also actively engaged in pursuing partnership efforts with the public health sector, mainly anchored by the San Bernardino Countywide Vision's Infrastructure and Wellness Elements. SANBAG is part of a steering committee of the Wellness Element called Community Vital Signs (CVS) where currently, data are being collected to be used as health indicators, including data related to the built-environment and active transportation. Also in April, SANBAG hosted a San Bernardino County Active Transportation Network (SBCATN) meeting where government agencies, community based organizations, bicycle clubs, and advocates met to discuss priorities for active transportation projects and policies in San Bernardino County. The group will continue to meet and partner on common issues surrounding active transportation in San Bernardino County. Any recommendations related to SANBAG will be brought to the Board for consideration in the future.

In the past, on a city level example, Rancho Cucamonga obtained Robert Wood Johnson Foundation Grant to increase their work effort for their Healthy RC program. Healthy RC encourages a healthy and sustainable lifestyle for residents of the city. "Healthy RC is developing a wide range of programs, policies, infrastructure and events to help build

and maintain healthy minds, healthy bodies and a clean and sustainable earth.”

Regional Active Transportation Projects

SANBAG and the local jurisdictions in San Bernardino County are aggressively pursuing planning and construction of Active Transportation projects throughout the County. Substantial portions of the Pacific Electric Trail and the Santa Ana River Trail have already been constructed. SANBAG and several jurisdictions are partnering to complete these and other regional active transportation projects. Several regional trail system segments are anticipating use of federal funds.

Pacific Electric Trail in Rialto

The project involves construction of the last segment of the Trail that remains to be completed, which will provide a continuous facility from the San Bernardino City limits to the Los Angeles County Line. The segment is approximately 1.2 miles long and runs parallel to Foothill Boulevard. The proposed project will connect with the existing Pacific Electric Inland Empire Trail at the city limits (Maple Avenue) and continue to the planned termination point at Riverside Avenue. As planned, the Trail will travel through the middle of the City of Rialto where it will eventually lead to the Rialto Civic Center, Library, Police Station, Fire Administration, and the Downtown Rialto business district.

Santa Ana River Trail – Phase 3

This project involves construction of a 3.6 mile Class I bikeway running from Waterman Avenue in the City of San Bernardino to California Street in the City of Redlands. The Santa Ana River Trail (SART) serves as the regional backbone to numerous city and community trails planned for future development. The SART corridor offers unique and diverse natural settings through eight geographic regions extending over 100 miles from the Pacific Ocean to the San Bernardino National Forest. The estimated construction cost is \$2.7 million, which includes a temporary alternate route around the Mission Zanja Channel and BNSF rail line.

Mojave Riverwalk Trail

The Mojave Riverwalk trail and bike path is a non-motorized multi-use trail, accommodating cyclists, walkers, joggers and hikers. The purpose of the project is to provide a safe alternative transportation link between Old Town Victorville, the Victorville Transportation Center and Victorville College. The project is proposed to extend approximately 9.5 miles from Interstate 15 to Victor Valley College via Hesperia Road to 6th Street at Mojave River. The overall cost is estimated at \$9.5 million.

There are numerous other bicycle facility projects in the process of development by local jurisdictions. The last several TDA Article-3 Calls for Projects have been oversubscribed, indicating that jurisdictions are actively readying projects for funding and implementation. A future agenda item will indicate the list of projects for which TDA Article-3 funds are being applied.

Financial Impact: This item has no impact on the current Fiscal Year 2012/2013 budget.

Reviewed By: This item was received by the General Policy Committee on May 8, 2013.

Responsible Staff: Steve Smith, Transportation Planning Analyst



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

Minute Action

AGENDA ITEM: 10

Date: June 5, 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 Board of Directors, acting as the San Bernardino County Transportation Commission approve Option Agreement No. C13106 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 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.

*

	<p><i>Approved</i> <i>Board of Directors</i></p> <p>Date: _____</p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>
--	---

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

Check all that apply.
 BRD1306a-pm
 Attachment: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13106.doc>

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. C13106 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 C13106 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. C13106 for the transfer of the City substation property to TCI.

Financial Impact: Agreement No. C13106 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 was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. SANBAG Contract Administrator and outside Right-of-Way Legal Counsel have reviewed this item and the contract.

Responsible Staff: Garry Cohoe, Director of Project Delivery

CONTRACT SUMMARY SHEET

Contract No. C 13106 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. C13106 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
TOTAL CONTRACT VALUE	\$	0	TOTAL CONTINGENCY VALUE	\$	0
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 0

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	
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0884</u> .	
<input type="checkbox"/> A Budget Amendment is required.	
How are we funding current FY? There is no direct cost associated with this agreement	
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds
<input 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 type="checkbox"/> Receivable Neither payable nor receivable; There is no direct cost associated with this agreement	

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

PAUL MELOWTON		4/29/13
Project Manager (Print Name)	Signature	Date
Garry Colve		4/29/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick		4/30/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
JESSIE HILL		
Contract Administrator (Print Name)	Signature	Date
W. SNUARSIC		3/2/13
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

**EXHIBIT A
PARCEL MAP**

907409.1

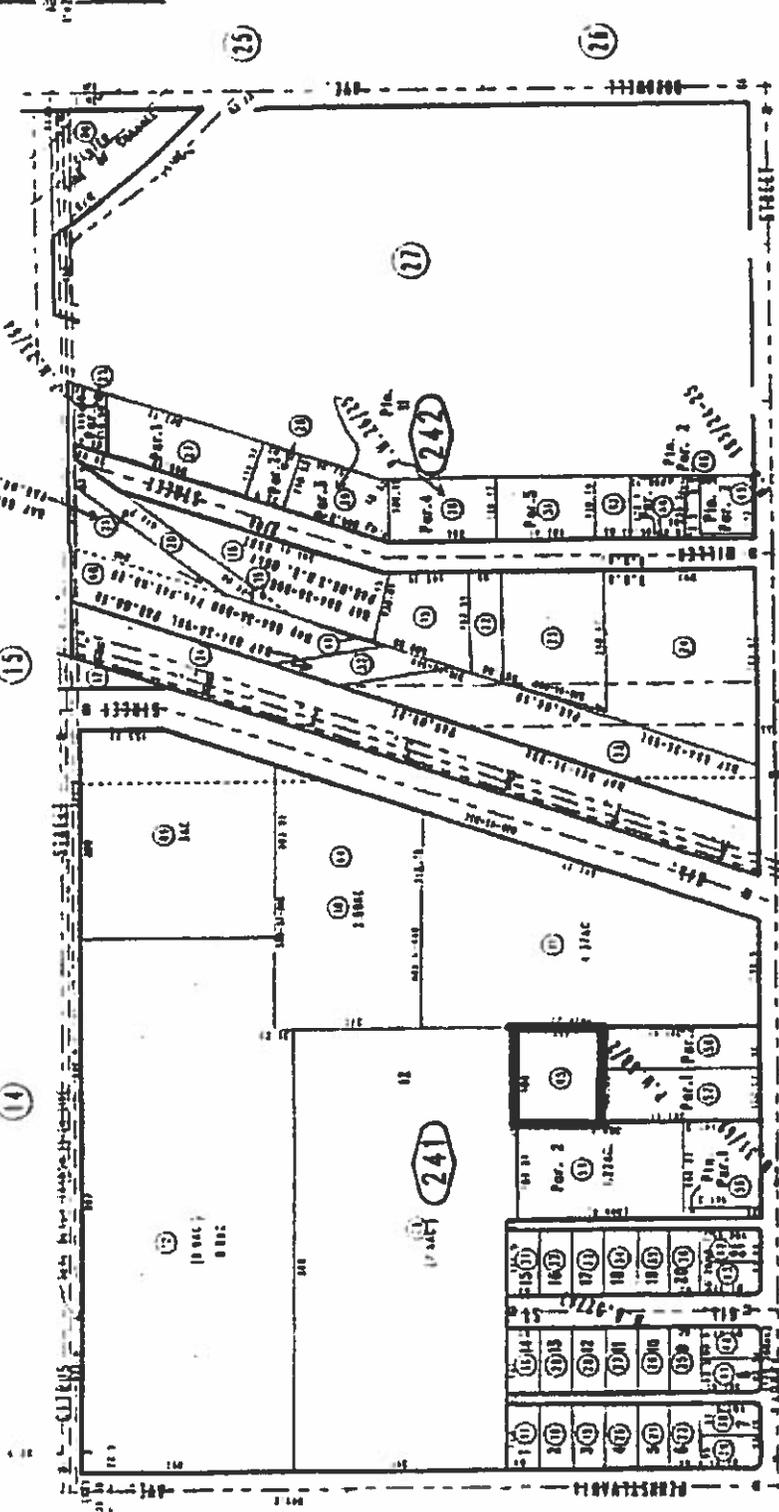
THIS MAP IS FOR PURPOSES OF ASSESSING TAXABLE VALUE

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

City Of Colton
Tax Rate Area
2108, 2133

0160 - 24

BILL POSTMUS, Assessor



0161
00

0161
00

0161
06

- Parcel Map No. 15833, P.M. 131/24-25
- Parcel Map No. 7883, P.M. 42/2
- Plat Parcel Map No. 3088, P.M. 31/35
- Parcel Map No. 2871, P.M. 15/25
- Parcel Map No. 2765, P.M. 13/14
- Tract No. 1163 M.B. 5/2/67

0161
00

Assessor's Map
Book 0160 Page 24
San Bernardino County

October 2003

**EXHIBIT B
QUIT CLAIM FORM**

907409.1

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: 11

Date: June 5, 2013

Subject: Replacement of De-Obligated Transportation Enhancement Funds

Recommendation: Approve replacing receivable of \$80,000 of Transportation Enhancement funds with Measure I 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 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

*Approved
Board of Directors*

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

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

BRD1306a-km

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 was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013.

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: 12

Date: June 5, 2013

Subject: Right-of-Way Signatory and Approval Authority Policy

Recommendation: Acting as the San Bernardino County Transportation Commission approve new Policy 34509 to establish right-of-way signatory and approval authority for the Measure I Program, Commuter Rail/Transit and non-Measure I funded projects.

Background: San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission (SANBAG) is reviewing and updating several of the key internal policies and procedures by which it operates including those that pertain to rights-of-way. The current right-of-way policies and procedures which SANBAG used are abbreviated and not comprehensive enough for SANBAG's expanding role in project delivery which includes right-of-way activities and eminent domain. With limited right-of-way policies and procedures in place, a lengthy and labor intensive effort by staff has developed to produce agenda items for committee and Board members to review, consider, and approve. Given that Right-of-Way Certification is a requirement for requesting federal and state funding, the current elongated approval process added to an already lengthy process, and is always the last component of a project to be completed. Any slippage in the schedule could jeopardize any funds that are tied to a deadline requirement. The purpose of this proposed policy is to establish a streamlined approval process for right-of-way related documents that is compliant with Federal and State statutes and regulations, in order to secure funding for delivery of projects into construction, and to relieve the Board,

Approved
Board of Directors

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG	<input type="checkbox"/>	CTC	<input type="checkbox"/>	X	CTA	<input type="checkbox"/>	SAFE	<input type="checkbox"/>	CMA	<input type="checkbox"/>
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Check all that apply.

BRD1306b-pb

Attachments: BRD1306b1-pb, BRD1306b2-pb, and BRD1306b3-pb

committees, and staff from the time consuming efforts involved in agenda item production and approvals.

Currently, the appropriate Board committee recommends and the Board approves appraisals for just compensation and the setting of dates for Resolution of Necessity (RONs) hearings. In addition, the Board delegates limited signature authority to the Executive Director for execution of acceptance and acquisition documents, agreements, right-of-way certifications, and conveyance and other real estate documents. As a result of this limited delegation of authority and the high volume of right-of-way acquisitions, the Board committees and the Board must consider numerous staff reports requesting certain approvals of right-of-way actions that other agencies allow at staff level. Each staff report requires production, review, approval and assembly in preparation for committee and Board agendas. This process takes approximately sixty to seventy days to complete at an average staff cost of approximately \$2,050.00 per agenda item. Without this authority, and assuming a single batch of appraisals and a single RON hearing are presented before a SANBAG committee and Board, the time necessary to acquire right-of-way certification is 276 days. With the proposed right-of-way signatory authority this period would be reduced to 204 days. This would generate approximately two and a half months and \$4,100.00 of savings per item. But for most projects, in order to maintain the schedule, particular right-of-way actions need to be approved in batches. Examples of multiple approvals are shown in the table below.

	Number of Agenda Items				Savings Under Proposed Policy	
	Current Policy			Proposed Policy	\$	Days
Project	Approve Appraisals	Approval to Set RON Hearing Date	RON Hearing	RON Hearing		
Lenwood Grade Separation	1	2	2	2	\$6,150	160
Laurel Grade Separation	3	2	3	3	\$10,250	255
Devore Interchange	12	N/A (CTC to Hear RONs)			\$15,252	327

In 1993, the Board adopted Policy 34507, "Measure I Major Projects Program, Administrative Settlement Policy: Right of Way Acquisition for Measure I Major Projects". Policy 34507 establishes a standard procedure for utilization of an

administrative process to acquire right-of-way. Proposed Policy 34509 clarifies that the administrative settlements process of Policy 34507 applies to all Measure I Major Projects, Commuter Rail/Transit projects and projects funded by non-Measure I funds. In addition, the proposed Policy 34509, shown in Attachment A, delegates authority to staff to approve and execute certain agreements and documents associated with acquisitions of rights-of-way for Measure I Program projects, Commuter Rail/Transit projects and non-Measure I funded projects. The policy would also delegate authority to staff to take certain actions associated with the eminent domain process including approving appraisals and setting Commission hearing dates for resolutions of necessity. The documents and actions listed in the table within the proposed policy are typical of those needed during the right-of-way phase of a project. This proposed policy provides delegation of authority similar to the signature and approval authority delegations adopted by Caltrans, OCTA and RCTC to streamline right-of-way and to deliver projects to construction. A comparison of transportation agency delegations of authority is shown in Attachment "B".

Adoption of Policy 35409 will increase the overall efficiency in project delivery to the construction phase by eliminating a number of routine matters from the Board's agendas thus freeing up time for the Board and staff to act on more substantive matters associated with the projects. Reporting will include concurrent notification to Board members when property owners receive notification of the Commission's intent to hold a Resolution of Necessity hearing. Staff recommends approval of Policy 35409.

Financial Impact: There is no fiscal impact to the current approved budget.

Reviewed By: This item was reviewed by the Right-of-Way Ad hoc Committee on March 27, 2013 and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel has reviewed this item and Policy 35409.

Responsible Staff: Paula Beauchamp, Project Delivery Manager

Attachment "A"

San Bernardino Associated Governments	Policy	34509
Adopted by the Board of Directors	Month Day, 2013	Revised
Right-of-Way Signatory and Approval Authority	Revision No.	0

Table of Contents Purpose References Policy Revision History
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I. PURPOSE

This policy delegates signatory and approval authority for various documents associated with right-of-way acquisitions for transportation projects.

II. REFERENCES

Policy 34507

III. POLICY

SANBAG, acting as the San Bernardino County Transportation Commission, acquires right-of-way for projects within the Measure I Program, Commuter Rail/Transit projects and projects funded with non-Measure I funds . It is the policy of SANBAG to comply with federal statutes and regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24), and State statutes and regulations (California Government Code Sections 7260-7277, as implemented by the California Relocation Assistance and Real Property Acquisition Guidelines, Title 25, California Code of Regulations, Chapter 6, Article 1, Sections 6000 *et seq*, and the California Code of Civil Procedure Sections 1230.010 – 1230.070).

In doing so certain documents are required. This policy defines the signature and approval authority for these documents in the Table below. Exercise of approval authority is subject to Policy 34507 that established a standard procedure for use of an administrative process to acquire right-of-way. This policy and the administrative settlements process of Policy 34507 applies to all projects in the Measure I Program, Commuter Rail and Transit projects, and projects funded by non-Measure I funds.

Documents	Signature and Approval Authority
Certificates of Acceptance (Deeds, Easements, other recorded property transfer documents)	Department Director
Agreements related to Property Acquisitions (Purchase & Sale Agreements, Possession & Use Agreements, Settlement Agreements, Leases, Rental Agreements, Right-of-Way Contracts, Licenses, Rights of Entry, Permits to Enter, etc.)	Executive Director or designee within the Executive Management Team

Attachment "A"

Documentsⁱ	Signature and Approval Authorityⁱⁱ
Utility Agreements up to \$2,000,000, including assumption of liability.	Department Director
SANBAG Conveyances to Others <ul style="list-style-type: none"> • Deeds • Other conveyance documents 	Executive Director or Designee within the Executive Management Team
Right-of-Way Certificationsⁱⁱⁱ *	Executive Director or designee within the Executive Management Team
Escrow Instructions*	Project Delivery Manager or Department Director or Designee
Notices to Utility Owners to Relocate*	Project Manager
Appraisals of Real Property Interests (Just Compensation, Goodwill and Relocation Assistance)*	Department Director, upon recommendation by a qualified appraiser
Setting Commission Hearing Dates for Resolutions of Necessity *	Department Director, working with Legal counsel and Clerk of the Board

IV. REVISION HISTORY

Revision No.	Revisions	Adopted
0	Adopted by the Board of Directors	Mm/dd/yy

ⁱ All listed documents must be approved as to form by SANBAG's General Counsel or designee, except those documents with an asterisk*.

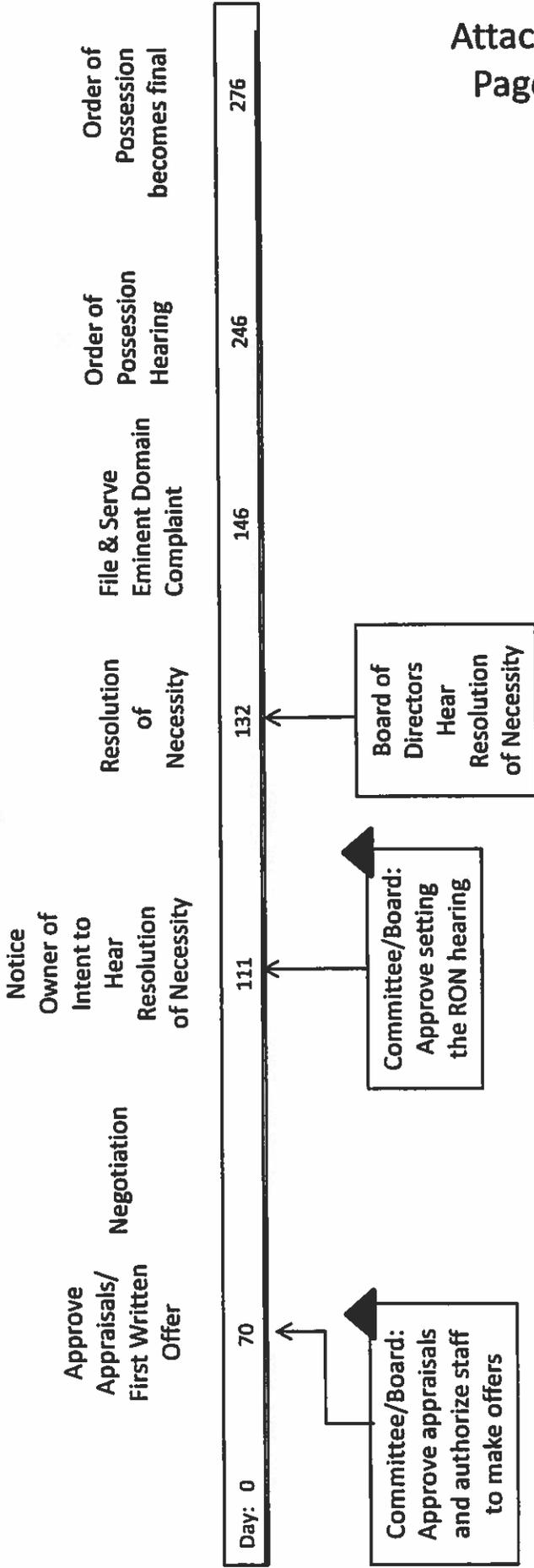
ⁱⁱ Signatures of parties on real property documents that are to be recorded with the county recorder's office, must be notarized.

ⁱⁱⁱ Resolution No. 13041 delegated authority to the Executive Director or designee to certify certain rights-of-way.

**Attachment "B"
Authority Delegation Comparison**

Document	SANBAG (Proposed)	BCGC	GCTA	CALTRANS
Certificate of Acceptance (Deeds and Easements)	Department Director	Executive Director or Designee	Executive Director Capital Programs	Director, Designee at District Office
Agreements for Acquisition (Purchase & Sale Agreements, Possession & Use Agreements, Settlement Agreements, Leases, Rental Agreements, Right of Way Contracts)	Executive Director or Designee within the Executive Management Team	Executive Director or Designee	Chief Executive officer or Designee within the Executive Management Team.	District Right of Way Delivery Manager
Right of Way Certification	Department Director	Right of Way Manager	Executive Director, Capital Programs	Senior Right of Way Agent Cert 1, 2 or Headquarters Chief Division of Right of Way Cert 3, 3W
Other Real Estate Documents (Licenses, Rights of Entry, Permit to Enter)	Department Director	Deputy Executive Director or Right of Way Manager	Director, Highway Programs	District Right of Way Delivery Manager
Agency Conveys to Others (Deeds and other conveyance documents)	Executive Director or Designee within the Executive Management Team	Executive Director or Designee (Deputy Executive Director)	Chief Executive Officer or Designee within the Executive Management Team.	District Right of Way Delivery Manager
Escrow Instructions	Project Delivery Manager or Department Director or Designee	Executive Director, Deputy Executive Director or Designee upon review and approval by Legal Counsel	Real Property Manager	District Right of Way Delivery Manager
Appraisal-Real Property Interest (Just Compensation, Goodwill, and Relocation Assistance Claim)	Department Director, upon recommendation by a qualified Review Appraiser	Executive Director, Deputy Executive Director or Designee upon recommendation of a qualified Review Appraiser	Review Appraiser	Appraisal, Real Property Interest, Just Comp.- (District Right of Way Manager) Goodwill, Railroads-(Headquarters, Chief, Division of Right of Way) Relo Claims-(Senior Right of Way Agent)
Utility Agreement up to \$2,000,000, including assumption of liability.	Department Director, upon review and approval by Legal Counsel	Executive Director or Designee (Deputy Executive Director or Director of Project, Delivery)	Executive Director, Capital Programs	District Senior Right of Way Agent
Notice to Utility Owners to Relocate.	Project Manager	Right of Way Manager	Real Property Manager	District Senior Right of Way Agent
Setting Resolution of Necessity Hearings	Department Director, working with Legal Counsel and Clerk of the Board	Right of Way Manager working with Legal Counsel and Clerk of the board	Real Property Manager working with Legal Counsel and Clerk of the Board	District Delivery manager upon approval by Headquarters Supervisory Right of Way Agent.

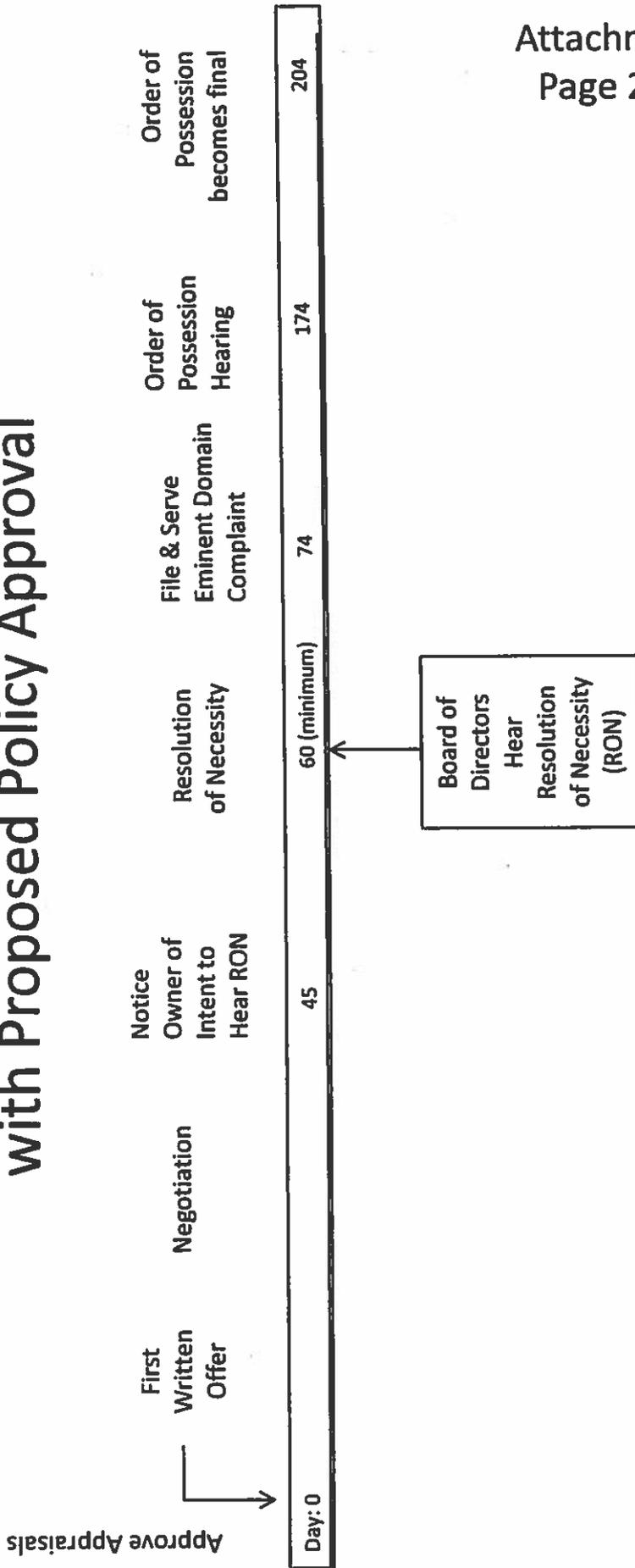
Current Off System Right of Way Acquisition Flow



Notes:

▲ Typically these Board actions are required more than once. For each additional action 60 – 70 days are required from the beginning of an agenda item preparation through Board approval.

Off System Right of Way Acquisition Flow with Proposed Policy Approval





- 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: 13

Date: June 5, 2013

Subject: Lenwood Road Grade Separation Project

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

1. Approve award of Contract No. C13032 with Simon Wong Engineering for Construction Management services for the Lenwood Road Grade Separation Project in an amount not-to-exceed \$2,493,341.00, provided that the award of the contract and the authorization to execute the contract are contingent upon Caltrans' issuance of a Conformance Letter and correction of any noted deficiencies, as required by Caltrans' Local Assistance Procedures Manual.
2. Approve a contingency amount for Contract No. C13032 of \$249,334.00 and authorize the Executive Director or designee to release contingency as necessary for the project.
3. Approve issuance of a Purchase Order in the amount of \$50,000.00 to cover the cost of the preconstruction services so that work can commence prior to the issuance of the federal funds for construction.

Background: Recommendations 1 & 2 are for a new contract. On March 6, 2013, San Bernardino Associated Governments (SANBAG) Board approved the release of

*

*Approved
 Board of Directors*

Date: _____

Moved: Second:

In Favor: Opposed: Abstained

Witnessed: _____

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

BRD1306c-mb

Attachment: C13032 <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13032.docx>

Request for Proposals (RFP) No. C13032 for Construction Management, Materials Testing, Source Inspection, Construction Surveying and Public Outreach services associated with the construction of the Lenwood Road Grade Separation Project.

On April 10, 2013, staff received five (5) proposals. The firms who submitted are, in alphabetical order, AECOM, BetKone, Inc., Falcon Engineering Services, HDR Construction Control Corporation, Inc., and Simon Wong Engineering. Staff assembled a selection panel consisting of members from the City of Barstow, Caltrans, County of San Bernardino and SANBAG. Following review of the five (5) proposals, three (3) firms were shortlisted to participate in interviews: BetKone Inc., Falcon Engineering Services and Simon Wong Engineering. Interviews were held on Thursday, April 25, 2013.

All three (3) firms were very qualified to manage this project. Simon Wong Engineering's thorough knowledge of the project, proposed staffing for work on the project, including their choice of sub-consultants, and their work plan distinguished it from the other firms. The selection panel unanimously agreed that Simon Wong Engineering was the most qualified and most available team to provide the services requested. Staff verified not only the references of the firm and the principal, but also called on and received positive references for the Resident Engineer and Structure Rep/Inspector.

In negotiations with Simon Wong Engineering the construction duration was reviewed. Based on the information available, it was agreed that the construction duration of 16 months would be reasonable. The construction management staffing and the not-to-exceed contract amount were based on this duration. The one unknown that may impact the duration, which in turn will impact the contract amount, is BNSF's 4th quarter restriction on construction within and near their tracks. This impact is very dependent on when the construction actually commences and contractor proposed staging modifications.

Staff recommends approval of Contract No. C13032 with Simon Wong Engineering, for Construction Management services on the Lenwood Road Grade Separation Project for a total not-to-exceed amount of \$2,493,341.00. Contingency for Contract No. C13032 is a not-to-exceed amount of \$249,334.00; and authorizes the Executive Director or designee to release contingency funds as necessary for the project.

The award and execution of the contract is contingent upon Caltrans' Audits & Investigations issuance of a Conformance Letter which indicates, that Caltrans has reviewed the proposed contract and the financial information submitted by Simon Wong and its subconsultants, and have found the contract terms and the

consultant's cost and price information compliant with state and federal requirements. This is a new Caltrans' procedure implemented in May 2013 impacting Architects and Engineering Contracts of \$150,000 or more.

Recommendation 3. Federal authorization to proceed is not expected until sometime in mid-summer 2013 (June/July). In anticipation of the project being released for advertisement and awarded prior to the end of the 2013 calendar year, Staff is requesting approval to issue a Purchase Order to Simon Wong Engineering in the amount of \$50,000.00 to cover the cost of the preconstruction services and a constructability review that would commence prior to the issuance of the federal funds for the construction phase. These funds are in addition to those identified in Recommendation 1 and 2 and will utilize local funds.

Financial Impact: This item is consistent with the Fiscal Year 2012/2013 budget. Task No. 0881

Reviewed By: This item was reviewed and unanimously recommended for approval by the Mountain/Desert Policy Committee on May 17, 2013. SANBAG General Counsel and Contract Administrator have approved this item and the contract.

Responsible Staff: Garry Cohoe, Director of Project Delivery

CONTRACT SUMMARY SHEET

Contract No. C 13032 Amendment No. _____

By and Between

San Bernardino County Transportation Authority and Simon Wong Engineering

Contract Description Construction Management Services Lenwood Road Grade Separation Project

Board of Director's Meeting Date: June 5, 2013
Overview of BOD Action: Award contract for construction management for Lenwood Road Grade Separation Project and approve Contingency.
 Is this a Sole-Source procurement? Yes No

CONTRACT VALUES			
Original Contract Amount	\$	2,493,341.00	Original Contingency Amount \$ 249,334.00
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i> \$
Current Amendment Amount	\$		Contingency Amendment \$
TOTAL CONTRACT VALUE	\$	2,493,341.00	TOTAL CONTINGENCY VALUE \$ 249,334.00
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 2,842,675.00

Contract Start Date June 5, 2013	Current Contract Expiration Date December 31, 2016	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FUNDING INFORMATION

Budget authority for this contract currently exists in Task No. 0881.
 A Budget Amendment is required.
 How are we funding current FY? - STP, TCIF, Local - City of Barstow, MSI No. Desert Fund - MLH

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract:
 STP, TCIF, Local - City of Barstow, MSI No. Desert Fund - MLH
 Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:
 Retention? If yes, indicate % 10.
 Disadvantaged Business Enterprise (DBE) Goal 6 %

<u>Mike Barnum</u>		<u>5/1/13</u>
Project Manager (Print Name)	Signature	Date
<u>Garry Cohoe</u>		<u>5-7-13</u>
Task Manager (Print Name)	Signature	Date
<u>Andrea Zureick</u>		<u>5/22/13</u>
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
<u>Jeffrey Hill</u>		<u>5/22/13</u>
Contract Administrator (Print Name)	Signature	Date
<u>W. Stinesick</u>		<u>5/22/13</u>
Chief Financial Officer (Print Name)	Signature	Date

ATTACHMENT A

SCOPE OF WORK

INDEX

- A. DESCRIPTION OF SERVICES
- B. PERFORMANCE REQUIREMENTS
- C. DUTIES AND RESPONSIBILITIES
 - 1. Pre-construction Services
 - 2. Bid Process
 - 3. Project Administration
 - 4. Construction Coordination
 - 5. Construction Inspection
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 - 7. Cost and Schedule
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 - 10. Project Close Out
- D. DELIVERABLES
- E. EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT
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- H. AVAILABILITY AND WORK HOURS
- I. LIMITATIONS TO AUTHORITY
- J. THIRD PARTY RELATIONSHIPS
- K. CONSTRUCTION SITE SAFETY
- L. BASIS FOR SURVEY AND MONUMENT MARKING
- M. PERSONNEL QUALIFICATIONS

A. DESCRIPTION OF SERVICES

The San Bernardino County Transportation Commission (SANBAG) will utilize the services of CONSULTANT to support the construction activities for the Project. The CONSULTANT will provide construction management, materials testing, construction surveying and public outreach for the Project. A description of the Project is given below.

The construction project is located along Lenwood Road in the City of Barstow. This project proposes to grade separate Lenwood Road over the BNSF railroad tracks at the current at-grade crossing. Lenwood Road will be expanded from two to four lanes between Main and Jasper Streets to match the City of Barstow's General Master Plans to two lanes in each direction. The construction project includes the following work elements:

- Construction of a four-lane roadway bridge.
- Construction of retaining walls.
- Drainage improvements
- Local street improvements and modifications to adjacent property lots.

The project will also include utility relocations, drainage modifications, signing and striping, traffic handling, and erosion control.

SANBAG intends to advertise, award and administer one construction contract for this project. The successful consultant firm will provide the construction management and support services.

Services

Services are anticipated to generally include, but are not limited to the following: participation in the evaluation of scheduling of the proposed project; constructability review; construction project advertising, bid analysis, and award; construction inspection; construction surveying, materials testing, landscape inspection, contractor interface and contract administration; office engineering; public outreach services and other assorted duties as appropriate in managing construction of a capital railroad grade separation improvement project.

SANBAG will issue a Purchase Order to the Consultant to complete a Constructability Review. A full Notice to Proceed (NTP) will be issued upon receipt of the approved funding agreement from Caltrans.

It is expected that the Consultant will assign a full-time Resident Engineer to coordinate all contract and personnel activities for all phases of construction. Other Resident Engineer(s) and inspection personnel may be assigned to direct and coordinate all project specific field activities and responsibilities as needed for satisfactory performance on the project. The Resident Engineer and every Resident Engineer assigned for this project shall be licensed as a Professional Civil Engineer in the State of California at the time of proposal submittal through the duration of the contract. The Consultant is expected to provide a Survey Project Manager, Materials Testing Project Manager, and Landscape Architect to administer the construction support services requested herein and to assign qualified field personnel to perform the requested services. Furthermore, the Consultant shall provide a public outreach liaison to assist the Authority's Public Information Office, and the City of Barstow in implementing the Public Outreach Program established for this project.

Insofar as the Consultant's approach described in the Proposal, the scope of responsibility and the total number of personnel assigned to each phase is left to the discretion of the Consultant. The Proposal shall include a staffing plan, an organization chart and a resource loaded schedule that establish the firm's ability to adequately and appropriately staff and manage the project.

CONSULTANT shall provide qualified construction management and inspection, materials testing, construction surveying and public relations personnel to perform a wide variety of construction management, support and contract administration duties as outlined in this Scope of Services for the Project.

SANBAG has designated a Project Manager to coordinate all construction activities.
Mr. Mike Barnum, Construction Manager

The CONSULTANT shall report to and receive direction from SANBAG through the Project Manager, or his designees. The SANBAG Project Manager is responsible for coordination of all SANBAG construction activities and for coordinating the efforts of the total construction team. The SANBAG Project Manager will be the main contact and primary source of information between SANBAG, cities, outside agencies, supporting consultants and the public for the construction projects.

B. PERFORMANCE REQUIREMENTS

Construction Management: CONSULTANT shall furnish a Project Manager to coordinate CONSULTANT operations with SANBAG. The Project Manager shall be responsible for all matters related to CONSULTANT personnel and operations. The Project Manager may also serve as the Resident Engineer. The Resident Engineer shall be assigned to direct and coordinate construction activities under this contract. Other Assistant Resident Engineers may be assigned to each specific project responsibilities as needed. The Resident Engineer shall be a Civil Engineer registered in the State of California and shall be in responsible charge of construction management and construction activity within the Project.

The number of CONSULTANT personnel assigned to the Project will vary throughout the duration of the contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT to meet the Project schedule, Project requirements, and construction activities.

Resumes of personnel must be submitted to SANBAG for review and approval prior to assignment to the Project. SANBAG and CONSULTANT will jointly determine the quality and quantity of services that are required by CONSULTANT personnel. Personnel selected for assignment by CONSULTANT shall be made available for personal interviews prior to acceptance by SANBAG. If, in the opinion of SANBAG, an individual lacks adequate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of CONSULTANT personnel is unsatisfactory to SANBAG, SANBAG may release him/her by written notice and may request another qualified person be assigned.

If CONSULTANT personnel are on leave of absence, the Project Manager shall provide equally qualified replacement personnel until the assigned personnel returns to the Project approved by SANBAG.

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for CONSULTANT personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for CONSULTANT personnel. The Project Manager, with prior concurrence from SANBAG, shall have the authority to increase, decrease, or eliminate CONSULTANT personnel work hours dependent on the schedule and requirements of the construction Contractor. All overtime required by CONSULTANT personnel shall be approved and authorized by SANBAG prior to each occurrence.

CONSULTANT personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CONSULTANT personnel shall cooperate and consult with SANBAG, State, and City officials during the course of the Project. CONSULTANT personnel shall perform duties as may be required to assure that construction is being performed in accordance with the Project plans and specifications. CONSULTANT personnel shall keep accurate and timely records and document all work performed by the Contractor and CONSULTANT.

CONSULTANT shall monitor for Contractor's compliance with the labor standards provisions of the projects and the related wage determination decisions of the Secretary of Labor.

CONSULTANT personnel shall assist SANBAG and local agencies in obtaining compliance with the safety and accident prevention provisions of the Project. Local agencies will retain jurisdictional control for traffic control.

All services required herein shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

Materials Testing & Source Inspection: The number of field testing and source inspection personnel assigned to the Project will vary throughout the duration of the construction contract. CONSULTANT certified materials testing and source inspection personnel will be assigned as needed by the Resident Engineer to meet the required numbers and frequencies of testing based on schedule of the construction contractor.

Materials Testing /Source Inspection Services will be provided on an on-call basis. The duration of assignments could vary from a minimum of a few hours to the full term of the Project. CONSULTANT personnel will be available within one (1) day of written notification by SANBAG.

It is the intent of SANBAG to maintain a consistency of material testing/source inspection quality throughout each phase of each project. CONSULTANT is therefore encouraged to provide, where ever and whenever possible, the same personnel for the duration of construction of each project.

On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the SANBAG Construction Manager.

Resumes of materials testing/source inspection personnel must be submitted to SANBAG for review and approval prior to assignment to the Project. If, at any time, the level of performance of any testing personnel is below expectations, SANBAG may release that field person and request that another be assigned as needed.

Consultant is responsible for finalizing the Source Inspection Quality Management Plan (SIQMP) to match the project requirements, assist SANBAG in gaining Caltrans approval and manage the SIQMP. Consultant shall provide Structural Materials Representative (SMR), Steel inspectors, Non-destructive Steel Inspectors, Coating Inspectors, Precast Concrete Inspectors and other source inspectors as needed.

If a member of CONSULTANT's materials testing/source inspection personnel is on a leave of absence, CONSULTANT's Project Manager will provide an equally qualified replacement employee until the original member returns to work. The replacement employee will meet all the requirements of a permanently assigned employee.

All CONSULTANT personnel will be knowledgeable of, and comply with, all applicable local, state, and federal regulations. All personnel shall cooperate and consult with SANBAG during the course of the contract; and perform other duties as may be required to assure that the construction is being performed in accordance with the Project plans and specifications. CONSULTANT's personnel will keep records and document the work as directed by the Resident Engineer.

All services required herein will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

Construction Surveying: CONSULTANT will furnish surveying crew(s) to perform construction surveys for the Project. The number of survey crew(s) assigned to the Project may vary throughout the duration of the construction contract to meet the Project needs. CONSULTANT personnel will be assigned as needed by the Resident Engineer to meet the schedule of the construction contractor.

Construction surveying services will be provided on an on-call basis. It is the intent of SANBAG to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, CONSULTANT is encouraged to provide the same field personnel for the duration of construction. It is important that the Field Party Chief(s) assigned to a project be completely familiar with the survey requirements and the assignments for the Project.

On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the Resident Engineer.

Construction surveying will not be performed when conditions such as weather, traffic, and other factors prevent safe and efficient operation.

Resumes of CONSULTANT personnel and certifications must be submitted to SANBAG for review. CONSULTANT personnel must be approved by SANBAG prior to assignment to a project. SANBAG and CONSULTANT will have the responsibility of determining the quality and quantity of work performed by CONSULTANT personnel. If, at any time, the level of performance of any CONSULTANT survey personnel is below expectations, SANBAG may release the survey crew member and request that another be assigned.

If CONSULTANT's survey crew personnel assigned to the Project is on a leave of absence, the Project Manager will provide an equally qualified replacement(s) until the original employee(s) returns to work. The replacement(s) will be required to meet all the requirements of the permanently assigned employee(s).

CONSULTANT personnel will:

- Be knowledgeable of, and comply with all, applicable local, Caltrans, state, and federal regulations.
- Cooperate and consult with SANBAG officials during the course of the contract.
- Perform duties as may be required to assure construction is performed in accordance with the Project plans and specifications.
- Keep records and document work as directed by the Resident Engineer.

All services required herein will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

C. DUTIES AND RESPONSIBILITIES

1. Pre-construction Services

a. Schedule

CONSULTANT shall review the proposed Project schedule, compare it to the Project plans and specifications, and provide recommendations to SANBAG, as appropriate, to ensure efficiency of Contractor and CONSULTANT operations and safe and expeditious completion of the Project.

b. Budget

CONSULTANT shall review the Project estimate, quantities and provide recommendations to SANBAG, as appropriate, to ensure efficient utilization of funds and control of project costs.

c. Constructability Review

CONSULTANT shall review Project plans and special provisions for possible errors and deficiencies and report such findings to SANBAG in a format provide by SANBAG.

2. Bid Process

a. Bid Documents

CONSULTANT shall assist SANBAG, as requested, with the following tasks:

- 1) Review of bid documents
- 2) Preparation of bid tabulations

b. Pre-construction Meetings

CONSULTANT shall assist SANBAG in conducting one, or more, pre-construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, design engineer, Caltrans, County and City staff, utility companies, and developers.

c. Contract Award

CONSULTANT shall assist SANBAG, as requested, with the following tasks:

- 1) Review of bid for completeness and responsiveness
- 2) Perform bid analysis
- 3) Development of contractor payment schedules, and other procedural items.

- 4) Checking Contractor references, licenses, insurance, and sureties.
- 5) Coordination with prospective Contractor for award of construction contract(s).

All processes will be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and Local Assistance Procedure Manuals.

3. Project Administration

- a. CONSULTANT shall administer Project construction contracts using Caltrans Construction Manual as a guideline.
- b. CONSULTANT shall conduct regular Project coordination meetings with Contractor, SANBAG, local agencies, and design engineer, as appropriate.
- c. CONSULTANT shall prepare Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by SANBAG for approval.
- d. CONSULTANT shall provide reports as needed to comply with specific funding requirements.
- e. CONSULTANT shall establish and maintain Project records in accordance with the Caltrans Construction Manual. Project record keeping shall include, but are not limited to, correspondence, memoranda, contract documents, change orders, claims, SANBAG and engineer directives, meeting minutes, shop drawings, supplementary drawings, and requests for payment. CONSULTANT shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractors, subcontractors, and principal material suppliers.
- f. CONSULTANT shall establish and maintain a filing system in hard copies files and in electronic forms for each Project using the Caltrans Construction Manual as a guideline. Electronic data documentation will be required to be uploaded weekly to the SANBAG Major Projects Portal
- g. CONSULTANT shall monitor Contractors' construction schedules on an ongoing basis and alert SANBAG to conditions that may lead to delays in completion of the Project.
- h. CONSULTANT shall prepare and submit a monthly Activity Summary Report for the Project in a format approved by SANBAG. The activity report shall include among other items status of SWPPP issues, RFIs, contract change orders, and notice of potential claims; construction activities completed, ongoing, and upcoming; status of Project budget and schedule, and other highlights and critical issues.
- i. CONSULTANT shall review and ensure compliance with environmental requirements.
- j. CONSULTANT shall participate in partnering sessions with the Contractor, SANBAG, and Local Agencies, as required.

- k. CONSULTANT shall ensure that the Project meets all provisions of the Caltrans Quality Assurance Program Manual.
- l. CONSULTANT shall review Contractors' certified payroll records and ensure compliance with the requirements of the construction contract.
- m. CONSULTANT shall ensure that the Project meets all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- n. CONSULTANT shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD) and State Water Resource Control Board (SWRCB).
- o. CONSULTANT shall maintain redlined as-built plans on an ongoing basis throughout the duration of the Project. Redlined plans shall show all changes made to the original contract plans, each change identified with the name of the approver, date of change approval, and CCO number, if applicable.

4. Construction Coordination

- a. CONSULTANT shall provide a minimum of one qualified Resident Engineer to effectively manage the Project.
- b. CONSULTANT Resident Engineer shall act as a prime point of contact between Contractor, SANBAG, CONSULTANT's construction surveyor, CONSULTANT's materials inspector, and utility companies. CONSULTANT may, when requested by SANBAG, act as point of contact between design engineers, cities, and the public. CONSULTANT shall ensure coordination with property owners adjacent to Project right-of-way to ensure timely communication regarding property-condition survey and construction activities and scheduling.
- c. CONSULTANT shall maintain regular contact with SANBAG's Project/Construction Manager.
- d. CONSULTANT shall coordinate utility relocations with utility companies and their designees, as well as the utility inspector.
- e. CONSULTANT shall proactively review Project plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to SANBAG. Should SANBAG determine that changes are necessary, CONSULTANT shall assist in implementation and processing of change orders in accordance with contract documents.
- f. CONSULTANT shall proactively review Project plans and special provisions; monitor, coordinate, and track construction progress schedule and RFIs; and communicate with various agencies prior to construction of any specific elements to ensure the Project proceeds on schedule and according to the order of work in the plans and special provisions. CONSULTANT shall expedite work, as required, to maintain schedule in conjunction with the overall construction staging program.
- g. CONSULTANT shall coordinate review of shop drawings and Requests for

Information (RFI) with the Construction Manager. CONSULTANT shall log and track all submittals and requests.

- h. CONSULTANT shall provide a qualified SWPPP Coordinator who along with the Resident Engineer shall review and certify contractor prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with SANBAG and the State Water Resource Control Board. The SWPPP Coordinator shall be at a minimum a Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD) and a Qualified SWPPP Practitioner (QSP). CONSULTANT shall provide at a minimum weekly SWPPP monitoring and shall cooperate with all monitoring agency inspections and field reviews.
- i. CONSULTANT shall coordinate the implementation of any changes with the Construction Manager and the design engineer.
- j. CONSULTANT shall review and approve falsework and shoring plans.
- k. CONSULTANT shall review and approve Traffic Control Plans and forward to SANBAG for Caltrans/City/County approvals, as necessary.
- l. CONSULTANT shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.

5. Construction Inspection

- a. CONSULTANT shall coordinate all required inspections necessary for the Project. CONSULTANT shall ensure that appropriate City and local agencies are notified and present as required throughout the Project. CONSULTANT shall notify SANBAG immediately regarding any directives, recommendations, notices, etc. received from agencies other than SANBAG.
- b. CONSULTANT shall perform daily on-site observations of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.
- c. CONSULTANT shall exercise reasonable care and diligence to discover and promptly report to SANBAG any and all defects or deficiencies in the materials or workmanship used in the Project.
- d. CONSULTANT personnel assigned to the Project shall be thoroughly familiar with Caltrans Standard Specifications, Caltrans Standard Plans, Caltrans Erosion Control and Highway Planting requirements, safety standards and State Water Resources Control Board requirements. CONSULTANT personnel shall have the ability to read and interpret construction plans and specifications. CONSULTANT personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, CONSULTANT personnel shall be thoroughly familiar with the construction requirements of Caltrans' Storm Water Pollution Prevention Program.
- e. Assignments to be performed by CONSULTANT personnel shall include, but are not limited to, the following:

- 1) Paving and subgrade inspection, sub-surface & finish surface drainage inspection, structures and foundation inspection, electrical inspection for traffic, ramp meter and irrigation control equipment, signing and striping inspection, quantity calculations, checking grade and alignment, construction traffic control, soil amendments and plant material identification & quality control, hardscape inspection, trenching & irrigation inspection and duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents.
- 2) Identifying actual and potential problems associated with the Project and recommending sound engineering solutions.
- 3) Identifying common plant diseases and/or pests together with their respective eradication techniques, directing of plant adaptability requirements along with proper planting & pruning techniques, and avoiding potential problems associated with the Project by recommending sound engineering solutions.
- 4) Perform basic sampling of construction materials in the field per California Test Method 105 and 125 by both the prime and subconsultant personnel.
- 5) Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.
- 6) Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, reports, and correspondence related to Project activities.
- 7) Preparing construction sketches, drawings, and cross-sections, as necessary.
- 8) Assisting in the preparation of as-built plans.
- 9) Providing inspections for environmental compliance.
- 10) Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions.
- 11) Monitoring Contractors' compliance with applicable regulations required by AQMD.
- 12) Other duties as may be required or reasonably requested.

6. Project Support

a. Construction Surveys

CONSULTANT shall perform construction surveying services, field calculations, and home office calculations to support construction of the Project.

CONSULTANT may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction of proposed projects. The Resident Engineer will assign survey work to the CONSULTANT by issuing a "Request for Survey Services". Requests may include, but not be limited to, the following types of surveys and related services:

1) Construction Surveys

CONSULTANT shall assist the Resident Engineer in all phases of construction staking and calculations as needed.

- a) Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.
- b) Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.
- c) Survey data will include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.
- d) Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.
- e) Perform construction staking, including but not limited to:
 - i. Utility relocations
 - ii. Clearing limits
 - iii. Slope staking
 - iv. Storm drain, sanitary sewer, and irrigation systems
 - v. Drainage structures
 - vi. Curbs, gutters, and sidewalk
 - vii. Horizontal and vertical control for structures and portions of structures (bents, abutments, wingwalls, etc.)
 - viii. Rough grade
 - ix. Finish grade
- f) Monitor for settlement, if required.
- g) Global Positioning Satellite (GPS) equipment shall be made available if required by SANBAG

2) Grid Grades

Grid grade data shall provide pavement elevations at the station line, the left edge of pavement, the right edge of pavement, and the right edge of travel way at 25 foot intervals for travel lanes.

3) Open Ended Traverses and Profile Data Sheets

Separate open-ended traverse calculations and point maps shall depict plan data for station lines, utility lines, wall layout lines, and abutment/bent alignment. Specific information to be shown will be part numbers, coordinates, bearings, and curve data.

Profile data sheets are required for all profiles shown on the plans identifying vertical design elements such as grade, point of intersection (PI) location, beginning of vertical curve (BVC) location, end of vertical curve (EVC) location, and curve length.

4) Three Line Profiles

Separate profile plots are required for the left edge of pavement, the right edge of pavement, and the edge of shoulder for all travel lanes.

5) Right of Way Lines

Existing right of way and easements will be established from Local Agency's record information and existing monumentation.

- a) Right of way monumentation shall be renewed and restored in accordance with Section 10.4 of the Caltrans "Survey Manual" and the State of California Land Surveyor's Act.
- b) Corner records and records of surveys shall be prepared and filed in accordance with the applicable standards and the State of California Land Surveyor's Act and the California Subdivision Map Act.
- c) Perpetuate existing monumentation, which includes restoring, renewing, referencing, and resetting existing boundary related monumentation. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.

New right of way and easements will be established from plans, right of way maps, utility drawings, and Local Agency record information, and existing monumentation.

- a) Right of Way Surveys, which includes research and preparation filing of required maps and records. In addition, locate and set monuments for right of way and easement lines, staking for right of way and easement fences.
- b) Final monumentation, which includes setting of centerline points of control upon completion of construction.

6) Special Design – Data Surveys

Includes drainage, utility, and surveys required for special field studies.

7) Control Survey

Includes Project control surveys, aerial mapping control surveys, horizontal and vertical control surveys. In addition control surveys will include restoration, renewal, reference, relocation, and resetting of existing control monumentation. The CONSULTANT will be required to provide horizontal and vertical control at the end of each bridge.

8) Topographic Surveys

Topographic surveys will normally be compiled by ground survey methods only.

CONSULTANT will provide all necessary Project related surveys and construction staking, including horizontal and vertical control, right of way, and easements. CONSULTANT shall coordinate all staking and verify accuracy. CONSULTANT shall ensure timely coordination of all staking requests from the Contractor.

b. Materials Testing, Source Inspection and Geotechnical Services

- 1) CONSULTANT will provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing will be used to ensure that structure and roadway construction work conforms to California State Department of Transportation (Caltrans) standards, specifications, and special provisions for material quality and workmanship.
- 2) All field and laboratory testing is to be performed in accordance with California Test Methods.
- 3) CONSULTANT will be responsible for the accuracy and completeness of all test data compilation and results.

c. Public Outreach

- 1) General Public Outreach Plan
 - a) SANBAG's primary goal is to assure the public that SANBAG is a public agency that delivers quality transportation projects and trustworthy, accurate and timely public information.
 - b) SANBAG will provide the primary outreach effort with supplemental support as requested from CONSULTANT. This will be a targeted approach with incremental outreach based on construction schedule and staging. The primary target audiences identified for this Project include, but are not limited to:
 - i. LOCAL AGENCY
 - ii. SANBAG Board
 - iii. LOCAL AGENCY and area Emergency Service Providers
 - iv. School Transportation Coordinator(s)
 - v. Local Business Community
 - i) Specific businesses with expanding priority based on proximity to work zone and detours
 - ii) Chamber of Commerce

- vi. Commuters
- vii. Recreational Travelers
- viii. Trucking Industry
- ix. Local media
 - i) Print
 - ii) Radio
 - iii) Television

- c) In the weeks prior to the selection of a construction contractor, SANBAG may coordinate an Emergency Responders Project Briefing to highlight the Project details and possible access challenges for consideration by the Project team.
- d) Following the emergency responders briefing, SANBAG may coordinate a Chamber of Commerce Project Briefing to highlight the Project benefits, possible construction schedule and traffic management plan.
- f) Just prior to the start of field construction activities, SANBAG and CONSULTANT (includes all PR subs) may coordinate a groundbreaking media event with the LOCAL AGENCY to ceremoniously open the Project. CONSULTANT will be called up on to develop (with input from SANBAG) and maintain a task list of deliverables for this event. CONSULTANT will acquire the necessary items authorized for the event. CONSULTANT will be responsible for set up and breakdown of the event site.
- g) Prior to construction beginning, SANBAG and CONSULTANT may coordinate a community meeting to share Project information, construction scheduling, detour information and expected challenges with the general public. CONSULTANT will be called up on to develop (with input from SANBAG) and maintain a task list of deliverables for this event. CONSULTANT will acquire the necessary items authorized for the event. CONSULTANT will be responsible for set up and breakdown of the event site. Staffing this event will be determined based on availability.
- h) Near the completion of the construction Project, SANBAG and CONSULTANT will coordinate a ribbon-cutting media event. CONSULTANT will be called upon in a similar fashion to the groundbreaking event.
- i) At various stages throughout the Project, SANBAG will request support from CONSULTANT for the following items:
 - i. Establish and maintain stakeholder and/or 'interested parties' list(s) – used for sharing Project updates during Project construction. May need to be filtered to specific audiences (i.e. emergency responders, city government, etc.)

- ii. Development of a Project fact sheet (include Project description, Project budget, Project schedule, SANBAG contact information, LOCAL AGENCY contact information, photos, logos, etc.)
 - iii. Weekly media advisories (use SANBAG template). CONSULTANT (or sub) will make weekly contact with Project team to establish what road or lane closures (and associated detours if applicable) will be taking place, develop the advisory, send to SANBAG Public Information Office for approval, submit to webmaster for posting, distribute to appropriate media and stakeholder list.
 - iv. Emergency notices – when needed.
 - v. Develop web content for project tab on SANBAG website. This page should include same elements of fact sheet with expanded detail when possible. If the information is dynamic, please provide updates to SANBAG Public Information Office for approval prior to submitting to webmaster.
- 2) All requests for speaking to government councils, boards, chambers of commerce or similar business or social groups shall be directed to the SANBAG Public Information Office before agreeing to appear.
 - 3) All media inquiries shall be directed to the SANBAG Public Information Office.

d. Permits

CONSULTANT shall review the Project for permit compliance and coordinate with SANBAG and the design engineer to ensure that necessary permits are obtained. CONSULTANT shall assist SANBAG in the coordination, timely processing and verification of approval for all permits. CONSULTANT shall maintain permits and permit documentation on site.

7. Cost and Schedule

- a. CONSULTANT shall monitor and track the following:
 - 1) Contract pay item quantities and payments
 - 2) Contract change orders
 - 3) Supplemental work items
 - 4) Agency furnished materials
 - 5) Contingency balance
 - 6) Project budget
- b. CONSULTANT shall review and monitor Contractor's schedule and inform SANBAG of any significant changes or deviations in the schedule.
- c. CONSULTANT shall provide and maintain a Project staffing plan of field office personnel based on the Contractor submitted baseline schedule update. In

cooperation with SANBAG, the staffing plan shall be periodically updated to reflect Project progress and needs.

8. Contract Change Orders and Claims

- a. CONSULTANT shall receive and evaluate requests for changes and/or substitutions by the Contractor. Contract Change Orders submitted to SANBAG shall be accompanied by CONSULTANT recommendations. Where applicable, CONSULTANT shall convey proposed changes to design engineer, or other Project consultants. If the requested changes are accepted, CONSULTANT shall negotiate and prepare appropriate Contract Change Orders.
- b. CONSULTANT shall attempt to avoid unnecessary Contract Change Orders. When a Contract Change Order is necessary, CONSULTANT shall consult with SANBAG prior to its preparation. Unless directed otherwise by SANBAG, the preferred method of payment for Contract Change Orders should be as follows
 - 1) Agreed Price
 - 2) Adjustment in compensation to a bid item
 - 3) Time and materials or Force Account

CONSULTANT shall perform force account analysis to validate cost submitted by the Contractor for contract change orders with agreed unit price, lump sum price, and adjustment in components. Analysis shall be based on realistic production and resource needs to complete the work.

- c. CONSULTANT shall attempt to identify all potential claims, track and monitor unresolved claims. The CONSULTANT shall implement appropriate claims avoidance processes where in the best interests of SANBAG as determined by SANBAG's Construction Manager.
- d. CONSULTANT shall assist SANBAG, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against SANBAG or the Project.

9. Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

- a. CONSULTANT shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for CONSULTANT personnel. CONSULTANT shall provide SANBAG with monthly status of safety reports.
- b. CONSULTANT shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual.
- c. CONSULTANT shall provide appropriate safety training for all CONSULTANT field personnel.
- d. CONSULTANT shall provide all necessary safety equipment as required for CONSULTANT personnel.

10. Project Close Out

- a. CONSULTANT shall prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.
- b. CONSULTANT shall collect and furnish as-built information to the design engineer for preparation of as-built drawings including pre-stress drawings and pile logs, as applicable.
- c. CONSULTANT shall review and verify completeness of as-built drawings.
- d. CONSULTANT shall conduct a final walk-through with SANBAG, Local Agencies, Contractors, and design engineers.
- e. CONSULTANT shall prepare final construction reports including the Project Completion Report.
- f. CONSULTANT shall prepare and deliver to SANBAG all Project files.
- g. CONSULTANT shall assist SANBAG and Contractor in obtaining final release of all Project permits.
- h. Project closeout services will be completed within two months of project acceptance.

D. DELIVERABLES

1. Inspector daily reports, extra work diaries and Resident Engineers' daily diaries.
2. Monthly Project Activity Summary Reports.
3. Monthly Contractor progress payments, back-up documentation, and Contractor payment records.
4. Contractor final payment documents, delivered to SANBAG no later than ten (10) working days after acceptance by SANBAG of the completed construction Project.
5. Project Completion Report documents per Local Assistance Procedure Manual and Caltrans Construction Manual.
6. All Project files, Project reports, correspondence, memoranda, shop drawings, Project logs, change order data, claims and claim reports, and Contractor payment records.
7. Certified payrolls and fringe benefit statements for all employees, CONSULTANT and Contractor, who are subject to the State and/or Federal prevailing wage rates.
8. All material test results will be provided in accordance with the applicable Standard Specifications and Special Provisions, and test methods. Failing tests will be immediately reported to the Resident Engineer or Structures Representative. All test results will be recorded on the appropriate forms. The test documents will be legible and show the identity of the tester where appropriate. A notebook containing all test results and reports will be maintained by CONSULTANT throughout the duration of the Project and delivered to SANBAG with the Project files.

9. Unless otherwise specified in the survey request, the deliverables shall conform to the following:

- a. Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein.
- b. Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
- c. All original survey documents resulting from this contract, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of SANBAG. A copy of all survey documents furnished by SANBAG shall be retained by CONSULTANT for future reference.

When the survey is performed with a total station survey system, the original field notes shall be a hard copy in a readable format of the data (observations) as originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

- d. Deliverables to the Resident Engineer shall follow the format specified below:
 - 1) Horizontal Control
 - 2) Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
 - 3) Vertical Control
 - 4) Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
 - 5) Topography
 - 6) Alpha numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by Caltrans.
- e. Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:
 - 1) Conventional Cross – Sections (each cross – section):
For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by Caltrans.
 - 2) Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):
Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided in a format compatible with the systems utilized by Caltrans.
 - 3) Data Collector Data

If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements.

- 4) Other—As specified in the survey request.

E. EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT

1. CONSULTANT shall provide all necessary equipment including software, materials, supplies, miscellaneous tools, phones, vehicles, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. The above noted items are not to be included in Attachment B of Consultants Cost Proposal and are part of the consultants overhead. Only those items authorized by SANBAG in Attachment B, CONSULTANT Cost Proposal, shall be reimbursed by SANBAG.
2. CONSULTANT personnel shall be provided with vehicles suitable for the location and nature of the work involved. Vehicles shall be equipped with flashing yellow lights, either permanently or temporarily affixed.
3. CONSULTANT personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is to be used, CONSULTANT shall provide a base station at the field office.
4. CONSULTANT personnel shall be provided with all applicable standard plans, specifications, and other standards as appropriate (see item G below).
5. For Materials Testing, CONSULTANT and its staff will be fully equipped at all times to perform the services required, including but not limited to the following:
 - a. An on-site mobile laboratory or laboratory in close proximity to the Project will be required. The type and location of the lab should be such that it can meet the needs of the Project in an efficient, time effective manner. The laboratory is to be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.
 - b. Field personnel will be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.
 - c. All equipment to be calibrated as per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.
6. For construction surveying, CONSULTANT and staff shall have adequate equipment and supplies to complete the required survey work. Equipment and supplies shall, include, but not be limited to:
 - a. Survey vehicles:
Survey vehicles will be suitable to perform the required work in varying terrain and conditions encountered on the Project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.
 - b. Data Processing Systems:

Data processing systems shall include hardware and software to:

- 1) Performing survey and staking calculations from the design plans and specifications;
 - 2) Reduce survey data collected with conventional and total station survey systems;
 - 3) Perform network adjustments for horizontal and vertical control surveys;
 - 4) Format survey data to be compatible with the Caltrans computer survey and data system.
- c. Drafting equipment and supplies.
- d. Digital calculators.
- e. Hand tools as appropriate for the requested survey work.
- f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).
- g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.
- h. Leveling instruments and equipment:
 - 1) Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less.
 - 2) Suitable level rods for the work to be performed.
- i. Distance measuring instruments and equipment:
 - 1) Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions.
 - 2) Prisms, sufficient to perform the required work.
 - 3) Tapes; steel, cloth.
- j. Angle measuring instruments and equipment:
 - 1) Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical.
 - 2) Targets as required to perform the work.
- k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.
- l. Radio or cellular communications equipment for communication between field office and field crews.
- m. Caltrans manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

F. MATERIALS TO BE FURNISHED BY SANBAG

1. SANBAG will provide three (3) copies of all Project construction documents including

plans, and special provisions, and one (1) copy of all other reports, designer prepared resident engineer files, and contracts. In addition, SANBAG will provide one (1) full size (24" x 36") sets of plans for use in the construction field office as record documents.

2. SANBAG will provide copies of all previously secured permits and Project authorizations.
3. Appropriate forms for recording test data in accordance with Caltrans practices and procedures outlined in the "Manual of Test".

G. STANDARDS

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current Caltrans Manuals including:

1. Construction Manual and its revisions
2. Bridge Construction Records and Procedures Manual
3. Quality Assurance Program Manual
4. Manual of Traffic Controls for Construction and Maintenance Work Zones
5. Caltrans Standard Specifications and Standard Plans
6. Caltrans Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual
7. Manual of Test (3 volumes)
8. Survey Manual
9. District 8 Standard Staking Procedures Manual

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Resident Engineer and SANBAG will decide all questions, which may arise as to the quality or acceptability of deliverables furnished and work performed for this contract. Any CONSULTANT employee who does not perform adequately will be replaced if directed by the

SANBAG Construction Manager.

H. AVAILABILITY AND WORK HOURS

The typical workday includes all hours worked by SANBAG's construction Contractor including nights and weekends. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for CONSULTANT's personnel. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT services will not be provided unless authorized by the SANBAG Construction Manager.

Unless otherwise directed by SANBAG, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by SANBAG.

I. LIMITATIONS TO AUTHORITY

CONSULTANT does not have the authority to:

1. Authorize deviations from the contract documents.
2. Approve substitute materials or equipment; except as authorized in writing by SANBAG.
3. Conduct or participate in tests or third party inspections; except as authorized in writing by SANBAG.
4. Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors.
5. Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions.
6. Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor.
7. Verbally authorize or approve change orders or extra work for the Project.
8. Offer or receive incentives, inducements, or other forms of enumeration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

J. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for a specific project. In the development of the Project, SANBAG has worked closely with various professional consultants, agencies, and others in the preparation of the construction documents and other Project related materials. SANBAG, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Project. CONSULTANT shall take direction only from SANBAG and shall regularly inform only SANBAG of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, CONSULTANT may find occasion to meet with Caltrans, City or County representatives, the design engineer, Project consultants, or other third parties who

have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While SANBAG enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SANBAG. All oral and written communication with outside agencies or consultants related to the Project shall be directed only to SANBAG. Distribution of Project related communication and information shall be at the sole discretion of SANBAG representatives.

K. CONSTRUCTION SITE SAFETY

In addition to the requirements specified elsewhere in this contract, the following also will apply.

1. CONSULTANT will conform to the safety provisions of the Caltrans Construction Manual.
2. CONSULTANT's field personnel will wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soled shoes at all times while working in the field.
3. CONSULTANT will provide appropriate safety training for all CONSULTANT's personnel, including work on and near highways.
4. All safety equipment will be provided by CONSULTANT.

L. BASIS FOR SURVEY AND MONUMENT STAKING

SANBAG will designate the existing horizontal and vertical control monuments that are the basis of CONSULTANT performed surveys. SANBAG will provide the California Coordinate System values and/or elevation values for these monuments. CONSULTANT shall adjust CONSULTANT performed surveys to be the designated control monuments and the values.

Monuments established by CONSULTANT shall be marked by CONSULTANT with furnished disks, plugs, tags. In addition, CONSULTANT shall identify CONSULTANT established monuments by tagging or stamping the monuments with the license or registration number of CONSULTANT'S surveyor who is in "responsible charge" of the work.

M. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments are subject to approval by SANBAG. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to the Project should have the following qualifications:

1. Project Manager
 - a. A minimum of six (6) years' project management experience on similar construction projects is desired.
 - b. Accessible to SANBAG at all times during normal working hours.
 - c. A thorough understanding of Caltrans construction practices and procedures. The Project Manager will assume the following functional responsibilities:

- 1) Review, monitor, train, and provide general direction for CONSULTANT personnel.
- 2) Assign personnel to projects on an as-needed basis.
- 3) Administer personal leave.
- 4) Prepare monthly reports for delivery to SANBAG.

2. Resident Engineer

- a. A minimum of eight (8) years' resident engineer experience on similar construction projects is desired.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Accessible to SANBAG at all times including weekends and holidays.
- e. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- f. A thorough understanding of Caltrans field methods, practices, and construction office procedures. The Resident Engineer will assume the following functional responsibilities:
 - 1) Monitor and provide daily direction to CONSULTANT Resident Engineers and inspection personnel.
 - 2) Assign field personnel to specific project tasks.
 - 3) Monitor and track Contractor progress.
 - 4) Prepare daily, weekly and monthly reports as required.
 - 5) Coordinate utility relocations with appropriate agencies and the utility inspector.
 - 6) Act as prime field contact between various project Contractors and SANBAG's Construction Manager.

3. Assistant Resident Engineer

- a. A minimum of four (4) years' experience on similar construction projects is desired.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Accessible to SANBAG at all times including weekends and holidays.
- e. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- f. Thorough understanding of Caltrans field methods, practices, and construction office procedures. The Assistant Resident Engineer shall act under the direction of the Resident Engineer and will assume the following functional responsibilities:

- 1) Monitor and provide daily direction to CONSULTANT inspection personnel.
- 2) Assign field personnel to specific project tasks.
- 3) Monitor and track Contractor progress.
- 4) Prepare daily, weekly and monthly reports as required.
- 5) Coordinate utility relocations with appropriate agencies.

4. Lead Field Inspector

- a. A minimum of six (6) years' construction inspection experience in public works or similar projects or a four-year degree in the field of civil engineering, transportation and four years of similar construction experience is desired.
- b. Knowledge of Caltrans construction practices, physical characteristics and properties of highway construction materials, and approved methods and equipment used in making physical tests of construction materials.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Ability to direct the efforts of subordinate inspectors.
- e. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- f. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- g. Understanding of Caltrans field and construction office procedures. The Lead Field Inspector will assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of construction.
 - 2) Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
 - 3) Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
 - 4) Maintain accurate and timely Project records. Perform quantity calculations for progress pay estimates.
 - 5) Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
 - 6) Provide input for the redesign of facilities to fit existing field conditions.
 - 7) Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.

5. Field Inspector

- a. Two (2) years' construction inspection experience in public works or similar projects or a four-year degree in the field of civil transportation engineering is desired.

- b. Knowledge of construction practices, physical characteristics and properties of construction materials, and approved methods and equipment used in making physical tests of construction materials.
- c. Ability to work independently. Ability to make minor decisions concerning construction work in progress and to solve field and office problems.
- d. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- e. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- f. Understanding of Caltrans construction methods and practices. The Field Inspector will assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of project construction.
 - 2) Assist in preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
 - 3) Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
 - 4) Perform quantity calculations for progress pay estimates and maintain Project records.
 - 5) Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
 - 6) Provide input for the redesign of facilities to fit existing field conditions.
 - 7) Perform construction materials sampling.
 - 8) Perform labor compliance interviews of the Contractors' personnel.

6. Structural Representative or Lead Structural Inspector

- a. A minimum of six (6) years' of bridge or structural construction inspection as related to major public works projects and a four-year degree in civil engineering is desired.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Knowledge of stress analysis, structural mechanics, and strength of materials.
- d. Knowledge of Caltrans construction practices and the physical characteristics and properties of various bridge construction materials including concrete.
- e. Experience in the following areas: foundations, pile driving, concrete prestressing, bridge deck construction, cast-in-place wall construction, falsework, and shoring.
- f. Ability to work independently. Ability to perform duties in the construction field office and effectively make decisions concerning construction work in progress and solving field problems.

- g. Ability to direct the efforts of subordinate inspectors.
- h. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- i. Thorough understanding of Caltrans field methods, practices, and construction office procedures. The Structural Representative shall assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundations, walls, falsework, shoring, and drainage structures.
 - 2) Make grade, alignment, quantity, falsework, and shoring calculations.
 - 3) Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project. Coordinate the sampling and testing of construction materials to monitor compliance with contract specifications.
 - 4) Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.
 - 5) Coordinate with Resident Engineer, as well as the Construction Staking and Material Testing consultants.
 - 6) Direct the daily activities of subordinate inspectors.

7. Structural Inspector

- a. A minimum of two (2) years' of bridge design or structural construction inspection as related to Caltrans or major public works projects or a four-year degree in civil or structural engineering is desired.
- b. Knowledge of stress analysis, structural mechanics, and strength of materials.
- c. Knowledge of construction practices and the physical characteristics and properties of various highway bridge construction materials including concrete.
- d. Experience in one or more of the following areas: pile driving, concrete prestressing, bridge deck construction, retaining wall construction, falsework, and shoring.
- e. Ability to work independently and make minor decisions concerning construction work in progress and to solve field and office problems.
- f. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- g. Understanding of Caltrans construction methods and practices. The Structural Inspector will assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundation, walls, falsework, shoring, and drainage structures.
 - 2) Make grade, alignment, quantity, falsework, and shoring calculations.

- 3) Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- 4) Sampling and testing of construction materials to monitor compliance with contract specifications and Caltrans Quality Assurance Program.

8. Office Engineer

- a. A minimum of two (2) years' experience as an office engineer on similar construction projects is desired.
- b. Knowledge of Caltrans Office of Highway Construction forms used to administer construction projects.
- c. Knowledge of Caltrans system of document organization.
- d. Knowledge of construction records and accounting procedures.
- e. Knowledge of documentation, procedures, and reporting for federally funded projects.
- f. Knowledge of laws and regulations governing the payment of prevailing wages.
- g. The Office Engineer will assume the following functional responsibilities:
 - 1) Process monthly progress pay estimates, monthly status reports, extra work reports, and weekly statements of working days.
 - 2) Prepare and process contract change orders.
 - 3) Monitor construction budget and schedule.
 - 4) Prepare, maintain, and/or file project documents including labor and equipment records, correspondence, memoranda, meeting minutes, claims, personnel records, labor compliance reports, and daily, weekly, and monthly reports.
 - 5) Perform routine calculations and checking of quantities.
 - 6) Coordinate all office activities and functions with SANBAG representatives.

9. Materials Testing/Source Inspection Project Manager

- a. A minimum four (4) years' project management experience on a similar highway/bridge construction project is desired.
- b. Licensed Civil Engineer in the State of California.
- c. Ability to use typical computer programs including word processing and spreadsheets.
- d. The materials testing/source inspection project manager will assume the following functional responsibilities:

- 1) Review, monitor, train, and provide general direction for CONSULTANT's laboratory, field and source inspection personnel.
- 2) Assign personnel to projects on an as-needed basis in coordination with the Resident Engineer.
- 3) Administer personal leave, subject to approval of the Resident Engineer.
- 4) Prepare monthly reports for delivery to the Resident Engineer.
- 5) Provide direction, administration, and responsibility for Materials Certification per Caltrans Construction Manual, Section 8-01.
- 6) Assist SANBAG and Resident Engineer in preparing the project specific Source Inspection Quality Management Plan (SIQMP) for Caltrans review and approval. (Reference Caltrans "Source Inspection Quality Management Plan (SIQMP Outline dated 04/17/12).
- 7) Provide direction, administration, and responsibility for implementation of the approved SIQMP per Caltrans Construction Procedures Directive (CPD) 08-5 and FHWA Title 23 requirements.

Material testing/source inspection personnel will be certified by a California Registered Civil Engineer as being experienced and competent in the test procedures required for the work involved (and possess a current certificate of proficiency (Form MR-0111) in accordance with Quality Assurance Program Manual (Section 3-5). Independent certification of Caltrans test procedures may be performed at the discretion of the SANBAG Project Manager.

10. Materials Technicians

CONSULTANT personnel provided under this contract will have a variety of skills and experience appropriate for the level of tasks to be assigned. Field personnel shall be certified by Caltrans and should have a minimum of two (2) years' experience in conducting material sampling and testing of the type required for the projects involved and possess the following additional capabilities:

- a. Have the ability to establish specific locations for appropriate tests when construction contract administration personnel are not available.
- b. Be familiar with construction practices and be fully aware of construction activities at the Project site.
- c. Have knowledge of and comply with safety and health regulations and requirements applicable to the Project.
- d. Specific qualifications for technicians are as follows:
 - 1) CONSTRUCTION TECHNICIAN I
 - a) Performs a variety of semi-skilled activities. Examples of duties assigned to this classification are:
 - i. Conducting quality control tests such as soil densities, sieve analysis tests, operation scales and inspecting spread operations.

- ii. Sampling and transporting produced construction materials from point of application or production to testing laboratory.

b) **Knowledge and Skills Required**

- i. Knowledge of tools, equipment and vehicles utilized in construction.
- ii. Knowledge of standard equipment and materials used for the sampling and testing of construction material.
- iii. Knowledge of basic mathematics used in the computation of a variety of construction items.
- iv. Knowledge of record keeping, preparing of documents and reports.

2) **CONSTRUCTION TECHNICIAN II**

a) Performs a variety of skilled activities. Examples of duties assigned to this classification are:

- i. Inspecting minor construction items, sampling and inspection of steel reinforcement, sampling and inspection of concrete placing operation.
- ii. Collect and analyze soil samples of construction materials to determine compaction and moisture content.
- iii. Inspection and sampling of all phases of asphalt concrete and PCC paving operation, including plant inspection.
- iv. Confers with construction engineers and contractors regarding construction in progress and is conformance to specifications and construction plans.
- v. Answers questions and resolves problems.
- vi. Inspects construction in progress to ensure conformance with specification, agreements, and established requirements.
- vii. Keeps daily diary of work progress.
- viii. Prepares reports on all field inspections and submits project quantities on a daily basis.
- ix. Keeps accurate documentation for force accounts and possible claims.

b) **Knowledge and Skills Required**

- i. All knowledge and skills required of lower classification.
- ii. Knowledge of currently accepted methods, procedures and techniques used in highway construction inspection, survey, materials testing, and quality control equipment.
- iii. Skill in interpersonal relations as applied to contact with contractors, representatives of other governmental jurisdictions, and other SANBAG/Caltrans staff.

3) CONSTRUCTION TECHNICIAN III

a) Exercises considerable independent judgment within general Caltrans standards and guidelines. Examples of duties assigned to this classification are:

- i. Inspect Project construction on an ongoing basis to assure compliance with contract and in accordance with State and local standards.
- ii. Perform a variety of structural material tests and inspections.
- iii. Reviews construction plans and verified that these are in accordance with designated specifications and other requirements.
- iv. Participates in the preparation of completed work estimates, to calculate compensation due contractor.
- v. Examines and verifies numeric data and material specifications on project cost source documents, utilizing geometry and trigonometry calculations.
- vi. Supervises all work activities involved in construction projects, laboratory, and quality control work.
- vii. Recommends approval of proposed Project changes.

b) Knowledge and Skills Required

- i. All knowledge and skills required of lower classifications.
- ii. Knowledge of the principles and practices of Civil Engineering as applied to the construction of state highways.
- iii. Skill in analyzing and evaluating a wide variety of highly technical engineering data, including construction plans, field survey and quality control documents.
- iv. Skill in interpreting and implementing Caltrans standards, policies, procedures and regulations.
- v. Skill in interpersonal relations, as applied to contacts with contractors, representatives of other governmental jurisdictions, and other SANBAG/Caltrans staff.

11. Construction Surveying Project Manager

- a. A minimum four (4) years' project management experience on similar construction projects is desired.
- b. Licensed Surveyor or pre-January 1, 1982 Registered Professional Engineer in the State of California.
- c. Accessible to the Resident Engineer and SANBAG at all times during normal working hours as specified in this Scope of Services.
- d. Under the direction of the Resident Engineer, the Project Manager will be responsible for:

- 1) Review, monitor, train, and provide general direction for CONSULTANT survey personnel.
- 2) Assign personnel to projects on an as-needed basis.
- 3) Administer personal leave, subject to approval of the Resident Engineer.
- 4) Prepare monthly reports for delivery to the Resident Engineer.

12. Field Party Chief(s)

- a. The person(s) holding the position of Party Chief shall meet at least one of the following licensing requirements:
 - 1) A licensed Land Surveyor in the State of California.
 - 2) A pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.
 - 3) An experienced surveyor who serves as chief under the direction or supervision of a person who is a licensed Land Surveyor or pre-January 1, 1982 Registered Professional Civil Engineer in the State of California. The direction or supervision shall place the supervisor in "responsible charge" of the work. "Responsible Charge" is defined in Chapter 15 of the Business and Professions Code (the Land Surveyor's Act) and Title 16, Chapter 5, of the California Administrative Code (regulations adopted by the Board of Registration for Professional Engineers and Land Surveyors).
- b. The Party Chief(s) should have a minimum two (2) years' survey experience on similar construction projects and possess the following additional capabilities:
 - 1) Thorough knowledge of construction survey practices and the ability to read and interpret plans and specifications.
 - 2) Ability to make effective decisions concerning field problems and work in progress.
 - 3) Familiarity with typical coordinate geometry computer programs.
 - 4) Familiarity with safety requirements for surveying near traffic.
- c. The Party Chief(s) will assume the following responsibilities:
 - 1) Perform construction staking services for Project construction.
 - 2) Administer day to day activities for the survey party.
 - 3) Perform analytical survey calculations for items such as grading, horizontal and vertical control, right of way, and minor in-field design.
 - 4) Maintain continuous communication with the Resident Engineer, field personnel, and construction administration staff.

13. Survey Crews

- a. Qualifications for survey crew members should include the following:
 - 1) A minimum of one (1) year of survey experience on similar construction projects is desired.
 - 2) Fundamental knowledge of construction survey practices and the ability to read and interpret plans and specifications.
 - 3) Ability to assist Party Chiefs and office personnel in all required surveying work.

- 4) One survey crew member must have the ability to assume temporary leadership of the survey party in the absence of the Party Chief.
- b. Under the direction of the Resident Engineer and the Party Chief, the survey crew members will assume the following responsibilities:
- 1) Perform basic calculations to support construction staking.
 - 2) Maintain continuous communication with Party Chiefs and office personnel.

**ATTACHMENT B,
“PRICE SCHEDULE”**

ATTACHMENT 'B'

SIMON WONG ENGINEERING

San Bernardino Associated Governments (SANBAG)

Lenwood Road Grade Separation Project

Construction Management, Construction Surveying, Materials Testing and Public Outreach

April 30, 2013

I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Manager	\$88.43	76	\$8,720.88
Technical Specialist (RR)	\$72.70	151	\$10,977.70
Construction Inspector	\$51.30	2,350	\$120,555.00
Structures Rep	\$86.27	1,272	\$109,735.44
Structures Inspector	\$51.97	2,225	\$115,633.25
Office Engineer	\$37.00	2,720	\$100,640.00
Scheduler	\$54.94	232	\$12,748.08
Landscape Inspector	\$49.33	55	\$2,713.15
SWPPP Coordinator	\$50.62	148	\$7,491.78
Public Outreach Coordinator	\$68.68	44	\$2,933.92
Outreach Liaison	\$30.77	114	\$3,507.78
Outreach Assistant	\$17.34	14	\$242.78

Subtotal Hours & Direct Labor Costs	9,401	\$493,697.52
Anticipated Salary Increases		\$11,032.91
Total Direct Labor Costs		\$504,930.43

(1)

II. INDIRECT COSTS

INDIRECT RATE	131.93 %	x \$	504,930.43	= Subtotal	\$666,164.72
			Subtotal (1)		

(2)

III. FEE (PROFIT)

	9 %	x \$	1,171,085.15	= Subtotal	\$105,387.66
			Total (1) + (2)		

(3)

IV. OTHER DIRECT COSTS

Item	Amount
Per Diem	\$0.00
Field Vehicle Truck/ Month	\$0.00
Public Outreach Direct Costs	\$6,072.00

Subtotal \$	\$6,072.00
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(4)

V. SUBCONSULTANTS COST

DHS Consulting, Inc.	\$484,552.38
Dynamic Engineering Services, Inc.	\$86,017.18
CHJ Consultants	\$220,586.42
Leighton Consulting, Inc.	\$122,970.29
Towill Inc.	\$286,660.22

Subtotal \$	\$1,210,786.45
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(5)

VI. TOTAL AMOUNT

	\$2,493,341
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(Total 1-5)

SIMON WONG ENGINEERING

LABOR & OTHER DIRECT COST (ODC) SUMMARY
 Lenwood Road Grade Separation Project
 Construction Management, Construction Surveying, Materials Testing and Public Outreach

May 6, 2013

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL DIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL DIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Project Manager		\$ 68.43	\$ 92.91	76	\$88.43	\$6,720.68	\$150.13	\$6,870.81	\$9,064.66	\$1,434.19	\$17,369.66	\$228.55
Technical Specialist (FR)		\$ 72.70	\$ 76.38	151	\$72.70	\$10,977.70	\$245.22	\$11,222.92	\$14,808.40	\$2,342.64	\$28,371.97	\$187.89
Construction Inspector		\$ 51.30	\$ 53.90	2,350	\$51.30	\$120,555.00	\$2,993.01	\$123,249.01	\$162,601.10	\$25,728.42	\$311,575.54	\$132.59
Structures Rep		\$ 66.27	\$ 90.64	1,272	\$86.27	\$109,735.44	\$2,451.32	\$112,186.76	\$148,007.99	\$23,417.53	\$283,612.28	\$222.97
Structures Inspector		\$ 51.97	\$ 54.60	2,225	\$51.97	\$115,633.25	\$2,583.07	\$118,216.32	\$155,962.78	\$24,976.12	\$298,855.23	\$134.32
Office Engineer		\$ 37.00	\$ 38.97	2,720	\$37.00	\$100,640.00	\$2,248.14	\$102,888.14	\$135,740.33	\$21,476.58	\$260,105.03	\$95.83
Scheduler		\$ 54.94	\$ 57.72	232	\$54.94	\$12,746.08	\$284.73	\$13,030.81	\$17,181.54	\$2,720.01	\$32,942.36	\$141.99
Landscape Inspector		\$ 49.33	\$ 51.83	55	\$49.33	\$2,713.15	\$60.81	\$2,773.76	\$3,659.42	\$579.99	\$7,012.16	\$127.49
SWPPP Coordinator		\$ 50.62	\$ 53.18	148	\$50.62	\$7,491.76	\$167.35	\$7,659.11	\$10,104.87	\$1,598.74	\$18,382.52	\$130.83
Public Outreach Coordinator		\$ 66.68	\$ 70.06	44	\$66.68	\$2,933.92	\$65.54	\$3,099.46	\$3,957.19	\$626.10	\$7,582.74	\$172.34
Outreach Liaison		\$ 30.77	\$ 32.33	114	\$30.77	\$3,507.78	\$76.36	\$3,584.14	\$4,731.19	\$748.56	\$9,065.89	\$79.53
Outreach Assistant		\$ 17.34	\$ 18.22	14	\$17.34	\$242.76	\$5.42	\$248.18	\$327.43	\$51.80	\$627.42	\$44.82
TOTAL =					9,401	\$493,897.52	\$11,032.91	\$504,930.43	\$666,154.72	\$105,397.66	\$1,276,482.81	

FEE (PROFIT) 9.00%

INDIRECT COST	
Overhead	N/A
General & Admin	N/A
Total	131.93%

OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Per Diem	\$884.00	Month	-	\$0.00	
Field Vehicle Truck/ Month	\$1,219.00	Month	-	\$0.00	
Public Outreach Direct Costs	\$6,072.00	LS	1.00	\$6,072.00	
				\$0.00	
				\$0.00	
TOTAL OTHER DIRECT COSTS				\$6,072.00	

Escalation Per Year =			2.50%
Year	# of Months	Esc.	Value
2013	11.45	1.000	11,448
2014	40.44	1.025	41,447
2015	5.24	1.051	5,501
TOTAL	57.12		59,397
Escalation Factor for Contract			1.022

of Months was calculated by dividing the total yearly staffing hrs by 165

TOTAL COSTS
\$1,282,554.81

ATTACHMENT 'B'

DHS Consulting, Inc.

San Bernardino Associated Governments (SANBAG)			
Lenwood Road Grade Separation Project			
Resident Engineering and Inspection Support Services			
			April 30, 2013
I. DIRECT LABOR COSTS			
Staff Classification	Initial Direct Hourly Rate	Hours	Total
Resident Engineer	\$90.99	2,170	\$197,448.30
Subtotal Hours & Direct Labor Costs		2,170	\$197,448.30
Anticipated Salary Increases			\$4,383.44
Total Direct Labor Costs			\$201,831.74 (1)
II. INDIRECT COSTS			
INDIRECT RATE	124.80 % x	\$ 201,831.74 Subtotal (1)	= Subtotal \$251,886.02 (2)
III. FEE (PROFIT)			
	9 % x	\$ 453,717.76 Total (1) + (2)	= Subtotal \$40,834.60 (3)
IV. OTHER DIRECT COSTS			
Item	Amount		
Per Diem	\$0.00		
Field Vehicle Truck/ Month	\$0.00		
Subtotal \$		\$0.00 (4)	
VI. TOTAL AMOUNT			\$494,552 (Total 1-5)

LABOR & OTHER DIRECT COST (ODC) SUMMARY
Lenwood Road Grade Separation Project
Resident Engineering and Inspection Support Services

April 30, 2013

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL DIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL DIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Resident Engineer				2,170	\$90.99	\$197,448.30	\$4,383.44	\$201,831.74	\$251,888.02	\$40,834.80	\$494,562.36	\$227.90
				TOTAL =		\$197,448.30	\$4,383.44	\$201,831.74	\$251,888.02	\$40,834.80	\$494,562.36	

INDIRECT COST	
Overhead	N/A
General & Admin	N/A
Total	124.86%

FEE (PROFIT)	9.00%
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OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Per Diem	\$984.00	Month	-	\$0.00	
Field Vehicle Truck/ Month	\$1,219.00	Month	-	\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
TOTAL OTHER DIRECT COSTS				\$0.00	

Escalation Per Year = 2.80%			
Year	# of Months	Esc.	Value
2013	3.21	1.000	3,212
2014	6.24	1.025	6,448
2015	1.70	1.051	1,783
TOTAL	13.15		13,443
Escalation Factor for Contract			1.023

of Months was calculated by dividing the total yearly staffing hrs by 185

TOTAL COSTS	\$494,562.36
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ATTACHMENT 'B'

Dynamic Engineering Services, Inc.

San Bernardino Associated Governments (SANBAG)

Lenwood Road Grade Separation Project
Electrical Inspection and Labor Compliance Monitoring

April 30, 2013

I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Electrical Inspector	\$58.58	328	\$19,214.24
Labor Compliance Officer	\$55.00	236	\$12,960.00
Subtotal Hours & Direct Labor Costs			564
Anticipated Salary Increases			\$790.87
Total Direct Labor Costs			<u>\$32,985.11</u> (1)

II. INDIRECT COSTS

INDIRECT RATE 146.02 % x \$ 32,985.11 = Subtotal \$48,184.86 (2)
Subtotal (1)

III. FEE (PROFIT)

9 % x \$ 81,149.97 = Subtotal \$7,303.50 (3)
Total (1) + (2)

IV. OTHER DIRECT COSTS

Item	Amount
NONE	\$0.00
Subtotal \$ <u>\$0.00</u> (4)	

VI. TOTAL AMOUNT

\$88,453 (Total 1-5)

ATTACHMENT 'B'

CHJ Consultants

San Bernardino Associated Governments (SANBAG)			
Lenwood Road Grade Separation Project			
Materials Inspection and Lab Testing Services			
			April 30, 2013
I. DIRECT LABOR COSTS			
Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Manager	\$60.00	41	\$2,460.00
Clerical/Admin Assistant	\$20.00	41	\$820.00
Material Testing Technician	\$56.00	820	\$45,920.00
Operations Manager	\$35.68	82	\$2,924.12
Subtotal Hours & Direct Labor Costs		984	\$52,124.12
			Anticipated Salary Increases
			\$1,252.17
Total Direct Labor Costs			\$53,376.29 (1)
II. INDIRECT COSTS			
INDIRECT RATE	170.00 % x	\$ 53,376.29	Subtotal \$90,739.69 (2)
		Subtotal (1)	
III. FEE (PROFIT)			
	9 % x	\$ 144,115.98	Subtotal \$12,970.44 (3)
		Total (1) + (2)	
IV. OTHER DIRECT COSTS			
Item	Amount		
Laboratory Testing	\$83,500.00		
Field Vehicle w/ Testing Equip (hr)	\$0.00		
Subtotal \$		\$83,500.00 (4)	
VI. TOTAL AMOUNT			\$220,586 (Total 1-5)

LABOR & OTHER DIRECT COST (ODC) SUMMARY
 Lanwood Road Grade Separation Project
 Materials Inspection and Lab Testing Services

April 30, 2013

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL DIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL DIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Project Manager	Various	\$80.00	\$60.00	41	\$60.00	\$2,460.00	\$89.10	\$2,519.10	\$4,262.46	\$612.14	\$7,413.70	\$180.82
Clerical/Admin Assistant	Various	\$19.23	\$25.00	41	\$20.00	\$820.00	\$19.70	\$839.70	\$1,427.49	\$204.05	\$2,471.23	\$60.27
Material Testing Technician	Various	\$53.00	\$57.00	820	\$56.00	\$45,920.00	\$1,103.13	\$47,023.13	\$79,839.32	\$11,426.62	\$138,389.07	\$166.77
Operations Manager	Various	\$35.66	\$35.66	82	\$35.66	\$2,924.12	\$70.25	\$3,094.37	\$5,000.42	\$727.63	\$6,812.42	\$107.47
TOTAL =				984		\$62,124.12	\$1,282.17	\$63,376.29	\$90,739.69	\$12,976.44	\$167,086.42	

INDIRECT COST	
Overhead	65.00%
General & Admin	102.00%
Total	170.00%

FEE (PROFIT)	0.00%
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OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Laboratory Testing	\$25.000	Lb	1.0	\$63,500.00	
Field Vehicle w/ Testing Equip (hr)	\$15.00	Hour	-	\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
TOTAL OTHER DIRECT COSTS				\$63,500.00	

Escalation Per Year =			2.50%
Year	# of Months	Esc.	Value
2013	0.61	1.000	0.506
2014	9.00	1.025	5.125
2015	0.38	1.051	0.382
		1.077	0.000
		1.104	0.000
		1.131	0.000
TOTAL	9.67		6.113
Escalation Factor for Contract			1.824

of Months was calculated by dividing the total yearly staffing hrs by 165

TOTAL COSTS	\$229,586.42
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ATTACHMENT 'B'

Leighton Consulting, Inc.

San Bernardino Associated Governments (SANBAG)

Lenwood Road Grade Separation Project

Source Inspection

April 30, 2013

I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Principal	\$78.15	4	\$312.00
Project Manager	\$47.60	300	\$14,280.00
Inspector for Source Inspection	\$39.96	120	\$4,795.20
Inspector for Source Inspection	\$39.96	160	\$6,393.60
Lab Manager/Reviewer	\$43.27	20	\$865.40
Clerical/Admin Assistant	\$20.25	40	\$810.00
Subtotal Hours & Direct Labor Costs		644	\$27,456.80
Anticipated Salary Increases			\$505.65
Total Direct Labor Costs			\$27,962.45 (1)

II. INDIRECT COSTS

INDIRECT RATE 170.00 % x \$ 27,962.45 = Subtotal \$47,536.16 (2)
Subtotal (1)

III. FEE (PROFIT)

9 % x \$ 75,498.61 = Subtotal \$6,794.87 (3)
Total (1) + (2)

IV. OTHER DIRECT COSTS

Item	Amount
Per Diem (Out of State Work)	\$1,600.00
Car Mileage	\$1,100.00
Photocopies (Black & White)	\$100.00
Photocopies (Color)	\$100.00
Mail/Courier	\$600.00
Source Inspection Lab Testing	\$41,000.00
Subtotal \$	\$44,500.00 (4)

VI. TOTAL AMOUNT \$126,793 (Total 1-5)

LABOR & OTHER DIRECT COST (ODC) SUMMARY
 Lemwood Road Grade Separation Project
 Source Inspection

April 30, 2013

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL DIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL DIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Project Principal				4	\$78.15	\$312.60	\$5.76	\$318.36	\$541.21	\$77.36	\$636.92	\$234.23
Project Manager				200	\$47.60	\$14,280.00	\$282.98	\$14,562.98	\$24,723.07	\$3,533.94	\$42,800.00	\$142.67
Inspector for Source Inspection				120	\$39.95	\$4,795.20	\$86.31	\$4,881.51	\$8,301.87	\$1,186.86	\$14,372.17	\$119.77
Inspector for Source Inspection				100	\$39.98	\$3,998.00	\$117.75	\$4,115.75	\$11,099.20	\$1,562.28	\$19,182.88	\$119.77
Lab Manager/Reviews				20	\$43.27	\$865.40	\$15.94	\$881.34	\$1,408.27	\$214.16	\$1,293.78	\$129.08
General Admin Assistant				40	\$20.25	\$810.00	\$14.92	\$824.92	\$1,402.38	\$208.45	\$1,227.73	\$60.89
TOTAL =				644		\$27,466.88	\$806.88	\$27,962.48	\$47,626.16	\$4,784.87	\$62,293.49	

INDIRECT COST	
Overhead	120.00%
General & Admin	50.00%
Total	170.00%

FEE (PROFIT)	1.00%
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OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Per Diem (Out of State Work)	\$40.00	days	40	\$1,600.00	
Car Mileage	\$0.55	mile	2000	\$1,100.00	
Photocopies (Black & White)	\$0.10	each	1000	\$100.00	
Photocopies (Color)	\$0.20	each	500	\$100.00	
Mail/Carrier	\$30.00	each	20	\$600.00	
Source Inspection Lab Testing	\$41,000.00	project	1	\$41,000.00	
				\$0.00	
				\$0.00	
				\$0.00	
TOTAL OTHER DIRECT COSTS				\$44,500.00	

Escalation Per Year = 2.50%			Value
Year	# of Months	Esc.	Value
2013	1.13	1.000	1.127
2014	2.68	1.025	2.748
2015	0.10	1.051	0.102
		1.077	0.000
		1.104	0.000
		1.131	0.000
TOTAL	3.90		3.975
Escalation Factor for Contract			1.016

of Months was calculated by dividing the total yearly staffing hrs by 168

TOTAL COSTS	\$126,793.49
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ATTACHMENT 'B'

TOWILL, Inc.

San Bernardino Associated Governments (SANBAG)

LENWOOD GRADE SEPARATION CONSTRUCTION MANAGEMENT SERVICES

April 30, 2013

I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Survey Task Manager	\$72.00	108	\$7,776.00
Certified Party Chief	\$44.26	861	\$38,107.86
Party Chief	\$42.21	0	\$0.00
Instrument Person	\$39.71	861	\$34,190.31
Chain Person	\$39.13	0	\$0.00
Apprentice A-G	\$27.00	0	\$0.00
Project Coordinator	\$0.00	0	\$0.00
PLS Surveyor	\$56.00	0	\$0.00
Project Surveyor	\$48.00	120	\$5,760.00
PLS Party Chief (Travel)	\$44.96	0	\$0.00
Certified Party Chief (Travel)	\$44.26	110	\$4,868.60
Party Chief (Travel)	\$42.21	0	\$0.00
Instrument Person (Travel)	\$39.71	110	\$4,368.10
Chain Person (Travel)	\$39.13	0	\$0.00
Apprentice A-G (Travel)	\$27.00	0	\$0.00
Other 9	\$0.00	0	\$0.00
Other 10	\$0.00	0	\$0.00

Subtotal Hours & Direct Labor Costs	2,170	<u>\$95,070.87</u>
Anticipated Salary Increases		<u>\$2,102.16</u>
Total Direct Labor Costs		<u>\$97,173.03</u> (1)

II. INDIRECT COSTS

INDIRECT RATE 170.00 % x \$ 97,173.03 = Subtotal \$165,194.15 (2)

Subtotal (1)

III. FEE (PROFIT)

9 % x \$ 262,367.18 = Subtotal \$23,613.05 (3)

Total (1) + (2)

IV. OTHER DIRECT COSTS

Item	Amount
Photocopies (Black & White)	\$500.00
Agency Fees	\$180.00

Subtotal \$ \$680.00 (4)

V. TOTAL AMOUNT

\$286,660 (Total 1-4)

TOWILL, Inc.

**LABOR & OTHER DIRECT COST (ODC) SUMMARY
LENWOOD GRADE SEPARATION
CONSTRUCTION MANAGEMENT SERVICES**

April 30, 2013

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL DIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL DIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Survey Task Manager		70.00	75.00	108	\$72.00	\$7,776.00	\$171.94	\$7,947.94	\$13,511.50	\$1,931.35	\$23,390.79	\$216.56
Certified Party Chief		44.28	44.28	561	\$44.28	\$24,819.88	\$842.62	\$25,662.50	\$66,215.82	\$9,464.97	\$114,631.27	\$133.14
Instrument Person		39.71	39.71	361	\$39.71	\$14,335.31	\$756.00	\$15,091.31	\$58,408.72	\$8,481.95	\$102,848.98	\$119.45
Chain Person		39.13	39.13	0	\$39.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Apprentice A-G		16.43	31.30	0	\$27.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PLS Surveyor		50.00	60.00	0	\$58.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Project Surveyor		42.00	50.00	0	\$58.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PLS Party Chief (Travel)		44.98	44.98	120	\$44.98	\$5,397.60	\$127.38	\$5,524.98	\$10,008.52	\$1,430.63	\$17,326.51	\$144.39
Certified Party Chief (Travel)		44.28	44.28	0	\$44.28	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Party Chief (Travel)		42.21	42.21	110	\$42.21	\$4,643.10	\$107.63	\$4,750.73	\$8,459.63	\$1,209.23	\$14,648.11	\$133.14
Instrument Person (Travel)		39.71	39.71	110	\$39.71	\$4,368.10	\$98.59	\$4,466.69	\$7,589.98	\$1,084.92	\$13,139.57	\$119.45
Chain Person (Travel)		39.13	39.13	0	\$39.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Apprentice A-G (Travel)		16.43	31.30	0	\$27.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL =				2,170		\$96,678.97	\$2,182.16	\$98,861.13	\$168,184.18	\$23,613.06	\$288,980.22	

INDIRECT COST	
Overhead	120.00%
General & Admin	50.00%
Total	170.00%

FEE (PROFIT)	9.00%
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OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Per Diem				\$0.00	
Car Mileage				\$0.00	
Travel				\$0.00	
Computer Charges				\$0.00	
Photocopies (Black & White)	\$1.000	Copy	1500.000	\$1500.00	
Photocopies (Color)				\$0.00	
Commercial Printing				\$0.00	
Mail/Courier				\$0.00	
Photographs				\$0.00	
Intersection Traffic Counts				\$0.00	
Ramp/Segment Counts				\$0.00	
Corridor Speed Surveys				\$0.00	
Agency Fees	\$18	Cor Rec	10	\$180.00	
b				\$0.00	
c				\$0.00	
d				\$0.00	
e				\$0.00	
TOTAL OTHER DIRECT COSTS				\$680.00	

Escalation Per Year = 2.50%			
Year	# of Months	Esc.	Value
2013	2,424,242,424	1.000	2,424
2014	10,181,818,181	1.023	10,438
2015	0,848,484,848	1.051	0,891
2016	0	1.077	0,000
2017	0	1.104	0,000
2018	0	1.131	0,000
TOTAL	13,454,545,454		13,752
Escalation Factor for Contract			
			1.022

TOTAL COSTS	\$286,660.22
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- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 14

Date: June 5, 2013

Subject: Amendment No. 1 for Contract No. C11174 Valley Transportation Services

Recommendation:* Approve Amendment No. 1 to Contract No. C11174 with Valley Transportation Services.

Background: In September 2010, the San Bernardino Associated Governments (SANBAG) Board of Directors approved Resolution No. 11-004 designating Valley Transportation Services (VTrans) as the Consolidated Transportation Services Agency (CTSA) for the San Bernardino Valley, making VTrans eligible for funding from the Valley Measure I Senior and Disabled Transit (VSdT) Program. Contained in the resolution was the finding that SANBAG will provide at least 2% of the revenues collected in the Valley to VTrans for the creation and operation of the CTSA, as outlined in the Measure I 2010-2040.

Subsequently on May 4, 2011, the Board approved Contract No. C11174 with VTrans for the operation of a CTSA in which VTrans would provide for the coordination of transit services for seniors and disabled persons within the Valley. In accordance with the agreement, the SANBAG Board has approved the VTrans five-year business plan as well as their By-Laws; both of which are required to be updated based on terms under the contract. The contract detailed the requirements for receiving Measure I funds for operations with a set term of three (3) years, which ends on June 30, 2013.

*

*Approved
 Board of Directors*

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG	CTC	CTA	X	SAFE	CMA
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Check all that apply.

BRD1306a-mmm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11174-01.doc>

The current amendment proposes to allocate and disburse funds based on actual receipts received by SANBAG rather than identifying specific dollar amounts as included in the original agreement. While this amendment does not provide a specific dollar amount for a contract value, funds will be allocated and disbursed in accordance with the Measure I Ordinance No. 04-01 and the Measure I 2010-2040 Strategic Plan Policy 40009 for the VSDT Program.

Additionally, the agreement outlines qualified expenditures must be in accordance with the Strategic Plan, SANBAG's approved guideline for the use of Measure I funds; VTrans' five (5) -Year Business Plan, to be approved by SANBAG as specified in this Contract; and VTrans' current annual budget, also to be approved by SANBAG. This process allows for efficient tracking and elimination of overages or shortages that may have occurred with the previous process of lump sum allocations. Staff will provide to the SANBAG Board for approval annual allocation estimates for VTrans. VTrans' revenues and expenditures will be audited annually, and SANBAG will perform performance reviews to insure that adequate progress is being made toward the goals and purposes of the program.

The new agreement also strengthens SANBAG's protections against liability that might be generated by VTrans' operations by bringing the indemnity language up to date and requiring VTrans to carry insurance naming SANBAG as an additional insured party. These changes are part of the General Counsel's efforts to increase SANBAG's legal protection and update all of SANBAG's funding agreements over time as they become due for renewal.

Lastly, within the contract amendment is a term extension date for five (5) years, which would extend the agreement term to June 30, 2018. This would be a change from the original agreement that had a three (3) year term.

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

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on May 8, 2013. SANBAG General Counsel, Contract Administrator and Fund Administration have approved this item and the Amendment.

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



CONTRACT SUMMARY SHEET

Contract No. C 11174 Amendment No. 01

By and Between

San Bernardino Associated Governments and Valley Transportation Services

Contract Description Operation of a Consolidated Transportation Services Agency

Board of Director's Meeting Date: May 1, 2013	
Overview of BOD Action: Approve Amendment No. 1 to C11174 with Valley Transportation Services	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW					
Original Contract Amount	\$	5,254,303.00	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	2% Valley MSI collections	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$	N/A	Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	2% Valley MSI collections	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY <i>(contract value + contingency)</i>					\$ 2% of Valley Measure I collections

Contract Start Date 5/4/11	Current Contract Expiration Date 6/30/13	Revised Contract Expiration Date June 30, 2018
Has the contract term been amended? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - please explain. Amendment brings funding in line with Measure I Strategic Plan, Policy 40009, which provides for 2% pass through of Valley Revenues and extends term for five years		

FINANCIAL INFORMATION					
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. 0310.					
<input type="checkbox"/> A Budget Amendment is required. How are we funding current FY? Measure I Senior & Disabled					
<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	
Provide Brief Overview of the Overall Funding for the duration of the Contract: Measure I Senior & Disable					
<input checked="" type="checkbox"/> Payable <input 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 _____ %	

Monica Morales
Project Manager (Print Name)

Mitch A. Alderman
Task Manager (Print Name)

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

Jeffery Hill
Contract Administrator (Print Name)

W. STAN PSII
Chief Financial Officer (Print Name)

Monica Morales 5/6/13
Signature Date

M.A. Alderman 5/6/13
Signature Date

Andrea Ureick 5/8/13
Signature Date

Jeffery Hill 5/8/13
Signature Date

W. STAN PSII 5/21/13
Signature Date

CONTRACT NO. C11174-01

AMENDED AND RESTATED

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

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

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

RECITALS

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

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

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

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

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

NOW, THEREFORE BE IT RESOLVED

The parties agree as follows:

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

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

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

3. Revenue Allocation and Disbursement

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

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

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

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

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

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

- e. VTrans shall, at all times, segregate all Measure I funds received from SANBAG and hold them in a separate, dedicated account. Interest earned on the funds held in such segregated account shall be retained in the segregated account and used by VTrans only on qualified expenditures consistent with the requirements of this agreement for expenditure of Measure I funds.
4. **Reporting and Performance Review.** Within 45 days after each calendar quarter, VTrans shall submit to SANBAG quarterly reports, on the attached form hereto as Exhibit "A" to this contract. At any time during the term of this Contract, and from time to time, but no more frequently than annually, VTrans shall provide such information and documents as the SANBAG Executive Director or designee (Executive Director) may request in order to conduct an evaluation of VTrans' performance in meeting the goals, objectives and purposes of the Ongoing Annual Programs. As part of such evaluation, the Executive Director may review the audits, along with the levels of expenditures of Measure I revenue made in prior fiscal years and projected for the upcoming fiscal year, and the amount of Measure I funds being held unexpended by VTrans. The Executive Director shall provide his or her findings to VTrans in writing. A substantial failure to meet such goals, objectives and purposes, or an excessive or unreasonable accumulation of unexpended Measure I revenue thus hindering the Ongoing Annual Programs shall be a material breach of this Contract and, in addition, may result in SANBAG withdrawing certification of VTrans as the CTSA and designation of another agency in that role. Decertification shall take place only after VTrans has been afforded not less than 60 days' notice and an opportunity to present evidence and be heard in a public hearing before the SANBAG Board of Directors. The finding of the SANBAG Board shall be final.
 5. **Audits.** Annual audits of VTrans' use of the Measure I funds will be performed by an independent auditor contracted through SANBAG at SANBAG's expense. VTrans agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) and to segregate and separately account for Measure I

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

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

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

11. Insurance.

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

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

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

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

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

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

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

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

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

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

(Signatures on following page)

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

**VALLEY TRANSPORTATION
SERIVCES**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Dennish Hansberger
Board Chair

By: _____
Janice Rutherford
Board President

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Miller & Owen
Vtrans Counsel

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

Exhibits are attached for reference only

Exhibit "A" - Quarterly Financial Report Format

SAMPLE PROFIT AND LOSS STATEMENT

	Mar 11	Budget	\$ Over Budget	% of Budget	Jul '15 - Mar 11	YTD Budget	\$ Over Budget	% of Budget	Annual Budget
Income									
401001 - Fares Revenue									
406003 - Advertising Revenue									
407006 - Gain on Sale of Assets									
407007 - Other Income									
409002 - Measure I OP Revenue									
409003 - ADA Operating Revenue									
409007 - JARC/New Freedom's Operating Rev									
409101 - TDA Article 4.5 Capital Revenue									
409102 - Measure I Capital Revenue									
414001 - Interest Income									
464001 - Section 5310 Revenue									
Total Income									
Expense									
501001 - Payroll									
502100 - Payroll Taxes									
502002 - Workers Comp									
502003 - Medical Expense									
502004 - Dental Expense									
503001 - Professional Services									
5030011 - Consulting Services									
5030012 - Accounting Services									
5030013 - Legal Services									
Total 503001 - Professional Services									
503002 - Outside Services									
503003 - Temporary Services									
503004 - Equipment Repair									
503005 - Facility Repair									
503006 - Community Service									
504001 - Maintenance - Fleet									
504002 - Fuel									
504008 - Office Supplies									
504009 - Postage									
504010 - Dues & Publications									
505001 - Telephone									
505002 - Utilities									
506001 - Insurance Premiums									
508021 - Computer Supplies and Software									
508032 - Minor Office Furniture & Eqpt									
507001 - Tax/License/Dues/Permits									
509001 - Travel									
509002 - Professional Development									
509003 - Uniforms									
509006 - Fines and Penalties									
511001 - Interest Expense									
512001 - Space Rent									
512002 - Equipment Rental									
513001 - Depreciation-Grant Equipment									
513002 - Depreciation-Non Grant Equip									
Total Expense	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%	0.00
Net Income	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%	0.00

SAMPLE BALANCE SHEET

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

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Accounts Payable

201001 · Trade Accounts Payable

Total Accounts Payable

Credit Card Payable

Other Current Liabilities

202001 · Workers' Compensation Payable

202002 · Accrued Vacation and Sick Leave

202003 · Accrued Payroll Payable

203001 · Sales Tax Payable

203004 · Payroll Taxes Payable

204001 · Non-Capital Debt-Short Term

204002 · Capital Debt-Short Term

205004 · TSA Payable

211001 · Deferred Rev-TDA & Other

211002 · Deferred Rev-Meas 1

Total Other Current Liabilities

Total Current Liabilities

Long Term Liabilities

221001 · Long-Term Lease/Notes Payable

Total Long Term Liabilities

Total Liabilities

Equity

300000 · Opening Balance Equity

304000 · Net Assets Invested in Capital

304001 · Contributed Capital

305100 · Retained Earnings

320000 · Unrestricted Net Assets

Net Income

Total Equity

TOTAL LIABILITIES & EQUITY



- 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: 15

Date: June 5, 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:***
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 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.

	<p><i>Approved</i> <i>Board of Directors</i></p> <p>Date: _____</p> <p>Moved: Second:</p> <p>In Favor: Opposed: Abstained:</p> <p>Witnessed: _____</p>
--	--

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

Check all that apply.

BRD1306b-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>

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 was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. SANBAG General Counsel and Contract Administrator have approved this item and the Contracts.

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



CONTRACT SUMMARY SHEET

Contract No. R 13144 Amendment No. _____

By and Between

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

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
TOTAL CONTRACT VALUE	\$	5,500	TOTAL CONTINGENCY VALUE
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 5,500

Contract Start Date 6/5/13	Current Contract Expiration Date <u>6-30-18</u>	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

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

White A. Holesman
Task Manager (Print Name)

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

Jeffery Hill
Contract Administrator (Print Name)

W. STUARSON
Chief Financial Officer (Print Name)

<u>Ulonica Ulloa</u> Signature	<u>4.9.13</u> Date
<u>M. H. Adams</u> Signature	<u>4/9/13</u> Date
<u>Andrea Turcotte</u> Signature	<u>4/9/13</u> Date
<u>[Signature]</u> Signature	<u>4/11/13</u> Date
<u>[Signature]</u> Signature	<u>4/26/13</u> Date

CONTRACT NO: R13144

By and Between

**SAN BERNARDINO ASSOCIATED GOVERNMENTS
Acting in its Capacity as the SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION and the SAN BERNARDINO
COUNTY TRANSPORTATION AUTHORITY**

AND

TIME WARNER CABLE PACIFIC WEST LLC

For

**License Agreement on the 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, acting in its capacity as the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION AND THE SAN BERNARDINO COUNTY TRNSPORTATION AUTHORITY 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. 3rd Street, 2nd 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)

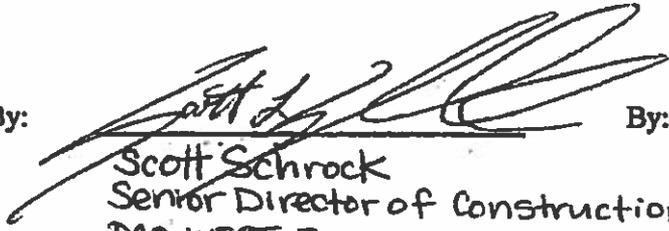
The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this Agreement.

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

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

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 supersedes 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.

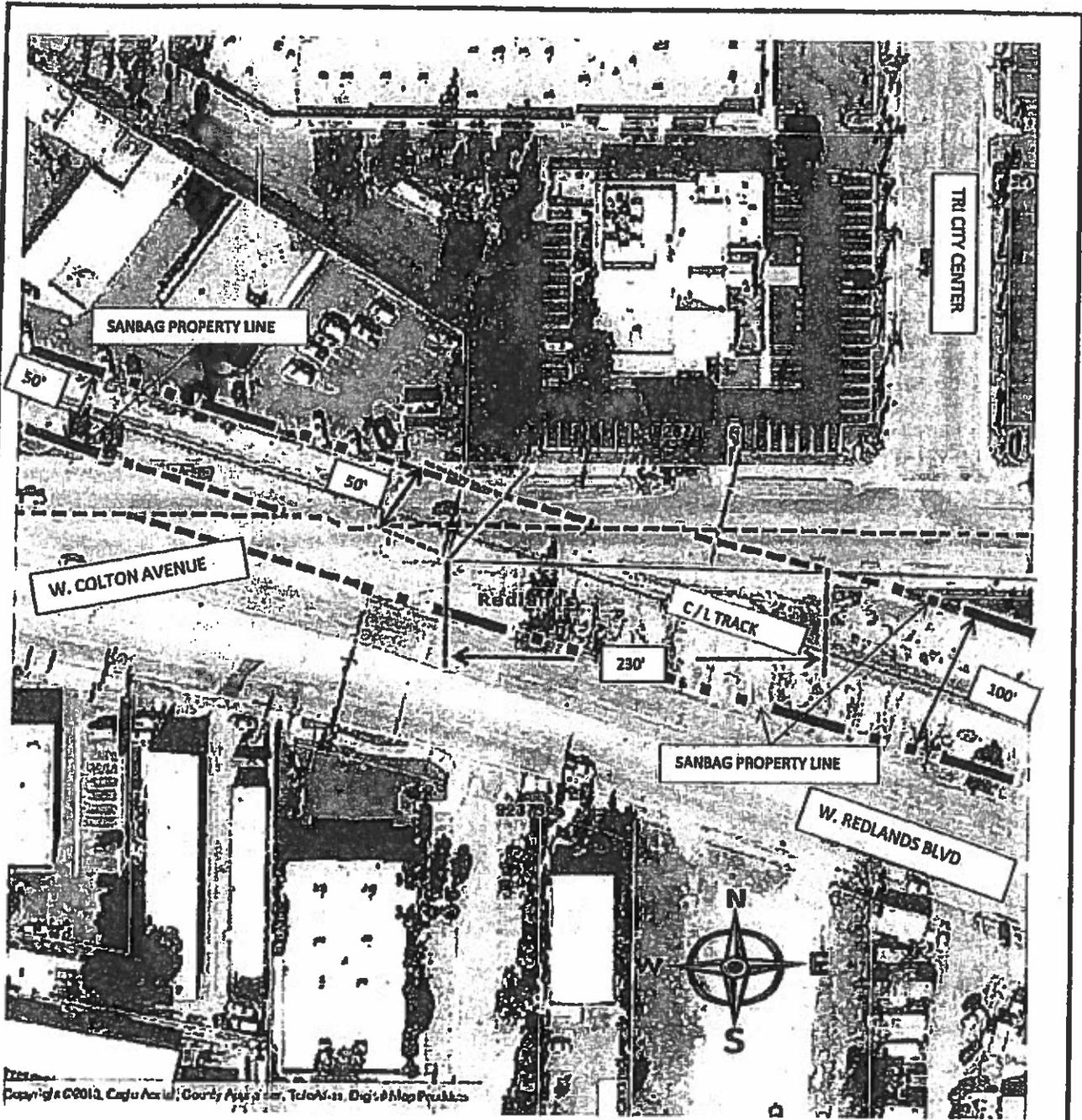
24.17 Time of Essence. Time is of the essence of this Agreement.

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: 0189-391-02

Date 3/15/2013

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



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.

Initials	SANBAG
<i>[Signature]</i>	
8-7-13	

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	\$	
TOTAL CONTRACT VALUE	\$	1,500	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 1,500

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

FINANCIAL INFORMATION

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

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

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

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

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes: Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

Ulonica Ulorales
 Project Manager (Print Name)

Wick U Ulolesman
 Task Manager (Print Name)

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

Jeffery Hill
 Contract Administrator (Print Name)

W. S. W. R. S. I. G.
 Chief Financial Officer (Print Name)

Ulonica Ulorales 4.9.13
 Signature Date

M. V. Adams 4/9/13
 Signature Date

Andrea Zureick 4/9/13
 Signature Date

[Signature] 4/16/13
 Signature Date

[Signature] 4/24/13
 Signature Date

CONTRACT NO: R13145

By and Between

**SAN BERNARDINO ASSOCIATED GOVERNMENTS
Acting in its Capacity as the SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION and the SAN BERNARDINO
COUNTY TRANSPORTATION AUTHORITY**

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 _____ 2013, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION AND THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY 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 (S4)

B. N/A percent (N/A%) of the gross revenues from the use of the Premises during the term of this Permit (S4)

7. Security Deposit: \$N/A (S5)

8. Insurance Amount: (See Exhibit "B") (S11)

9. SANBAG's Address:

San Bernardino Associated Governments
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
Attn: Director of Transit and Rail Programs (S15.1)

10. Permittee's Address:

Optimum, Inc.
215 S. Western
Hemet, California 92543
Attn: Louis LaBarge
951-652-7155 (S15.1)

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 (S15.17)
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 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 terms, 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.



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, Permittee's subsidiaries, partners, officers, employees, and agents and their property from acts of third parties.

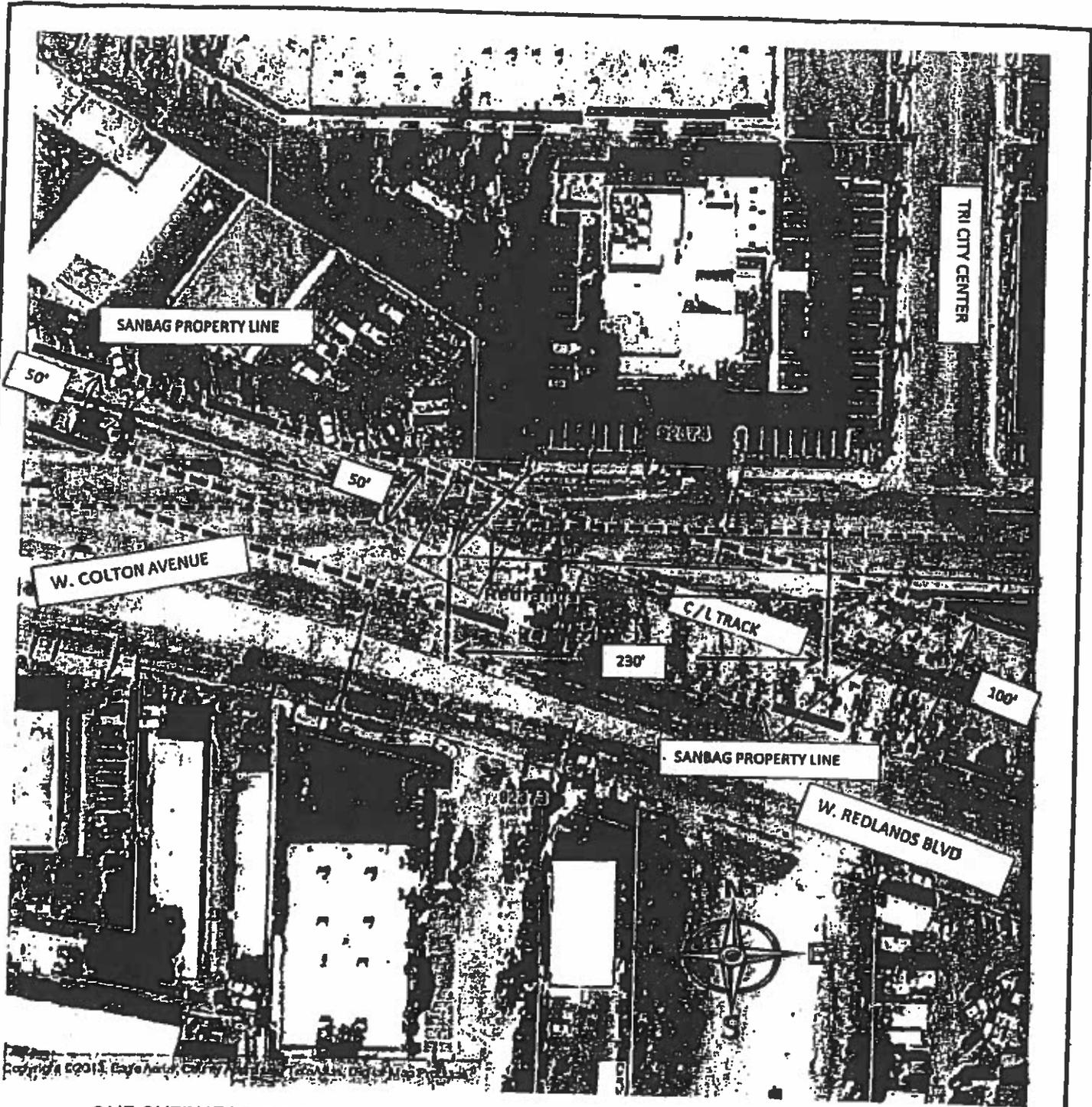
15.20 Effective Date/Nonbinding Offer. Submission of this Permit for examination or signature by Permittee does not constitute an offer or option for permit and it is not effective as a permit or otherwise until executed and delivered by both SANBAG and Permittee. Each individual executing this Permit 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
800 SQ FT	REDLANDS	1"=100'
Map Reference	Use	Thomas Gulda Grid
ND 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 I (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:

Eple 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



- 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: 16

Date: June 5, 2013

Subject: Eastern California Transportation Planning Partnership Memorandum of Understanding

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

Approve an Amendment to the Eastern California Transportation Planning Partnership Memorandum of Understanding to include support for future State Regional Improvement Program funding for the State Route 58 Corridor from Interstate 5 to Interstate 40.

Background: The Eastern California Transportation Planning Partnership (ECTPP) was created in 2002 with the goals to coordinate development of long range transportation plans, transportation improvement programs, and other transportation planning systems studies required to address interregional issues. Furthermore, the ECTPP made a commitment to the long-range improvement of US-395 from San Bernardino County to the Mono County/Nevada State Line.

In 2002, a four-agency Memorandum of Understanding (MOU) was executed by Kern County Council of Governments (Kern COG), Inyo County Local Transportation Commission (Inyo County LTC), Mono County Local Transportation Commission (Mono County LTC), and San Bernardino Associated Governments (SANBAG). The purpose of the MOU was to support increased capacity on the U.S. 395 Corridor by prioritizing the development of projects identified in the "U.S. 395 Corridor Study".

*

*Approved
Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.

BRD1306a-ep

Attachment I: <http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1306/AgendaItems/BRD1306a1-ep.docx>

The Agencies also agreed to pool county shares of Regional Improvement Program (RIP) funds for the purpose of jointly sponsoring projects on the U.S. 395 Corridor. Kern COG, Inyo County LTC, and Mono County LTC each contributed \$2 million of their Regional Improvement Program (RIP) funds to the realignment of U.S. 395. Caltrans allocated \$4 million of Interregional Transportation Improvement Program (ITIP) funds and SANBAG allocated \$4 million in Surface Transportation Improvement Program (STIP) funds

The California Department of Transportation (Caltrans), while not a party to the MOU, acknowledges the intent of the parties to pool funding for both U.S. 395 and SR 58 projects. Since 1998, the MOU partners have invested in capacity adding projects on the U.S. 395 and SR 14 corridors. The total investment to date, including the contributions from the Interregional Improvement Program (IIP), is \$248 million.

In early 2011, a Program Change Request (PCR) was prepared by Caltrans to officially split the Realignment Project into two segments. The southerly segment would start at the junction of I-15 and U.S. 395 (PM 4.0) and end at Purple Sage Road (PM 21.61) above Adelanto. The northerly segment would start at Purple Sage Road (PM 21.61) and end at 0.5 south of Farmington Road at Kramer Junction, just north of SR 58. The split allowed work to continue on the northerly segment so that the funds designated by Kern, Inyo and Mono counties could still be used towards delivery of a project design prior to formal reallocation of the funds.

In November 2011, the SANBAG Board of Directors reallocated \$4 million of IIP funds to the northerly segment of the US395 Realignment Project.

In 2012 Kern COG, Inyo County LTC and Mono County LTC each approved reallocating their committed funding of \$2 million to the northerly segment of the U.S. 395 Realignment Project.

Kern COG has now requested that the parties to the original MOU support improving the State Route 58 Corridor to a freeway facility. Kern COG has requested that Caltrans consider this segment of SR 58 for future Interregional Improvement Program (IIP) funding. There are no related financial implications required of the MOU participating agencies at this time. The revised language is inserted as the last two paragraphs in the Recitals section on page one of Attachment 1.

Financial Impact: This item has no impact to the current SANBAG fiscal year 2012/2013 budget.

Board of Directors Agenda Item
June 5, 2013
Page 3

Reviewed By: This item was reviewed and unanimously recommended for approval by the Mountain/Desert Committee on May 17, 2013. SANBAG General Counsel has approved this item and the Memorandum of Understanding.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN INYO COUNTY LOCAL TRANSPORTATION COMMISSION, KERN COUNCIL OF GOVERNMENTS, MONO COUNTY LOCAL TRANSPORTATION COMMISSION, AND SAN BERNARDINO ASSOCIATED GOVERNMENTS

This Amended and Restated Memorandum of Understanding (MOU) is entered into, by, and between the Inyo County Local Transportation Commission and Mono County Local Transportation Commission (LTCs), the Kern Council of Governments (Kern COG), and the San Bernardino Associated Governments acting in its capacity as the San Bernardino County Transportation Commission (SANBAG), collectively referred to herein as AGENCIES, nominally dated _____, 2013.

RECITALS

The LTCs and the Kern COG were established pursuant to California Government Code Section 29532, and SANBAG was established as the San Bernardino County Transportation Commission pursuant to California Government Code Section 130054.

The AGENCIES wish to cooperate and seek common goals in the development of U.S. 395, from Interstate 15 to the Mono County/Nevada State line and including Highway 120 in Mono County (referred to herein as 395 CORRIDOR).

The LTCs and the Kern COG entered into a Memorandum of Understanding in January 1999 that provides for the joint funding of certain projects on the 395 CORRIDOR, along with the following other considerations:

- Forming a coalition consisting of Inyo, Mono, and Kern County RTPAs
- Meeting regularly
- Developing additional MOUs to define the planning process and the 395 CORRIDOR development plan
- Jointly funding projects (referred to herein as PROJECTS) on the 395 CORRIDOR, to include Highway 120
- At a future date invite San Bernardino Associated Governments to participate in the coalition and increase the scope to include the development of U.S. 395 from Interstate 15 to the Kern/San Bernardino County line.

This MOU records the result of meetings between the AGENCIES and three Caltrans District offices concerning the development of the 395 CORRIDOR. The AGENCIES and Caltrans have agreed to support increased capacity on the 395 CORRIDOR, and have prioritized the development of projects in the "U.S. 395 Corridor Study".

The AGENCIES also wish to cooperate, seek common goals, and facilitate the development of State Route 58 from Interstate 5 to Interstate 40. State Route 58 functions as a critical east-west corridor connecting the Western United States to the Pacific Coast by way of Interstate 40 and is a major route for goods movement in addition to passenger travel.

Kern Council of Governments is seeking endorsement from participating AGENCIES of the importance to improve the State Route 58 Corridor through Kern County to a freeway facility. Kern COG requests that Caltrans consider this segment of State Route 58 in the Interregional Improvement Program (IIP). However, there are no related financial implications for this endorsement for any of the participating AGENCIES at this time.

ROLES AND RESPONSIBILITIES

Under this MOU, the AGENCIES agree to pool Regional Improvement Program (RIP) funds (county shares) for the purpose of joint sponsoring PROJECTS on the 395 CORRIDOR. The RTPAs hereby request the California Transportation Commission (CTC) commit Interregional Improvement Program (IIP) funding toward the joint sponsored PROJECTS.

The AGENCIES agree to meet and confer upon request of any party to this MOU or by any of the three Caltrans Districts to discuss proposed changes to project scope, limits, cost and/or schedule. Any proposed

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN INYO COUNTY LOCAL TRANSPORTATION COMMISSION, KERN COUNCIL OF GOVERNMENTS, MONO COUNTY LOCAL TRANSPORTATION COMMISSION, AND SAN BERNARDINO ASSOCIATED GOVERNMENTS

change to PROJECT scope, limits, cost and/or schedule must be approved by the California Transportation Commission before becoming effective. The AGENCIES agree to not change the scope, limits, cost, and/or schedule of the PROJECTS without the mutual consent of all parties to the MOU. Said consent by the AGENCIES will not be unreasonably withheld if it can be demonstrated that the proposed changes will not impact funding and/or delivery of other programmed priority projects. If there are cost increases, then each of the AGENCIES will contribution will be increased proportionately, subject to the mutual consent of all parties to the MOU.

This MOU becomes effective when fully executed by all parties. The terms and conditions of this MOU remain in effect until the proposed PROJECT identified below is completed (when Final Estimate has been processed by the State) or abandoned by a unanimous vote of the parties hereto. This MOU can be modified or amended by mutual written consent of all parties. This MOU does not replace or modify any other preexisting MOU between any or all parties. Likewise, future MOUs may be entered into between any or all of the parties notwithstanding this MOU. In the event funding for any of the PROJECTS is not authorized by the CTC, the provisions for funding that PROJECT contained in this MOU shall become null and void.

PROPOSED PROJECTS AND FUNDING

For the 2002 STIP the component of PROJECT for joint funding under this agreement is:

- **Development of the U.S. 395 corridor from approximately Interstate 15 to State Route 58 (PM4.0-48.0). Achieve Project Approval and Environmental Document.**

Each party recognizes that, while no reciprocal projects are identified in the remaining Counties in this MOU, that there may be jointly funded future projects in each County identified in future MOUs.

This MOU does not necessarily constitute agreement to program the remaining phases of this PROJECT in the future STIPs, but doesn't preclude further funding of the remaining components. The MOU partners agree to continue to consider mechanisms for funding future phases of this PROJECT. The Project Approval and Environmental component cost is estimated at \$14,000,000. This MOU splits the funds to be programmed as follows:

- \$2,000,000 by Mono County LTC
- \$2,000,000 by Inyo County LTC
- \$2,000,000 by Kern COG
- \$4,000,000 by SANBAG

The desire of the AGENCIES is to have the CTC commit IIP funds in the amount of \$4,000,000 toward this jointly funded project.

-----SIGNATURES ON FOLLOWING PAGE-----

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN INYO COUNTY LOCAL TRANSPORTATION COMMISSION, KERN COUNCIL OF GOVERNMENTS, MONO COUNTY LOCAL TRANSPORTATION COMMISSION, AND SAN BERNARDINO ASSOCIATED GOVERNMENTS

Inyo, Mono, and Kern County RTPAs and SANBAG have, by separate Resolution or Minute Order authorized their duly appointed officers to execute this agreement.

Kern Council of Governments

Harold W. Hanson, Chairperson

Thomas Morgan, Deputy County Counsel

Ahron Hakimi, Executive Director

Inyo County Local Transportation Commission

Robert Kimball, Chairperson

Paul Bruce, County Counsel

Jeff Jewett, Executive Director

Mono County Local Transportation Commission

Kathleen Cage, Chairperson

Marshall Rudolph, County Counsel

Scott Burns, Executive Director

San Bernardino Associated Governments

Janice Rutherford, President

Eileen Monaghan Teichert, General Counsel

Raymond Wolfe, Executive Director

CALTRANS ACKNOWLEDGMENT:

Although not a party to this MOU, Caltrans acknowledges the intent of the parties to pool their RIP county shares with IIP funds for the purpose of jointly funding the State Highway Projects as specified in this 395 MOU and to support freeway improvements on State Route 58 in Kern County.

Thomas P. Hallenbeck, District Director
Caltrans, District 9

Sharri Bender-Ehlert, District Director
Caltrans, District 6

Basem Muallem, District Director
Caltrans, District 8



- 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: 17

Date: June 5, 2013

Subject: Cooperative Agreement C13147 for the US395 Widening Project

Recommendation:* That the Board, acting in its capacity as the San Bernardino County Transportation Commission, approve Cooperative Agreement C13147 with the California Department of Transportation in the amount of \$6,015,354 for the US395 Widening Project Design Phase.

Background: **This is a new agreement.** The subject agreement defines the roles and responsibilities of the signatory agencies in funding and administering the Planning, Specifications, and Estimate (PS&E) phase of the US395 Widening Project through Adelanto from SR-18 to Bartlett Avenue. San Bernardino Associated Governments (SANBAG) is the sponsor of the project and is responsible for all capital and support costs, and the California Department of Transportation (Caltrans) is the implementing agency for the phase.

The project identified in this agreement is to widen sections of US395 from two to four lanes and add left turn channelization at intersections from SR-18 to Bartlett Avenue (post miles 12.20 to 16.60) (Segments 5, 6, 7 and 8) in the City of Adelanto. Attachment I shows the locations of these four segments.

Caltrans developed the Project Report and the Environmental Document for this project per the terms of Cooperative Agreement No. 08-1250.

Approved
Board of Directors

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

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

Check all that apply.

BRD1306b-ep

Attachment: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13147.doc>

On April 3, 2013, the Board approved the allocation of \$6,015,000 in federal Surface Transportation Program funds to Caltrans for the PS&E phase of the project. This Agenda Item requests approval of the Cooperative Agreement No. 08-1559 (SANBAG Contract No. C13147), which defines the roles and responsibilities in the PS&E phase.

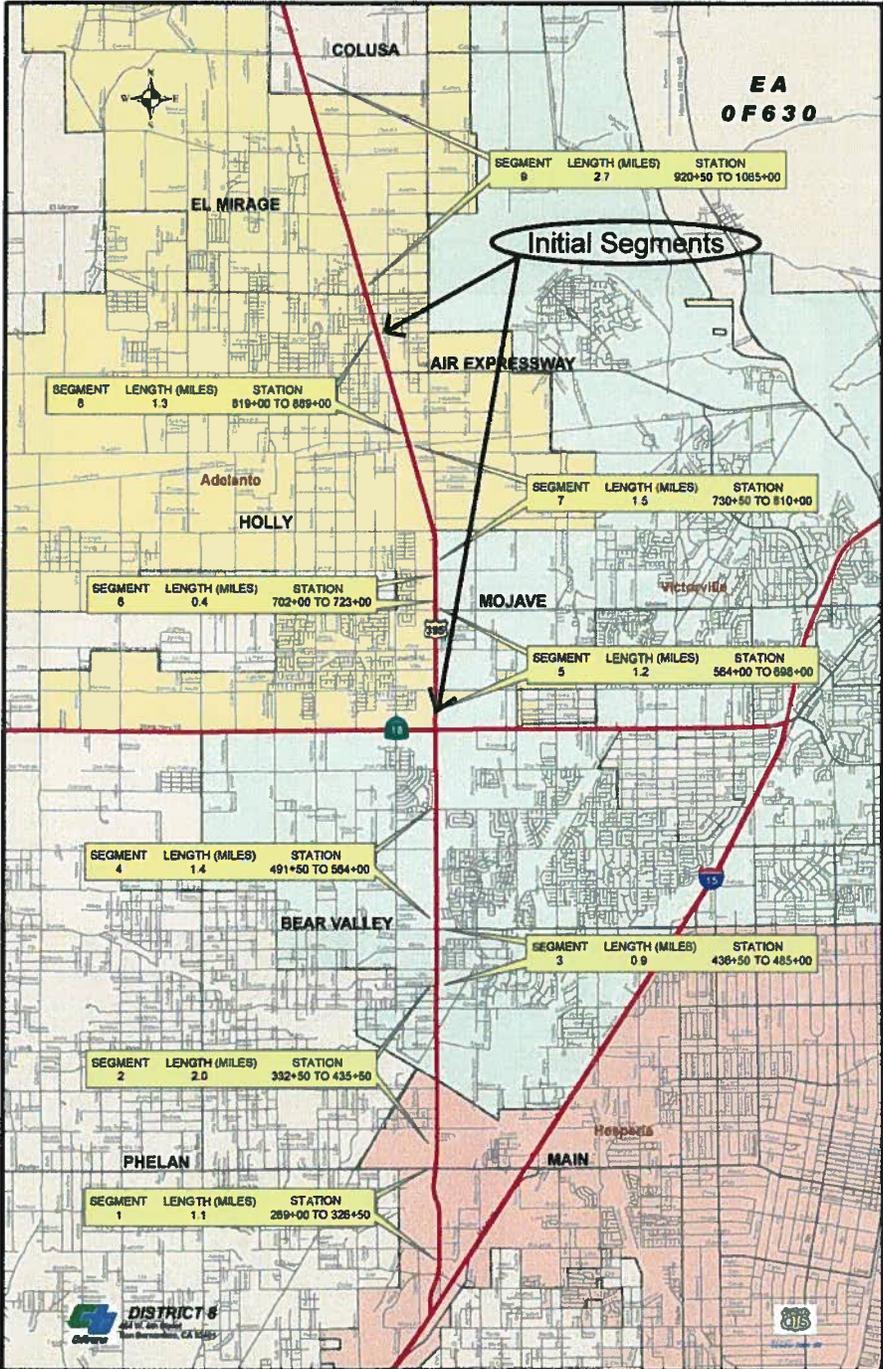
Per SANBAG policy, an Independent Cost Estimate (ICE) was prepared by Parsons on the design costs. The estimate quoted by Caltrans for design is fair and reasonable.

Financial Impact: This item has no financial impact on the approved Fiscal Year 2012-2013 budget.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Mountain/Desert Committee on May 17, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Cooperative Agreement.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

ATTACHMENT 1



CONTRACT SUMMARY SHEET

Contract No. C 13147 Amendment No. _____

By and Between

San Bernardino Associated Governments and State of CA Dept. of Transportation

Contract Description **Memorandum of Understanding for US395 PS&E Design Phase.**
Caltrans Agreement #08-1559.
Funds will not flow through SANBAG budget.

Board of Director's Meeting Date: June 5, 2013	
Overview of BOD Action: Approve Cooperative Agreement with the CA Department of Transportation for US395 Widening Project Design Phase. No	
Is this a Sole-Source procurement? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

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

Contract Start Date 07/01/2013	Current Contract Expiration Date 6/30/2018	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION	
<input type="checkbox"/> Budget authority for this contract currently exists in Task No. _____.	
<input type="checkbox"/> A Budget Amendment is required.	
How are we funding current FY? Funds will not flow through SANBAG budget.	
<input checked="" type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds
<input 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: STP-L Funds will not flow through SANBAG budget.	
<input type="checkbox"/> Payable <input 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 <u>N/A</u> %		
<u>Stuart Botkins</u> Project Manager (Print Name)	<u>Stuart Botkins</u> Signature	5/8/13 Date
<u>Andrea Zureick</u> Task Manager (Print Name)	<u>Andrea Zureick</u> Signature	5/8/13 Date
<u>Andrea Zureick</u> Dir. of Fund Admin. & Programming (Print Name)	<u>Andrea Zureick</u> Signature	5/8/13 Date
<u>Jeffery Hill</u> Contract Administrator (Print Name)	<u>Jeffery Hill</u> Signature	5/8/13 Date
<u>W. STAWRSKI</u> Chief Financial Officer (Print Name)	<u>W. STAWRSKI</u> Signature	5/8/13 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 Associated Governments, a public entity acting in its capacity as the San Bernardino County Transportation Commission, referred to hereinafter as SANBAG.

RECITALS

1. 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, widen United States Highway 395 from 2 to 4 lanes and add left turn channelization at intersections from post miles 12.20 to 16.60 (Segments 5, 6, 7 and 8), 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:
 - Plans, Specifications, and Estimate (PS&E)
4. This Agreement is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.
5. Prior to this Agreement:
 - Caltrans developed the Project Report (Cooperative Agreement No. 08-1250).
6. CALTRANS prepared the environmental documentation for the PROJECT.
7. In this Agreement capitalized words represent defined terms and acronyms.
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. CALTRANS is IMPLEMENTING AGENCY for PS&E.
12. CALTRANS is the CEQA lead agency for PROJECT.
13. CALTRANS is the NEPA lead agency for PROJECT.

SCOPE

Scope: General

14. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
15. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN.
16. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
17. Each PARTNER will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
18. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS.
19. 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 the Department of Industrial Relations.
20. 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.
21. 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.

22. If any PARTNER 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.
23. 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 and 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.
24. 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 consult with each other prior to the release of any public documents related to the PROJECT.
25. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.

31. **IMPLEMENTING AGENCY** for each **PROJECT COMPONENT** will furnish **PARTNERS** with written quarterly progress reports during the implementation of **OBLIGATIONS** in that component.
32. 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.
33. **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.
34. **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.
35. **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.
36. 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** 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.
37. **PARTNERS** will maintain and make available to each other all **OBLIGATIONS**-related documents, including financial data, during the term of this Agreement.
38. **PARTNERS** will retain all **OBLIGATIONS**-related records for three (3) years after the final voucher.
39. **PARTNERS** have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA (if **PROJECT** utilizes federal funds), and SANBAG 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 thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTNERS have thirty (30) calendar 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.

40. 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.
41. 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*.
42. 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.
43. If WORK stops for any reason, IMPLEMENTING AGENCY will place PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
44. 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.
45. 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.
46. This Agreement includes the PS&E PROJECT COMPONENT but does not include the R/W SUPPORT PROJECT COMPONENT. Completion of PS&E is dependent upon completion of some activities in R/W SUPPORT. PARTNERS acknowledge that the WORK will not result in a product that can be used to advertise and award a contract for the CONSTRUCTION SUPPORT/CAPITAL PROJECT COMPONENTS without completing some activities outside of this agreement, under a separate agreement, or by later amending this Agreement.

Scope: Environmental Permits, Approvals and Agreements

47. 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
NPDES SWRCB	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS
State Waste Discharge Requirements (Porter Cologne) RWQCB	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS
FESA Section 7 USFWS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS
1602 DFG	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS
2080.1 DFG	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS
2081 DFG	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS	CALTRANS

Scope: Plans, Specifications, and Estimate (PS&E)

48. The responsibility to advertise, open bids, award, and approve the construction contract will be handled outside of this Agreement.

COST

Cost: General

49. 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 each FUNDING PARTNER signs and dates 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.

50. PARTNERS may invoice the appropriate FUNDING PARTNER according to the terms documented in the FUNDING SUMMARY.
51. 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.
52. Unless otherwise documented in the FUNDING SUMMARY, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.
53. 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.
54. After PARTNERS agree that all WORK is complete for a PROJECT COMPONENT, PARTNER(S) 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.
55. 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.
56. If FUNDING PARTNERS fund OBLIGATIONS with Proposition 1B Bond funds, PARTNERS will meet the requirements of California 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.

57. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost.
58. 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.
59. 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.

60. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
61. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS cost.
62. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS cost.
63. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
64. 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.
65. If federal funds are used on PROJECT while this Agreement is active CALTRANS will administer all federal subvention funds documented on the FUNDING SUMMARY.
66. 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.

67. 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.
68. If CALTRANS reimburses SANBAG for any costs later determined to be unallowable, SANBAG will reimburse those funds.
69. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
70. 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.

71. 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.

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

Cost: Environmental Permits, Approvals and Agreements

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

SCHEDULE

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

GENERAL CONDITIONS

75. 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.
76. 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.
77. Neither 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 CALTRANS

and/or its agents 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 defend, indemnify, and save harmless 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 CALTRANS and/or its agents under this Agreement.

78. Neither CALTRANS 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 and/or its agents 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 defend, indemnify, and save harmless CALTRANS 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 and/or its agents under this Agreement.
79. 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.
80. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.
81. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
82. 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.
83. 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.
84. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.

85. PARTNERS will first attempt to resolve Agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of SANBAG 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 forty-five (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.

86. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
87. 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.
88. PARTNERS intend this Agreement to be their final expression and supersedes any oral understanding or writings pertaining to OBLIGATIONS.
89. 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.
90. Except as otherwise provided in the Agreement, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
91. 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.

92. The following documents are attached to, and made an express part of this Agreement:
SCOPE SUMMARY.

DEFINITIONS

ARRA – American Recovery and Reinvestment Act of 2009

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.

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.

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.

NEPA (National Environmental Policy Act of 1969) – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

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.

PS&E (Plans, Specifications, and Estimate) – See PROJECT COMPONENT.

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/ser/memos.htm#LinkTarget_705). This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA Guideline requirements.

SCOPE SUMMARY – The attachment in which each PARTNER designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the *Workplan Standards Guide for the Delivery of Capital Projects* 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.

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:

Robert So, Program/Project Management Office Chief

464 West 4th Street, 6th Floor, (MS-1229)

San Bernardino, California 92401-1400

Office Phone: (909) 383-4513

Mobile Phone: (909) 288-4420

Email: robert.so@dot.ca.gov

The primary Agreement contact person for SANBAG is:

Ellen Pollema, Transportation Planning Analyst

1170 W. 3rd Street, 2nd Floor

San Bernardino, CA 92410

Office Phone: (909) 884-8276

Email: e.pollema@sanbag.ca.gov

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

SAN BERNARDINO ASSOCIATED
GOVERNMENTS, acting as the San
Bernardino County Transportation
Commission
APPROVED

By: _____
Basem E. Muallem, P.E.
District Director

By: _____
Janice Rutherford
Board President

CERTIFIED AS TO FUNDS:

Date _____

By: _____
Lisa Pacheco
Budget Manager

APPROVED AS TO FORM AND
PROCEDURE

By: _____
Eileen Monaghan Teichert
SANBAG's General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	SANBAG	N/A
3	185				Prepare Base Maps and Plan Sheets for PS&E Development	X		<input type="checkbox"/>
		05			Updated Project Information	X		
			05		Project Concept Review	X		
			10		Updated Project Information	X		
			99		Other Updated Project Information Products	X		
		10			Surveys and Photogrammetric Mapping for Design	X		
			50		Control Surveys	X		
			55		Photogrammetric Maps and Products	X		
			60		Engineering Surveys	X		
			65		As-Built Centerline Surveys	X		
			70		Pavement Surveys	X		
		15			Preliminary Design	X		
			05		Roadway and Miscellaneous Design	X		
			10		Proposed Geometrics Review	X		
			15		Requests for Exceptions to Design Standards	X		
			20		Value Analysis	X		
			99		Other Preliminary Design Products	X		
		20			Engineering Reports	X		
			05		Updated Traffic Data, Analysis, and Forecasts	X		
			10		Preliminary Hydrology and Hydraulic Reports	X		
			15		Preliminary Geotechnical Design Report (PGDR)	X		
			20		Preliminary Pavement Design Report	X		
			25		Preliminary Materials Report	X		
			30		Soundwall Design Report	X		
			35		Updated Transportation Management Plan for Design Phase	X		
			40		Utility Locations Determined for Design	X		
			99		Other Engineering Report Products	X		
		25			Right of Way Requirements Determination	X		
			05		Project Review with Affected Agencies	X		
			10		Fee and Easement Requirements Determination	X		
			15		Right of Way Requirements Maps	X		
			20		Final Railroad Involvement Determination	X		
			25		Water Well Abandonment Needs Determination	X		
			30		Utility Conflict Maps	X		
		30			Structure Site Plans	X		
			10		Site Plans for Bridges and Structures	X		
			15		Site Plans for Retaining Walls and Non-Standard Earth Retention Systems	X		
			20		Site Plans for Soundwalls on Retaining Systems or	X		

				Structures			
			25	Site Plans for Pumping Plants	X		
			30	Site Plans for Special-Design Culverts	X		
			99	Other Structure Site Plan Products	X		
			99	Other Base Map and Plan Sheet Products	X		
3	205			Permits and Agreements during PS&E Component	X		
			05	Required permits	X		
			15	Railroad Agreements	X		
			05	Plan Approval	X		
			10	Special Provisions and Insurance Clauses	X		
			15	Service Contract for Railroad Services	X		
			20	Construction and Maintenance Agreement	X		
			25	PUC Exhibits and Applications	X		
			95	Other Railroad Agreement Products	X		
			25	Agreement for Material Sites			X
			30	Executed Maintenance Agreement	X		
			45	MOU From Tribal Employment Rights Office (TERO)			X
			55	NEPA Delegation	X		
3	230			Prepare Draft Plans, Specifications, and Estimates	X		
			05	Draft Roadway Plans	X		
			05	Title Sheet	X		
			10	Typical Cross Sections	X		
			15	Key Map and Line Index	X		
			20	Roadway Layouts	X		
			25	Profile and Superelevation Sheets	X		
			30	Construction Details	X		
			35	Contour Grading Plans	X		
			40	Summary of Quantities Sheets	X		
			45	Noise Barrier Plans	X		
			50	Retaining Wall Plans	X		
			55	Standard Plans Selection	X		
			60	Stage Construction and Detour Plans or Traffic Handling Plans	X		
			65	Water Pollution Control Plans	X		
			70	Engineering Reports	X		
			05	Hydrology and Hydraulic Reports	X		
			10	Products Required to Ready Site for Subsurface Exploration	X		
			15	Geotechnical Design Report (GDR)	X		
			20	Pavement Design Report	X		
			25	Materials Report	X		
			99	Other Draft Roadway Plan Products	X		
		10		Draft Highway Planting Plans	X		
			05	Highway Planting Plans	X		
			15	Plant List	X		
			20	Irrigation Plans	X		
			30	Irrigation Quantity Sheets	X		
			99	Other Draft Highway Planting Plan Products	X		
		15		Draft Traffic Plans	X		
			05	Signing and Pavement Delineation Plans	X		

		10	Construction Area Signs Plans	X		
		15	Traffic Electrical Plans	X		
		99	Other Draft Traffic Plan Products	X		
		20	Transportation Management Plan	X		
		25	Draft Utility Plans	X		
		05	New Facility Plans	X		
		10	Utility Relocation Plans	X		
		99	Other Draft Utility Plan Products	X		
		30	Draft Drainage Plans	X		
		35	Draft Specifications	X		
		05	Roadway Specifications	X		
		10	Highway Planting Specifications	X		
		15	Traffic Specifications	X		
		20	Electrical Specifications	X		
		25	Utility Specifications	X		
		30	Hydraulic Specifications	X		
		35	Water Pollution Control Specifications	X		
		40	Erosion Control Specifications	X		
		99	Other Draft Specification Products	X		
	40		Draft Plans, Specifications, and Estimates Quantities and Estimates	X		
		05	Roadway Quantities and Estimates	X		
		10	Highway Planting Quantities and Estimates	X		
		15	Drainage Quantities and Estimates	X		
		20	Traffic Quantities and Estimates	X		
		25	Electrical Quantities and Estimates	X		
		30	Utility Quantities and Estimates	X		
		35	Water Pollution Control Quantities and Estimates	X		
		40	Erosion Control Quantities and Estimates	X		
		99	Other Draft Plans, Specifications, and Estimates Quantities and Estimates Products	X		
	55		Structures Draft Plans, Specifications, and Estimates Incorporation	X		
	60		Updated Project Information for Plans, Specifications, and Estimates Package	X		
		05	Updated Storm Water Data Report	X		
		10	Other Reviews and Update of Project Information	X		
		90	NEPA Delegation	X		
		99	Other Draft Plans, Specifications, and Estimates Products	X		
3	235		Mitigate Environmental Impacts and Clean Up Hazardous Waste	X		
		05	Environmental Mitigation	X		
		05	Historical Structures Mitigation	X		
		10	Archaeological and Cultural Mitigation	X		
		15	Biological Mitigation	X		
		20	Environmental Mitigation Right of Way Work	X		
		25	Paleontology Mitigation	X		
		99	Other Environmental Mitigation Products	X		
		10	Detailed Site Investigation for Hazardous Waste	X		
		05	Right or Permit for Hazardous Waste Site Investigations	X		
		10	Hazardous Waste Sites Survey	X		
		15	Detailed Hazardous Waste Site Investigation	X		

		30		Hazardous Substances Disclosure Document (HSDD)	X		
		40		Updated Environmental Commitments Record	X		
		45		NEPA Delegation	X		
3	240			Draft Structures Plans, Specifications, and Estimates	X		
		50		Overall Draft Structures Plans, Specifications, and Estimates	X		
		55		Foundation Plan	X		
		60		Hydraulic Report	X		
		65		Preliminary Foundation Reports	X		
		70		Products Required to Ready Site for Subsurface Exploration	X		
		75		Draft General Plans	X		
		80		Foundation Reports	X		
		85		Draft Structure Plans	X		
		90		Draft Structures Special Provisions and Cost Estimate	X		
3	250			Final Structures PS&E Package	X		
		50		Project Review	X		
		55		Final Structure Plans	X		
		60		Final Structure Special Provisions and Cost Estimate	X		
3	255			Circulate, Review, and Prepare Final District Plans, Specifications, and Estimates Package	X		
		05		Circulated and Reviewed Draft District Plans, Specifications, and Estimates Package	X		
		10		Updated Plans, Specifications, and Estimates Package	X		
		05		Updated Roadway Plans, Specifications, and Estimates	X		
		10		Updated Highway Planting Plans, Specifications, and Estimates	X		
		15		Updated Traffic Plans, Specifications, and Estimates	X		
		20		Updated Hydraulic Plans, Specifications, and Estimates	X		
		25		Updated Technical Reports	X		
		30		Updated Utility Plans, Specifications, and Estimates	X		
		35		Updated Electrical Plans, Specifications, and Estimates	X		
		99		Other Updated Plans, Specifications, and Estimates Products	X		
		15		Environmental Re-evaluation	X		
		20		Final District Plans, Specifications, and Estimates Package	X		
		25		Geotechnical Information Handout	X		
		30		Materials Information Handout	X		
		35		Construction Staking Package and Control			X
		10		Construction Staking Package			X
		20		Project Control for Construction			X
		40		Resident Engineer's Pending File	X		
		45		NEPA Delegation	X		
		50		Secured Lease for Resident Engineer Office Space or Trailer			X
		55		Contractor Outreach			X
		65		Right of Way Certification Documentation			X
		70		Right of Way Engineering Products	X		
		75		Upgrade/Updated Right of Way Certification Document			X
3	260			Contract Bid Documents Ready to List			X

FUNDING SUMMARY Number 1

Project Number: 0800000144

Agreement: 08-1559

Part I – FUNDING SUMMARY table

Funding Source	Funding Partner	Fund Type	PA&ED Support	PS&E Support	Totals by Fund Type
IMPLEMENTING AGENCY >					
FEDERAL	SANBAG	Surface Transportation Program	\$0	*\$6,015,354	\$6,015,354
		Totals by Component	\$0	\$6,015,354	\$6,015,354

This table represents full funding of each PROJECT COMPONENT in Agreement 08-1559.

*The matching for the federal funds will be waived with Toll Credits in the amount of \$689,962.

Billing and payment details follow.

FUNDING SUMMARY Number 1

Project Number: 0800000144

Agreement: 08-1559

Part II – Billing and Payment Details

Cost: PS&E (Plans, Specifications, and Estimate)

1. Each PARTNER listed below will do work for PS&E as described in the SCOPE SUMMARY of this Agreement:

- CALTRANS

Therefore, based on the funding types displayed in the FUNDING SUMMARY table for this PROJECT COMPONENT:

- Since CALTRANS is administering the Federal funds, no invoicing will occur for this PROJECT COMPONENT.

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

SAN BERNARDINO ASSOCIATED
GOVERNMENTS, acting as the San
Bernardino County Transportation
Commission
APPROVED

By: _____
Basem E. Muallem, P.E.
District Director

By: _____
Janice Rutherford
Board President

Date: _____

Date: _____

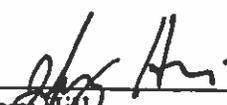
CERTIFIED AS TO FUNDS:

APPROVED AS TO FORM AND
PROCEDURE

By: _____
Lisa Pacheco
Budget Manager

By:  5/2/13
Eileen Monaghan Teichert
SANBAG's General Counsel

CONCURRENCE

By: 
Jeffery Hill
SANBAG's 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: 18

Date: June 5, 2013

Subject: Allocation of Project Development/Traffic Management System Funds to the City of Hesperia

Recommendation:* That the Board, acting in its capacity as the San Bernardino County Transportation Authority, allocate \$40,000 in Measure I Victor Valley Project Development/Transportation Management System funds for the City of Hesperia's Main Street Traffic Light Synchronization Project, contingent on allocation of Proposition 1B fund to the project.

Background: Proposition 1B authorized \$250 million for the Traffic Light Synchronization Program (TLSP) to fund signal synchronization projects and other technology-based improvements that improve safety, operations, and effective capacity of local streets and roads. Senate Bill 88, the implementing legislation for Proposition 1B, directed \$150 million of this to the City of Los Angeles, and the remaining \$100 million was open for applicants statewide.

At the May 2008 California Transportation Commission (CTC) meeting, San Bernardino Associated Governments (SANBAG) was awarded \$2 million of TLSP funds (50% of the estimated construction costs) for Tiers 3 and 4 of the San Bernardino Valley Coordinated Traffic Signal System Program (SBVCTSSP). The construction estimate was \$4 million for the project. The total construction cost for Tiers 3 and 4 was lower than the estimate, which left a balance of \$462,959 in TLSP funds unused.

*

	<p><i>Approved</i> Board of Directors</p> <p>Date: _____</p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>
--	---

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

Check all that apply.

The CTC is allowing SANBAG to nominate a new project within our county for the remaining TLSP that can demonstrate similar benefits and is ready to advertise for construction. SANBAG staff notified the Transportation Technical Advisory Committee about this immediate funding opportunity, and the City of Hesperia was the only agency with an eligible project that could demonstrate similar benefits and meet the required construction schedule.

The CTC will deprogram the funds from the SBVCTSSP at its June 2013 meeting. SANBAG has requested that the CTC allocate funds to the City of Hesperia's Main Street Traffic Light Synchronization Project at its August meeting. The project will coordinate eight signals along 2.5 miles of Main Street from I to 11th Avenues.

In the Fall of 2012, SANBAG's planning department met with the various Victor Valley agencies to look at the possibility of a regional traffic signal synchronization program. The Cities of Hesperia, Victorville and the Town of Apple Valley each provided information regarding their systems, maps, and support for coordination within the Victor Valley.

Hesperia began looking into real time adaptive signal controllers that have the ability to change the timing of the signal based on the actual traffic patterns approaching the intersection. The InSync system that they will be purchasing for this project works with the City's existing signal controller to provide real time adaptive signal timing. The system has already been deployed in locations throughout the country with excellent results. Communication will be established between the four signals that currently have no interconnect and all the video detection cameras will be upgraded to provide real time video monitoring of the signals. A traffic study will also be completed to analyze the before and after conditions of the corridor for delay, stops, travel time, fuel consumption and emissions over multiple time periods throughout the weekday peak periods.

The City of Hesperia has estimated that the total project cost is \$380,320, which includes \$50,000 for the Before and After Traffic Study. The City has requested an allocation of \$40,000 PD/TMS funds for the completion of the Before and After Study and to meet the 1:1 match required for TLSP funds. The City will allocate \$150,660 in local funds to complete the funding for the project. The PD/TMS funds will be applied to the cost of the traffic studies as Measure I Policy 40015, Victor Valley Project Development and Traffic Management Systems (VVPDTMS) defines projects eligible for funding to include, but not be limited to: corridor studies, project study reports, **projects to improve traffic flow and maximize use of traffic facilities, congestion management**, commuter assistance programs and programs which contribute to environmental enhancement associated with highway facilities.

Financial Impact: There is no financial impact at this time. If the City is successful in receiving the allocation of TLSP funds from the CTC, a funding agreement for the PD/TMS funds and any necessary budget amendment will be brought forward at that time.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Mountain/Desert Committee on May 17, 2013.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

**DISCUSSION
ITEMS**



- 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: 20

Date: June 5, 2013

Subject: Update on Court Closure Issue in San Bernardino County

Recommendation:* Receive a presentation from San Bernardino County Superior Court Presiding Judge Marsha Slough on recent activity related to court funding and court closures throughout the County.

Background: Recent decisions by the State of California would have a significant impact on the court system in San Bernardino County. State actions could cause the closure of courts in the desert areas causing a great hardship for residents of those regions of the County. A coalition of mayors from the County along with Presiding Judge Slough have been working together to protect these courts and maintain access to the judicial system. Presiding Judge Slough will give an update on this issue.

This item follows the action of the SANBAG Board of Directors to oppose the closure of additional courthouses in San Bernardino County at the April 11, 2013 Board Meeting. SANBAG also supported AB 1313 by Assembly Member Donnelly (R-Twin Peaks) which requires the Judicial Council, upon availability of funding, to allocate an additional 12 judges per year to counties where the greatest disparity exists between assessed need and positions allocated. Assembly Member Brown (D-San Bernardino) is a principal co-author and other co-authors include Assembly Members Fox (D-Palmdale), Grove (R-Bakersfield), Hagman (R-Chino Hills), Harkey (R-Dana Point), Jones (R-Santee), Linder (R-Corona),

*Approved
 Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

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

Check all that apply.
 BRD1306c-dab

Morrell (R-Rancho Cucamonga), Olsen (R-Modesto), and Wagner (R-Irvine), as well as Senators Emmerson (R-Redlands) and Knight (R-Antelope Valley).

Although AB 1313 would not have fully restored funding to the county, it would have been a step in the right direction for the state to recognize the current shortages that exist in various regions throughout the state. The Assembly Judiciary Committee held the bill in committee in May and it is now a two-year bill.

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

Reviewed By: This item has not received prior policy committee or technical advisory committee review.

Responsible Staff: Duane A. Baker, Director of Management Services



- 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: 21

Date: June 5, 2013

Subject: Resolution of Intention to Modify the Home Energy and Renovation Opportunity (HERO) Program Report to Add the Town of Apple Valley and the Cities of Needles, Redlands, and Upland and to Set a Public Hearing on the Matter

- Recommendation:***
1. Adopt Resolution No. 13-086 that declares SANBAG's intention to modify the SANBAG HERO Program Report so as to expand the program area within which contractual assessments may be offered.
 2. Set a public hearing for Wednesday, July 3, 2013 at 10:30 a.m. at the regularly scheduled Board of Directors meeting to consider the proposed modifications to the HERO Program Report and the expansion of the program area and to take public testimony.

Background: On March 6, 2013, the SANBAG Board of Directors held a public hearing and then adopted Resolution 13-044 creating the HERO Program that allows a jurisdiction and an interested property owner to enter into a contractual agreement to finance the installation of eligible renewable energy, energy efficiency, or water efficiency improvements that are permanently fixed to the property.

On October 3, 2012, the Board of Directors approved the Memorandum of Understanding (MOU) to be approved by the County and the cities if they wish to be included in the HERO Program. By the time of the public hearing on March 6, 2013, 20 of SANBAG's 25 member agencies had signed the MOU. Since that time four more agencies have approved the MOU, Apple Valley,

*

*Approved
Board of Directors*

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

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

Check all that apply.

BRD1306f-dab

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13086.doc>

Needles, Redlands and Upland. In order for these four agencies to be included in the HERO Program, the Program Report must be modified to add them and that requires a public hearing.

If the Resolution of Intention is approved by the Board of Directors, SANBAG staff will publish notice of and will schedule a public hearing for the July 3, 2013 SANBAG Board of Directors meeting to consider modifying the HERO Program Report so as to expand the program area within which contractual assessments may be offered to include Apple Valley, Needles, Redlands, and Upland.

Financial Impact: This item will not have an impact on the adopted SANBAG budget.

Reviewed By: This item has not received prior policy committee or technical advisory committee review.

Responsible Staff: Duane A. Baker, Director of Management Services

RESOLUTION NO. 13-086

RESOLUTION OF THE SAN BERNARDINO ASSOCIATED GOVERNMENTS DECLARING ITS INTENTION TO MODIFY THE SANBAG HERO PROGRAM REPORT SO AS TO EXPAND THE PROGRAM AREA WITHIN WHICH CONTRACTUAL ASSESSMENTS MAY BE OFFERED AND SETTING A PUBLIC HEARING THEREON

WHEREAS, the Board of Directors of the San Bernardino Associated Governments ("SANBAG") undertook proceedings pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Chapter 29"), the Joint Powers Agreement of the San Bernardino Associated Governments ("SANBAG"), originally made and entered into October 17, 1975 (the "Joint Powers Agreement"), as further amended to date, and each separate Memorandum of Understanding (each, a "PACE Memorandum of Understanding") by and between SANBAG and those parties (each, a "Participating Party") to the Joint Powers Agreement identified in Exhibit A of Resolution No. 13-038 (the "Resolution of Intention") entered into as of the effective date of the Resolution of Intention, to establish and did establish, by the adoption of Resolution No. 13-044 (the "Resolution Establishing the HERO Program"), a voluntary contractual assessment program, to be known as the SANBAG HERO Program (the "HERO Program"), to assist property owners within the jurisdictional boundaries of each Participating Party with the cost of installing distributed generation renewable energy sources, energy or water efficient improvements or electric vehicle charging infrastructure (the "Authorized Improvements") that are permanently fixed to their property; and

WHEREAS, by the adoption of the Resolution Establishing the HERO Program, the Board of Directors approved a report (the "Program Report") addressing all of the matters set forth in Section 5898.22 of Chapter 29, including establishment of the boundaries of the territory of the Participating Parties within which voluntary contractual assessments may be offered (the "Program Area") to provide for financing of the installation of Authorized Improvements on properties within the Program Area; and

WHEREAS, subsequent to the adoption of the Resolution of Intention, the legislative bodies of the City of Needles, the City of Upland, the City of Redlands and the Town of Apple Valley did each approve a PACE Memorandum of Understanding in order to enable the Program Report and the Program Area to be modified so as to provide for voluntary contractual assessments to be offered pursuant to the HERO Program within such jurisdictions to finance the installation of Authorized Improvements on properties within such jurisdictions; and

WHEREAS, the Board of Directors desires to initiate proceedings pursuant to Chapter 29 to modify the Program Report to include the jurisdictions of the City of Needles, the City of Upland, the City of Redlands and the Town of Apple Valley in the Program Area.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Bernardino Associated Governments as follows:

Section 1. The Board of Directors declares its intention to modify the Program Report so as to modify the Program Area within which contractual assessments may be

offered pursuant to the HERO Program to include the jurisdictions of the City of Needles, the City of Upland, the City of Redlands and the Town of Apple Valley.

Section 2. Public Hearing. Pursuant to Chapter 29, the Board of Directors hereby orders that a public hearing be held before the Board of Directors in the SANBAG offices located the Santa Fe Depot, 1170 W. 3rd Street, First Floor Lobby, San Bernardino, CA 92410, at 10:30 a.m. on July 3, 2013, on the proposed modifications to the Program Report and the expansion of the Program Area. At the public hearing all interested persons may appear and hear and be heard and object to or inquire about the proposed modifications to the Program Report and expansion of the Program Area.

Section 3. Notice of Public Hearing. The Secretary of the Board of Directors is hereby directed to provide notice of the public hearing by publishing this Resolution once a week for two weeks, pursuant to Section 6066 of the California Government Code, and the first publication shall occur not later than 20 days before the date of such hearing in a newspaper of general circulation published within the jurisdiction of SANBAG or, if there is no such newspaper of general circulation published within the jurisdiction of SANBAG, then in a newspaper of general circulation published nearest thereto.

Section 4. Effective Date of Resolution. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the San Bernardino Associated Governments held on June 5, 2013.

Janice Rutherford
President

ATTEST:

Vicki Watson,
Clerk of the Board



- 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: 22

Date: June 5, 2013

Subject: SANBAG 2013/2014 Proposed Budget

- Recommendation:***
1. Conduct the Public Hearing for the proposed Fiscal Year 2013/2014 budget; and
 2. Adopt the SANBAG Fiscal Year 2013/2014 budget.

Background: The development of the Fiscal Year 2013/2014 proposed budget is complete. The proposed budget documents were distributed to members of the Board prior to the Budget Workshop which was held in conjunction with the May General Policy Committee meeting.

Task level budget development has been completed relative to all of the activities included in the Fiscal Year 2013/2014 budget. SANBAG's budget process is structured to provide for the maximum level of input from all SANBAG policy committees. Each policy committee has reviewed the tasks that relate to the functional areas of committee oversight and each task has been reviewed by at least one of the policy committees.

SANBAG's budget process includes a review of the Boards' direction as it relates to short term goals and how it integrates with the agency's long term goals and

Approved
Board of Directors

Date: _____

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

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

objectives. As part of this review, staff analyzes the resources available to help meet the short term goals as set forth in the Fiscal Year budget.

Staffing for Fiscal Year 2013/2014 includes 50.5 regular full-time positions in comparison to 49.5 positions from the previous Fiscal Year, and also includes reclassifications. Total salary and benefit costs are \$7,961,988 which is 1.1% of the overall budget.

A merit adjustment based on performance evaluations at a projected cost of \$176,345 is recommended. This amount is equal to 5% merit increase for half of eligible employees. An increase to the health insurance premium subsidy of \$45.19/pay period is also recommended. This is in addition to the current \$57.70/pay period subsidy and the \$325.89/pay period flexible benefit. The total annual cost of the subsidy increase is \$42,297.

SANBAG develops a program based budget which is adopted with funding source detail. The modified accrual basis (where revenues are recognized when received and available to meet current year obligations) is the basis for the Fiscal Year 2013/2014 budget. The budget summary shows the anticipated revenues and expenditures for the upcoming Fiscal Year.

Estimated revenues for the Fiscal Year 2013/2014 budget are \$614,864,569 and budget appropriations are \$733,069,185.

Financial Impact: Budget estimated revenues and appropriations are \$614,864,569 and \$733,069,185 respectively. The budget will establish the work program and financial approvals to guide the organization throughout the coming Fiscal Year.

Reviewed By: This item was reviewed by the General Policy Committee on May 8, 2013, in conjunction with the Board of Directors Budget Workshop. All four (4) of the SANBAG policy committees have reviewed task descriptions and budgets for activities under their purview during the past month.

Responsible Staff: William Stawarski, Chief Financial Officer



- 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: 23

Date: June 5, 2013

Subject: Appropriations Limitation for Fiscal Year 2013/2014

Recommendation: Adopt Resolution 13-084 to establish an appropriations limit at \$1,003,154,656.

Background: Article XIIIB of the California Constitution specifies that the appropriations limit of state and local governments may increase annually by a factor comprised of the change in population combined with the change in California per capita personal income.

In accordance with the above mentioned requirements, Resolution 13-084 has been prepared and is attached for review and adoption. The California Department of Finance provides the percentage change over prior year for the per capita personal income and the annual percentage change in population. This factor, multiplied by the approved prior year appropriations limit, establishes the fiscal year 2013/2014 appropriations limit at \$1,003,154,656. The annual establishment of an appropriations limitation excludes federal grant funds.

The previous limit, as approved by the Board of Directors was \$946,247,341. Resolution 13-084 adjusts the limit to \$1,003,154,656. The increase from the prior year is due primarily to a 5.12% increase in per capita personal income over the prior year.

Financial Impact: This item poses no financial impact. The Fiscal Year 2013/2014 adopted budget, with associated amendments, is well below the proposed appropriations limit.

Approved
 Board of Directors

Date: _____

Moved: _____ Second: _____
 In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

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

BRD1306c-wws

Attachment: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/RES13084.doc>

Board Agenda Item
June 5, 2013
Page 2

Reviewed By: The item was not available for review by the General Policy Committee on May 8, 2013; therefore, the Committee approved bringing this item directly to the Board of Directors meeting on June 5, 2013, in conjunction with the adoption of the Fiscal Year 2013/2014 budget.

Responsible Staff: William Stawarski, Chief Financial Officer

RESOLUTION NO. 13-084

**RESOLUTION OF THE
SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION
ESTABLISHING APPROPRIATIONS LIMIT
FOR FISCAL YEAR 2013/2014**

WHEREAS, Article XIII B of the California Constitution and Sections 7900 through 7913 of the California Government Code require the establishment of an appropriation limit; and

WHEREAS, appropriation limits are applicable to funds received from the proceeds of taxes and interest earned on such proceeds.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the San Bernardino County Transportation Commission hereby determined that pursuant to Section 7902(b) of the California Government Code, the appropriation limit for San Bernardino County Transportation Authority for Fiscal Year 2013/2014 is determined to be \$1,003,154,656.

Approved by the Board of Directors of the San Bernardino County Transportation Commission at its regular meeting thereof held this 5th day of June 2013.

*

*Approved
Board of Directors*

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

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

RES13084



- 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: 24

Date: June 5, 2013

Subject: Announcement of Vacancies and Appointments on Regional Committees

- Recommendation:**
1. Note the Presidential appointment of Needles Mayor Edward Paget to the Southern California Association of Governments (SCAG) Community, Economic and Human Development Committee.
 2. Note one vacancy on the SCAG Energy and Environment Committee.

Background: This item provides a report to Board Members related to appointments and vacancies for Board Members to serve on various committees.

SANBAG has a total of seven subregional appointees to SCAG Policy Committees which are made by SANBAG Presidential appointment. SANBAG has had two vacant appointments for nearly a year. These vacancies have been announced on several occasions. Mayor Edward Paget from the City of Needles has expressed his interest in serving the region on the SCAG Community, Economic and Human Development Committee and Board President Janice Rutherford has appointed Mayor Paget to that committee. Per SANBAG Policy, any Presidential appointment is to be announced at the next Board meeting.

There is still one vacancy for appointment to the SCAG Energy and Environment Committee. These SCAG Committees meet in the morning of every first Thursday at the SCAG offices in Los Angeles. Any SANBAG Board Member

Approved
Board of Directors

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG	CTC	X	CTA	SAFE	CMA
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Check all that apply.

who has an interest in serving in any of the vacant committee positions should contact SANBAG President Janice Rutherford or SANBAG staff.

Financial Impact: This item is consistent with the adopted SANBAG budget.

Reviewed By: This item has not received prior policy committee or technical advisory committee review.

Responsible Staff: Duane A. Baker, Director of Management Services



- 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: 25

Date: June 5, 2013

Subject: Amend Agreement for lease of construction field office space for Interstate 215 (I-215) Segments 1 & 2 Freeway Project

Recommendation: That the Board acting in its capacity as the San Bernardino County Transportation Authority approve Amendment No. 2 to SANBAG Contract C06049 between SANBAG and the Mountain Business Park extending the duration of the agreement until April 30, 2014, at current rental rate of \$6,419.56 and establish \$10,000 contingency be added to address any unforeseen demobilization costs.

Background: This is an amendment to a current Agreement. On December 7, 2005, the Board approved a lease agreement with Mountain Business Park/Pacific Day Capital for 6,400 square feet for five years at a rate of \$1.25 per square foot plus a yearly escalation rate per the Consumer Price Index (CPI). The initial lease period had a termination date of February 27, 2011, with an Option to extend the lease for two separate two-year periods at an increase of 3% per year.

In February 2011, the Board approved Amendment No. 1 extending the lease to June 31, 2013. The amendment's "gross" lease rate was \$0.95 per square foot for year one, \$0.98 for year two, and \$1.03 from March 1 to June 30, 2013.

Approved
Board of Directors

Date: _____

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	
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Check all that apply.

BRD1306a-mb

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/DCSS%20C06049-02.xlsx>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/CSS%20C06049-02.docx>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C06049-02.docx>

This office space was leased as a construction field office for the State Route 210 (SR-2012) and I-215 projects. The space is currently being utilized as a construction field office to manage the SR-210 landscape and I-215 Segment 1 and 2 projects. These projects are scheduled to be completed in mid-January 2014. Therefore, the proposed second amendment extends the lease by 10 months to April 30, 2014, to allow for the completion of these projects.

Staff is recommending approval of the second amendment to extend the lease agreement, to April 30, 2014, at the current "gross" rate of \$1.03 per square foot or \$6,419.56 per month for an approximate total cost of \$64,195. In addition Staff is requesting a \$10,000 contingency to address any unforeseen demobilization costs.

This item is coming directly to the Board without prior Committee review. The reason this item has not had prior review is that staff thought that the Executive Director had been delegated the authority, with the approved revision of the Contracting and Procurement Policy, to sign the subject contract. Upon further review of the policy, it was determined that the delegation did not include lease agreements. Since the lease expires this month, the Board's consideration of the amendment needs to occur at the June meeting.

Financial Impact: The budget is consistent with the Fiscal Year 2012/2013 budget. Task No. 0836

Reviewed By: This item has not had prior Policy Committee or Technical Advisory Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item and Agreements.

Responsible Staff: Garry Cohoe Director of Project Delivery



CONTRACT SUMMARY SHEET

Contract No. C C06049 Amendment No. 2

By and Between
Mountain Business Park and San Bernardino County Transportation Authority

Contract Description Leased Office Space

Board of Director's Meeting Date: 6/5/13
Overview of BOD Action: Approve Lease Amendment # 2

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW			
Original Contract Amount	\$	500,000.00	Original Contingency Amount
			\$ 0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	690,805.66	Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$ 0
Current Amendment Amount	\$	64,195.60	Contingency Amendment
			\$ 10,000.00
TOTAL CONTRACT VALUE	\$	755,001.26	TOTAL CONTINGENCY VALUE
			\$ 10,000.00
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 765,001.26

Contract Start Date 12/7/05	Current Contract Expiration Date 06/30/13	Revised Contract Expiration Date 4/30/14
Has the contract term been amended? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - please explain. Extend lease term to match I215 Seg 1 & 2 project completion and closeout		

FINANCIAL INFORMATION	
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. 0838.	
<input type="checkbox"/> A Budget Amendment is required.	
How are we funding current FY? Measure I 1990 – Valley Funds – Major Projects	
<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	
Provide Brief Overview of the Overall Funding for the duration of the Contract: Measure I 1990 – Valley Funds – Major Projects	
<input checked="" type="checkbox"/> Payable <input 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 _____ %	

Mike Barnum		5/14/13
Project Manager (Print Name)	Signature	Date
Garry Cohoe		5-15-13
Task Manager (Print Name)	Signature	Date
Andrea Zureick		5/22/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill		5/22/13
Contract Administrator (Print Name)	Signature	Date
W. STANWELL		5/27/13
Chief Financial Officer (Print Name)	Signature	Date

SECOND AMENDMENT TO LEASE

C06049-02

This Second Amendment to Lease (this "Second Amendment") is effective on the Effective Date as defined herein. This Amendment concerns the Lease executed December 7, 2005 and extension executed February 11, 2011 by Landlord (or Landlord's predecessor) for the rental of the Demised Premises located at 2700 Little Mountain Dr., Suite B-101, San Bernardino, CA 94805 by and between Mopark LP ("Lessor") and San Bernardino Associated Governments - SANBAG ("Lessee"). Lessee and Lessor desire to modify and extend the Lease terms and to make other changes to the Lease upon the conditions set forth in this Agreement. In consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lease, is hereby amended, modified and extended as provided in this Agreement.

2. The Base Rent shall be as follows: \$6,419.56 per month beginning July 1, 2013. The lease expiration date is April 30, 2014.

3. As a material inducement for Lessor to enter into this Agreement Lessee hereby represents, warrants, certifies and agrees that Lessor has fulfilled all of Lessor's obligations to Lessee under the Lease, Guarantee or otherwise, that Lessee have no outstanding claims against Lessor or Lessor's employees, agents, or partners and there are no amounts due from Lessor or Lessor's employees, agents, or partners regarding any issue related to this Lease, Guarantee or unrelated to this Lease and that Lessee and Guarantor have no offset, claims, recoupment or defense against the payment of rent and other sums and the performance of all obligations of Lessee and Guarantor under the Lease or Guarantee. Lessor, Guarantor and Lessee approve and ratify the Lease as modified. In the event of conflict between the terms of the Lease as amended or modified and the terms of this Modification and Extension of Lease, the terms of this Modification and Extension of Lease shall prevail. Lessee and Guarantor agree to execute any and all documents and agreements requested by Lessor to further evidence or effectuate this Agreement. This Agreement is binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one Agreement. Except as modified or amended in this Agreement the terms and conditions of the Lease as previously modified shall remain unchanged except all provisions for rent credits or other concessions and all option provisions to extend or renew the Lease, if any, set forth in the Lease are deleted and no longer applicable. Lessee acknowledges and agrees that Lessee is in sole possession of the Demised Premises under the Lease and all work, improvements and furnishings required by Lessor if any have been completed and accepted by Lessee. The party executing this document for Lessee and Guarantor represents and warrants that they have the authority to execute this document on behalf of Lessee. Lessor does not waive any rights under the Lease. Guarantor agrees to these terms.

The date that this Second Amendment is executed by Lessee shall be the Effective Date of the Amendment.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

AGREED AND ACCEPTED, the parties have executed this Amendment on the day and year below written.

SAN BERNARDINO ASSOCIATED

**Mopark LP by Vested GOVERNMENTS
Management, Inc. general partner**

By: _____
Janice Rutherford,
Board President

By: _____
Ronald Franco President

Date _____

Date _____

**APPROVED AS TO FORM AND
PROCEDURE:**

By: _____
Eileen Monaghan Teichert
SANBAG General Counsel

CONCURS:

By: _____
Jeffery Hill
Contract Administrator



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

Minute Action

AGENDA ITEM: 26

Date: June 5, 2013

Subject: Award Construction Contract No. C13002 for State Route 210 Freeway Segment 11 Landscaping Project

Recommendation: That the San Bernardino County Transportation Authority:

1. Reject as non-responsive the apparent low bid from YAKAR for failure to provide required Disadvantaged Business Enterprise documentation as required by the Invitation for Bids , and
2. Award Construction Contract No. C13002 to Kasa Construction, Inc. as the lowest responsive and responsible bidder for the State Route 210 Freeway Segment 11 Landscaping Project in the amount of **\$3,807,318.30**, and
3. Approve Allowances/Contingency for Contract No. C13002 on the State Route 210 Freeway Segment 11 Landscaping Project in the amount of **\$445,031.83** and authorize the Executive Director or designee to release as necessary for the project.

Background: This is for award of a new contract based on the competitive low bid process. In October 2012, the San Bernardino Associated Governments

*Approved
 Board of Directors*

Date: June 5, 2013

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

COG	CTC	CTA	X	SAFE	CMA
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Check all that apply.

BRD1306 b-mb

Attachment: C13002 <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13002%20Contract.docx>
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/DCSS%20C13002.xlsx>
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/CSS%20C13002.docx>

(SANBAG) Board of Directors authorized release of Invitation for Bid No. C13002 and authorized staff to proceed directly to the Board with a recommendation for award of the State Route (SR) 210 Segment 11 Landscape Improvement Project (Project) contract. The engineer's construction cost estimate was \$4,485,909.59. With supplemental items, agency furnished items, and contingency, the total project was estimated at \$4,770,920.07.00. Segment 11 landscape project extends from 0.46 miles west of State Street undercrossing to 0.124 miles east of Route 210/Route 215 junction and is the last of the SR 210 landscape installation projects.

Recommendation 1:

On May 9, 2013, SANBAG received five (5) bids from landscape contractors for the Project. At the bid opening, YAKAR was identified as the apparent low bidder at \$3,467,460.26, followed by KASA Construction, Inc. at \$3,807,318.30, Griffith Company at \$4,355,778.55, Pacific Restoration Group, Inc. at \$4,998,272.11 and ACCU Construction, Inc. at \$5,037,069.10.

All bids were reviewed by staff for discrepancies and compliance with the Invitation for Bids requirements. Based on the review, the YAKAR bid was found to contain discrepancies in the total amount shown on the bid form of \$98.00 due an error in totaling the total of all bid item costs. Based on the Invitation for Bids (IFB) document, in case of a discrepancy between the unit price and the total, the unit price shall prevail. Therefore, the correct total bid amount is \$3,467,558.26. Based on this correction YAKAR's bid was found to be the bid day apparent lowest bidder (see Exhibit A). No calculation errors were found in the KASA Construction, Inc. or Griffith Company bids.

This project specified a 1% Disadvantaged Business Enterprise (DBE) goal. Per bid requirements, the three apparent lowest bidders must complete and submit within four business days after bid opening specific federally mandated documentation to support Good Faith Efforts (GFE) efforts and bid day DBE commitment.

On May 15, 2013, Staff received documentation from these three bidders. Staff and SANBAG's on-call DBE compliance consultant reviewed the information provided. This review found that YAKAR failed to provide required DBE documentation forms Exhibit 12-G "Bidder's List of Subcontractors (DBE and non-DBE) – Part 1" and Exhibit 15-H "Good Faith Efforts" making YAKAR's bid non-responsive. Per the IFB this information must be submitted no later than four (4) working days after bid submittal. On May 20, 2013, staff notified YAKAR of the intended

recommendation to SANBAG Board to reject the company's bid as non-responsive.

Staff recommends the Board reject YAKAR's bid as non-responsive for failure to provide the Disadvantaged Business Enterprise documentation as required by the Invitation for Bids.

Recommendations 2 and 3:

Based on a review of the bids and the GFE documentation and a determination that the 1.0% DBE contract goal was met in accordance with the requirements of the IFB, the apparent lowest responsible and responsive bidder is KASA Construction, Inc. (Exhibit B). Staff is recommending that Contract No. C13002 for the SR-210 Segment 11 Landscape Improvement Project be awarded to KASA Construction, Inc. in the amount of \$3,807,318.30.

Staff is also recommending approval of Allowances/Contingency for Contract No. C13002 for the SR-210 Segment 11 Landscape Improvement Project consisting of supplemental items, agency furnished items and a 10% contingency, for a total amount of \$445,031.83 (See Exhibit C).

With the addition of Allowances/Contingency the total construction cost is \$4,252,350.13

Financial Impact: Funding is provided under Task Number No. 0824–State Route 210 Construction. The funding sources are Surface Transportation Program (STP) and Regional Improvement Program (RIP-TE). This item is consistent with SANBAG's Fiscal Year 2013/2014 budget.

Reviewed By: This item has not had prior Policy Committee or Technical Advisory Committee review. At the October 2012, Board meeting, the Board approved taking award of Contract No. C13002 directly to the Board without prior Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.

Responsible Staff: Garry Cohoe, Director of Project Delivery

Exhibit A

#	Bidder	Final Bid Amount
1	YAKAR	\$ 3,467,558.26
2	Kasa Construction, Inc.	\$ 3,807,318.30
3	Griffith Company	\$ 4,355,778.55
4	Pacific Restoration Group, Inc.	\$ 4,998,272.11
5	ACCU Construction, Inc.	\$ 5,029,927.10

Exhibit B

#	Bidder	Final Bid Amount
1	Kasa Construction, Inc.	\$ 3,807,318.30
2	Griffith Company	\$ 4,355,778.55
3	Pacific Restoration Group, Inc.	\$ 4,998,272.11
4	ACCU Construction, Inc.	\$ 5,029,927.10
5	YAKAR	Non-Responsive

Exhibit C

Item	Item Description	Amount
SUPPLEMENTAL WORK		
1	FEDERAL TRAINEE PROGRAM	\$ 800.00
2	MAINTAIN TRAFFIC	\$ 10,000.00
3	WATER POLLUTION CONTROL MAINTENANCE SHARING	\$ 5,000.00
4	ADDITIONAL WATER POLLUTION CONTROL	\$ 10,000.00
5	STORM WATER SAMPLING AND ANALYSIS	\$ 1,500.00
6	PARTNERING (OVER 1 MILLION)	\$ 5,000.00
7	MAINTAIN EXISTING ELECTRICAL SYSTEM	\$ 1,000.00
8		
9	SUBTOTAL (1)	\$ 33,300.00
AGENCY FURNISHED MATERIALS AND EXPENSES		
10	COZEEP	\$ 22,800.00
11	TRAFFIC MANAGEMENT PLAN PUBLIC INFORMATION	\$ 7,000.00
12	PADLOCKS	\$ 1,200.00
13	SUBTOTAL (2)	\$ 31,000.00
CONTINGENCIES		
14	CONTINGENCIES (10% of Construction Contract \$3,807,318.30)	\$ 380,731.83
15	SUBTOTAL (3)	\$ 380,731.83
Total ALLOWANCES AND CONTINGENCY		\$ 445,031.83
SUMMARY		
1	Construction Contract C13002	\$ 3,807,318.30
2	Supplemental Work Items	\$ 33,300.00
3	Agency Furnished Items	\$ 31,000.00
4	Contingency (10%)	\$ 380,731.83
TOTAL		\$ 4,252,350.13

CONTRACT SUMMARY SHEET

Contract No. C 13002 Amendment No. _____

By and Between

San Bernardino Transportation Authority and Kasa Construction, Inc

Contract Description SR 210 Segment 11 Landscape Construction

Board of Director's Meeting Date: 6/5/13
Overview of BOD Action: Award Construction Contract for SR 210 Segment 11 landscape and established Contingency

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW

Original Contract Amount	\$	3,807,318.30	Original Contingency Amount	\$	445,031.83
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	3,807,318.30	TOTAL CONTINGENCY VALUE	\$	445,031.83
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 4,252,350.13

Contract Start Date 6/5/13	Current Contract Expiration Date 6/5/2016	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. 0824.

A Budget Amendment is required.

How are we funding current FY? \$1.8M Surface Transportation Program (STP); \$2.5M Regional Transportation Program (RIP-TE)

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

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

Surface Transportation Program (STP); Regional Transportation Program (RIP-TE)

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % 5.

Disadvantaged Business Enterprise (DBE) Goal 1 %

Mike Barnum
 Project Manager (Print Name)
GARY COHOE
 Task Manager (Print Name),
Andrea Zureick
 Dir. of Fund Admin. & Programming (Print Name)
Jeffery Hill
 Contract Administrator (Print Name)
W. STAWARSKY
 Chief Financial Officer (Print Name)

<u>WB</u>	5/21/13
Signature	Date
<u>WB</u>	5/21/13
Signature	Date
<u>Andrea Zureick</u>	5/21/13
Signature	Date
<u>[Signature]</u>	5/21/13
Signature	Date
<u>[Signature]</u>	5/22/13
Signature	Date



CONTRACT TERMS AND CONDITIONS

CONTRACT # C13002

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

KASA CONSTRUCTION, INC.

FOR

STATE ROUTE-210 SEGMENT 11 LANDSCAPING IMPROVEMENTS PROJECT

This Contract, is effective on the Effective Date as defined herein, by and between San Bernardino County Transportation Authority (referred to hereinafter as "AUTHORITY"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and, KASA Construction, Inc. (referred to hereinafter as "CONTRACTOR") whose address is 316 N. Corona Avenue, Ontario, CA 91764. AUTHORITY and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, AUTHORITY has determined that it requires construction of State Route-210 Segment 11 Landscaping Improvements Project; and

WHEREAS, the work described herein cannot be performed by the employees of AUTHORITY; and

WHEREAS, CONTRACTOR has certified that they have the requisite personnel, experience, materials, and equipment and is fully capable and qualified to perform these services identified herein.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS

The complete Contract includes all of the following Contract Documents:

- a) The Contract Terms and Conditions;
- b) Invitation for Bids dated April 3, 2013
- c) Bidder's Bid dated May 9, 2013.
- d) California Department of Transportation Standard Plans, dated 2006, the Standard Specifications dated 2006, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

- e) Project Plans dated 3-1-2013, entitled "State Highway in San Bernardino County in the City of San Bernardino from 0.46 Miles west of State Street Undercrossing to 0.124 Mile East of Route 210/Route 215 Junction to 0.19 Mile South of Route 210/Route 215 Junction".
- f) Special Provisions entitled "Special Provisions for Construction on State Highway in San Bernardino County in the City of San Bernardino from 0.46 Miles west of State Street Undercrossing to 0.124 Mile East of Route 210/Route 215 Junction to 0.19 Mile South of Route 210/Route 215 Junction".
- g) Addenda No. 1 dated May 2, 2013
- h) Performance and Payment Bonds
- i) Prevailing Wage Rate Schedules

ARTICLE 2. PAYMENT

CONTRACTOR agrees to perform all work set forth and particularly described in this Contract, incorporated herein by reference, in consideration of the Base Bid to be paid by AUTHORITY in the amount of **\$3,807,318.30**.

ARTICLE 3. PAYMENT AND PERFORMANCE BONDS

CONTRACTOR will furnish a Payment bond, in the form provided by AUTHORITY in the IFB, in an amount equal to one hundred percent (100%) of the contract price, and a faithful Performance bond in the form provided by AUTHORITY in the IFB, in an amount equal to one hundred percent (100%) of the contract price, said bonds, to be secured from a surety company satisfactory to AUTHORITY within ten (10) working days of the Notice of Award of this Contract and prior to the commencement of work under this Contract. Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. Notwithstanding any other provision set forth in this Contract, performance by a Surety or Guarantor of any obligation of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

ARTICLE 4. RETENTION/PROMPT PAYMENT

Pursuant to CFR 26.29, CONTRACTOR is required to pay all subcontractors for satisfactory performance no later than 7 days from when the CONTRACTOR receives payment from the AUTHORITY. AUTHORITY shall hold retainage from CONTRACTOR of five percent (5%) from each invoice, and shall make prompt and regular incremental acceptances of portions, as determined by AUTHORITY of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed

and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with AUTHORITY's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of; a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE contractors.

ARTICLE 5. COMPENSATION

AUTHORITY agrees to pay, and CONTRACTOR agrees to accept in full payment for the work outlined in the Contract documents, the sum of **Three Million, Eight Hundred Seven Thousand, Three Hundred Eighteen Dollars and Thirty Cents (\$3,807,318.30)**, subject to additions and deductions, if any, in accordance with said documents [including without limit that compensation due for unit price work shall be the actual number of such units performed multiplied by the unit price]. Payment shall not be made more often than once each thirty (30) days, nor shall the amount be paid in excess of ninety-five percent (95%) of the Contract at time of completion. Payment requests shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment to be made after acceptance of the Project. The Bid Schedule presented on the next page is incorporated into this Contract by this reference.

C13002 ACCEPTED BIDDERS BID SCHEDULE

Item	Item Code	ITEM DESCRIPTION	UNIT	QTY	Unit Price	Amount
1	070016	CONSTRUCTION SITE MANAGEMENT	LS	1	\$ 5,000.00	\$ 5,000.00
2	074019	PREPARE SWPPP	LS	1	\$ 5,000.00	\$ 5,000.00
3	074028	TEMPORARY FIBER ROLL	LF	2,500	\$ 3.00	\$ 7,500.00
4	074038	TEMPORARY DRAINAGE INLET PROTECTION	EA	10	\$ 100.00	\$ 1,000.00
5	074043	TEMPORARY CONCRETE WASHOUT BIN	EA	3	\$ 650.00	\$ 1,950.00
6	074057	STORM WATER ANNUAL REPORT	EA	1	\$ 1,500.00	\$ 1,500.00
7	120090	CONSTRUCTION AREA SIGNS	LS	1	\$ 11,000.00	\$ 11,000.00
8	120100	TRAFFIC CONTROL SYSTEM	LS	1	\$ 25,000.00	\$ 25,000.00
9	128650	PORTABLE CHANGEABLE MESSAGE SIGN	EA	4	\$ 500.00	\$ 2,000.00
10	200002	ROADSIDE CLEARING	LS	1	\$ 145,000.00	\$ 145,000.00
11	200114	ROCK BLANKET (TYPE 1)	SQYD	7,137	\$ 65.00	\$ 463,905.00
12	200114(A)	ROCK BLANKET (TYPE 2)	SQYD	969	\$ 70.00	\$ 67,830.00
13	200116	GRAVEL (MISCELLANEOUS AREAS)	SQYD	56,674	\$ 7.50	\$ 425,055.00
14	202011	MULCH	CY	11,947	\$ 26.00	\$ 310,622.00
15	202066	SOIL AMENDMENT	CF	9,826	\$ 1.00	\$ 9,826.00
16	204001	PLANT GROUP A	EA	27,259	\$ 5.25	\$ 143,109.75
17	204002	PLANT GROUP B	EA	220	\$ 14.00	\$ 3,080.00
18	204021	PLANT GROUP U	EA	816	\$ 100.00	\$ 81,600.00
19	204055	WILD FLOWER SEEDING (TYPE 1)	SQYD	11,739	\$ 0.65	\$ 7,630.35
20	204055 (A)	WILD FLOWER SEEDING (TYPE 2)	SQYD	108,146	\$ 0.70	\$ 75,702.20
21	204099	PLANT ESTABLISHMENT WORK	LS	1	\$ 50,000.00	\$ 50,000.00
22	206560	CONTROL AND NEUTRAL CONDUCTORS	LS	1	\$ 150,000.00	\$ 150,000.00
23	206603	1" ELECTRIC REMOTE CONTROL VALVE	EA	65	\$ 350.00	\$ 22,750.00
24	206604	1 1/2" ELECTRIC REMOTE CONTROL VALVE	EA	1	\$ 500.00	\$ 500.00
25	206605	2" ELECTRIC REMOTE CONTROL VALVE	EA	7	\$ 400.00	\$ 2,800.00
26	206751	12 STATION IRRIGATION CONTROLLER	EA	2	\$ 5,500.00	\$ 11,000.00
27	206753	16 STATION IRRIGATION CONTROLLER	EA	1	\$ 6,200.00	\$ 6,200.00
28	035042	40 STATION IRRIGATION CONTROLLER	EA	1	\$ 7,700.00	\$ 7,700.00
29	208598(F)	3" PLASTIC PIPE (PR 315) (SUPPLY LINE)	LF	9,398	\$ 14.00	\$ 131,572.00
30	208301	IRRIGATION CONTROLLER ENCLOSURE CAB	EA	4	\$ 5,000.00	\$ 20,000.00
31	208304	INSTALL WATER METER	EA	4	\$ 53,000.00	\$ 212,000.00
32	208304(B)	DEVELOP WATER SUPPLY	LS	1	\$ 33,000.00	\$ 33,000.00
33	208421	BACKFLOW PREVENTER ENCLOSURE	EA	4	\$ 1,750.00	\$ 7,000.00
34	208426	2" BACKFLOW PREVENTER ASSEMBLY	EA	4	\$ 1,800.00	\$ 7,200.00
35	208588	3" GATE VALVE	EA	19	\$ 600.00	\$ 11,400.00
36	208482	SPRINKLER (TYPE C-2)	EA	544	\$ 25.00	\$ 13,600.00
37	208483	SPRINKLER (TYPE D-1)	EA	30,821	\$ 6.00	\$ 184,926.00
38	208595(F)	1" PLASTIC PIPE (SCH 40) Supply Line	LF	166,837	\$ 3.00	\$ 500,511.00
39	208597(F)	1 1/2" PLASTIC PIPE (SCH 40)Supply Line	LF	5,492	\$ 3.25	\$ 17,849.00
40	208598(F)	2" PLASTIC PIPE (SCH 40) Supply Line	LF	25,460	\$ 4.00	\$ 101,840.00
41	208630	2" WYE STRAINER	EA	20	\$ 500.00	\$ 10,000.00
42	208633(A)	1" PRESSURE REDUCING VALVE	EA	1,344	\$ 90.00	\$ 120,960.00
43	208633(B)	1 1/2" FLOW SENSOR	EA	4	\$ 1,500.00	\$ 6,000.00
44	208649(A)	1" MANUAL FLUSH VALVE	EA	1,344	\$ 40.00	\$ 53,760.00
45	208670(A)	2" CHECK VALVE	EA	672	\$ 70.00	\$ 47,040.00
46	208683(A)	2" BALL VALVE	EA	20	\$ 250.00	\$ 5,000.00
47	208911(A)	EXTEND 12" CONDUIT	LF	38	\$ 50.00	\$ 1,900.00
48	016214A	MODIFY COMMUNICATION SYSTEM	LS	1	\$ 75,000.00	\$ 75,000.00
49	802540	8' CHAIN LINK GATE (TYPE CL-6)	EA	6	\$ 2,500.00	\$ 15,000.00

50	860090	MAINTAINING EXISTING MANAGEMENT SYS	LS	1	\$ 2,000.00	\$ 2,000.00
51	860797	ELECTRICAL SERVICE (IRRIGATION)	LS	1	\$ 60,000.00	\$ 60,000.00
52	NA	MOBILIZATION (5%)	LS	1	\$ 125,500.00	\$ 125,500.00
TOTAL						\$ 3,807,318.30

ARTICLE 6. TAXES, DUTIES AND FEES

Except to the extent expressly provided otherwise elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensations set forth in this Contract shall be inclusive of all a) local, municipal, state, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 7. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not allocated or available for the continuance of work performed by the CONTRACTOR, work directly or indirectly involved may be suspended or terminated by AUTHORITY at the end of the period for which funds are available. When AUTHORITY becomes aware that any portion of work, which will or may be affected by a shortage of funds, it will notify CONTRACTOR within fifteen (15) days. Nothing herein shall relieve AUTHORITY from its obligation to compensate CONTRACTOR for work performed pursuant to this Contract. No penalty shall accrue to AUTHORITY in the event this provision is exercised.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other authorized representatives or agents of AUTHORITY, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow AUTHORITY or its representatives or agents to reproduce any materials as reasonably necessary. This Article applies to all subcontractors at any tier that is performing work under this Contract.

ARTICLE 9. SCHEDULE

CONTRACTOR agrees to complete the work within the time period as stipulated in the Special Provisions attached herein. CONTRACTOR shall incur no costs and shall not perform or furnish any work, services or equipment under this Contract, unless and until the AUTHORITY has

issued a written Notice To Proceed (NTP).

ARTICLE 10. CONTRACTORS LICENSE

CONTRACTOR agrees that he is currently the holder of a valid license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain license through the entire duration of Contract.

ARTICLE 11. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

11.1 CONTRACTOR agrees to comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of transportation (DOT), Title 49 CFR Part 21 as they may be amended from time to time, which are herein incorporated by this reference and made part of this Contract. The following minimum specific requirement activities of the Equal Employment Opportunity (EEO):

11.1.1 CONTRACTOR will work with the AUTHORITY and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the Contract.

11.2.1 CONTRACTOR will accept as his operating policy the following statement: "It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

11.2 EEO Officer: CONTRACTOR will designate and submit to the AUTHORITY in writing the EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active CONTRACTOR program of EEO and who must be assigned adequate AUTHORITY and responsibility to do so.

11.3 Dissemination of Policy: All members of the CONTRACTOR's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONTRACTOR's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

11.3.1 Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at

which time the CONTRACTOR's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

- 11.3.2 All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the CONTRACTOR's EEO obligations within thirty days following their reporting for duty with the CONTRACTOR.
 - 11.3.3 All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the CONTRACTOR's procedures for locating and hiring minority group employees.
 - 11.3.4 Notices and posters setting forth the CONTRACTOR's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - 11.3.5 CONTRACTOR's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- 11.4 **Recruitment:** When advertising for employees, CONTRACTOR will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- 11.4.1 CONTRACTOR will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, CONTRACTOR will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to CONTRACTOR for employment consideration.
 - 11.4.2 In the event CONTRACTOR has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits CONTRACTOR's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the CONTRACTOR to do the same, such implementation violates Executive Order 11246, as amended.)
 - 11.4.3 CONTRACTOR will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
- 11.5 **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall

be followed:

- 11.5.1 CONTRACTOR will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - 11.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - 11.5.3 CONTRACTOR will periodically review-selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONTRACTOR will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - 11.5.4 CONTRACTOR will promptly investigate all complaints of alleged discrimination made to the CONTRACTOR in connection with his obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONTRACTOR will inform every complainant of all of his avenues of appeal.
- 11.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- 11.6.1 Consistent with CONTRACTOR' work force requirements and as permissible under Federal and State regulations, the CONTRACTOR shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - 11.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - 11.6.3 CONTRACTOR will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
- 11.7 Unions: If CONTRACTOR relies in whole or in part upon unions as a source of employees, CONTRACTOR will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by CONTRACTOR either directly or through a CONTRACTOR's association acting, as agent will include the procedures set forth below:

- 11.7.1 CONTRACTOR will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- 11.7.2 CONTRACTOR will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- 11.7.3 CONTRACTOR is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to CONTRACTOR, CONTRACTOR shall so certify to the AUTHORITY and shall set forth what efforts have been made to obtain such information.
- 11.7.4 In the event the union is unable to provide CONTRACTOR with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, CONTRACTOR will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which CONTRACTOR has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents CONTRACTOR from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONTRACTOR shall immediately notify the AUTHORITY.
- 11.8 CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Contract. Disadvantaged business enterprises (DBE), as defined in 49 CFR Part 23 shall have equal opportunity to compete for and perform subcontracts, which the CONTRACTOR enters into pursuant to this contract. CONTRACTOR will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. CONTRACTOR shall obtain lists of DBE construction firms from AUTHORITY DBE Liaison. CONTRACTOR will use his best efforts to ensure subcontractor compliance with their EEO obligations.
- 11.9 Records and Reports: CONTRACTOR shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three (3) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the AUTHORITY. The records kept by the CONTRACTOR shall document the following: The number of minority and non-minority group members and women employed in each work classification on the project; the progress and efforts being made in cooperation with unions, when applicable, to

increase employment opportunities for minorities and women; the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

11.9.1 CONTRACTOR will submit an annual report to the AUTHORITY each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, CONTRACTOR will be required to collect and report training data.

ARTICLE 12. CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. CONTRACTOR further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONTRACTOR is obligated to fully disclose to AUTHORITY, in writing, of any conflict of interest issues as soon as they are known to CONTRACTOR and to comply with AUTHORITY Policy 10102 regarding disclosure. CONTRACTOR acknowledges that no member or delegate to, the Congress of the U.S. shall have any interest, direct or indirect, in this Contract or the benefits thereof.

ARTICLE 13. PROPRIETARY RIGHTS/CONFIDENTIALITY

13.1 If, as part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by AUTHORITY, shall deliver to AUTHORITY the original of all such products which shall become the property of AUTHORITY.

13.2 All materials, documents, data or information obtained from AUTHORITY's data files or any AUTHORITY medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of AUTHORITY. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of AUTHORITY.

13.3 Except as reasonably necessary for the performance of Services, CONTRACTOR and its employees and agents shall hold in confidence the materials and information referred to in this Article, which are produced by CONTRACTOR for AUTHORITY in the performance and completion of CONTRACTOR's Services under this Contract, until released in writing by AUTHORITY, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.

- 13.4 CONTRACTOR shall not use AUTHORITY's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of AUTHORITY.
- 13.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by AUTHORITY unless otherwise agreed to by CONTRACTOR and AUTHORITY.
- 13.6 CONTRACTOR agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of AUTHORITY, any information obtained by CONTRACTOR from or through AUTHORITY in connection with CONTRACTOR's performance of this Contract, unless (a) the information was known to CONTRACTOR prior to obtaining same from AUTHORITY pursuant to a prior contract; or (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from AUTHORITY and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same.

ARTICLE 14. TERMINATION

- 14.1 Termination for Convenience - AUTHORITY shall have the right at any time, with or without cause, to terminate further performance of Services by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Services and shall preserve work in progress and completed work ("Work"), pending AUTHORITY's instruction, and shall turn over such Work in accordance with AUTHORITY's instructions. CONTRACTOR shall deliver to AUTHORITY, in accordance with AUTHORITY instructions, all deliverables prepared by CONTRACTOR or its subcontracts or furnished to CONTRACTOR by AUTHORITY. Upon such delivery, CONTRACTOR may then invoice AUTHORITY for payment in accordance with the terms hereof. If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from AUTHORITY as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination. CONTRACTOR shall be entitled to receive the actual cost incurred by CONTRACTOR to return CONTRACTOR's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with AUTHORITY's instructions plus the actual cost necessarily incurred in effecting the termination.
- 14.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its solvency, or if CONTRACTOR shall default in the performance of any

express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, AUTHORITY may, without prejudice to any other rights or remedies AUTHORITY may have, (a) hold in abeyance further payments to CONTRACTOR; (b) stop any services of CONTRACTOR or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by AUTHORITY, AUTHORITY may take possession of the deliverables and finish Services by whatever method AUTHORITY may deem expedient. A waiver by AUTHORITY of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of CONTRACTOR, nor be deemed to waive, amend, or modify any term of this Contract.

14.2.1 In the event of termination, CONTRACTOR shall deliver to AUTHORITY all finished and unfinished products prepared under this Contract by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by AUTHORITY.

14.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to AUTHORITY, satisfactory in form and content to AUTHORITY and verified by AUTHORITY. In no event shall CONTRACTOR be entitled to any prospective profits or any damages because of such termination.

ARTICLE 15. INSURANCE

Without in anyway affecting the indemnity herein provided and in addition thereto the CONTRACTOR shall, at the CONTRACTOR's expense, and prior to commencement of any work, procure and maintain in full force insurance from the beginning of the work through final acceptance by AUTHORITY. In addition, CONTRACTOR shall maintain completed operations coverage with a carrier acceptable to AUTHORITY through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the Code of Civil Procedure. The policies shall be written by a carrier authorized to do business in the State of California with a Best rating of A-VII or better, and shall be written with at least the following limits of liability:

15.1 Workers' Compensation and Employer's Liability Insurance – Workers' Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California. Employer's Liability Insurance shall be provided in amounts not less than:

- (a) \$1,000,000 for each accident for bodily injury by accident.
- (b) \$1,000,000 policy limit for bodily injury by disease.
- (c) \$1,000,000 for each employee for bodily injury by disease.

15.2 Liability Insurance – CONTRACTOR shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations performed by or on behalf of the Contractor providing insurance for bodily injury liability, and property damage liability for the limits

of liability indicated below and including coverage for:

- (a) Premises and Operations coverage, with no exclusion or limitation for the perils of Explosion, Collapse or underground Operations;
- (b) No limitation or exclusion for CONTRACTOR's liability arising out of work performed by its subcontractors; Products and completed operations.
- (c) No limitation or exclusion to the definition of Products and Completed Operations coverage as contained in the ISO CF 00 01 12 04 or its equivalent;
- (d) No limitation or exclusion to the definition of "Insured Contract" as contained in the ISO Commercial General Liability form CG 00 01 12 04 or its equivalent.

15.2.1 Liability Limits/Additional Insureds - Insurance shall be written on ISO occurrence form CG 00 01 12 04 (or its equivalent) and the policy must contain the following endorsement, which must be stated on the certificate of insurance:

- (a) Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

The limits of liability shall be at least:

- (a) \$2,000,000 for each occurrence (combined single limit for bodily injury and property damage).
- (b) \$2,000,000 aggregate for products-completed operations.
- (c) \$10,000,000 general aggregate. This general aggregate limit shall apply separately to the Contractor's work under this Agreement.
- (d) \$10,000,000 umbrella or excess liability. Combined total Commercial General Liability and Excess Liability limits of \$25,000,000 will be required for projects with a contract value in excess of \$25,000,000.
- (e) Umbrella or excess policy shall follow form over the CONTRACTOR's General Liability coverage and shall provide a separate aggregate limit for products and completed operations coverage. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

15.3 AUTHORITY, the State of California, the City of San Bernardino and their authorized officers, employees, agents and volunteers, shall be named as additional insureds with respect to liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract. Coverage for such additional insureds shall not extend to liability:

- (a) Arising from any defective or substandard condition of the Roadway which

existed at or prior to the time the CONTRACTOR commenced work, unless such condition has been changed by the work or scope of the work requires the CONTRACTOR to maintain existing Roadway facilities and the claim arises from the CONTRACTOR' failure to maintain; or

(b) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the CONTRACTOR which occurred during the course of the work; or

(c) To the extent prohibited by Section 11580.04 of the Insurance Code.

15.3.1 The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance. Any other insurance or self-insurance maintained by AUTHORITY will be excess only and shall not be called upon to contribute with this insurance. Such additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010 07 04 and CG 20 37 07 04, as published by the Insurance Services Office (ISO).

15.4 Automotive Liability Insurance – CONTRACTOR shall carry automobile liability insurance, including coverage for all owned hired and non-owned automobiles. The primary limits of liability shall not be less than \$5,000,000 combined single limit each accident for bodily injury and property damage. Umbrella or excess liability coverage used to meet the limits required under “Liability Limits/Additional Insureds,” shall also apply to automobile liability.

15.5 Contractors Pollution Liability – CONTRACTOR’s pollution liability insurance (and if required Excess Liability insurance) written on an occurrence form with limits of liability of not less than \$10,000,000 per occurrence and \$10,000,000 general aggregate applicable solely to the Project for third-party claims for bodily injury and/or property damage, and for remediation costs stemming from pollution incidents resulting from the CONTRACTOR’s covered operations resulting from Work at the Project site.

15.6 Builder’s Risk Insurance – CONTRACTOR shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder’s risk “Special Form Cause of Loss” or equivalent policy form in an amount equal to the not-to-exceed amount of the Contract, plus the cost of materials supplied or installed by others on a full replacement cost basis. The Builder’s Risk policy shall include a soft cost endorsement that covers AUTHORITY’s soft costs equal to twenty percent (20%) of the contracts full value. Soft costs are defined as certain expenses, in addition to labor and materials, required to complete the project that has been delayed due to unexpected physical damage and include, but are not limited to the following; legal/accounting fees, design or other professional fees, financing costs, taxes, general administration, lease expenses, permit fees and insurance premiums. This insurance shall include interests of AUTHORITY, CONTRACTOR and its sub-contractors in the Project as insureds as their interest may appear. The insurance shall cover without

limitation, loss or damage to the work arising from the perils covered under "Special Form Cause of Loss" form coverage including, without duplication of coverage for theft, fire, lightning, explosion, or hail, smoke aircraft or vehicles, riot or civil commotion, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false-work, testing and delay of startup, temporary buildings, property in transit and while stored at a temporary location, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR's services and expenses required as a result of such loss. During the Project construction period, the AUTHORITY, CONTRACTOR and its sub-contractors shall mutually waive all rights of recovery for damages caused by fire or other perils covered by the Builders Risk "Special Form Cause of Loss" insurance. All applicable policies of insurance covering the work or the property of the CONTRACTOR or sub-contractor shall be endorsed to provide a waiver of subrogation in favor of the AUTHORITY, CONTRACTOR and sub-contractors-as their interest may appear.

- 15.7 Waiver of Subrogation Rights - CONTRACTOR shall require the carriers of the above required coverage's to waive all rights of subrogation against AUTHORITY, and its authorized officers, employees, agents and volunteers, CONTRACTOR and subcontractors by endorsement to the policy.
- 15.8 Policy Forms, Endorsements and Certificates – CONTRACTOR's General Liability Insurance shall be provided under General Liability policy form No. CG 00 01 12 04 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG 00 01 12 04.
- 15.9 Proof of Insurance – Evidence of insurance in a form acceptable to AUTHORITY, including the required "additional insured" endorsements, shall be provided within 10 business days after Notice of Award is given to CONTRACTOR. Prior to commencing any work, CONTRACTOR shall furnish AUTHORITY with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article. If the insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide AUTHORITY 30 days written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide AUTHORITY 10 days written notice. Certificates of Insurance, as evidence of required insurance, for the General Liability, Auto Liability and Umbrella-Excess Liability policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy, and shall also include the Contract Number and Project Manager's name on the face of the certificate. AUTHORITY may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to interests of AUTHORITY. Standard ISO form No. CG 00 01 12 04 or similar exclusions will be allowed provided they are not inconsistent with the requirements of this section. Allowance of any additional exclusion is at the discretion of AUTHORITY. Regardless of the allowance of exclusions or deductions by AUTHORITY, CONTRACTOR shall be responsible for any deductible amount and shall warrant that the coverage provided to AUTHORITY is consistent with the requirements of this section. CONTRACTOR shall require provide certified copies of all

insurance policies required within ten (10) days of AUTHORITY's written request of said copies.

15.10 **Enforcement** – AUTHORITY may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of Contract. In the event the CONTRACTOR fails to maintain any insurance coverage required, AUTHORITY may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or terminate this Contract. The required insurance shall be subject to the approval of AUTHORITY, but any acceptance of insurance certificates by AUTHORITY shall in no way limit or relieve the CONTRACTOR of the CONTRACTOR's duties and responsibilities under the Contract to indemnify, defend and hold harmless AUTHORITY, and its authorized officers, employees, agents and volunteers. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONTRACTOR for liability in excess of such coverage, nor shall it preclude AUTHORITY from taking other actions as is available to it under any other provision of the contract or law. Failure of AUTHORITY to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

15.11 **Miscellaneous** – Nothing contained in this Contract is intended to make the public or any member thereof a third party beneficiary of the Insurance or Indemnity provisions of the Contract, nor is any term, condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

ARTICLE 16. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by AUTHORITY) and hold harmless AUTHORITY, the State of California, the City of San Bernardino and their authorized officers, employees, agents and volunteers (indemnitees) from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification obligation applies to the indemnitees' "passive" negligence but does not apply to the indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE 17. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the property of AUTHORITY when prepared, whether delivered to AUTHORITY or not.

ARTICLE 18. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent CONTRACTOR. Accordingly, all work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. AUTHORITY shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance or as to the manner, means and methods by which work is to be performed. All workers furnished by CONTRACTOR pursuant to this Contract, and all representatives of CONTRACTOR shall be and remain the employees or agents of CONTRACTOR or of CONTRACTOR's subcontractors at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AUTHORITY.

ARTICLE 19. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under the Indemnification provision.

ARTICLE 20. BONDS

As a condition of issuance of the Notice To Proceed, CONTRACTOR agrees to furnish to AUTHORITY a satisfactory Payment Bond in an amount equal to one hundred percent (100%) of the original contract amount and a Performance Bond in an amount equal to one hundred percent (100%) of the original contract amount. These bonds shall be secured from a surety company (ies) admitted in the state of California and satisfactory to AUTHORITY. Bonds shall remain in force and effect for a period of one year following the date of filing of Notice of Completion. If the contract price is increased, AUTHORITY may in its sole discretion, require an increase in the amount of the bonds or new bonds covering the increased amount. These bonds are to be in effect from Notice To Proceed through the term of this Contract.

ARTICLE 21. PRECEDENCE

The Contract documents consist of these general terms and conditions and the specifications, drawings and special provisions referenced herein and incorporated by this reference. The following order of precedence shall apply: a) this Contract and all attachments; b) IFB provisions; c) CONTRACTOR's Bid; all other documents, if any, cited herein or incorporated by reference.

ARTICLE 22. COMMUNICATIONS/NOTICES

All notices and communications permitted or required to be given hereunder shall be deemed duly 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. Each such notice shall be sent to the respective party at the address indicated

below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other Party in writing. All communications pursuant to or in connection with this Contract shall be marked with 'AUTHORITY' contract number.

To CONTRACTOR	To AUTHORITY
KASA Construction Inc.	San Bernardino Associated Governments
316 N. Corona Avenue	1170 W. 3rd Street, 2nd Floor
Ontario, CA	San Bernardino, CA 92410-1715
Attn: Ms. Diana Kasbar	Attn: Garry Cohoe, Director of Project Delivery
Phone: 909-457-8260	Cc: Contract Administrator
Fax: 909-457-8261	Phone: (909) 884-8276

ARTICLE 23. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, District Civil Division. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, District Civil Division.

ARTICLE 24. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations. This project is financed in part with federal funds, and therefore, all of the statutes, rules and regulations by the federal government applicable to the work being performed will apply to this project. All applicable provisions as identified herein, and titled, Federal Highways Administration (FHWA) "Form 1273", shall pertain to the project. FHWA Form 1273 is included in Special Provisions Section 14 Federal Requirements for Federal -Aid Construction Projects and shall be physically incorporated into the contract for this project and all subcontracts at any tier.

ARTICLE 25. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable Federal Highways Administration (FHWA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Contract, as they may be amended time to time through the term of this Contract. CONTRACTOR's failure to comply shall constitute a material breach of Contract.

ARTICLE 26. LIQUIDATED DAMAGES

Should CONTRACTOR fail to complete all work within the time specified herein, including any written authorized changes, the actual damages to AUTHORITY for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay AUTHORITY the sum of **\$3,000.00** per each calendar day of delay as identified in the weekly statement of working days issued by the AUTHORITY. If all work, except plant establishment, is complete and the total number of working days has expired, liquidated damages are **\$950** per day. AUTHORITY shall not withhold liquidated damages if the delay is determined by AUTHORITY to be excusable in accordance with the Force Majeure article of this Contract. AUTHORITY may extend the period of performance of this Contract when in its sole judgment, sufficient justification to do so.

ARTICLE 27. ASSIGNMENT

CONTRACTOR agrees not to sell, transfer, or otherwise dispose of any contract part either voluntarily or by operation of law without prior written consent from AUTHORITY.

ARTICLE 28. SUBCONTRACTS

28.1 CONTRACTOR shall perform with its own organization contract work amounting to not less than **30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by AUTHORITY. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by CONTRACTOR' own organization (23 CFR 635).

28.1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

28.1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. The contract amount upon which the requirements set forth in this Contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the contract provisions.

28.2 CONTRACTOR shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as AUTHORITY determines is necessary to assure

the performance of the Contract.

28.3 No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the written consent of AUTHORITY, or authorized representative, and such consent when given shall not be construed to relieve CONTRACTOR of any responsibility for the fulfillment of the contract. Written consent will be given only after AUTHORITY has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. CONTRACTOR does not have the right to make any substitutions of any subcontractor listed in its Bid, except in accordance with the State of California Public Contract Code, Section 4100 et. seq. AUTHORITY's consent to substitution shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Contract. CONTRACTOR shall be responsible for all acts and omissions of its employees, subcontractors and their employees. CONTRACTOR is responsible for coordinating all work performed by the subcontractors. AUTHORITY reserves the right, but not the obligation, to review the subcontractor agreements for this project and to require any modifications so as to conform to the requirements set forth in this Contract.

ARTICLE 29. COORDINATION WITH OTHER CONTRACTS

AUTHORITY may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other CONTRACTOR's and AUTHORITY's employees or agents and carefully fit its own work to such additional work as may be directed by AUTHORITY. CONTRACTOR shall not commit or permit any act, which will interfere with the performance of work by any other CONTRACTOR or by AUTHORITY.

ARTICLE 30. PREVAILING WAGE REQUIREMENTS

30.1 All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.

30.2 Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this Article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to

skill, except as provided in herein. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under of this section) and the Davis-Bacon poster (WH1321) shall be posted at all times by the CONTRACTOR and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 30.3 AUTHORITY shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under this Contract shall be classified in conformance with the wage determination. AUTHORITY shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- 30.4 If CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and AUTHORITY agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by AUTHORITY to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the AUTHORITY or will notify AUTHORITY within the 30-day period that additional time is necessary.
- 30.5 In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and AUTHORITY do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), AUTHORITY shall refer the questions, including the views of all interested parties and the recommendation of AUTHORITY, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise AUTHORITY or will notify the AUTHORITY within the 30-day period that additional time is necessary.
- 30.6 The wage rate (including fringe benefits where appropriate) determined pursuant to this section, should be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 30.7 Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- 30.8 If CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 30.9 Withholding - AUTHORITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this Contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by this Contract, AUTHORITY may, after written notice to CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 30.10 Payrolls and basic records - Payrolls and basic records relating thereto shall be maintained by CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described herein, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- 30.11 Apprenticeship - If CONTRACTOR employs apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 30.12 Payroll - CONTRACTOR shall submit weekly for each week in which any contract work

is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to AUTHORITY. The payrolls submitted shall set out accurately and completely all of the information required to be maintained Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029005000141), U.S. Government Printing Office, Washington, DC 20402. CONTRACTOR is responsible for the submission of copies of payrolls by all subcontractors.

30.12.1 Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the CONTRACTOR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

30.12.2 The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH347 shall satisfy the requirement for submission of the Statement of Compliance required by this section. The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

30.12.3 CONTRACTOR or subcontractor shall make the records required under of this section available for inspection, copying, or transcription by authorized representatives of the AUTHORITY or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If CONTRACTOR or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

30.13 Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and

Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, which is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in CONTRACTOR's or subcontractors registered program shall be observed.

30.13.1 Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

30.14 Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding

journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

- 30.15 Compliance with Copeland Act requirements - CONTRACTOR shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract. CONTRACTOR or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5 (a)(1) through (10) and such other clauses as AUTHORITY may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 30.16 Contract termination – debarment- A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a subcontractor as provided in 29 CFR 5.12.
- 30.17 Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- 30.18 Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and AUTHORITY, the U.S. Department of Labor, or the employees or their representatives.
- 30.19 Certification of eligibility- (i) By entering into this Contract, CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in CONTRACTOR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- 30.20 Contract Work Hours and Safety Standards Act- AUTHORITY shall cause or require the

following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

30.21 Overtime requirements- No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

30.22 Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (b)(1) of this section the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

30.22.1 Withholding for unpaid wages and liquidated damages - AUTHORITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

30.23 Subcontracts - CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

30.23.1 In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 5.1, AUTHORITY shall insert a clause requiring that the CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of

three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, AUTHORITY shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of AUTHORITY and the Department of Labor, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

ARTICLE 31. SAFETY

31.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as AUTHORITY may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

31.2 Pursuant to 29 CFR 1926.3, it is a condition of this Contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

ARTICLE 32. DISADVANTAGED BUSINESS ENTERPRISES

32.1 AUTHORITY, as a recipient of federal financial assistance, is required to implement a Disadvantaged Business Enterprise Program in accordance with Federal regulation 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). The AUTHORITY has set a contract specific goal of 1.0 % for this project. CONTRACTOR must furnish all documentation satisfactory to AUTHORITY that the work committed to DBE's was actually performed by DBE's.

Requests for progress payments must include a summary of payments (Form 315) actually made to DBE's during the invoice period, which includes a total of all payments made to all subcontractors under this Contract. This form is to be provided at a minimum of monthly to the Authority's Contract Administrator.

DBE participation shall be credited toward the overall DBE goal only when payments are actually made to the DBE firms. CONTRACTOR shall submit on the 15th of every month to AUTHORITY' Contract Compliance Officer, Form 315. Upon completion of the Contract, CONTRACTOR shall submit "Final Report-Utilization of Disadvantaged Business Enterprises-First Tier Subcontractors", Form 17-F and submit with the final invoice.

32.2 CONTRACTOR shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONTRACTOR to carry out these requirements is material breach of this Contract, which may result in the termination of this Contract or such other remedy, as AUTHORITY may deem appropriate.

ARTICLE 33. NONSEGREGATED FACILITIES

33.1 CONTRACTOR, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. CONTRACTOR agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

33.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

33.3 CONTRACTOR agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

ARTICLE 34. RECORD OF MATERIALS, SUPPLIES AND LABOR

CONTRACTOR agrees to become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by CONTRACTOR of Highway Construction Involving Federal Funds," prior to the commencement of work under this Contract. CONTRACTOR shall also maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47. CONTRACTOR shall furnish, upon the completion of the Contract, to AUTHORITY on Form

FHWA-47 together with the data required in this Article relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned. At the CONTRACTOR's option, either a single report covering all contract work or separate reports for the CONTRACTOR and for each subcontract shall be submitted.

ARTICLE 35. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

CONTRACTOR agrees that in order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, CONTRACTOR's suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

ARTICLE 36. GRATUITIES

CONTRACTOR, its employees, agents or representatives shall not offer or give to an officer, official or employee of AUTHORITY, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 37. CONFIDENTIALITY

Any AUTHORITY materials to which the CONTRACTOR or its agents has access to or materials prepared by the CONTRACTOR during the term of this Contract shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent disclosure of confidential information to anyone except as authorized by AUTHORITY.

CONTRACTOR shall not release any reports, information of promotional materials or allow for the use of any photos of the project for any purposes without written approval from AUTHORITY.

ARTICLE 38. CONVICT LABOR

In connection with the performance of work under this Contract, CONTRACTOR agrees not to employ any person, undergoing sentence of imprisonment at hard labor. This Article does not include convicts who are on parole or probation.

ARTICLE 39. INSPECTION OF SITE

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electricity and roads and uncertainties of weather, river stages, tides or similar conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. CONTRACTOR fully acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by AUTHORITY, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by CONTRACTOR to acquaint itself with the available information will not relieve it from responsibility for the difficulty of cost of successfully or interpretations made by CONTRACTOR on the basis of the information made available by AUTHORITY.

ARTICLE 40. RECYCLED PRODUCTS

CONTRACTOR shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended, (42 USC 6962), including but not limited to the 40 CFR Part 247 and Executive Order 12873, as applicable. CONTRACTOR agrees to include this Article in all of its subcontracts.

ARTICLE 41. CLEAN WATER REQUIREMENTS

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq. CONTRACTOR shall report each violation to AUTHORITY and understands and agrees that AUTHORITY who will in turn, report each violation as required to assure notification to FHWA and appropriate Environmental Protection Agency (EPA) Regional Office. CONTRACTOR shall include this requirement in each subcontract exceeding \$100,000.

ARTICLE 42. SEVERABILITY

The partial or complete invalidity in whole or in part, of any one or more of the provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.

ARTICLE 43. FORCE MAJEURE

CONTRACTOR shall not be in default of this Contract in the event that the work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons; riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government, and fires, severe weather, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. Other catastrophic events do not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

ARTICLE 44. INCORPORATION OF RECITALS

The Recitals stated above are true and correct and are hereby incorporated into this Contract.

ARTICLE 45. EFFECTIVE DATE

The date that this Contract is executed by AUTHORITY shall be the Effective Date of this Contract.

_____SIGNATURES ON FOLLOWING PAGE_____

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year first written below, but effective on the Effective Date.

KASA Construction Inc.

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Diana Kasbar, President
KASA Construction, Inc.

By: _____
Janice Rutherford,
President, Board of Directors

Date: _____

Date: _____

Licensed in accordance with an act
providing for registration of contractors.

927544

License Number

26-3647498

Federal Employer
Identification Number

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator



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

Minute Action

AGENDA ITEM: 27

Date: June 5, 2013

Subject: Interstate 15 Base Line Road Interchange Improvements

Recommendation: That the Board of Directors:

1. Acting as the San Bernardino County Transportation Authority 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, with SANBAG's share not to exceed \$20,481,000, and waive the five-year contract term limits of SANBAG Policy No. 11000 Art. V (F) for this contract that terminates upon reimbursement of eligible costs by Authority; and
2. Acting as the San Bernardino County Transportation Authority, 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 waive the five-year contract term limits of SANBAG Policy No. 11000 Art. V (F) for this contract that terminates the later of December 31, 2018, or the termination of the construction contract; and
3. Acting as the San Bernardino County Transportation Authority, authorize the Executive Director or his designee to execute an escrow agreement, that is

	<p><i>Approved</i> <i>Board of Directors</i></p> <p>Date: _____</p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>
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COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

BRD1306b-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>

consistent with the requirements of Agreement No. R13028 and is approved as to form by General Counsel, for escrow of construction funds deposited by the City of Rancho Cucamonga pursuant to Agreement No. R13028; and

4. Acting as the San Bernardino County Transportation Commission, 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. Acting as the San Bernardino County Transportation Commission, 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, and include highway planting, plant establishment, and extended plant maintenance in the Cities of Rancho Cucamonga and Fontana. The City of Rancho Cucamonga (City) is the lead agency for the design phase and right-of-way acquisition which is nearing completion. 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, 2 and 3: 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 per the Nexus Study is 50% of the remaining balance of eligible project expenditures after the federal and state funds are subtracted. This amount is \$20,481,000 as shown in Exhibit A, the Summary of Project Costs (Estimate) and Funding Table.

Note that the Table has changed since the review by the Metro Valley Study Session. The recently enacted federal transportation authorization extended Buy America requirements to all federally-eligible agreements regardless of actual

fund source, and utility companies are not prepared to include those provisions in their agreements at this time. On May 14, staff learned that the \$1 million State Local Partnership Program (SLPP) funds programmed for this project would be lost if the City was unable to execute Buy America-compliant utility agreements by the June 2013 California Transportation Commission (CTC) meeting because the SLPP funds expire in June and only projects that are able to proceed to construction can receive funding allocations. The loss of the SLPP funds negatively affects both the City and SANBAG shares equally. Because the City desires to advance the project, the City has agreed to increase the advancement by \$1,000,000 to cover this loss. SANBAG's share increases by \$500,000 to cover this loss and will be repaid at a later date as outlined in the Advance Expenditure Agreement.

Also, as a result of this SLPP funding loss, the 3-party Construction Cooperative Agreement C13148 that was recommended for approval at the May 9th Metro Valley Study Session was withdrawn from this agenda item and will be presented at a later date. The funding change triggers a Federal Transportation Improvement Program (FTIP) amendment to depict the revised funding. This must occur before Caltrans will approve of the 3-party Cooperative Agreement. Staff will bring this 3-party Cooperative Agreement back to Metro Valley Study Session after the FTIP amendment.

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. Under Agreement R13028 SANBAG agrees to retain, by purchase order, a selected construction management firm to perform preconstruction services for an amount up to \$100,000.00, and the City agrees to reimburse SANBAG for these services.

Staff is requesting the Board approve the Advance Expenditure Agreement C13030 and the Construction Cooperative Agreement R13028, and waive the five-year contract terms limits in SANBAG Policy No. 11000 Art. V (F) for these contracts which terminate as described in the recommendations.

Agreement R13028 requires that the City and SANBAG to enter into an Escrow Agreement and that the City deposit the balance of the Construction Management and Construction Capital into an escrow account, prior to SANBAG's advertisement of the construction project. Upon SANBAG's submittal of construction cost invoices, the escrow agent will release reimbursement funds to SANBAG. Staff requests the Board authorize the Executive Director or his

designee to execute the Escrow Agreement after it has been approved as to form by SANBAG's General Counsel.

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 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 was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013, however, subsequent to the meeting, funding changes occurred and generated the need to update the recommendations. SANBAG General Counsel and Contract Administrator have reviewed this item and Agreements.

Responsible Staff: Paula Beauchamp, Project Delivery Manager



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

Board of Director's Meeting Date: 6/5/2013

Overview of BOD Action: 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.

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW

Original Contract Amount	\$	20,481,000.00	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	\$	
TOTAL CONTRACT VALUE	\$	20,481,000.00	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 20,481,000.00

Contract Start Date
6/5/2013

Current Contract Expiration Date
12-5-2017

Revised Contract Expiration Date

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

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0892.

A Budget Amendment is required.

How are we funding current FY?

Federal Funds
 State Funds
 Local Funds
 TDA Funds
 Measure I Funds

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

SANBAG reimburses City with Meas. I VF Interchange Program funds at a later date, not to exceed \$20.481M.

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

Barbara Fortman
 Project Manager (Print Name)
Garry Cohen
 Task Manager (Print Name)
Andrea Zureick
 Dir. of Fund Admin. & Programming (Print Name)
Jeffery Hill
 Contract Administrator (Print Name)
W. Shawn RSL
 Chief Financial Officer (Print Name)

<u>Barbara Fortman</u>	5.2.13
Signature	Date
<u>Garry Cohen</u>	5.2.13
Signature	Date
<u>Andrea Zureick</u>	5/2/13
Signature	Date
<u>Jeffery Hill</u>	5/2/13
Signature	Date
<u>W. Shawn RSL</u>	5/16/13
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

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C13030

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

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:

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

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 3rd 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 ¹ (\$1,000)	Federal Earmarks (\$1,000)	State Funds Buy Down Funds (\$1,000)	Remaining Balance ² (\$1,000)	Local Agency Share ³ (\$1,000)	Authority Share ⁴ (\$1,000)
						City of Rancho Cucamonga	
<u>Preconstruction</u>							
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
Subtotal	13,008	6,584	1,171	0	5,413	2,707	2,707
<u>Construction</u>							
Design Const. Support	700	700			700	350	350
Const. Management ⁵	7,300	7,300			7,300	3,650	3,650
Const. Capital ⁶	34,150	34,150	6,602	0	27,548	13,774	13,774
SANBAG Management & Oversight	600	600			600	600	
Subtotal	42,750	42,750	6,602	0	36,148	18,374	17,774
Total Project Cost	55,758	49,334	7,773	0	41,561	21,081	20,481

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

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

³ 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.

⁴ Authority Share is 50% of Remaining Balance.

⁵ Construction Management includes \$250,000 for Source Inspection.

⁶ 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 1 year of plant establishment within project limits plus another 5 years of maintenance within Caltrans right of way.

Proposed Project Schedule (milestone delivery dates):

Estimated construction start date: December 2013

Estimated completion date: December 2015

Attachment "B"

San Bernardino Associated Governments	Policy	40002
Adopted by the Board of Directors April 1, 2009	Revised	11/3/10
Valley Project Advancement (PA) and Advance Expenditure (AE) Processes Measure I 2010-2040 Strategic Plan	Revision No.	1

Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SANBAG intranet.

Table of Contents

[Purpose](#) | [References](#) | [Definitions](#) | [Policies for Project Advancement Process](#) | [Policies for the Advance Expenditure Process](#) | [Revision History](#)

I. PURPOSE

The purpose of this policy is to establish the requirements for administration of the Project Advancement (PA) and Advance Expenditure (AE) processes for jurisdictions in the Valley. Both the PA and AE processes enable local jurisdictions to advance funding for development and construction of Measure I projects prior to the availability of Measure I 2010-2040 revenue for those projects. The policies establish project eligibility criteria and reimbursement terms for each process. The PA process allows for reimbursement on projects that initiate construction no later than January 31, 2009. Eligible expenditures on Nexus Study projects for which construction begins after January 2009 are captured under the AE process, unless otherwise provided for in individual Project Advancement Agreements (PAA). A project for which construction fails to be initiated by January 31, 2009 under a previously executed Project Advancement Agreement may be transitioned to an Advance Expenditure Agreement (AEA) with SANBAG Board Authorization.

II. REFERENCES

Ordinance No. 04-01 of the San Bernardino County Transportation Authority, Exhibit A – Transportation Expenditure Plan

Policy 40005 – San Bernardino Valley Freeway Interchange Program

Policy 40006 – San Bernardino Valley Major Street Program

III. DEFINITIONS

Project Advancement Agreement (PAA) - A contract that establishes agency roles, responsibilities and financial commitments between local jurisdiction(s) and SANBAG that is required to be executed prior to project approval under the Advance Expenditure process.

Advance Expenditure Agreement (AEA) – A contract that establishes agency roles, responsibilities and financial commitments between local jurisdiction(s) and SANBAG that is required to be executed prior to project approval under the AE process.

Development Share – The percentage share of total project cost assigned as the development contribution percentage as listed in the SANBAG Nexus Study.

Public Share – The share of project cost calculated as the total cost of the project minus the developer share.

Sponsoring Agency – The jurisdiction with the majority share development mitigation responsibility for projects included in the SANBAG Development Mitigation Nexus Study.

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IV. POLICIES FOR THE PROJECT ADVANCEMENT PROCESS

A. General Policies

Policy PA-1: The public share costs for eligible projects in the Valley Freeway Interchange or Major Street Programs shall be eligible for a Project Advancement Agreement (PAA) to reimburse eligible costs incurred under the PAA if construction is initiated no later than January 31, 2009.

Policy PA-2: Only projects included in the most recent Board-approved version of the Development Mitigation Nexus Study shall be eligible for reimbursement under the PA process.

Policy PA-3: The PAA shall establish agency roles, responsibilities and financial commitments between local jurisdiction(s) and SANBAG for projects being reimbursed under the PA process.

Policy PA-4: In the event a jurisdiction fails to initiate construction by January 31, 2009, SANBAG reserves the right to terminate the PAA upon written notice to the jurisdiction. A jurisdiction may be reimbursed for those eligible project expenditures that occur prior to the date of termination when successfully completed as provided for in the terms of the PAA. A project covered under an executed PAA for which construction fails to be initiated by January 31, 2009 may be transitioned to an Advance Expenditure Agreement with SANBAG Board Authorization. The reimbursement terms of the AE process will apply in this case.

Policy PA-5: Any public share project costs incurred for Nexus Study projects prior to January 31, 2009 without an executed PAA shall not be reimbursed by SANBAG under the PA process. Eligible expenditures for Nexus Study projects not covered under the PA process shall be covered under the AE process, subject to the provisions below.

Policy PA-6: The project cost included in the PAA shall be the Nexus Study project cost in the most recent Board-approved Development Mitigation Nexus Study or the version of the Nexus Study in force at the time the first project expenditures were incurred, whichever is earlier.

B. Reimbursement

Policy PA-7: SANBAG shall reimburse jurisdictions with approved PAAs eligible expenditures up to the public share of either the Nexus Study project cost or the actual cost as adjusted per Policy VS-30, whichever is less.

Policy PA-8: Reimbursements shall not be made under the Project Advancement process for expenditures incurred prior to April 5, 2006 (the date when the model agreement for the Project Advancement process was adopted by the SANBAG Board of Directors) or prior to the date of approval of a jurisdiction's development mitigation program by SANBAG, whichever is earlier.

Policy PA-9: SANBAG shall reimburse local jurisdictions with PAAs executed under the Valley Major Street and Valley Freeway Interchange Programs with 40% of revenues available to the respective programs on an annual basis. At SANBAG Board discretion, the percentage of program revenue dedicated to reimbursement may be increased to a higher percentage specific to each program if the time between expenditure and reimbursement has become greater than six years or if the other project needs for a fiscal year are less than the remaining 60% of the pertinent program.

Policy PA-10: Local jurisdictions shall provide adequate documentation to substantiate the costs included in invoices submitted for reimbursement under the PA process. At a minimum, the jurisdiction must submit the invoice provided by the contractor/consultant to the agency, which shall include unit costs, quantities, labor rates and other documentation, as appropriate, to substantiate expenses incurred by the contractor/consultant. If jurisdiction in-house staff time is submitted for reimbursement, documentation of hours by individual and salary rate must be provided, with tabulations from the payroll system by project task as backup. Overhead will only be allowed via an approved cost allocation plan or an equitable and auditable distributions of overhead among all departments.

Policy PA-11: SANBAG shall administratively reimburse local jurisdictions with PAAs in the order of expenditure as established by the date of invoice received by the jurisdiction from the

Attachment "B"

contractor/consultant for a PAA project. The order of expenditure shall be considered separately for the Valley Major Street and Valley Freeway Interchange Programs.

Policy PA-12: Reimbursements by SANBAG for eligible expenditures shall be provided on a quarterly basis. Reimbursements shall occur beginning in approximately July 2010 following the quarterly reconciliation of sales tax dollars by the State Board of Equalization. Quarterly reimbursements from the Valley Major Streets and Valley Freeway Interchange Programs shall occur until all local jurisdictions with PAAs are reimbursed.

C. Equitable Share Calculation

Policy PA-13: For the Valley Major Street Program, reimbursement pursuant to PAAs shall be included in the equitable share calculations for the respective local jurisdictions, as specified in Policy 40006, maintained by SANBAG to ensure geographic equity over the life of the Measure.

V. POLICIES FOR THE ADVANCE EXPENDITURE PROCESS

A. General Policies

Policy AE-1: Jurisdictions that deliver Valley Freeway Interchange or Major Street Program projects may expend local jurisdiction funds with the expectation of later reimbursement of the public share costs by SANBAG, subject to the terms of the Advance Expenditure process. SANBAG's commitment to reimburse the public share cost shall be subject to the project priorities and policies referenced in Policies 40005 and 40006.

Policy AE-2: Only projects included in the current, Board-approved version of the Development Mitigation Nexus Study shall be eligible for the AE Program.

Policy AE-3: Reimbursement for a project under the AE process may take the form of monetary compensation for the public share cost of the project as defined in the Advance Expenditure Agreement (AEA), or credit for the same amount against the development share of one or more subsequent projects within the same Measure I Program.

B. Freeway Interchange Program and Railroad/Highway Grade Separation Sub-program Projects

Policy AE-4: All freeway interchanges and railroad/highway grade separation projects for which jurisdictions desire reimbursement under the AE process shall be included in an AEA with SANBAG. For multi-jurisdictional projects, the AEA shall be between the sponsoring agency and SANBAG.

Policy AE-5: The AEA shall establish agency roles, responsibilities and financial commitments between local jurisdiction(s) and SANBAG and is required to be executed prior to project cost reimbursement or credit under the AE process.

Policy AE-6: Public share project costs incurred for Nexus Study projects in advance of an executed AEA shall not be reimbursed by SANBAG, nor shall they be credited against the development share of a future project.

Policy AE-7: SANBAG shall begin reimbursement for phases of a Freeway Interchange project or a Railroad/Highway Grade Separation project in the first year that funding becomes available to the project based on the reimbursement criteria below and on the prioritization list contained in the Board-adopted version of the Nexus Study in force at the time of the AEA's execution. Subsequent changes in the Interchange and Grade Separation prioritization lists shall not affect the time of reimbursement or availability of credit once the AEA has been executed for the project. The process and criteria for the interchange Program include the following:

- SANBAG may call for applications for local jurisdictions to enter into Advance Expenditure Agreements (AEAs) for projects in the Valley Freeway Interchange Program. Jurisdictions in the Valley may submit applications for AEAs in response to this call, and SANBAG may enter into such agreements at its option and under the following conditions:
 - The request must be made through the call for applications in conjunction with the annual Capital Project Needs Analysis (CPNA) submittal and must include a financial plan that demonstrates the capability of a jurisdiction to fund the entirety of the project through

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- construction without SANBAG's contribution to the public share. The financial plan must show funding sources by phase through completion of the project, including years beyond the five-year CPNA horizon.
- A Project Study Report (PSR), or equivalent, must have been completed and be consistent with current plans for the interchange. Measure I Valley Interchange Funds are not eligible for work on a PSR when applying for an AEA.
 - The project must be one of the top 10 interchanges in the most current interchange prioritization list established by the SANBAG Board. This is defined as the group of "Tier 1" interchanges.
 - Interchanges in the 11-20 priority range (Tier 2) may be eligible for an AEA on an exception basis, with the required financial plan. Reimbursement for Tier 2 interchanges shall be based on the chronological order of expenditure, following reimbursement for all active Tier 1 interchanges. An "active" interchange project is defined as one that has progressed through the PSR (or equivalent) stage, has identified subsequent phases and funding sources in the most current CPNA, and is demonstrating progress in accomplishing those phases. Any interchange in the Tier 1 list that is not active following full reimbursement of other interchanges in Tier 1 shall be incorporated into the chronological reimbursement process that applies to Tier 2 interchanges. Interchanges of priority 21 or lower (Tier 3) shall not be eligible for an AEA.
 - The jurisdiction does not undertake loans of Measure I funds from SANBAG for the development share on any project in any program.
 - The jurisdiction assumes all risk associated with the timing of reimbursement of the public share of funds for the project.
- Once an AEA is executed, the ranking for purposes of AEA reimbursement shall be no lower than the ranking of the project at the time of AEA execution, even if traffic study and cost updates indicate a lower ranking. A higher ranking may accelerate the reimbursement for a Tier 1 interchange, based on the project's new position on the priority list. The updated ranking will not affect reimbursement for Tier 2 interchanges.
 - The SANBAG Board has the sole discretion to approve or deny applications for AEAs based on the criteria and on project and financial conditions that exist at the time of the request. These financial conditions may include, but are not limited to, any indication that reimbursement of the public share of project cost would likely exceed SANBAG's funding capacity over the term of Measure I 2010-2040. SANBAG shall consider anticipated reimbursements of Measure I 2010-2040 funds for AEA projects in the annual apportionment and allocation process.

Policy AE-8: In general, SANBAG will complete reimbursement for a Freeway Interchange or Grade Separation project in its entirety prior to allocation of funds to construction of a project of lower priority on the Freeway Interchange or Grade Separation prioritization list. This will be balanced with the need to maintain commitments to other interchange or grade separation projects on which project development activity has been initiated.

Policy AE-9: SANBAG shall only reimburse or provide credit to jurisdictions with approved AE projects up to the public share of the project cost in the Board adopted Nexus Study in effect at the time the AEA was executed, or the public share of the actual project cost, whichever is less.

Policy AE-10: Reimbursement for project development phases of a project under the AEA shall be limited to the estimated cost of the phase for which funds have been allocated, as included in the current Board-approved version of the Nexus Study or to the actual cost, whichever is less.

Policy AE-11: The AEA shall be amended by phase to incorporate the project cost information included in the current Board-adopted version of the Nexus Study.

Policy AE-12: Local jurisdictions shall provide adequate documentation to substantiate the costs included in the invoice. At a minimum, the jurisdiction must submit the invoice provided by the

Attachment "B"

contractor/consultant to the agency, which shall include unit costs, quantities, labor rates and other documentation, as appropriate, to substantiate expenses incurred by the contractor/consultant. If jurisdiction in-house staff time is submitted for reimbursement, documentation of hours by individual and salary rate must be provided, with tabulations from the payroll system by project task as backup. Overhead will only be allowed via an approved cost allocation plan or an equitable and auditable distributions of overhead among all departments.

C. Valley Arterial Sub-program Projects

Policy AE-13: The following types of projects in the Valley Major Street Arterial Sub-program are eligible for reimbursement of public share costs under the AE process:

- Nexus Study project costs that are:
 1. Incurred prior to the commencement of Measure I 2010-2040
 2. Not covered under the PA process mentioned above.
 3. Not incurred prior to either April 5, 2006 or prior to the date of approval of a jurisdiction's development mitigation program by SANBAG, whichever is earlier.
- Nexus Study projects included in the Jurisdiction Master Agreement that have incurred additional costs for project delivery beyond the total amount of funding allocated to a jurisdiction in a fiscal year.
- Nexus Study projects for which an allocation of funding was not approved in the current fiscal year but will be available in future years, subject to a jurisdiction's cumulative equitable share calculations.

Policy AE-14: Projects delivered through the AE process in the Valley Arterial Sub-program are not required to execute an AEA prior to the expenditure of funds on eligible projects (as defined by Policy AE-13 above)

Policy AE-15: Prior to receiving reimbursement or credit under the AE process, jurisdictions shall specifically designate the project(s) in their Capital Project Needs Analysis and receive an allocation of funding by the SANBAG Board for the project, documented through the Jurisdiction Master Agreement.

Policy AE-16: In the annually submitted CPNA, a local jurisdiction with an eligible AE project shall specifically designate whether it elects to receive reimbursement or credit under the AE process for the project. The decision to receive credit or reimbursement will be reflected in the Jurisdiction Master Agreement.

Policy AE-17: Advance Expenditure projects shall be included in the Jurisdiction Master Agreement. Following approval of the agreement, the local jurisdiction may submit invoices for reimbursement or receive credit toward the development share of future project cost.

Policy AE-18: Jurisdictions shall not receive immediate reimbursement or credit for Advance Expenditure in excess of the jurisdiction's five-year equitable share of Valley Arterial Sub-program funds. Jurisdictions that reach the cap on reimbursement or credit may submit eligible projects for reimbursement as additional allocations become available under the jurisdiction's five-year equitable share cap.

D. Equitable Share Calculation

Policy AE-19: For the Valley Major Street Program, reimbursement pursuant to AEAs shall be included in the equitable share calculations for the respective local jurisdictions, as specified in Policy 40006, maintained by SANBAG to ensure geographic equity over the life of the Measure.

VI. REVISION HISTORY

Revision No.	Revisions	Adopted
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Attachment "B"

0	Adopted by the Board of Directors.	04/01/2009
1	Deleted language no longer applicable in Policy AE-6. Expanded Policy AE-7, establishing criteria for execution of Advance Expenditure Agreements for valley freeway interchange projects.	11/03/2010

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

Board of Director's Meeting Date: 6/5/2013
Overview of BOD Action: 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? Yes No

CONTRACT OVERVIEW

Original Contract Amount	\$	100,000.00	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	\$	
TOTAL CONTRACT VALUE	\$	100,000.00	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 100,000.00

Contract Start Date 6/5/13	Current Contract Expiration Date 12-31-2017	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. 0892.

A Budget Amendment is required.

How are we funding current FY? City of Rancho Cucamonga

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

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

Barbara Fortman
Project Manager (Barbara Fortman)

Garry Cohoe
Task Manager (Garry Cohoe)

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

Jeffery Hill
Contract Administrator (Print Name)

W. STANARSKI
Chief Financial Officer (Print Name)

<u>Barbara Fortman</u>	4.30.13
Signature	Date
<u>Garry Cohoe</u>	5-1-13
Signature	Date
<u>Andrea Curwick</u>	5-6-13
Signature	Date
<u>Jeffery Hill</u>	5-7-13
Signature	Date
<u>W. Stanarski</u>	5/16/13
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 ADVANCE 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. To issue a purchase order for preconstruction services to be performed by the selected construction management firm and to invoice the CITY directly for these services.
12. 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.
13. 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.

14. **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.**
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. 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 reimburse AUTHORITY up to \$100,000 for preconstruction services to be performed by the selected construction management firm; to enter into a joint escrow account with AUTHORITY pursuant to an escrow agreement prior to advertisement of a construction contract 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 bid amount exceeds the Engineer's Cost Estimate by 105% or less, AUTHORITY can award the construction contract. If the construction bids come in greater than 105% of the Engineer's Cost Estimate, 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 pursuant to an escrow agreement 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 day 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 3rd 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

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

Construction Funding	Funding Source
Federal Funds for Construction	\$6,602,000
City Funds for Pre Construction (Direct payable to AUTHORITY)	\$100,000
City Funds for Construction (For deposit into an escrow account prior to advertisement of a construction project)	\$36,048,000
Total Construction Funding	\$42,750,000

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

¹ Construction Management includes \$250,000 for Source Inspection

² 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 1 year of plant establishment within project limits plus another 5 years of maintenance within Caltrans right of way.



- 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: 28

Date: June 5, 2013

Subject: Amendment to Project Management Contract with Chad Costello

Recommendation:* 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 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

*Approved
 Board of Directors*

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

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

Check all that apply.

BRD1306c-pb

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

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 was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and 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 SUMMARY			
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
TOTAL CONTRACT VALUE	\$	915,000.00	TOTAL CONTINGENCY VALUE
			\$ 0
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 915,000.00

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.

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

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

Paula Beauchamp
Project Manager (Paula Beauchamp)

Chad Costello
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. STAWARSKI
Chief Financial Officer (Print Name)

W. Stawarski
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



Chad Costello
Consultant

AUTHORITY

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: 29

Date: June 5, 2013

Subject: Railroad Grade Separation Project Funding Agreements in the City of Ontario

Recommendation:* That the San Bernardino County Transportation Authority:

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.
4. Approve a public share contribution of up to \$51,933,000 for the construction of the South Milliken Avenue Grade Separation project, based on current construction cost estimates.

*

*Approved
 Board of Directors*

Date: _____

Moved _____ *Second:* _____

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

Witnessed: _____

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

Check all that apply.

BRD1306a-pc

R10195-03 <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R10195-03.doc>

C13104 <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13104.doc>

C13105 <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13105.doc>

5. Approve a public share contribution of up to \$38,981,000 for the construction of the South Milliken Avenue Grade Separation project, based on current construction cost estimates.

Background:

Recommendation No. 1: In May 2010, San Bernardino Associated Governments (SANBAG) approved Construction Cooperative Agreement No. R10195 with the 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. Award of the construction contract is scheduled for December 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. Award of the construction contract is scheduled for December 2013.

Recommendation Nos. 4 & 5: The current cost estimates with the funding shares for the South Milliken Avenue and North Vineyard Avenue Grade Separation projects are shown in Tables 1 and 2, respectively. This differs from the funding tables included in Agreements C13104 and C13105 as a result of construction cost estimates and contingencies being updated based on final plans. In addition, fund sources have recently changed as a result of multiple programming modifications that have been required to the overall grade separation program to preserve Proposition 1B funding for the region.

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	13,764,045	3,120,955	28,213,000	16,510,000	7,210,000	2,482,000	71,300,000
Total	15,907,245	3,120,955	28,213,000	25,082,800	7,210,000	2,482,000	82,016,000

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	9,745,000		19,491,000	19,490,000	2,074,000	50,800,000
Total	10,724,000		22,907,000	19,490,000	2,074,000	55,195,000

As the City of Ontario approved Agreements C13104 and C13105 on April 16, 2013, they are being presented to the SANBAG Board for approval with the original funding amounts. However, per the terms of the agreement, SANBAG has no obligation to pay costs in excess of the costs in the approved agreement in the event bids are higher than estimated without an additional allocation of public share funds. Staff has recently learned that TCIF projects will not be eligible for extensions to award deadlines. Because the Proposition 1B funds have stringent construction contract award deadlines and the current cost estimate exceeds the costs in the agreements, staff recommends approving an allocation of up to \$51,933,000 in public share funds for the South Milliken Avenue Grade Separation project and an allocation of up to \$38,981,000 for the North Vineyard Avenue Grade Separation project based on the current construction cost estimates and as shown in Tables 1 and 2. Once the construction award amount is determined, and if necessary per the terms of the agreement, an amendment to the Agreement(s) will be presented to the SANBAG Board for approval.

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

Reviewed By: Recommendations 1, 2, and 3 were reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on May 9, 2013. Recommendations 4 and 5 have not been reviewed by a policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item, the contracts and the amendment.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

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 inclusive of prior amendments	\$		Revised Contingency Amount inclusive of prior amendments	\$	
Current Amendment Amount			Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	10,819,545	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)				\$	10,819,545

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

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0876.
 A Budget Amendment is required.

How are we funding current FY? City will fund 12/13

Federal Funds State Funds Local Funds TDA Funds 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 : \$68,100,000

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes: N/A

Retention? If yes, indicate % _____

Disadvantaged Business Enterprise (DBE) Goal _____ %

<u>Paula Bon</u> Project Manager (Print Name)	<u>[Signature]</u> Signature	<u>4/10/13</u> Date
<u>Garry Cahoe</u> Task Manager (Print Name)	<u>[Signature]</u> Signature	<u>4-30-13</u> Date
<u>Andrea Zeweck</u> Dir. of Fund Admin. & Programming (Print Name)	<u>[Signature]</u> Signature	<u>4/10/13</u> Date
<u>Jeffery Hill</u> Contract Administrator (Print Name)	<u>[Signature]</u> Signature	<u>4/25/13</u> Date
<u>W. SHINESK</u> Chief Financial Officer (Print Name)	<u>[Signature]</u> Signature	<u>4/26/13</u> 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 3rd Street, 2nd 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

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: _____

**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					
	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. Shifting repayment of \$3,120,955 DIF from North Vineyard project to S. Milliken project.	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	15,027,000	Original Contingency Amount
			\$ 0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	15,603,073	Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$ 0
Current Amendment Amount	\$	(6,241,910)	Contingency Amendment
			\$ 0
TOTAL CONTRACT VALUE	\$	9,361,163	TOTAL CONTINGENCY VALUE
			\$ 0
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 9,361,163

Contract Start Date 5/12/2010	Current Contract Expiration Date 5/12/2015	Revised Contract Expiration Date
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. 0882.				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? <u>STIP/RIP and City of Ontario Funds</u>				
<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
Garry Chua		4-30-13
Task Manager (Print Name)	Signature	Date
Andrea Turcotte		4/10/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill		4/25/13
Contract Administrator (Print Name)	Signature	Date
W. STANESKI		4/26/13
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/UPRR 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

Chris Hughes, City Manager

Date

Approved as to Form:

John Brown, City Attorney

Attested By:

Mary E. Wirtes, City Clerk

AUTHORITY

Janice Rutherford
President, Board of Directors

Date

Approved as to Form:

Eileen Monaghan Teichert
General Counsel

Concurrence:

Jeffery Hill
Contract Administrator

CONTRACT SUMMARY SHEET

Contract No. C 13105

Amendment No. 0

By and Between **SANBAG** and **City of Ontario**

Contract Description Vineyard Grade Separation Construction Funding Agreement

Board of Director's Meeting Date: June 5, 2013
Overview of BOD Action: Approve Funding Agreement No. C13105 with the City of Ontario for Construction Services

is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW					
Original Contract Amount	\$	14,070,900	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount			Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	14,070,900	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)				\$	14,070,900

Contract Start Date May 1, 2013	Current Contract Expiration Date 8/30/18	Revised Contract Expiration Date
------------------------------------	---	----------------------------------

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

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0877.
 A Budget Amendment is required.

How are we funding current FY? City will fund 12/13

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract: Funding is \$8,756,200 City; \$6,884,000 TCIF; \$14,070,900 Measure I, Valley Major Street; \$14,070,900 SLPP; \$3,618,000 Union Pacific Railroad. Total contract cost: \$47,400,000

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes: N/A

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

<u>Paula Beauchamp</u> Project Manager (Print Name)	<u>[Signature]</u> Signature	<u>4/11/13</u> Date
<u>Garry Colton</u> Task Manager (Print Name)	<u>[Signature]</u> Signature	<u>4.30.13</u> Date
<u>Andrea Turcotte</u> Dir. of Fund Admin. & Programming (Print Name)	<u>[Signature]</u> Signature	<u>4/10/13</u> Date
<u>Jeffery Hill</u> Contract Administrator (Print Name)	<u>[Signature]</u> Signature	<u>4/25/13</u> Date
<u>W. STANBIS</u> Chief Financial Officer (Print Name)	<u>[Signature]</u> Signature	<u>4/26/13</u> Date

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. 3rd Street, 2nd 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 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.
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: _____

**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: 30

Date: June 5, 2013

Subject: Federal Transit Administration (FTA) Section 5310 Grant Applications

Recommendation:* That the Board, acting as the County Transportation Commission:

1. Adopt prioritization of applications received from Omnitrans and OPARC
2. Approve amending the Federal Transportation Improvement Program (FTIP) to include projects applied for by San Bernardino County entities; and
3. Adopt Resolution No. 13-085 certifying the projects recommended for funding are consistent with the Regional Transportation Plan.

Background: Section 5310 of the Federal Transportation Act (FTA) provides discretionary capital funding for projects submitted by private non-profit corporations and public agencies to provide safe, efficient and coordinated transportation services for elderly individuals and individuals with disabilities for whom public transit is otherwise unavailable, insufficient or inappropriate. The grant program allows for procurement of accessible vans and buses, communication equipment and computer hardware and software.

Each regional planning agency is responsible for evaluating and scoring project applications. The application review process used the statewide criteria and scoring developed by the California Transportation Commission. This year San Bernardino Associated Government (SANBAG) staff along with AMMA

*

Approved
Board of Directors

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

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

Check all that apply.

BRD1306a-ns

Attachments: <http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1306/AgendaItems/BRD1306a1-ns.xls>
<http://portal.sanbag.ca.gov/mgmt/APOR-Memnt/Shared%20Documents/RES13085-ns.docx>

Transit Planning, a consultant, scored each project along with technical comments to suggest improvements to the application that would improve the scores.

SANBAG received applications from four different agencies. Only two agencies completed the application process, Omnitrans and OPARC. SANBAG has submitted the grant requests for a total of 11 vehicles in the amount of \$780,000 to the State (Attachment A). Grant awards should be made in September. This year's 5310 program is significant in that agencies are not required to provide a local match. The 11.87% local match will be provided through Caltrans with available toll credits.

The California Transportation Commission guidelines require that the regional planning agency adopt a resolution that includes certain findings associated with this grant program. Resolution No. 13-085 meets those requirements.

Financial Impact: There is no formal impact on the SANBAG budget. The total amount of FTA Section 5310 being applied for is \$780,000. Administration of the FTA Section 5310 grant program is consistent with the approved SANBAG 2012/2013 Budget, Task No. 0501.

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

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

ATTACHMENT A
SANBAG Section 5310 Scoring Sheet and Priority List

Agency	County	Congressional District	Zip	Contact First Name	Contact Last Name	Equipment	Type	TOTAL FOR RTPA	Federal	Local	Project Total
OPARC	San Bernardino	43, 41, 25	91763	Andrea	Erickson	Small Bus	SE	78	\$ 53,118.00	\$ 6,882.00	\$ 60,000.00
OPARC	San Bernardino	43, 41, 25	91763	Andrea	Erickson	Small Bus	SE	78	\$ 53,118.00	\$ 6,882.00	\$ 60,000.00
OPARC	San Bernardino	43, 41, 25	91763	Andrea	Erickson	Small Bus	SE	78	\$ 53,118.00	\$ 6,882.00	\$ 60,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00
Omnitrans	San Bernardino	43, 41, 25	92411	Maurice	Mansion	Large Bus	R	92	\$ 66,397.50	\$ 8,602.50	\$ 75,000.00

RESOLUTION NO. 13-085

RESOLUTION OF SAN BERNARDINO ASSOCIATED GOVERNMENTS ACTING IN ITS CAPACITY AS THE COUNTY TRANSPORTATION COMMISSION ADOPTING FTA SECTION 5310 APPLICATIONS FOR 2012-2013 PROGRAM YEAR REGIONAL PRIORITY LIST

WHEREAS, Federal Law (title 49 USC section 5310) provides for capital grants for the purpose of assisting private non-profit corporations, and, under certain circumstances, public agencies provide transportation services for elderly individuals and individuals with disabilities for whom public mass transportation services are otherwise unavailable, insufficient or inappropriate.

WHEREAS, State Law, AB 772 (Charter 669, Statutes of 1996) requires the California Transportation Commission (Commission) to direct Caltrans on how to allocate program funds, establish an appeals process for the program and hold at least one public hearing prior to adopting its program of projects.

WHEREAS, the Commission has, through Resolution #G-97-01, established a project selection process for the FTA Section 5310 program which requires the regional transportation planning agencies, using the Commission's adopted scoring criteria, to score project proposals and send a prioritized listing of projects recommended for funding to Caltrans.

WHEREAS, San Bernardino Associated Governments, acting as the San Bernardino County Transportation Commission, completed its review of the Section 5310 applications received using the Commission's evaluation process.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the San Bernardino Associated Governments, acting as the San Bernardino County Transportation Commission, the county regional transportation planning agency, hereby adopts the attached San Bernardino County Fiscal Year 2012/13 Section 5310 Regional Priority List (priority funding list) and ranking of applicant scores and makes the following findings:

That the evaluated projects would address needs identified in the locally developed Public Transit-Human Services Transportation Coordination Plan for San Bernardino County;

That the process conducted to develop this priority funding list complies with all applicable State, Federal and Southern California Association of Governments (acting as the metropolitan planning organization) regulations;

That the applicants proposed for funding meet Section 5310 eligibility requirements;

That those projects recommended on the priority funding list are consistent with the Southern California Association of Governments Regional Transportation Plan and will be included in the Federal Transportation Improvement Program (FTIP).

Adopted by the Board of Directors of San Bernardino County Transportation Commission at its regular meeting thereof held this _____.

*

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____



- 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: 31

Date: June 5, 2013

Subject: Adoption of Proposed Amended Bylaws

Recommendation: Adopt the San Bernardino Associated Governments (SANBAG) Amended Bylaws to be effective immediately June 5, 2013.

Background: The SANBAG Bylaws have been in effect since December 3, 1975, and have never been amended. The proposed Amended SANBAG Bylaws are the culmination of almost a year's work by the Bylaws Ad Hoc Committee consisting of Chair Rhodes (Dusty) Rigsby, Mayor Patrick Morris, Councilmember Mike Leonard and Mayor Larry McCallon and several months of Board deliberation. Consistent with the process for amending the Bylaws embodied in the Bylaws, the proposed Amended Bylaws were first provided to the entire Board February 14, 2013. The Amended Bylaws were placed on the agendas of two public Board meetings where the Board deliberated at length regarding the proposed Bylaws changes at its April 11, 2013, and May 1, 2013, Board meetings. A detailed discussion of the scope, history and legal issues of the Bylaws is included in the staff reports for those Board meetings and is not repeated in this report.

At the May 1, 2013, Board meeting the Board reached concurrence on the Amended Bylaws and on additional changes to Article V of the Bylaws addressing issues associated with the nominations and elections of the President and Vice President. The Board concurred that these officers should be elected at-

*Approved
 Board of Directors*

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG	X	CTC		CTA		SAFE		CMA	
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Check all that apply.

BRD1306a-ent

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large and be eligible to serve any number of terms in such offices provided that no representative may serve more than two consecutive one-year terms.

Additionally, the Board discussed and reached agreement on a seven-member nominating committee process to nominate candidates for President and/or Vice President. The nominating committee would consist of one county supervisor, and two representatives each from the East Valley, Mountain/Desert and West Valley subareas, who would be appointed by their respective subarea or county representatives. In order to avoid the appearance of a conflict of interest, members of the nominating committee would be ineligible for election as President or Vice President, with two exceptions. The President and Vice President may serve on the nominating committee and remain eligible for election as President or Vice President. Finally, the President is automatically on the nominating committee serving as the representative from his/her subarea or county. Candidates for the offices of President and Vice President may apply to the nominating committee.

The nominating committee process must be followed whenever there is an election, including annual elections and vacancies. If there is a vacancy in the office of President, of course, the President does not serve on the nominating committee.

Proposed Amended Bylaws

The key proposed Bylaws amendments, reflecting the concurrence of the Board, include:

- Gender neutrality of language (throughout)
- Addition of reference to "towns" (throughout)
- Clarification that the Board sets the total compensation of appointees and employees. (Article IV B. 3)
- Flexibility to set meeting dates and times, and to introduce budget (Article IV, C)
- Ability of Board to appoint other officers deemed necessary (Article IV, B)
- Assignment of Secretary duties to Clerk of the Board and Treasurer duties to Chief Financial Officer (Article V, A)
- Creation of a seven-member nominating committee, to nominate candidates for office of President/Vice President, consisting of one county supervisor, two representatives each from East Valley, Mountain/Desert and West Valley subareas, appointed to the committee by their respective county/subarea representatives (Article V, B)

- President (unless office is vacant) is automatic representative from his/her subarea or county on nominating committee (Article V, B)
- Nominating committee process applies to any election of President and/or Vice President, including annual elections and vacancy-caused elections. (Article V B)
- President and Vice President are elected at-large. (Article V, C and D)
- Removal of Secretary-Treasurer duties from Executive Director functions (Article VI)
- New Article re: General Counsel appointment and duties (Article VII)
- Annual budget to be adopted not later than May 15 each fiscal year. (Article VIII, B)
- Annual Bylaws review (Article XI)
- Shortening of Bylaws amendment adoption process (Article XI)

Conclusion

The Bylaws Ad Hoc Committee recommends the Board adopt the Amended Bylaws as proposed, to be effective immediately upon adoption.

Financial Impact: This item has no impact on SANBAG's budget.

Reviewed By: Proposed amended Bylaws were provided by the Bylaws Ad Hoc Committee to the Board of Directors February 14, 2013, and reviewed and discussed by the Board of Directors on April 11, 2013, and May 1, 2013. This item and the proposed Amended Bylaws have been reviewed and approved as to legal form by SANBAG's General Counsel.

Responsible Staff: Rhodes (Dusty) Rigsby, Chair Bylaws Ad Hoc Committee; Eileen Monaghan Teichert, General Counsel.

Preamble

Article I – Functions

Article II – Definitions

Article III -- Membership & Representation

Article IV -- Board of Directors

Article V -- Officers, Elections & Vacancies

Article VI -- Executive Director

Article VII – General Counsel

Article VIII – Finances

Article IX -- Statutory Authority

Article X – Withdrawal

Article XI – Amendments

Article XII -- Effective Date

PREAMBLE

The San Bernardino Associated Governments is an Association voluntarily established by its members pursuant to a Joint Exercise of Powers Agreement for the purpose of providing a forum for discussion, study and development of recommendations on countywide, subregional and regional problems of mutual interest and concern. It shall be the responsibility of the Association to effect improved intergovernmental cooperation and thereby increase the overall quality of government services.

Article I - Functions

The functions of the Association are:

- A. Exchange of planning information. Making available to members plans and planning studies, completed or proposed by local governments or those of state or federal agencies which would affect local governments.
- B. Study of sub-regional problems. Identification and study of problems requiring planning by more than one governmental entity within the collective area of its membership and the making of appropriate policy or action recommendations.
- C. Review and/or develop governmental proposals. Review and/or develop proposals creating agencies of regional scope and the making of appropriate policy or action recommendations concerning the need for such units or agencies.
- D. Consider questions of mutual interest and concern to members of the Association and develop policy and action recommendations of an advisory nature only.
- E. Act upon any matter to the extent and in the manner required, permitted or authorized by joint powers agreements, state or federal law or the regulations adopted pursuant to any such law.
- F. Provide oversight, staffing and other support to the San Bernardino County Transportation Authority, San Bernardino County Transportation Commission, San Bernardino County Service

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Authority for Freeway Emergencies, San Bernardino County Congestion Management Agency and such other entities or capacities that the Association has been designated and funded to serve as from time to time pursuant to state or federal law or joint powers agreements.

Article II - Definitions

- A. Association.** The Association, as used in these Bylaws, means the San Bernardino Associated Governments as established by these Bylaws.
- B. Board of Directors.** As used in these Bylaws, means the official representatives of the members of the San Bernardino Associated Governments.
- C. Official Representative.** As used in these Bylaws, means either the Mayor or Councilmember of each member city or town, and the members of the Board of Supervisors of the County of San Bernardino.
- D. Alternate.** Alternate, as used in these Bylaws when referring to the Board of Directors, shall mean either the Mayor or a Councilmember of each member city or town in the absence of the official representative of that member city or town. The County shall have no alternates to the Board of Directors.

Article III - Membership and Representation

A. Membership.

1. Membership shall be contingent upon the execution of the Joint Exercise of Powers Agreement and the payment by the county, cities and towns of each annual assessment.
2. Any city or town in the area set forth in the Joint Exercise of Powers Agreement may become a member after the initial formation of this Association, provided that all the provisions of this Article III are met by the jurisdiction seeking membership.
3. Special districts which are significantly involved in regional problems and the boundaries of which include territory within the collective area of the membership shall be eligible for advisory membership in the Association. The representatives of any such advisory member may participate in the work of committees of the Association.

B. Representation.

1. Only the official representatives or alternates present shall represent a member on the Board of Directors.
2. The mayor of each city or town shall be either the official representative or alternate for such city or town unless the city or town council specifically designates another councilmember to act as representative and alternate.
3. Names of official representatives and alternates shall be communicated to the Board of Directors by the appointing city, town or county.
4. Official representatives and alternates shall serve until a successor is appointed, except if an official representative or alternate ceases to be a member of the legislative body or mayor of the

city, town or county appointing him/her, in which case his/her seat as an official representative shall be vacant until a successor is appointed.

Article IV - Board of Directors

A. The powers and functions of the Board of Directors, subject to the limitations of Article I, shall include:

1. The making of policy decisions and the determination of policy matters for the Association.
2. Any official representative may, at any meeting of the Board of Directors, propose a subject or subjects for study by the Association. The Board of Directors may determine whether a study will be made of the subject or subjects so proposed.
3. The Board of Directors shall review the proposed budget and assessment schedule submitted by the Executive Director and shall adopt an annual budget and an assessment schedule.

B. Duties

1. The Board of Directors shall conduct the affairs of the Association.
2. The Board of Directors shall have power to transfer funds within the total budget amount in order to meet unanticipated needs or changed situation.
3. The Board of Directors shall have the authority to appoint, fix the total compensation of, and remove an Executive Director, a General Counsel, and such other officers as the Board deems necessary to carry out the duties and functions of the Association and shall have the authority to create and discontinue positions in the employ of the Association and fix total compensation.
4. The Board of Directors shall have the power to appoint committees to study specific problems, programs, or other matters which they have approved for study.
5. Recommendations from committees for policy decisions shall be made to the Board of Directors. The Board shall act upon policy recommendations including policy recommendations from committees.

C. Meetings

1. Regular meetings of the Board of Directors shall be held at such times as shall be designated by the Board. Special meetings of the Board of Directors may be called by the President or a majority of the Board of Directors. Written notice of a special meeting shall be given to the official representatives and alternates in accordance with Government Code section 54956. An agenda specifying the subject of the special meeting shall accompany the notice.
2. At its first meeting of the calendar year or such other meeting determined by the Board of Directors, the Board of Directors shall establish the time and dates of its regular meetings for such year. The meeting location shall be determined the preceding month by the Board of Directors. Other meetings may be called by the Board of Directors for the purpose of determining sub-regional consensus of items of common interest.
3. Association committees shall meet on the call of their chairpersons or as otherwise provided herein.

D. Voting on the Board of Directors shall be conducted in the following manner:

1. A quorum of the Board of Directors shall consist of official representation from a majority of the membership of the Board of Directors, and the Board of Directors shall act only upon a majority vote of the membership present with a quorum in attendance.
2. 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.
3. 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.

E. Expenses

1. Members of the Board of Directors shall serve without compensation but shall be reimbursed for the actual and necessary expenses incurred by them in the performance of their duties to the extent that reimbursement is not otherwise provided by another public agency.

Article V - Officers, Elections and Vacancies

A. Officers of the Association shall consist of a President, a Vice President, a Secretary and a Treasurer. The President and Vice President shall be elected by the Board of Directors from among its own membership. The Secretary shall be the Clerk of the Board and the Treasurer shall be the Chief Financial Officer of the Association, but they shall have no votes in the Association.

B. A seven-member nominating committee, consisting of one county supervisor and two representatives each from the East Valley, Mountain/Desert and West Valley subareas, who are appointed by their respective subarea or county representatives, shall nominate representatives from any of the subareas and/or the county for the office of President and/or office of Vice President. The President shall serve on the nominating committee as the representative from his/her subarea or county. Candidates for the office of President or Vice President may apply to the nominating committee. Members of the nominating committee, except for the President and the Vice President, if applicable, shall not be eligible for election as the President or Vice President. This nominating committee process shall apply preceding any election of President or Vice President.

C. The President and Vice President shall be elected annually by the Board of Directors at the last regular meeting of the Association's fiscal year and shall take office at the next regular Board meeting subsequent to the election. A representative may serve any number of one-year terms of office as President or Vice President provided that no representative shall serve more than two consecutive one-year terms in the same office.

D. A vacancy shall immediately occur in the office of the President or Vice President if the officer resigns from the office, or ceases to be a member of the Board. Upon the occurrence of a vacancy in the office of President or Vice President, the Board of Directors shall elect a President or Vice President, as the case may be, from among its members at-large to serve for the balance of the unexpired term.

E. The President shall be the presiding officer of the Board of Directors. The Vice President shall act in his or her absence.

F. The Secretary shall keep a record of all proceedings and perform the usual duties of such office. The Treasurer shall have custody of all funds, and perform the usual duties of such office, provided however, the Treasurer of San Bernardino County shall maintain in a separate trust account all funds received by the Association.

Article VI - Executive Director

The Executive Director shall be the chief administrative officer of the Association. He or she shall receive such compensation as may be fixed by the Board of Directors. The powers and duties of the Executive Director are:

- A.** Subject to the authority of the Board of Directors, to administer the affairs of the Association.
- B.** To appoint, direct and remove all employees of the Association.
- C.** Annually to prepare and present a proposed budget to the Board of Directors and to control the approved budget.
- D.** To attend the meetings of the Board of Directors.
- E.** To perform such other and additional duties as the Board of Directors may require.

Article VII – General Counsel

The General Counsel shall be the chief legal advisor of the Association. He or she shall receive such compensation as may be fixed by the Board of Directors. The powers and duties of the General Counsel are:

- A.** Subject to the direction of the Board of Directors, to provide legal advice and representation for the Association.
- B.** To appoint, retain, direct and remove all legal counsel and legal staff of the Association.
- C.** To attend the meetings of the Board of Directors.
- D.** To perform such other and additional duties as the Board of Directors may require.

Article VIII - Finances

- A. Fiscal Year.** The Fiscal Year of the Association shall commence on July 1.
- B. Budget Submission and Adoption.** The budget of the Association shall be submitted to the Board of Directors by the Executive Director on or before the second to last regular meeting of each fiscal year. The annual budget and assessment schedule shall be adopted by the Board of Directors not later than May 15th of each fiscal year. Notwithstanding any provision of the agreement establishing the Association, any member that cannot pay its assessment therefore because of any applicable law or charter provision or other lack of ability to appropriate or pay the same, may add such assessment to its assessment for the next full fiscal year. The budget for

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each year shall provide the necessary funds with which to obtain and maintain the requisite liability and worker's compensation insurance to fully protect each of the signatory parties hereto against liabilities reasonably estimated to arise out of Association's own activities, and such insurances shall be so obtained and maintained.

C. Annual Audit. The Board of Directors shall cause an annual audit of the financial affairs of the Association to be made at the end of each fiscal year. The audit report shall be made available to Association members.

D. Indemnification for Tort Liability. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said code, the parties hereto as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said code, will each assume the full liability imposed upon it, or any of its officers, agents or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said code. To achieve the above stated purpose each party indemnifies and holds harmless the other party for any loss, cost or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The rules set forth in Civil Code Section 2778 are hereby made a part of these Bylaws.

E. Notwithstanding the provisions of said Joint Exercise of Powers Agreement by which this Association is formed, no contract, employment, debt, liability or obligation of the Association shall be binding upon or obligate any member of this Association without the express written request or consent of such member and only to the extent so requested or consented to, nor shall the Association have the authority or the power to bind any member by contract, employment, debt, liability, or obligation made or incurred by it without the written request or consent of such member and then only to such extent as so requested or consented to in writing.

Article IX - Statutory Authority

The San Bernardino Associated Governments shall be an agency established by a joint powers agreement among the members pursuant to Title 1, Division 7, Chapter 5, of the Government Code of the State of California and shall have the powers vested in the Association by state or federal law, the Joint Exercise of Powers Agreement, or these Bylaws. The Association shall not have the power of eminent domain, or the power to levy taxes.

Article X - Withdrawal

Any member city, town or county may, at any time, withdraw from the Association providing, however, that the intent to withdraw must be stated in the form of a resolution enacted by the legislative body of the jurisdiction wishing to withdraw. Such resolution of intent to withdraw from the Association must be given to the Executive Director by the withdrawing jurisdiction at least 90 days prior to the effective date of withdrawal. Such withdrawal shall be made prior to May 1 of any year and shall be effective only as of July 1 of the year withdrawal is made.

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Article XI - Amendments

The Board of Directors shall review these Bylaws not less than every year. Amendments to these Bylaws may be proposed by an official representative on the Board of Directors. A proposed amendment shall be submitted to the Board of Directors at least 14 days prior to the regular meeting at which the proposed amendment shall be first introduced. Each proposed amendment shall be considered and voted upon no sooner than the first regular meeting following the introduction of the amendment.

A majority vote of the entire membership of the Board of Directors is required to adopt an amendment to these Bylaws.

Initial adoption of these Bylaws shall follow this same procedure.

Article XII - Effective Date

These Bylaws shall go into effect June 5, 2013.

REDLINE VERSION

BYLAWS, SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG)

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Preamble

Article I – Functions

Article II – Definitions

Article III -- Membership & Representation

Article IV -- Board of Directors

Article V -- Officers, Elections & Vacancies

Article VI -- Executive Director

Article VII – General Counsel

Article VIII – Finances

Article VIII -- Statutory Authority

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PREAMBLE

The San Bernardino Associated Governments is an Association voluntarily established by its members pursuant to a Joint Exercise of Powers Agreement for the purpose of providing a forum for discussion, study and development of recommendations on countywide, subregional and regional problems of mutual interest and concern. It shall be the responsibility of the Association to effect improved intergovernmental cooperation and thereby increase the overall quality of government services.

Article I - Functions

The functions of the Association are:

- Exchange of planning information. Making available to members plans and planning studies, completed or proposed by local governments or those of sState or fFederal agencies which would affect local governments.
- Study of sub-regional problems. Identification and study of problems requiring planning by more than one governmental entity within the collective area of its membership and the making of appropriate policy or action recommendations.
- Review and/or develop governmental proposals. Review and/or develop proposals creating agencies of regional scope and the making of appropriate policy or action recommendations concerning the need for such units or agencies.
- Consider questions of mutual interest and concern to ~~county and city~~ members of the Association and develop policy and action recommendations of an advisory nature only.
- Act upon any matter to the extent and in the manner required, permitted or authorized by joint powers agreements, state or federal law or the regulations adopted pursuant to any such law.
- Provide oversight, staffing and other support to the San Bernardino County Transportation Authority, San Bernardino County Transportation Commission, San Bernardino County Service

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Authority for Freeway Emergencies, San Bernardino County Congestion Management Agency and such other entities or capacities that the Association has been designated and funded to serve as from time to time pursuant to state or federal law or joint powers agreements.

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Article II - Definitions

- A. **Association.** The Association, as used in these Bylaws, means the San Bernardino Associated Governments as established by these Bylaws.
- B. **Board of Directors.** As used in these Bylaws, means the official representatives of the members of the San Bernardino Associated Governments.
- C. **Official Representative.** As used in these Bylaws, means either the Mayor or Councilmember of each member city or town, and the members of the Board of Supervisors of the County of San Bernardino.
- D. **Alternate.** Alternate, as used in these Bylaws when referring to the Board of Directors, shall mean either the Mayor or a Councilmember of each member city or town in the absence of the official representative of that member city or town. The County shall have no alternates to the Board of Directors.

Article III - Membership and Representation

A. Membership.

- 1. Membership shall be contingent upon the execution of the Joint Exercise of Powers Agreement and the payment by the county, and cities and towns of each annual assessment.
- 2. Any city or town in the area set forth in the Joint Exercise of Powers Agreement may become a member after the initial formation of this Association, provided that all the provisions of this Article III are met by the jurisdiction seeking membership.
- 3. Special districts which are significantly involved in regional problems and the boundaries of which include territory within the collective area of the membership shall be eligible for advisory membership in the Association. The representatives of any such advisory member may participate in the work of committees of the Association.

B. Representation.

- 1. Only the official representatives or alternates present shall represent a member on the Board of Directors.
- 2. The mayor of each city or town shall be either the official representative or alternate for such city or town unless the city or town council specifically designates other members another councilmember to act as representative and alternate.
- 3. Names of official representatives and alternates shall be communicated to the Board of Directors by the appointing city, town or county.
- 4. Official representatives and alternates shall serve until a successor is appointed, except if an official representative or alternate ceases to be a member of the legislative body or mayor of the

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city, town or county appointing him/her, in which case his/her seat as an official representative shall be vacant until a successor is appointed.

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Article IV - Board of Directors

A. The powers and functions of the Board of Directors, subject to the limitations of Article I, shall include:

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- The making of policy decisions and the determination of policy matters for the Association.
- Any official representative may, at any meeting of the Board of Directors, propose a subject or subjects for study by the Association. The Board of Directors may determine whether a study will be made of the subject or subjects so proposed.
- ~~Each year at its annual meeting,~~ The Board of Directors shall review the proposed budget and assessment schedule submitted by the Executive Director and shall adopt an annual budget and an assessment schedule.

B. Duties

- The Board of Directors shall conduct the affairs of the Association.
- The Board of Directors shall have power to transfer funds within the total budget amount in order to meet unanticipated needs or changed situation.
- The Board of Directors shall have the authority to appoint, fix the ~~salary-total compensation~~ of, and remove an Executive Director, a General Counsel, and such other officers as the Board deems necessary to carry out the duties and functions of the Association and shall have the authority to create and discontinue positions in the employ of the Association and fix ~~salaries~~total compensation.
- The Board of Directors shall have the power to appoint committees to study specific problems, programs, or other matters which they have approved for study.
- Recommendations from committees for policy decisions shall be made to the Board of Directors. The Board shall act upon policy recommendations including policy recommendations from committees.

C. Meetings

- Regular meetings of the Board of Directors shall be held at such times as shall be designated by the Board ~~monthly. The annual meeting of the Board of Directors shall be held in April.~~ Special meetings of the Board of Directors may be called by the President or a majority of the Board of Directors. ~~Ten days.~~ Written notice of a special meeting shall be given to the official representatives and alternates in accordance with Government Code section 54956. An agenda specifying the subject of the special meeting shall accompany the notice.
- ~~The time and date of regular meetings of the Board of Directors shall be 9:00 a.m. on the first Wednesday of the month. At its first meeting of the calendar year or such other meeting determined by the Board of Directors, the Board of Directors shall establish the time and dates of its regular meetings for such year.~~ The meeting location shall be determined the preceding

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month by the Board of Directors. Other meetings may be called by the Board of Directors for the purpose of determining sub-regional consensus of items of common interest.

3. Association committees shall meet on the call of their chairpersons ~~man~~ or as otherwise provided herein.

D. Voting on the Board of Directors shall be conducted in the following manner:

1. A quorum of the Board of Directors shall consist of official representation from a majority of the membership of the Board of Directors, and the Board of Directors shall act only upon a majority vote of the membership present with a quorum in attendance.

2. 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.

3. 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.

E. Expenses

1. Members of the Board of Directors shall serve without compensation but shall be reimbursed for the actual and necessary expenses incurred by them in the performance of their duties to the extent that reimbursement is not otherwise provided by another public agency.

Article V - Officers, Elections and Vacancies

A. Officers of the Association shall consist of a President, a Vice President, and a Secretary- and a Treasurer. The President and Vice President shall be selected by the Board of Directors from among its own membership. The Secretary-Treasurer shall be the Executive Director/Clerk of the Board and the Treasurer shall be the Chief Financial Officer of the Association, but they shall have no votes in the Association.

B. A seven-member nominating committee, consisting of one county supervisor and two representatives each from the East Valley, Mountain/Desert and West Valley subareas, who are appointed by their respective subarea or county representatives, shall nominate representatives from any of the subareas and/or the county for the office of President and/or office of Vice President. The President shall serve on the nominating committee as the representative from his/her subarea or county. Candidates for the office of President or Vice President may apply to the nominating committee. Members of the nominating committee, except for the President and the Vice President, if applicable, shall not be eligible for election as the President or Vice President. This nominating committee process shall apply preceding any election of President or Vice President.

C. The President and Vice President Officers shall be elected/appointed annually by the Board of Directors at the last regular meeting of the Association's fiscal year/its annual meeting. New officers and shall take office on adjournment of that at the next regular Board meeting subsequent to the election. A representative may serve any number of one-year terms of office as The Office of President or Vice President provided that no representative shall serve more than two consecutive one-year terms in the same office. shall alternate annually between county

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~~representatives and city representatives. In years when the President is a county representative, the Vice President shall be a city representative and vice versa.~~

~~**DG.** A vacancy shall immediately occur in the office of the President or Vice President upon if the officer resignation or death of the Person holding such from the office, or upon his ceasing to be a member of the Board an official representative of a member city or county. Upon a the occurrence of a vacancy occurring in the office of Ppresident or Vice President, the Bboard of Directors shall appoint-elect a President or Vice President, as the case may be, from among its members at-large to serve for the balance of the unexpired term. If the former incumbent was a county representative, the successor shall be a county representative; and if he was a city representative, the successor shall be a city representative.~~

~~**ED.** The President shall be the presiding officer of the Board of Directors. The Vice President shall act in his or her absence.~~

~~**EE.** The Secretary-Treasurer shall keep a record of all proceedings, have custody of all funds, and perform the usual duties of such office. The Treasurer shall have custody of all funds, and perform the usual duties of such office, provided however, the Treasurer of San Bernardino County shall maintain in a separate trust account all funds received by the Association.~~

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Article VI - Executive Director

The Executive Director shall be the chief administrative officer of the Association. He or she shall receive such compensation as may be fixed by the Board of Directors. The powers and duties of the Executive Director are:

- ~~**A.** Subject to the authority of the Board of Directors, to administer the affairs of the Association.~~
- ~~**B.** To appoint, direct and remove all employees of the Association.~~
- ~~**C.** Annually to prepare and present a proposed budget to the Board of Directors and to control the approved budget.~~
- ~~**D.** To serve as Secretary-Treasurer of the Association and of the Board of Directors.~~
- ~~**E.** To attend the meetings of the Board of Directors.~~
- ~~**EF.** To perform such other and additional duties as the Board of Directors may require.~~

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Article VII - General Counsel

The General Counsel shall be the chief legal advisor of the Association. He or she shall receive such compensation as may be fixed by the Board of Directors. The powers and duties of the General Counsel are:

- ~~**A.** Subject to the direction of the Board of Directors, to provide legal advice and representation for the Association.~~
- ~~**B.** To appoint, retain, direct and remove all legal counsel and legal staff of the Association.~~
- ~~**C.** To attend the meetings of the Board of Directors.~~

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Bylaws, San Bernardino Associated Governments (SANBAG)

Revised
June 5, 2013

D. To perform such other and additional duties as the Board of Directors may require.

Article VIII - Finances

A. Fiscal Year. The Fiscal Year of the Association shall commence on July 1.

B. Budget Submission and Adoption. The budget of the Association shall be submitted to the Board of Directors by the Executive Director on or before the ~~March second to last regular~~ meeting of each fiscal year. The annual budget and assessment schedule shall be adopted by the Board of Directors not later than the ~~May meeting 15th~~ of each fiscal year. Notwithstanding any provision of the agreement establishing the Association, any member that cannot pay its assessment therefore because of any applicable law or charter provision or other lack of ability to appropriate or pay the same, may add such assessment to its assessment for the next full fiscal year. The budget for each year shall provide the necessary funds with which to obtain and maintain the requisite liability and ~~workmen's~~ worker's compensation insurance to fully protect each of the signatory parties hereto ~~against liabilities reasonably estimated to arise out of Association's own activities~~, and such insurances shall be so obtained and maintained.

C. Annual Audit. The Board of Directors shall cause an annual audit of the financial affairs of the Association to be made at the end of each fiscal year. The audit report shall be made available to Association members.

D. Indemnification for Tort Liability. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said code, the parties hereto as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said code, will each assume the full liability imposed upon it, or any of its officers, agents or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said code. To achieve the above stated purpose each party indemnifies and holds harmless the other party for any loss, cost or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The rules set forth in Civil Code Section 2778 are hereby made a part of these Bylaws.

E. Notwithstanding the provisions of said Joint Exercise of Powers Agreement by which this Association is formed, no contract, employment, debt, liability or obligation of the Association shall be binding upon or obligate any member of this Association without the express written request or consent of such member and only to the extent so requested or consented to, nor shall the Association have the authority or the power to bind any member by contract, employment, debt, liability, or obligation made or incurred by it without the written request or consent of such member and then only to such extent as so requested or consented to in writing.

Article IXVIII - Statutory Authority

The San Bernardino Associated Governments shall be an agency established by a joint powers agreement among the members pursuant to Title I, Division 7, Chapter 5, of the Government Code of the State of California and shall have the powers vested in the Association by state or

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Bylaws, San Bernardino Associated Governments (SANBAG)

Revised
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federal law, the Joint Exercise of Powers Agreement, or these Bylaws. The Association shall not have the power of eminent domain, or the power to levy taxes.

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Article IX - Withdrawal

Any member city, town or county may, at any time, withdraw from the Association providing, however, that the intent to withdraw must be stated in the form of a resolution enacted by the legislative body of the jurisdiction wishing to withdraw. Such resolution of intent to withdraw from the Association must be given to the Executive Director by the withdrawing jurisdiction at least 90 days prior to the effective date of withdrawal. Such withdrawal shall be made prior to May 1 of any year and shall be effective only as of July 1 of the year withdrawal is made.

Article XI - Amendments

The Board of Directors shall review these Bylaws not less than every year. Amendments to these Bylaws may be proposed by an official representative on the Board of Directors. A proposed amendment shall be submitted to the Board of Directors at least 145 days prior to a regular meeting at which the proposed amendment shall be first introduced. Each proposed amendment shall be considered and voted upon no sooner than the first regular meeting following the introduction of the amendment, by the Board of Directors at least 30 days prior to the meeting at which such proposed amendment will be voted upon.

A majority vote of the entire membership of the Board of Directors is required to adopt an amendment to these Bylaws.

Initial adoption of these Bylaws shall follow this same procedure.

Article XII - Effective Date

These Bylaws shall go into effect ~~December 3, 1975~~ June 5, 2013.

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

Minute Action

AGENDA ITEM: 32

Date: June 5, 2013

Subject: Results of Caucus Meetings to Select the Board Nominating Committee and Election of the Board President and Vice President

Recommendation:* Report the results of the subarea caucus meetings to select members to the Board of Directors Nominating Committee; note the nominations for Board President and Vice President as submitted by the Nominating Committee; and conduct election for President and Vice President of the SANBAG Board of Directors for 2013/2014.

Background: With the adoption of the revised SANBAG Bylaws, the process for electing the SANBAG Board President and Vice President has changed. The first step of that election is the formation of a seven member Nominating Committee that consists of one member of the County Board of Supervisors and two members each from the three SANBAG Subareas: Mountain/Desert, East Valley, and West Valley. The current SANBAG Board President is automatically included as a member of the Nominating Committee representing either the County or their respective subarea.

As the current Board President Janice Rutherford is a member of the County Board of Supervisors, she represented the County on the Nominating Committee. The other six members were selected by a caucus of the city members of their respective subareas.

*Approved
 Board of Directors*

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG	X	CTC		CTA		SAFE		CMA	
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Check all that apply.
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The Nominating Committee will submit nominees for the office of President and Vice President and the Board of Directors will conduct the election.

Financial Impact: This item is consistent with the adopted SANBAG budget.

Reviewed By: This item has not received prior policy committee or technical advisory committee review.

Responsible Staff: Duane A. Baker, Director of Management Services



- 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: 33

Date: June 5, 2013

Subject: Legislative Update

- Recommendation***
1. Receive State update from SANBAG's State Advocate, Mark Watts.
 2. Receive Legislative Bill Matrix and adopt the following positions on State Legislation:
 - a. Support in Concept AB 268 (Holden, D-Pasadena)
 - b. Support AB 466 (Quirk-Silva, D-Fullerton)
 - c. Support AB 574 (Lowenthal, D-Long Beach)
 - d. Oppose AB 43I (Mullin, D-San Francisco)
 3. Receive summary of California Air Resources Board (CARB) Cap and Trade Investment Plan.
 4. Receive Federal Update
 - a. Support H.R. 1676 (Cook, R-Yucca Valley)

Background: State Update

The Governor released his May Revision on May 14th outlining changes to his January Budget Proposal. During his press conference, the Governor credited Proposition 30 as well as previous cuts and restructuring efforts with the state's

Approved
Board of Directors

Date: _____

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

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

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improved financial condition. He called for prudence and caution in the formulation of the fiscal year (FY) 2013-2014 in order to later prepare for the eventual expiration of Proposition 30's temporary revenues.

Revenues are expected to be up \$1.5 billion over the 2012-2013 and 2013-2014 fiscal years, reflecting a rise of \$2.8 billion in the current year and an anticipated drop in revenues next year of \$1.3 billion. The FY 2013-2014 revenue decrease would be even larger without a loan of Cap and Trade funds of \$500 million, to be repaid when the expenditure plan indicates the funds are needed.

The Governor's January 2013 Budget had proposed investing \$500 million from auction proceeds in programs supporting greenhouse gas emission reductions that were currently or could be funded by the General Fund. The Governor's May Revision proposes to provide a one-time loan of \$500 million from the Greenhouse Gas Reduction Fund to the General Fund.

The Governor is also proposing to maintain a \$1.1 billion reserve fund and continue to pay down debt. The May Revision shows a reduction in the state's "Wall of Debt" from \$35 billion in 2011, to \$27 billion in FY 2013-2014, to \$5 billion in FY 2016-2017.

The increase of funds noted for the current fiscal year are proposed to be directed to "one-time" increases to K-14 education, including \$240 million more for the Local Control Funding Formula proposed in January, \$1 billion to help schools meet "Common Core Standards" for language arts and math, and \$1.6 million in additional funds to pay down previously deferred payments to schools - reducing the deferral amount to \$4.9 billion by the end of FY 2013-2014.

Another major focus of the May Revision was on health care, particularly on the optional expansion of the Medi-Cal program as part of the federal Affordable Care Act. This expansion carries local impacts as funds are planned to be reduced to counties for indigent care as these individuals become eligible for Medi-Cal under the expanded program.

With respect to transportation, the May Revision discusses the large reliance on bond monies for infrastructure funding as well as the increasing amount of funding devoted to debt service in the coming fiscal year. Bond programs are providing 30% of the funding and debt service payments are coming in at 13%. The budget proposes a reduction of \$36.3 million and 184 positions in Capital Outlay Support services in the California Department of Transportation (Caltrans) for engineering, design, and construction oversight work. This reduction is intended to reflect reduced workloads following the winding down of American Recovery and Reinvestment Act and Proposition 1B programs. The budget also

proposes an increase of \$18.6 million for Amtrak to reflect higher costs and federal requirements for funding.

Additionally, following Executive Order B-13-11, the California Department of Finance (DOF) and Caltrans underwent a Zero Based Budgeting process and a few recommendations from that ongoing effort are found in the budget proposal including, a reduction in the equipment program and a redirection of funds from contract services to enhance the National Pollution Discharge Elimination System permit program.

Regarding economic development efforts, the Governor has proposed a significant restructuring of the Enterprise Zone program to shift to a statewide upfront sales tax exemption for manufacturing or biotech research and development equipment. Through the May Revision, the Governor also proposes a change to the Hiring Credit program, focusing it on hiring the long-term unemployed, veterans, and those on public assistance in high unemployment and poverty areas. For redevelopment, the May Revision projects an additional \$400 million in the form of offsets for Proposition 98 guarantees resulting from reviews of Recognized Obligation Payment Schedules.

The Governor did not propose any additional funding for the courts, stating that the level funding means that a way has to be found to control costs. He did, however, acknowledge some potential for give and take on this issue, noting the Speaker of the Assembly's desire to provide additional funding.

Lastly, the May Revision notes several risks and long-term future liabilities which may shift the state's future financial condition. A slower growing economy than expected, additional cuts related to prison overcrowding and healthcare resulting from federal court decisions, rising healthcare costs, and additional court actions blocking state spending cuts all could increase financial pressures in the coming fiscal year. Going forward, CalPERS and retiree healthcare costs and the deferred maintenance of the state's infrastructure systems will require attention in future years.

Later that same week, the state Legislative Analyst's Office released their analysis of the May Revision. Most notably, they project \$3.2 billion more in revenues during the budget period than the Governor predicted. It remains to be seen what actions the Legislature will take with additional revenues potentially on the table.

Legislation

Staff continues to monitor bills shown in the Legislative Bill Matrix, Attachment #5, as they move through the legislative process. At this time, staff is recommending the following positions for consideration:

AB 268 (Holden, D-Pasadena) Metro Gold Line Extension
Recommend: Support in Concept

AB 268 was recently significantly amended to contain intent language to encourage the extension of the Gold Line to Ontario Airport, with stops in San Dimas, La Verne, Pomona, Claremont, and Montclair. The bill further reiterates the economic and transportation related benefits of any such extension and encourages continued cooperation on transportation projects such as the Gold Line that provide broad regional benefits.

Staff recommends that the Board of Directors adopt a "Support in Concept" position as an indication of support for regional cooperation regarding transit connections to Ontario Airport, as long as the connections are financially viable and consistent with the needs and vision of transit service in San Bernardino County. A Support in Concept position would not apply if the bill is later amended to mandate the funding of the extension by any particular funding source under the control of any local agency in any particular year.

This recommendation is consistent with SANBAG's 2013-2014 adopted State Legislative Platform under the provision, "SANBAG will advocate for a safe, funded, and growing rail system in Southern California." An analysis of this bill is included as Attachment #1.

AB 466 (Quirk-Silva, D-Fullerton) Federal Transportation Funds
Recommend: Support

AB 466 describes the process for allocating federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds in California. Previously, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contained a set of weighted factors for the distribution of CMAQ funds to federal non-attainment and maintenance areas. When Moving Ahead for Progress in the 21st Century (MAP-21) was approved, these previously described formulas were not included in the federal bill and thus AB 466 is intended to memorialize the process that is currently used to allocate funds across the regions.

Staff's recommendation is consistent with SANBAG's 2013-2014 adopted State Legislative Platform under the provision, "Support legislation to provide funding for innovative, intelligent/advanced transportation, goods movement, demand management and air quality programs which relieve congestion, improve air quality and enhance economic development." An analysis of this bill is included as Attachment #2.

AB 574 (Lowenthal, D-Long Beach) California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund: sustainable communities strategies
Recommend: Support

AB 574 is the vehicle for the Cap and Trade distribution proposal being advanced by the Transportation Coalition for Livable Communities (Coalition), of which SANBAG is a member. This proposal seeks to outline the distribution of Cap and Trade funding resulting from the expansion of the program to transportation fuels in 2015. As these funds are to be derived from transportation sources, AB 574 focuses the expenditure of these funds on transportation projects in sustainable communities strategies (SCS) that help meet the greenhouse gas (GHG) emission reduction goals of AB 32 (Chapter 488, Statutes of 2006) and SB 375 (Chapter 728, Statutes of 2008).

Staff recommends that the Board of Directors adopt a "Support" position once amendments are in print related to the distribution of funds in the Southern California Associated Governments (SCAG) region. This position is consistent with the Cap and Trade principles adopted at the April 11, 2013 Board Meeting. An analysis of this bill is included as Attachment #3.

AB 431 (Mullin, D-San Francisco) Regional Transportation Plan: Sustainable Communities Strategy: Funding
Recommend: Oppose

AB 431 (Mullin, D-San Francisco) seeks to provide Metropolitan Planning Organizations (MPOs) with the option of levying regional taxes for the purposes of achieving the goals of their approved SCS'. Under the bill, MPOs could place a measure before voters in multiple counties to fund transportation, affordable housing, parks, and open space. For the tax measure to pass, it would have to be approved by the required margin from all counties cumulatively voting on the ordinance. At this time, this bill is not expected to move forward in the 2013 legislative session due to concerns raised regarding a number of provisions in the bill.

This recommendation is consistent with SANBAG's 2013-2014 adopted State Legislative Platform under the provision, "Oppose legislative or regulatory

actions that rely on regional transportation agencies to sponsor ballot measures to raise revenue for transportation or planning purposes”. An analysis of this bill is included as Attachment #4.

Other Bills of Interest

As previously reported, the Legislature continues to consider a number of bills related to the expanded use of high occupancy vehicle (HOV) lanes by alternative fuel vehicles and use of the lanes during non-peak hours.

Due to increased pressure by the Federal Highways Administration (FHWA) following the passage of MAP-21 provisions requiring states to evaluate the performance of their HOV system, the California Department of Transportation (Caltrans) is currently studying California’s system. Should the report indicate deficiencies in the system, Caltrans will then have 180 days to respond to the report by either improving the performance of the lanes or risk future federal funding. Considering the 2009 Caltrans HOV/Express Lane Business Plan found that nearly 50 percent of the HOV lanes in the state experience periods of degradation in the peak hour according to the federal definition – meaning that average speeds of 45 mph speed or lower have been measured more than 10 percent of the time – the impacts of this study could be significant.

The three bills described below are currently moving through the legislative process and could further exacerbate this issue. Staff will continue to monitor the bills for impacts to our region’s ability to manage congestion.

AB 266 (Blumenfield, D-San Fernando Valley) and SB 286 (Yee, D-San Francisco) would extend the timeframe for single-occupant users of certain low emission vehicles to ride in HOV lanes, as well as on specified high-occupancy toll lanes (HOT) free of charge. Although, both bills provide a process should FHWA determine the lanes are degraded, AB 266 further adds an additional criteria for consideration if these policies are to be reversed. This criteria states that these vehicles can only be removed from the HOV and HOT lanes if it has been demonstrated that the congestion cannot be alleviated by other means, including increased occupancy and tolling.

Currently, the designated decals for these vehicles expire on January 1, 2015. AB 266 and SB 286 would extend this date to January 1, 2018.

AB 405 (Gatto, D-Burbank) would prohibit any HOV lane from being established on State Route (SR) 134 between SR-170 and Interstate 5 or on SR-210 between SR-134 and SR-57 unless the facility is only operated as an HOV lane during peak hours. It also encourages Caltrans to examine the potential for this program

to be extended to other freeways within Los Angeles County. However, AB 405 authorizes Caltrans, on or after May 1, 2015, to reinstate 24-hour HOV lanes on the specified portions of these routes if they determine that there is an adverse impact on safety, congestion or the environment.

Staff is also closely monitoring SB 375 related funding proposal bills. In addition to AB 431 described earlier in this report, AB 1002 (Bloom, D-Santa Monica) would impose a vehicle registration tax of \$6 for the purpose of implementing SCS related projects. These funds would be distributed 50% to cities and counties for bicycle and pedestrian projects, as well as safe routes to school projects; 40% to transportation agencies and transit operators for transit operations and reduced fare programs; and 10% to MPOs (such as SCAG) and transportation planning agencies for competitive grants to cities and counties for transit oriented development projects, complete streets, and bicycle and pedestrian projects.

Lastly, to follow up on previous Board actions, the SANBAG Board of Directors directed that staff work with the author on AB 749 (Gorell, R-Camarillo), related to public-private partnership authority in California. Specifically, SANBAG requested amendments to extend current authority to at least January 1, 2021, align the Public Infrastructure Advisory Commission's (PIAC) authority to the Legislature's authority as a commenting party rather than a project approval entity, and to more explicitly allow publicly operated facilities.

Staff has worked with the author's office to secure amendments that extend the sunset date to January 1, 2022, properly insert the PIAC as a commenting and advisory party rather than a project approval entity, and explicitly cover projects that could be operated by a public entity. However, the bill did not make this year's policy committee deadline and is now considered a two-year bill.

Cap and Trade

The AB 32 Scoping Plan identifies the development of the Cap-and-Trade program as one of California's key strategies to reduce GHG emissions to 1990 levels by the year 2020, and ultimately achieving an 80% reduction from 1990 levels by 2050. The first Cap and Trade auctions for emissions allowances (equivalent to one metric ton of CO₂) were held in November 2012 and February 2013 and May 16, 2013. As the auction proceeds are currently primarily generated from electricity and large industrial sources, the California Public Utilities Commission presently requires that the majority of auction proceeds received thus far are to be credited to consumers to offset projected utility rate increases. Transportation fuels, as well as other energy sources, will be included in the program beginning in 2015.

On May 14th the California Air Resources Board (CARB) released the final Cap and Trade Investment Plan. The plan provides recommendations to the Legislature to help establish priorities for expenditure during the annual budget process. The goal of the plan was to provide for a reduction in GHG emissions while supporting investments in disadvantaged communities, enhancing job opportunities throughout the state, and providing incentives for the continued growth of the state's economy. The plan covers a three-year period from Fiscal Year (FY) 2013-2014 through 2015-2016. The plan must then be updated every three years with the release of the Governor's January budget.

The key change in the final plan from the draft plan as presented to the General Policy Committee is the Governor's proposed loan of cap and trade funds as reported above. The report states that one-time loan of \$500 million from the Greenhouse Gas Reduction Fund to the General Fund is not expected to dramatically impact the program over time. It remains to be seen how this proposal will be treated by the Legislature and if it will indeed impact the subsequent year spending priorities. In June, the Legislature is scheduled to approve a budget trailer bill including an allocation plan for the FY 2013-2014 auction proceeds, if applicable.

Since the transportation sector is the largest contributor of both GHGs and criteria air pollutants, the plan recognizes that investment is needed to implement the adopted SCS and support sustainable development efforts at the regional and local level. Several activities are considered to be essential including:

1. Support of the SCS development process at the regional level;
2. Development of local planning efforts to reflect each regional strategy; and
3. Implementation of specific projects at the local and regional levels to support the development of sustainable communities.

The plan also recognizes while there are many existing programs that provide incentives for transportation projects, the current level of funding is not sufficient to meet the existing demand and support the large-scale deployment of alternative technologies in the long-term.

Examples of projects that are consistent with these priorities are:

- SCS implementation, such as: rail modernization and system integration (including high speed rail); public transit with connectivity to rail; expanded transit and ridership programs; infrastructure; livable communities and transit oriented development; and active transportation.
- Development and implementation of SCS plans.

- Low-carbon freight equipment and zero-emission passenger transportation, including the necessary fueling/charging infrastructure.

The California Environmental Protection Agency is responsible for identifying disadvantaged communities prior to submittal of the investment plan to the Legislature. Identification criteria may include, but are not limited to:

- Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure or environmental degradation.
- Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

The objectives of the auction proceeds include reducing the emissions of GHG that contribute to climate change, as well as cutting other forms of air pollution, particularly in disadvantaged communities.

In April, the SANBAG Board of Directors adopted principles pertaining to the Cap and Trade program. The Investment Plan addresses several of SANBAG's adopted principles, but lacks clarity on the following principles:

- Project funding determinations should be done primarily at the regional level reflecting each region's transportation funding structures under statewide criteria for evaluating GHG impacts. Criteria for project selection should be uniform statewide and developed by the State of California. Regions shall administer competitive funding processes and select projects based on these criteria.
- Create a performance-based approach to maximize regional flexibility with improved modeling and verification systems to ensure effective results.

Federal Update

In April, the House Transportation and Infrastructure Committee announced the creation of a six-month freight panel, "Panel on 21st Century Freight Transportation." The panel is tasked with examining the current state of freight transportation in the U.S. and how improving freight transportation can strengthen the economy. The members of the panel are as follows:

Chairman – John J. Duncan (R-TN)
Ranking Member – Jerrold Nadler (D-NY)
Corrine Brown (D-FL)
Rick Crawford (R-AR)
Janice Hahn (D-CA)

Richard Hanna (R-NY)
Daniel Lipinski (D-IL)
Gary Miller (R-CA)
Markwayne Mullin (R-OK)
Albio Sires (D-NJ)
Daniel Webster (R-FL)

The first hearing took place on April 24, 2013 and the witnesses included the Presidents/CEOs of FedEx, Norfolk Southern Corporation, South Carolina Ports Authority, Wemer Enterprises, and the Transportation Trades Department of the AFL-CIO. Chairman Duncan noted at the start of the hearing that he has three priority issue areas- funding, delivering projects, and balancing resources between urban, suburban, and rural areas.

In general, the panel discussed the need for integration of the various infrastructure components that support goods movement, the need for additional regulatory streamlining to encourage private investment, issues impacting economic competitiveness, as well as the need for additional federal investment in goods movement infrastructure, including a potential increase in the gas tax.

As the Inland Empire's representative on the panel, Congressman Miller encouraged a corridor approach to the development of the Primary Freight Network under MAP-21, citing the I-10, SR-210, and SR-60 freeways as an example of how freight movement is impacting communities in areas where there are multiple potential routes. Mr. Miller also highlighted the importance of Colton Crossing and discussed the role that warehouses and distribution centers play in the nation's freight network. In six months, the panel will make policy recommendation to the rest of the Committee.

TIGER V

On April 22, 2013, the Department of Transportation (DOT) announced a new round of Transportation Investment Generating Economic Recovery (TIGER) grants. DOT has \$474 million to award for TIGER V and will be accepting applications through June 3, 2013, a shorter TIGER application period than has been seen previously. Since funding must be obligated by September 30, 2014, there will be a very high emphasis on "construction-ready" (environmental review completed) projects.

Successful applications are likely to highlight the significance of the TIGER grant to round out funding for the project, focus funding on projects of regional significance with significant benefits, and limit the TIGER request to \$10-15 million given the limited funds available for the program. Agencies may submit

up to three applications for projects and note that any combined projects should be clearly related to one another.

Johnson Valley National Off-Highway Vehicle Recreation Area Establishment Act (H.R. 1676), Recommend: Support

On April 23rd Congressman Paul Cook (R-Yucca Valley) introduced H.R. 1676, the Johnson Valley Nation Off-Highway Vehicle (OHV) Recreation Area Establishment Act. The bill would designate approximately 188,000 acres as the Johnson Valley National OHV Recreation Area in San Bernardino County as public recreation area when the lands are not otherwise in use for military training or natural resource conservation. Military use would be limited to 42 days annually for specific purposes and the measure provides for a process for coordinating military and recreational uses for this area.

Due to shifting demographics in this area, this measure was introduced to ensure that additional uses are considered so that both the residents and military needs are appropriately balanced.

Staff's recommendation is consistent with SANBAG's 2013-2014 adopted Federal Legislative Platform under the provision, "Participate in the development of livability and sustainability programs for the citizens of San Bernardino County". The bill language and additional information provided by Congressman Cook's office are included as Attachment #6 and #7.

- Financial Impact:** This item has no fiscal impact to the FY2012/2013 SANBAG Budget.
- Reviewed By:** This item was presented at the General Policy Committee on May 8, 2013.
- Responsible Staff:** Wendy Strack, Director of Legislative Affairs



Bill Analysis

Bill Number: AB 268	Author: Holden (D-Pasadena)
Title: Transit: Metro Gold Line Extension	

Summary

AB 268 was recently significantly amended to contain intent language in order to encourage the extension of the Gold Line to Ontario Airport, with stops in San Dimas, La Verne, Pomona, Claremont, and Montclair. The bill further reiterates the economic and transportation related benefits of any such extension and encourages the impacted parties to continue to work together on transportation projects such as the Gold Line that provide broad regional benefits.

Impact on SANBAG

The Measure I Ten-Year Delivery Plan, adopted January 2012, contains funding for transit related expenditures over the first ten years of the measure for the San Bernardino Valley Subarea. This funding is allocated as follows: 8% for Metrolink/Rail Service, 8% for Senior and Disabled Transit Service, and 2% for Express Bus/BRT Service. Eligible projects within these sources could include Metrolink rolling stock, track capacity, and parking; Redlands Passenger Rail; the Gold Line extension to Montclair; development and operation of Senior and Disabled Transportation; as well as the development, implementation and operation of Express Bus/BRT service.

A process is currently underway to develop a strategy to allocate these funds across various potential projects as current local, state, and federal funding levels are insufficient to meet current and future transportation needs. In light of projected transit operations funding shortfalls in the coming years, SANBAG is unable to commit funding to an extension of the Gold Line into San Bernardino County, particularly given that the near-term funding priorities of the Los Angeles County Metropolitan Transportation Authority (Metro) do not include funding for the extension of this line beyond Azusa. Even if Measure J in Los Angeles had been approved in November 2012, funding for the Gold Line extension remained decades out. We understand the bill may be envisioned to inform conversations related to sales tax measures to be considered in the future.

Recommendation: SUPPORT IN CONCEPT

Staff recommends that the Board of Directors adopt a "Support in Concept" position as an indication of support for regional cooperation regarding transit connections to Ontario Airport, as long as the connections are financially viable and consistent with the needs and vision of transit service in San Bernardino County. A Support in Concept position would not apply if the bill is later amended to mandate the funding of the extension by any particular funding source under the control of any impacted local agency in any particular year.

Attachment #1

This recommendation is consistent with SANBAG's 2013-2014 adopted State Legislative Platform under the provision, "SANBAG will advocate for a safe, funded, and growing rail system in Southern California."

Bill History
Introduced: February 7, 2013
Amended: April 16, 2013
Current Disposition: Pending Committee Assignment
Hearing Date: N/A



Bill Analysis

Bill Number: AB 466	Author: Quirk-Silva (D-Fullerton)
Title: Federal Transportation Funds	

Summary

AB 466 describes the process for allocating federal Congestion Mitigation and Air Quality Program (CMAQ) funds in California. Previously, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contained a set of weighted factors for the distribution of CMAQ funds to federal non-attainment and maintenance areas. When Moving Ahead for Progress in the 21st Century (MAP-21) was approved, this formula was not included in the federal bill, and thus AB 466 is intended to memorialize the process that is currently used to allocate funds to eligible agencies across the State.

In Fiscal Year 2012-2013, the existing formula was used to distribute the funds in order to avoid a loss of funds to California and to ensure that projects that were anticipating those funds were able to move forward. In order to provide for a process going forward that is appropriately captured in statute, AB 466 has been introduced.

Impact on SANBAG

As determined by policies set by the SANBAG Board of Directors, CMAQ funds are prioritized for use on regional programs, such as rideshare programs; the valley-wide signal synchronization program; transit capital; transit start-up operating expenses; and eligible highway and arterial uses, such as high occupancy vehicle lane additions and grade separations. SANBAG anticipated receiving CMAQ funds at historical levels as part of the development of the Measure I 10-Year Delivery Plan and related transit funding strategies. These plans anticipate using future CMAQ funds for the Interstate 10 Widening project, the Downtown San Bernardino Passenger Rail Project, and the Redlands Rail project. In order to keep the funding plans in place for these high priority projects, CMAQ funding levels must be maintained and predictable for future use.

Recommendation: SUPPORT

Staff recommends that the Board of Directors adopt a "Support" position, "Support legislation to provide funding for innovative, intelligent/advanced transportation, goods movement, demand management and air quality programs which relieve congestion, improve air quality and enhance economic development."

Bill History
Introduced: February 19, 2013
Amended: March 14, 2013
Current Disposition: Passed Assembly Transportation Committee, 16-0 Pending in the Assembly Appropriations Committee
Hearing Date: N/A



Bill Analysis

Bill Number: AB 574	Author: Lowenthal (D-Long Beach)
Title: California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund: sustainable communities strategies	

Summary

AB 574 is the vehicle for the cap and trade distribution proposal being advanced by the Transportation Coalition for Livable Communities (Coalition), of which SANBAG is a member. This proposal seeks to focus the distribution of cap and trade funding resulting from the expansion of the program to transportation fuels in 2015. As these funds are being derived from transportation sources, AB 574 focuses the expenditure of these funds on transportation projects in sustainable communities strategies (SCS) that help meet the greenhouse gas emission reduction goals of AB 32 (Chapter 488, Statutes of 2006) and SB 375 (Chapter 728, Statutes of 2008).

Eligible projects under AB 574 include: transportation network and demand management; public transportation; road and bridge projects including maintenance, complete streets, bike/pedestrian projects, safe routes to schools and urban greening; clean transportation fueling infrastructure; multimodal connectivity; development of local land use plans; infrastructure related to transit oriented developments; and rail modernization.

To be considered for funding, these projects must, within the context of implementing the SCS, provide cost-effective and feasible results, combine investments to achieve additional co-benefits, and comply with requirements related to economically disadvantaged communities.

Impact on SANBAG

As transportation funds become increasingly over-subscribed, the processes for the distribution of potential new funding sources as well as considerations over project eligibility are a high priority for SANBAG in 2013. The broad set of eligible uses permitted for this funding source will allow potential revenues to flow to many of SANBAG's highest priority areas. The April 15th version of the bill does not include a recognition of the local funding structures in the Southern California Associated Governments (SCAG) region. However, the author has been working with SANBAG and other regional partners in order to include a fix with the next set of amendments. The region has agreed on language and the author has agreed to integrate that language. Once it is incorporated into the bill, AB 574 will meet the principles adopted by the SANBAG Board of Directors.

Recommendation: SUPPORT

Staff recommends that the Board of Directors adopt a "Support" position once amendments are in print related to the distribution of funds in the SCAG region. This position is consistent with the Cap and Trade principles adopted at the April 11, 2013 Board Meeting.

Attachment #3

Bill History
Introduced: February 20, 2013
Amended: April 15, 2013
Current Disposition: Passed Assembly Transportation Committee 12-4 Pending in the Assembly Natural Resources Committee
Hearing Date: April 29, 2013



Bill Analysis

Bill Number: AB 431	Author: Mullin (D- San Francisco)
Title: Regional Transportation Plan: Sustainable Communities Strategy: Funding	

Summary

AB 431 seeks to provide Metropolitan Planning Organizations (MPOs) with the option of levying regional taxes for the purposes of achieving the goals of their approved Sustainable Communities Strategies (SCS'). Under the bill, MPOs could place a measure before voters in multiple counties to fund transportation, affordable housing, parks, and open space. For the tax measure to pass, it would have to be approved by the required margin from all counties cumulatively voting on the ordinance.

At this time, this bill is not expected to move forward in the 2013 legislative session due to concerns raised regarding a number of provisions in the bill.

Impact on SANBAG

Pursuant to SB 375, each MPO in the state is required to incorporate a SCS into their regional transportation plan to achieve the targets for greenhouse gas emission reduction by 2020 and 2035. Since SB 375 did not include a funding mechanism to implement the new state mandates, several legislative proposals have been offered to provide funding. AB 431, like past legislative attempts, passes the burden to the regions to secure funding. This bill would create administrative hurdles when funding crosses city and county lines, and fails to identify a state funding source to implement the state-wide SB 375 goals.

Recommendation: OPPOSE

Staff recommends that the Board of Directors adopt an "Oppose" position. This recommendation is consistent with SANBAG's 2013-2014 adopted State Legislative Platform under the provision "Oppose legislative or regulatory actions that rely on regional transportation agencies to sponsor ballot measures to raise revenue for transportation or planning purposes".

Bill History
Introduced: February 15, 2013
Amended: April 15, 2013
Current Disposition: Assembly Transportation Committee
Hearing Date: N/A

Bill Matrix

CA AB 5

AUTHOR: Ammiano (D)
TITLE: Homelessness
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 04/30/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Enacts the Homeless Person's Bill of Rights and Fairness Act. Provides that no person's rights, privileges, or access to public services may be denied or abridged because he or she is homeless. Provides the right to specified actions, confidentiality of certain records, legal assistance, and restitution. Prohibits retaliation against a public employer for assisting the homeless. Requires reports and public information regarding ordinances and certain actions against the homeless. Provides civil penalties.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 8

AUTHOR: Perea (D)
TITLE: Alternative Fuel: Vehicle Technologies: Funding Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: yes
INTRODUCED: 12/03/2012
LAST AMEND: 05/13/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Provides the State Air Resources Board has no authority to enforce any element of its existing clean fuels outlet regulation or other regulation that requires or has the effect of requiring any person to construct, operate, or provide funding for the construction or operation of any publicly available hydrogen fueling station. Requires the public disclosure of the number of vehicles sold or lease, and grants and loans for a sufficient hydrogen fueling network. Relates to a registration charge and tire fee.
STATUS: 05/13/2013 In ASSEMBLY. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.

CA AB 14

AUTHOR: Lowenthal B (D)
TITLE: State Freight Plan
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 05/06/2013

DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Requires the Transportation Agency to prepare a state freight plan with specified elements to govern the immediate and long-range planning activities and capital investments of the state with respect to the movement of freight. Requires the agency to establish a freight advisory committee.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspend File.

CA AB 21

AUTHOR: Alejo (D)
TITLE: Safe Drinking Water Small Community Grant Fund
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 02/14/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Authorizes the assessment of a specified annual charge in lieu of interest on loans for water projects made pursuant to the Safe Drinking Water State Revolving Fund, and the deposit of that money into the Safe Drinking Water State Small Community Emergency Grant Fund. Authorizes the expending of the money in the fund for grants for specified water projects that serve disadvantaged and severely disadvantaged communities.
STATUS: 04/10/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspend File.

CA AB 39

AUTHOR: Skinner (D)
TITLE: Proposition 39: Implementation
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 05/08/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Requires the State Energy Resources Conservation and Development Commission to administer grants, loans, or other financial assistance to an eligible institution that provides instruction in kindergarten or grades 1 to 12, inclusive, or a community college for the purposes of eligible projects that create jobs by reducing energy demand and consumption by eligible institutions. Provides the percentage of funds in the Job Creation Fund to be used for such grants and the remainder for specified projects.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspend File.

CA AB 114

AUTHOR: Salas (D)
TITLE: Proposition 39: Implementation: Workforce Development
FISCAL COMMITTEE: yes

URGENCY no
CLAUSE:
INTRODUCED: 01/14/2013
LAST AMEND: 05/08/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Requires the Labor and Workforce Development Agency to develop and implement the Clean Energy Jobs and Workforce Development Program to award grants for projects to provide job training on energy efficiency and clean energy projects that are located in economically disadvantaged communities. Requires a review and evaluation of the program and to develop improvement solutions. Provides for a specified percentage of the Clean Energy Job Creation Fund be made available for purposes of providing grants.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 153

AUTHOR: Bonilla (D)
TITLE: Global Warming Solutions Act of 2006: Offsets
FISCAL
COMMITTEE: yes
URGENCY
CLAUSE: no
INTRODUCED: 01/18/2013
LAST AMEND: 04/08/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Amends the Global Warming Solutions Act of 2006. Requires the State Air Resources Board to adopt a specified process for the review and consideration of new offset protocols for reducing greenhouse gases and, commencing in 2014 and continuing thereafter, use that process to review and consider new offset protocols. Requires the board to adopt guidelines and incentives that prioritize the approval of specified offset protocols. Requires the board to submit a specified annual report to the Legislature.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 160

AUTHOR: Alejo (D)
TITLE: Public Employees' Pension Reform Act: Exceptions
FISCAL
COMMITTEE: yes
URGENCY
CLAUSE: no
INTRODUCED: 01/22/2013
LAST AMEND: 04/11/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Excepts from the Public Employees' Pension Reform Act of 2013 certain multiemployer plans authorized under federal law and retirement plans for public employees whose collective bargaining rights are protected by a specified provision of federal law if a federal agency determines a conflict with federal law. Excludes from the definition of a supplemental defined benefit plan for purposes of a prohibition in the Act, a multiemployer plan, pursuant to a collective bargaining or similar agreement.

STATUS: 05/08/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 164

AUTHOR: Wieckowski (D)
TITLE: Infrastructure Financing
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/23/2013
LAST AMEND: 05/13/2013
DISPOSITION: Pending
LOCATION: SENATE

SUMMARY: Requires a lease agreement between a governmental agency undertaking an infrastructure project and a private entity to include performance bonds as security to ensure the completion of the construction of the facility and payment bonds to secure the payment of claims of laborers, mechanics, and materialmen employed on the work under contract.

STATUS: 05/16/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (73-0)

CA AB 179

AUTHOR: Bocanegra (D)
TITLE: Electronic Transit Fare Collection Systems
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/24/2013
LAST AMEND: 04/24/2013
DISPOSITION: Pending
FILE: 29
LOCATION: Assembly Third Reading File

SUMMARY: Amends existing law that prohibits a transportation agency from selling or providing personally identifiable information to a person through the person's participation in an electronic toll collection system or use of a toll facility that uses such system and requires the discarding of such information within a specified time period. Makes these and other provisions applicable to an agency that uses such system for payment of transit fares.

STATUS: 05/13/2013 In ASSEMBLY. Read second time. To third reading.

CA AB 193

AUTHOR: Logue (R)
TITLE: Local Ballot Measures: Arguments
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/28/2013
LAST AMEND: 04/30/2013
DISPOSITION: Pending

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COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
Requires the County or city elections official to extend the deadline for submission of arguments relating to a city ballot measure by one calendar day if an argument in favor of or against a
SUMMARY: measure is not submitted by the deadline fixed by the official. Requires the county or city official, if the deadline is extended, to immediately issue a press release requesting that arguments for or against the measure, or both, be submitted by the extended deadline.
STATUS: 05/08/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 195

AUTHOR: Hall (D)
TITLE: Counties: Construction Projects: Design-Build
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/28/2013
LAST AMEND: 05/20/2013
DISPOSITION: Pending
FILE: 105
LOCATION: Assembly Third Reading File
Extends provisions of existing law that authorizes counties to use alternative procedures, known as design-build, for bidding on specified types of construction projects in the county in excess of
SUMMARY: a specified amount, in accordance with specified procedures, and provides that the procedures include a requirement for contracts awarded after a certain date that a county board of supervisors pay a fee into the State Public Works Enforcement Fund.
STATUS: 05/21/2013 In ASSEMBLY. Read second time. To third reading.

CA AB 205

AUTHOR: Pan (D)
TITLE: Public Employees' Retirement: Pension Fund
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/30/2013
DISPOSITION: Pending
LOCATION: SENATE
Extends the authorization to prioritize investment in an in-state infrastructure project to the
SUMMARY: board of retirement or the board of investments of a retirement system established pursuant to the County Employees Retirement Law of 1937.
STATUS: 05/13/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (55-20)

CA AB 229

AUTHOR: Perez J (D)
TITLE: Infrastructure and Revitalization Financing Districts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/04/2013
LAST AMEND: 04/08/2013

DISPOSITION: Pending
LOCATION: SENATE
 Authorizes the creation of an infrastructure and revitalization financing district and the issuance of debt with voter approval. Authorizes the creation of a district for up to 40 years and the issuance of debt with a final maturity date of up to 30 years. Authorizes a district to finance projects in redevelopment project areas and former redevelopment project areas and former military bases.
SUMMARY:
STATUS: 05/09/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.
 (71-3)

CA AB 243

AUTHOR: Dickinson (D)
TITLE: Local Government: Infrastructure Financing Districts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/06/2013
DISPOSITION: Pending
LOCATION: SENATE
 Authorizes the creation of an infrastructure and revitalization financing district and the issuance of debt with voter approval. Authorizes a district to finance projects in redevelopment project areas and former redevelopment project areas and former military bases if special conditions are met. Authorizes a district to fund various projects, including watershed land used for the collection and treatment of water for urban uses, flood management, open space, habitat restoration and development purposes.
SUMMARY:
STATUS: 05/09/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.
 (44-29)

CA AB 250

AUTHOR: Holden (D)
TITLE: State Innovation Initiatives
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/06/2013
LAST AMEND: 04/18/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
 Creates the State Innovation Hub Program, which requires the Governor's Office of Business and Economic Development to designate Innovation Hubs. Authorizes the office to use vacant or underused state-owned or leased property that is controlled by the Department of General Services. Authorizes specified state property, when authorized by law, to be used as matching funds to meet federal funding requirements. Requires the office to issue a request for proposals. Relates to iHub partnerships.
SUMMARY:
STATUS: 05/01/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 266

AUTHOR: Blumenfield (D)
TITLE: Vehicles: High-Occupancy Vehicle Lanes
FISCAL COMMITTEE: yes

COMMITTEE:**URGENCY**

no

CLAUSE:**INTRODUCED:** 02/07/2013**LAST AMEND:** 04/09/2013**DISPOSITION:** Pending**LOCATION:** SENATE**SUMMARY:**

Extends the operation of existing law that authorizes the Department of Transportation to designate certain lanes for the exclusive use of high-occupancy vehicles, which lanes may also be used by certain low-emission or alternative fuel vehicles not carrying the requisite number of passengers otherwise required for the use of an HOV lane for certain low-emission vehicles, and extends those provisions for other specified low-emission vehicles or, in either case, until a specified notice is received.

STATUS:

05/20/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.
(49-22)

CA AB 284**AUTHOR:** Quirk (D)**TITLE:** Energy: Road to 2050 Board: Reporting**FISCAL****COMMITTEE:** yes**URGENCY**

no

CLAUSE:**INTRODUCED:** 02/11/2013**LAST AMEND:** 05/08/2013**DISPOSITION:** Pending**COMMITTEE:** Assembly Appropriations Committee**HEARING:** 05/24/2013, Room 4202**SUMMARY:**

Requires the State Air Resources Board to convene a Road to 2050 Board to submit a report on the impacts to the state of global warming, including impacts to water supply, public health, agriculture, coastline, and forestry, and to prepare and report on mitigation and adaptation plans to combat these impacts. Requires the report be used to guide key infrastructure decisionmaking processes and policies and the local and statewide level.

STATUS:

05/08/2013 In ASSEMBLY. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.

CA AB 294**AUTHOR:** Holden (D)**TITLE:** Local-State Joint Investment Partnership Program**FISCAL****COMMITTEE:** yes**URGENCY**

no

CLAUSE:**INTRODUCED:** 02/11/2013**LAST AMEND:** 05/06/2013**DISPOSITION:** Pending**COMMITTEE:** Assembly Appropriations Committee**HEARING:** 05/24/2013, Room 4202**SUMMARY:**

Establishes a pilot program whereby certain local government entities, upon the approval and oversight of the Infrastructure and Economic Development Bank, are authorized to reallocate their annual payments of property tax revenue directed to the Educational Revenue Augmentation Fund to instead finance certain kinds of public works that further state policy. Requires each entity operating a project under the program and the bank to submit

reports on program results.

STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.**CA AB 380**

AUTHOR: Dickinson (D)
TITLE: California Environmental Quality Act: Notice
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/14/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Amends the California Environmental Quality Act. Requires that notices regarding environmental impact reports filed by lead agencies need to be filed with the Office of Planning and Research and the county clerk and posted by that clerk for public review. Provides additional duties regarding that notice by the Office and the county clerk. Provides notice requirements for projects that are determined to be exempted from the Act.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 392

AUTHOR: Jones-Sawyer (D)
TITLE: State Mandates: Prorated Claims
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
DISPOSITION: Pending
LOCATION: SENATE
SUMMARY: Amends existing law requiring the Controller to prorate mandated claims, including school claims, if the amount appropriated for reimbursement is not sufficient to pay all of the claims approved by the Controller, and requiring the controller to report to the Department of Finance when it is necessary to prorate claims. Deletes that reporting requirement. Requires the Controller to determine the most cost-effective allocation method if a specified amount is appropriated.
STATUS: 05/09/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (75-0)

CA AB 405

AUTHOR: Gatto (D)
TITLE: High-Occupancy Vehicle Lanes: County of Los Angeles
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
LAST AMEND: 04/18/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Prohibits the establishment of any high-occupancy land on specified state highway routes in the

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County of Los Angeles, unless the lane is established as such land only during the hours of heavy commuter traffic. Requires any such lane to be modified to conform to those requirements. Authorizes the Department of Transportation to reinstate 24-hour high-occupancy vehicle lanes on the specified portions of these routes if the department makes a specified determination. Requires a related report.

STATUS: 05/08/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 416

AUTHOR: Gordon (D)
TITLE: Local Emission Reduction Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
LAST AMEND: 04/04/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202

SUMMARY: Creates the Local Emission Reduction Program and requires money to be available from the general fund for providing grants and other financial assistance to develop and implement greenhouse gas emissions reduction projects in the state, giving consideration to the ability of a project to create local job training and job creation benefits and achieve greenhouse gas emissions reduction. Provides the public entities that will be required to administer the program.

STATUS: 05/01/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 466

AUTHOR: Quirk-Silva (D)
TITLE: Federal Transportation Funds
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
LAST AMEND: 03/14/2013
DISPOSITION: Pending
LOCATION: SENATE

SUMMARY: Requires the Department of Transportation to allocate federal transportation funds to regional agencies under the federal Congestion Mitigation and Air Quality Improvement Program based on a weighted formula that considers population and pollution in a given area.

STATUS: 05/09/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.
(75-0)

CA AB 481

AUTHOR: Lowenthal B (D)
TITLE: High-Speed Rail.
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
LAST AMEND: 04/01/2013
DISPOSITION: Pending

FILE: 64
LOCATION: Assembly Third Reading File
SUMMARY: Enacts exceptions and authorizations relative to real property obtained for high-speed rail purposes by the High-Speed Rail Authority. Enacts new provisions governing acquisition or disposal of right-of-way property by the authority. Requires payments for leases or other conveyances of property controlled by the authority to be deposited in the High-Speed Rail Property Fund created by the bill, and would provide that the funds shall be available to the authority upon appropriation for specified purposes.
STATUS: 05/20/2013 In ASSEMBLY. Read second time. To third reading.

CA AB 493

AUTHOR: Daly (D)
TITLE: Toll Facilities
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
LAST AMEND: 04/17/2013
DISPOSITION: Pending
COMMITTEE: Senate Transportation and Housing Committee
HEARING: 06/04/2013 1:30 pm, Burton Hearing Room (4203)
SUMMARY: Authorizes operators of toll facilities on federal-aid highways to fully implement technologies or business practices that provide for the interoperability of electronic toll collection programs on and after the date specified in the Moving Ahead for Progress in the 21st Century Act. Limits the information that may be disclosed through participation in an interoperability program.
STATUS: 05/09/2013 To SENATE Committee on TRANSPORTATION AND HOUSING.

CA AB 528

AUTHOR: Lowenthal B (D)
TITLE: State Rail Plan: High-Speed Rail Authority
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
LAST AMEND: 04/25/2013
DISPOSITION: Pending
LOCATION: SENATE
SUMMARY: Revises and recasts certain items required to be in the elements of the State Rail Plan and the business plan. Eliminates the current timeframe for the plan. Changes the date by which the High-Speed Rail Authority is required to prepare, publish, adopt, and submit the business plan to the Legislature. Repeals provisions regarding the identification of specified areas or conditions, and costs of specified types of service improvements needed.
STATUS: 05/20/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (53-20)

CA AB 564

AUTHOR: Mullin (D)
TITLE: Community Redevelopment: Successor Agencies
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no

CLAUSE:**INTRODUCED:** 02/20/2013**LAST AMEND:** 03/12/2013**DISPOSITION:** Pending**COMMITTEE:** Assembly Appropriations Committee**HEARING:** 05/24/2013, Room 4202**SUMMARY:**

Amends existing law that dissolved redevelopment agencies and community development agencies and provides for the designation of successor agencies. Prohibits the Department of Finance from taking any future action to modify the enforceable obligations described in existing law following the effective date of the approval of those obligations after review by an oversight board and the department, and from taking action to modify the transfer of property, if the transfer is in an approved transfer plan.

STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.**CA AB 574****AUTHOR:** Lowenthal B (D)**TITLE:** Greenhouse Gas Reduction Fund: Sustainable Communities**FISCAL COMMITTEE:** yes**URGENCY CLAUSE:** no**INTRODUCED:** 02/20/2013**LAST AMEND:** 04/15/2013**DISPOSITION:** Pending**COMMITTEE:** Assembly Appropriations Committee**HEARING:** 05/24/2013, Room 4202**SUMMARY:**

Requires the State Air Resources Board to establish standards for the use of moneys allocated in the Greenhouse Gas Reduction Fund for sustainable communities projects. Requires the board to establish the criteria for the development and implementation of regional grant programs. Requires the State Transportation Commission to designate the regional granting authority within each region of the state to administer the allocated moneys for regional grant programs.

STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.**CA AB 662****AUTHOR:** Atkins (D)**TITLE:** Local Government: Infrastructure Financing Districts**FISCAL COMMITTEE:** no**URGENCY CLAUSE:** no**INTRODUCED:** 02/21/2013**DISPOSITION:** Pending**COMMITTEE:** Senate Governance and Finance Committee**HEARING:** 06/05/2013 9:30 am, Room 112**SUMMARY:**

Amends existing law that authorizes the creation of infrastructure financing districts and prohibits such district from including any portion of a redevelopment project area. Deletes that prohibition on infrastructure financing districts including any portion of a redevelopment project area.

STATUS: 05/09/2013 To SENATE Committee on GOVERNANCE AND FINANCE.**CA AB 797****AUTHOR:** Gordon (D)**TITLE:** Transit Districts: Contracts

FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
LAST AMEND: 04/15/2013
DISPOSITION: Pending
LOCATION: SENATE

SUMMARY: Authorizes the Santa Clara County Valley Transportation Authority and the San Mateo County Transit District to utilize the Construction Manager/General Contractor project delivery contract method for transit projects within their jurisdictions. Requires the Authority or the district to reimburse the Department of Industrial Relations for costs of performing wage monitoring and enforcement on projects using such contracting methods. Requires those funds to be for enforcement of prevailing wage requirements.

STATUS: 05/13/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.
 (53-22)

CA AB 906

AUTHOR: Pan (D)
TITLE: Personal Services Contracts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 04/25/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202

SUMMARY: Relates to the State civil Service Act and personal services contracts. Prohibits the award of a personal services contract unless the Legislature has specifically authorized the performance of the work by an independent contractor and appropriated funds specifically for that purpose.

STATUS: 05/08/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 953

AUTHOR: Ammiano (D)
TITLE: California Environmental Quality Act
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
DISPOSITION: Pending
FILE: 34
LOCATION: Assembly Third Reading File

SUMMARY: Amends the California Environmental Quality Act, which defines environment and significant effect on the environment for certain purposes. Revises those definitions. Requires a lead agency to include in an environmental assessment report, a detailed statement on any effects that may

result in the locating a proposed project near natural hazards or adverse environmental conditions.

STATUS: 05/13/2013 In ASSEMBLY. Read second time. To third reading.

CA AB 1046

AUTHOR: Gordon (D)
TITLE: Department of Transportation: Innovative Delivery
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 03/21/2013
DISPOSITION: Pending
LOCATION: SENATE

SUMMARY: Authorizes the Department of Transportation's District 4 director to direct existing district resources to the Innovative Delivery Team Demonstration Program. Authorizes department staff to perform reimbursed work for projects on and off the state highway system within the boundaries of the County of Santa Clara pursuant to the master agreement and accompanying work programs.

STATUS: 05/09/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (76-0)

CA AB 1070

AUTHOR: Frazier (D)
TITLE: California Transportation Financing Authority
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 04/03/2013
DISPOSITION: Pending
LOCATION: SENATE

SUMMARY: Relates to the Transportation Financing Authority Act and the Transportation Financing Authority. Provides for the roles of the authority and an issuer of bonds under the act if the project sponsor, rather than the authority, is the issuer of bonds.

STATUS: 05/09/2013 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (75-0)

CA AB 1077

AUTHOR: Muratsuchi (D)
TITLE: Vehicle License Fee and Alternative Fuel Taxes
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 04/02/2013
DISPOSITION: Pending
LOCATION: Assembly Revenue and Taxation Committee

SUMMARY: Amends existing law that imposes state sales and use taxes on retailers measured by the gross

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receipts from the sale of tangible personal property sold at retail in the state and defines the terms gross receipts and sales price. Excludes from the terms gross receipts and sales price in the sale of a new alternative fuel motor vehicle, in any amount allowed as a credit under the Internal Revenue Code, relating to new qualified plug-in electric drive motor vehicles, and amounts under the state incentive.

STATUS: 05/06/2013 In ASSEMBLY Committee on REVENUE AND TAXATION: To Suspend File.

CA AB 1080

AUTHOR: Alejo (D)
TITLE: Community Revitalization & Investment Authorities
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no

INTRODUCED: 02/22/2013

LAST AMEND: 05/20/2013

DISPOSITION: Pending

FILE: 103

LOCATION: Assembly Third Reading File

SUMMARY: Authorizes certain public entities of a community revitalization and investment area to form a community revitalization plan within a community revitalization and investment authority to carry out the Community Redevelopment Law in a specified manner. Requires the authority to adopt a community revitalization plan for a community revitalization and investment area and authorizes the authority to include in that plan a provision for the receipt of tax increment funds.

STATUS: 05/21/2013 In ASSEMBLY. Read second time. To third reading.

CA AB 1081

AUTHOR: Medina (D)
TITLE: Economic Development: Goods-Movement Infrastructure
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no

INTRODUCED: 02/22/2013

LAST AMEND: 04/03/2013

DISPOSITION: Pending

COMMITTEE: Assembly Appropriations Committee

HEARING: 05/24/2013, Room 4202

SUMMARY: Amends existing law that requires the Governor to submit to the Legislature a proposed infrastructure plan containing specified information concerning infrastructure needed by specified entities and a proposal for funding the needed infrastructure. Requires the plan to include information related to infrastructure identified by state and federal transportation authorities and a recommendation for public sector financing.

STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspend File.

CA AB 1140

AUTHOR: Daly (D)
TITLE: Public Works: Prevailing Wages
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no

INTRODUCED: 02/22/2013
LAST AMEND: 03/19/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202

SUMMARY: States that if the Director of Industrial Relations determines, within a semiannual period, that there is a change in any prevailing rate of per diem wages in a locality, that determination applies to any public works. Authorizes any contractor, awarding body, or representative affected by a change in rates to file with the director a verified petition to review the determination of that rate. Requires the initiation of an investigation or hearing to make a final determination.

STATUS: 05/01/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 1194

AUTHOR: Ammiano (D)
TITLE: Safe Routes to School Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 04/01/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202

SUMMARY: Requires the Safe Routes to School Program to be funded by budget appropriations for grants by the Department of Transportation to local government agencies for construction and noninfrastructure activities. Provides for activities to encourage walking and bicycling to school, public awareness campaigns, outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, funding for training and volunteers.

STATUS: 05/01/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 1272

AUTHOR: Medina (D)
TITLE: Infrastructure and Economic Development Bank
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202

SUMMARY: Revises the definition of economic development facilities to include facilities that are used to provide goods movement and would define goods movement-related infrastructure. Revises the definition of port facilities to specifically reference airports, landports, waterports, and railports. The bill would authorize the bank to join or formally participate in regional, state, national, or international organizations related to infrastructure financing.

STATUS: 04/17/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA AB 1290

AUTHOR: Perez J (D)

TITLE: Transportation Planning
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 04/23/2013
DISPOSITION: Pending
COMMITTEE: Assembly Appropriations Committee
HEARING: 05/24/2013, Room 4202
SUMMARY: Provides for 2 additional voting members of the State Transportation Commission to be appointed by the Legislature. Provides for the Secretary of the Transportation Agency, the Chairperson of the State Air Resources Board, and the Director of Housing and Community Development to serve as ex officio members without a vote. Requires the Governor to make sure the transportation community is represented on the board with future appointments.
STATUS: 05/15/2013 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

CA ACA 1

AUTHOR: Donnelly (R)
TITLE: Administrative Regulations: Legislative Approval
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
DISPOSITION: Pending
LOCATION: Assembly Accountability and Administrative Review Committee
SUMMARY: Requires an administrative agency to submit all regulations to the Legislature for approval. Authorizes the Legislature, by means of a concurrent resolution, to approve a regulation adopted by an administrative agency of the state.
STATUS: 05/01/2013 In ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW: Failed passage.

CA ACA 3

AUTHOR: Campos (D)
TITLE: Local Government Finance: Public Safety Services
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/22/2013
DISPOSITION: Pending
LOCATION: Assembly Local Government Committee
SUMMARY: Authorizes the imposition, extension, or increase of a special tax for funding fire, emergency response, police, or sheriff services, upon the approval of 55% of the voters voting. Creates an additional exception to the 1% limit for a rate imposed by a city, county, or special district to service bonded indebtedness incurred to fund certain fire, emergency response, police, or sheriff buildings or facilities, and equipment that is approved by 55% of the voters of the city, county, or special district.
STATUS: 04/04/2013 To ASSEMBLY Committees on LOCAL GOVERNMENT and APPROPRIATIONS.

CA ACA 8

AUTHOR: Blumenfield (D)
TITLE: Local Government Financing: Voter Approval
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/13/2013
LAST AMEND: 04/04/2013
DISPOSITION: Pending
LOCATION: Assembly Local Government Committee
SUMMARY: Proposes an amendment to the Constitution to create an additional exception to the 1% limit for an ad valorem tax rate imposed by a city, county, city and county, or special district, to service bonded indebtedness incurred to fund specified public improvements and facilities, or buildings used primarily to provide sheriff, police, or fire protection services, that is approved by 55% of the voters of the city, county, city and county, or special district.
04/04/2013 To ASSEMBLY Committees on LOCAL GOVERNMENT and APPROPRIATIONS.
STATUS: 04/04/2013 From ASSEMBLY Committee on LOCAL GOVERNMENT with author's amendments.
04/04/2013 In ASSEMBLY. Read second time and amended. Re-referred to Committee on LOCAL GOVERNMENT.

CA SB 1

AUTHOR: Steinberg (D)
TITLE: Sustainable Communities Investment Authority
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 05/02/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)
Authorizes certain public entities of a Sustainable Communities Investment Area to form a Sustainable Communities Investment Authority to carry out the Community Redevelopment
SUMMARY: Law. Provides for tax increment funding receipt under certain economic development and planning criteria. Establishes prequalification requirements for receipt of funding. Requires monitoring and enforcement of prevailing wage requirements within the area.
STATUS: 05/20/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 11

AUTHOR: Pavley (D)
TITLE: Alternative Fuel: Vehicle Technologies: Funding Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: yes
INTRODUCED: 12/03/2012
LAST AMEND: 05/15/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)

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SUMMARY: Provides the State Air Resources Board has no authority to enforce any element of the clean fuels outlet regulation or other regulation that requires the construction, operation, or providing funding for the construction or operation of any publicly available hydrogen fueling station. Requires the public disclosure of the number of vehicles sold or leased. Requires grants and loans for a sufficient hydrogen fueling network. Extends a vehicle registration charge. Increases the state tire fee.

STATUS: 05/20/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 33

AUTHOR: Wolk (D)
TITLE: Infrastructure Financing Districts: Voter Approval
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 03/06/2013
DISPOSITION: Pending
COMMITTEE: Assembly Local Government Committee
HEARING: 06/12/2013 1:30 pm, Room 444

SUMMARY: Revises provisions governing infrastructure financing districts. Eliminates the requirement of voter approval for creation of the district and for bond issuance, and authorizes the legislative body to create the district subject to specified procedures. Authorizes the creation of such district subject to specified procedures. Authorizes a district to finance specified actions and project. Prohibits the district from providing financial assistance to a vehicle dealer or big box retailer.

STATUS: 05/16/2013 To ASSEMBLY Committee on LOCAL GOVERNMENT.

CA SB 34

AUTHOR: Calderon R (D)
TITLE: Greenhouse Gas: Carbon Capture and Storage
FISCAL COMMITTEE: yes
URGENCY CLAUSE: yes
INTRODUCED: 12/03/2012
LAST AMEND: 04/30/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)

SUMMARY: Requires a final methodology for carbon capture and storage projects to demonstrate geologic sequestration of greenhouse gases under the federal Underground Injection Control program. Requires the regulation of carbon dioxide enhanced oil recovery projects that demonstrate carbon sequestration providing for greenhouse gas emissions reduction. Relates to pipeline security regulation and enforcement.

STATUS: 05/13/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 64

AUTHOR: Corbett (D)
TITLE: Proposition 39: Implementation
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no

INTRODUCED: 01/10/2013
LAST AMEND: 04/23/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)
SUMMARY: Requires the State Energy Resources Conservation and Development Commission to develop and administer programs, consistent with the State Clean Energy Jobs Act, to provide financial assistance to school districts, cities and counties to install energy efficiency or clean energy technology in schools and municipal facilities. Appropriates funds from the Clean Energy Job Creation Fund. Relates to clean energy to offset a facility's electrical requirements. Relates to the state's loading order.
STATUS: 05/13/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 110

AUTHOR: Steinberg (D)
TITLE: California Transportation Commission: Guidelines
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/14/2013
DISPOSITION: Pending
LOCATION: Assembly Transportation Committee
SUMMARY: Establishes specified procedures that the Transportation Commission would be required to utilize when it adopts guidelines relative to its programming and allocation policies. Exempts the adoption of those guidelines from the requirements of the Administrative Procedure Act.
STATUS: 05/09/2013 To ASSEMBLY Committees on TRANSPORTATION and ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.

CA SB 123

AUTHOR: Corbett (D)
TITLE: Environmental and Land-Use Court
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/18/2013
LAST AMEND: 05/02/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)
SUMMARY: Requires the Judicial Council to direct the creation of an environmental and land-use division within the Superior Courts selected by the Council to process civil proceedings brought pursuant to the California Environmental Quality Act or in specified subject areas, including air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality. Increases the fees for environmental license plates with revenue for the environmental and land use court.
STATUS: 05/13/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 133

AUTHOR: DeSaulnier (D)
TITLE: Enterprise Zones: Applications
FISCAL no

COMMITTEE:
URGENCY
CLAUSE: no
INTRODUCED: 01/28/2013
DISPOSITION: Pending
LOCATION: Assembly Jobs, Economic Development, and The Economy Committee
 Provides that, for any application for an enterprise zone designation submitted on or after January 1, 2014, if any portion of the proposed zone is within, or was previously within, the boundaries of a previously designated zone, or if any portions of the proposed zone are within, or previously were within, the boundaries of 2 or more previously designated enterprise zones, the bill prohibits the proposed enterprise zone from exceeding a specified aggregate size.
SUMMARY:
STATUS: 05/09/2013 To ASSEMBLY Committee on JOBS, ECONOMIC DEVELOPMENT AND THE ECONOMY.

CA SB 142

AUTHOR: DeSaulnier (D)
TITLE: Public Transit
FISCAL
COMMITTEE: yes
URGENCY
CLAUSE: no
INTRODUCED: 01/30/2013
LAST AMEND: 05/07/2013
DISPOSITION: Pending
FILE: 21
LOCATION: Senate Third Reading File
 Repeals existing law providing for creation of one or more special benefit districts within a transit or rapid transit district regarding issuance of bonds to be repaid through special assessments levied on property within the special benefit district. Amends district areas. Enacts provisions authorizing a transit district, municipal operator, other other public agency operating or contracting for the operation of transit, commuter rail, or intercity rail service to create one or more special districts.
SUMMARY:
STATUS: 05/07/2013 In SENATE. Read second time and amended. To third reading.

CA SB 176

AUTHOR: Galgiani (D)
TITLE: Administrative Procedures
FISCAL
COMMITTEE: yes
URGENCY
CLAUSE: no
INTRODUCED: 02/06/2013
LAST AMEND: 04/24/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)
 Requires, in order to increase public participation and improve the quality of regulations, state agencies, boards, and commissions to submit a notice to the state Regulatory Notice Register prior to any meeting date or report, provided the meeting or report is seeking public input.
SUMMARY:
STATUS: 04/29/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 286

AUTHOR: Yee (D)
TITLE: Vehicles: High-Occupancy Vehicle Lanes
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/14/2013
LAST AMEND: 03/18/2013
DISPOSITION: Pending
LOCATION: Assembly Transportation Committee
 Extends the operation of existing law that authorizes the Department of Transportation to designate certain lanes for the exclusive use of high-occupancy vehicles, which lanes may also be used by certain low-emission or alternative fuel vehicles not carrying the requisite number of passengers otherwise required for the use of an HOV lane. Permits the department to issue a valid identifier to a vehicle that meets the state's transitional zero emission standard.
SUMMARY:
STATUS: 05/16/2013 To ASSEMBLY Committee on TRANSPORTATION.

CA SB 328

AUTHOR: Knight (R)
TITLE: Counties: Public Works Contracts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
LAST AMEND: 04/09/2013
DISPOSITION: Pending
LOCATION: Assembly Local Government Committee
 Authorizes a county to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. Provides that a construction manager at-risk contract may be awarded using the lowest responsible bidder or the best value method. Requires subcontractors not listed as partners, general partners, or association members be awarded certain work by the construction manager at-risk.
SUMMARY:
STATUS: 05/16/2013 To ASSEMBLY Committees on LOCAL GOVERNMENT and ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.

CA SB 425

AUTHOR: DeSaulnier (D)
TITLE: Public Works: the Public Works Peer Review Act of 2013
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
LAST AMEND: 05/07/2013
DISPOSITION: Pending
FILE: 54
LOCATION: Senate Third Reading File
SUMMARY: Allows a public agency, principally tasked with administering, planning, developing, and operating a public works project, to establish a specified peer review group. Requires the

administering agency, if a peer group is established, to draft a charter, published on the agency's Internet Web site, related to the duties of the peer review group.

STATUS: 05/21/2013 In SENATE. Read second time. To third reading.

CA SB 436

AUTHOR: Jackson (D)

TITLE: California Environmental Quality Act: Notice

FISCAL COMMITTEE: yes

URGENCY CLAUSE: no

INTRODUCED: 02/21/2013

LAST AMEND: 04/03/2013

DISPOSITION: Pending

FILE: 31

LOCATION: Senate Third Reading File

SUMMARY: Relates to the California Environmental Quality Act. Requires a lead agency to conduct at least one public scoping meeting for the specified projects and to provide notice to the specified entities of at least one public scoping meeting. Revises the meeting notice requirements to requires the notice be given to a list of specified parties including the State Clearinghouse and project applicants.

STATUS: 05/14/2013 In SENATE. Read second time. To third reading.

CA SB 454

AUTHOR: Corbett (D)

TITLE: Public Resources: Electric Vehicle Charging Stations

FISCAL COMMITTEE: yes

URGENCY CLAUSE: no

INTRODUCED: 02/21/2013

LAST AMEND: 05/07/2013

DISPOSITION: Pending

COMMITTEE: Senate Appropriations Committee

HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)

SUMMARY: Creates the Electric Vehicle Charging Stations Open Access Act. Requires an electric vehicle charging station installed in a public parking space to be available to the general public. Provides charging a subscription or membership fee to use the station. Authorizes network roaming charges for nonmembers if charges are disclosed at the point of sale. Authorizes public disclosure of fees and network roaming charges for nonmembers. Requires interoperability billing standards. Provides for consumer complaints.

STATUS: 05/20/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 513

AUTHOR: Hancock (D)

TITLE: Diversion Programs: Sealed Records

FISCAL COMMITTEE: yes

URGENCY CLAUSE: no

INTRODUCED: 02/21/2013

LAST AMEND: 04/01/2013

DISPOSITION: Pending

COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)
 Provides that in any case where a person is arrested and successfully completes a diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the Superior Court that would have had jurisdiction over the matter for an order to seal the records of the arresting agency and related court files and records, and the court may issue that order if the court finds that doing so will be in furtherance of justice.
SUMMARY:
STATUS: 05/13/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 557

AUTHOR: Hill (D)
TITLE: High-Speed Rail
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 05/02/2013
DISPOSITION: Pending
FILE: 57
LOCATION: Senate Third Reading File
SUMMARY: Relates to existing law that appropriates specified funds from the High Speed Passenger Train Bond Fund and from federal funds for high-speed rail and connecting rail projects. Adds detail to provisions governing the expenditure of certain of those appropriated funds. Specifies that of the moneys appropriated for early high-speed rail improvement projects in the Budget Act of 2012, a specified amount shall be allocated solely for purposes of specified memoranda of understanding.
STATUS: 05/21/2013 In SENATE. Read second time. To third reading.

CA-SB-628

AUTHOR: Beall (D)
TITLE: Infrastructure Financing: Transit Priority Projects
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 05/14/2013
DISPOSITION: Pending
LOCATION: ASSEMBLY
SUMMARY: Eliminates the requirement of voter approval for the adoption of an infrastructure financing plan, the creation of an infrastructure financing district, and the issuance of bonds with respect to a transit priority project. Requires a specified percentage of the revenue for increasing, improving, and preserving the supply of lower and moderate-income housing. Requires a low-income housing replacement ordinance. Requires projects to be consistent with the sustainable communities strategy.
STATUS: 05/20/2013 In SENATE. Read third time. Passed SENATE. *****To ASSEMBLY. (24-11)

CA SB-731

AUTHOR: Steinberg (D)
TITLE: Environment: California Environmental Quality Act
FISCAL yes

COMMITTEE:
URGENCY
CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 05/07/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)
 Relates to the state environmental quality act. Provides that aesthetic impacts of a residential, mixed-use residential, or employment center project within a transit priority area shall not be considered significant impacts on the environment. Requires guidelines for thresholds of significance and the transportation and parking impacts to be made available to the public. Requires preparation of environmental impact reports. Extends tolling agreements for judicial actions and mitigation measures.
SUMMARY:
STATUS: 05/20/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SB 751

AUTHOR: Yee (D)
TITLE: Meetings: Publication of Action Taken
FISCAL
COMMITTEE: yes
URGENCY
CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 05/02/2013
DISPOSITION: Pending
FILE: 66
LOCATION: Senate Third Reading File
 Amends the Ralph M. Brown Act that requires all meetings of the legislative body of a local agency to be open and public and prohibits that body from taking action by secret ballot, whether preliminary or final. Requires that the legislative body of a local agency to publicly report any action taken and the vote or abstention of that action of every member present.
SUMMARY:
STATUS: 05/21/2013 In SENATE. Read second time. To third reading.

CA SB 785

AUTHOR: Wolk (D)
TITLE: Design-Build
FISCAL
COMMITTEE: yes
URGENCY
CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 05/02/2013
DISPOSITION: Pending
FILE: 81
LOCATION: Senate Third Reading File
 Repeals certain authorizations and enacts provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and certain local agencies to use the design-build procurement process for specified public works. Provides that specified information is exempt from the Public Records Act. Requires specified moneys to be deposited into the State Public Works Enforcement Fund.
SUMMARY:
STATUS: 05/21/2013 In SENATE. Read second time. To third reading.

CA SB 788

AUTHOR: Senate Transportation and Housing Committee
TITLE: Transportation
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 04/18/2013
DISPOSITION: Pending
LOCATION: ASSEMBLY

SUMMARY: Defines the term highway for these exemption purposes under the CEQA. Relates to the prepayment of retail sales tax on aircraft jet fuel. Authorizes relinquishment of certain highways. Modifies bikeway provisions. Revises the definition of logging dolly. Relates to Olympic license plates. Extends provisions of existing law regarding medical requirements for commercial driver's licensing.

STATUS: 05/16/2013 In SENATE. Read third time. Passed SENATE. *****To ASSEMBLY. (37-0)

CA SB 811

AUTHOR: Lara (D)
TITLE: State Highway Route 710
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LAST AMEND: 05/06/2013
DISPOSITION: Pending
COMMITTEE: Senate Appropriations Committee
HEARING: 05/23/2013 9:30 am, Burton Hearing Room (4203)

SUMMARY: Imposes various requirements on the Department of Transportation with respect to the I-710 expansion project in the County of Los Angeles. Requires the lead agency to consider, within the environmental review process for the process, alternative to address the air quality, public health, and mobility impacts the projects will have on neighboring communities. Requires the EIR to contain information on investments in mitigation for those communities. Requires submission of a related report to the Legislature.

STATUS: 05/20/2013 In SENATE Committee on APPROPRIATIONS: To Suspense File.

CA SCA 3

AUTHOR: Leno (D)
TITLE: Taxation: Educational Entities: Parcel Tax
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 05/21/2013
DISPOSITION: Pending
LOCATION: Senate Elections and Constitutional Amendments Committee

SUMMARY: Conditions the imposition, extension, or increase of a parcel tax by a school district, community college district, or county office of education upon the approval of voters if the proposition meets specified requirements.

STATUS: 05/21/2013 In SENATE. Read second time and amended. Re-referred to Committee on ELECTIONS AND CONSTITUTIONAL AMENDMENTS.

CA SCA.4

AUTHOR: Liu (D)
TITLE: Local Government Transportation Project: Voter Approval
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
LAST AMEND: 05/21/2013
DISPOSITION: Pending
LOCATION: Senate Rules Committee

SUMMARY: Proposes an amendment to the Constitution to provide that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for local transportation projects and requires the approval of a related proposition. Prohibits the local government from expending any revenues derived from a special transportation tax approved by the voters at any time prior to the completion of a identified capital project funded by specified revenues.

STATUS: 05/21/2013 In SENATE. Read second time and amended. Re-referred to Committee on RULES.

CA SCA 8

AUTHOR: Corbett (D)
TITLE: Transportation Projects: Special Taxes: Voter Approval
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 12/14/2012
LAST AMEND: 05/21/2013
DISPOSITION: Pending
LOCATION: Senate Rules Committee

SUMMARY: Provides that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for transportation projects requires the approval of 55% of its voters voting on the proposition.

STATUS: 05/21/2013 In SENATE. Read second time and amended. Re-referred to Committee on RULES.

CA SCA 9

AUTHOR: Corbett (D)
TITLE: Local Government: Economic Development: Special Taxes
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 12/18/2012
LAST AMEND: 05/21/2013
DISPOSITION: Pending
LOCATION: Senate Elections and Constitutional Amendments Committee

SUMMARY: Proposes an amendment to the Constitution to provide that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for community and

Attachment #5

economic development projects requires the approval of a specified percentage of its voters voting on the proposition.

STATUS: 05/21/2013 In SENATE. Read second time and amended. Re-referred to Committee on ELECTIONS AND CONSTITUTIONAL AMENDMENTS.

CA SGA 11

AUTHOR: Hancock (D)
TITLE: Local Government: Special Taxes: Voter Approval
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/25/2013
LAST AMEND: 05/21/2013
DISPOSITION: Pending
LOCATION: Senate Elections and Constitutional Amendments Committee
SUMMARY: Makes conforming and technical, nonsubstantive changes to provisions relative to special taxation. Proposes an amendment to the Constitution to condition the imposition, extension, or increase of a special tax by a local government upon the approval of 55% of the voters voting on the proposition.
STATUS: 05/21/2013 In SENATE. Read second time and amended. Re-referred to Committee on ELECTIONS AND CONSTITUTIONAL AMENDMENTS.

H.R.1676 -- Johnson Valley National Off-Highway Vehicle Recreation Area Establishment Act (Introduced in House - IH)

113th CONGRESS
1st Session
H. R. 1676

To designate the Johnson Valley National Off-Highway Vehicle Recreation Area in San Bernardino County, California, to authorize limited military use of the area, to provide for the transfer of the Southern Study Area to the administrative jurisdiction of the Secretary of the Navy for inclusion in the Marine Corps Air Ground Combat Center Twentynine Palms, and by recreational users, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 23, 2013

Mr. COOK (for himself and Mr. MCKEON) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To designate the Johnson Valley National Off-Highway Vehicle Recreation Area in San Bernardino County, California, to authorize limited military use of the area, to provide for the transfer of the Southern Study Area to the administrative jurisdiction of the Secretary of the Navy for inclusion in the Marine Corps Air Ground Combat Center Twentynine Palms, and by recreational users, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Johnson Valley National Off-Highway Vehicle Recreation Area Establishment Act'.

SEC. 2. DESIGNATION OF JOHNSON VALLEY NATIONAL OFF-HIGHWAY VEHICLE RECREATION AREA.

(a) Designation- The approximately 188,000 acres of public land and interests in land administered by the Secretary of the Interior through the Bureau of Land Management in San Bernardino County, California, as generally depicted as the 'Johnson Valley Off-Highway Vehicle Recreation Area' on the map titled 'Johnson Valley National Off-Highway Vehicle Recreation Area and Transfer of the Southern Study Area' and

dated April 11, 2013, are hereby designated as the 'Johnson Valley National Off-Highway Vehicle Recreation Area'.

(b) Recreational and Conservation Use- The Johnson Valley National Off-Highway Vehicle Recreation Area is designated for the following purposes:

- (1) Public recreation (including off-highway vehicle use, camping, and hiking) when the lands are not used for military training as authorized by section 3.
- (2) Natural resources conservation.

(c) Withdrawal- The public land and interests in land included in the Johnson Valley National Off-Highway Vehicle Recreation Area are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing and geothermal leasing laws.

(d) Treatment of Existing Rights- The designation of the Johnson Valley National Off-Highway Vehicle Recreation Area and the withdrawal of the public land and interests in land included in the Recreation Area are subject to valid existing rights.

SEC. 3. LIMITED BIENNIAL MARINE CORPS AIR GROUND COMBAT CENTER TWENTYNINE PALMS USE OF JOHNSON VALLEY NATIONAL OFF-HIGHWAY VEHICLE RECREATION AREA.

(a) Use for Military Purposes Authorized- Subject to subsection (b), the Secretary of the Interior shall authorize the Secretary of the Navy to utilize portions of Johnson Valley National Off-Highway Vehicle Recreation Area twice in each calendar year for up to a total of 42 days per year for the following purposes:

- (1) Sustained, combined arms, live-fire, and maneuver field training for large-scale Marine air-ground task forces.
- (2) Individual and unit live-fire training ranges.
- (3) Equipment and tactics development.
- (4) Other defense-related purposes consistent with the purposes specified in the preceding paragraphs.

(b) Conditions on Military Use-

(1) CONSULTATION AND PUBLIC PARTICIPATION REQUIREMENTS- Before the Secretary of the Navy requests the two time periods for military use of the Johnson Valley National Off-Highway Vehicle Recreation Area in a calendar year, the Secretary of the Navy shall--

- (A) consult with the Secretary of the Interior regarding the best times for military use to reduce interference with or interruption of nonmilitary activities authorized by section 2(b); and
- (B) provide for public awareness of and participation in the selection process.

(2) PUBLIC NOTICE- The Secretary of the Navy shall provide advance, widespread notice before any closure of public lands for military use under this section.

(3) PUBLIC SAFETY- Military use of the Johnson Valley National Off-Highway Vehicle Recreation Area during the biennial periods authorized by subsection (a) shall be conducted in the presence of sufficient range safety officers to ensure the safety of military personnel and civilians.

(4) **CERTAIN TYPES OF ORDNANCE PROHIBITED-** The Secretary of the Navy shall prohibit the use of dud-producing ordnance in any military training conducted under subsection (a).

(c) **Implementing Agreement-**

(1) **AGREEMENT REQUIRED; REQUIRED TERMS-** The Secretary of the Interior and the Secretary of the Navy shall enter into a written agreement to implement this section. The agreement shall include a provision for periodic review of the agreement for its adequacy, effectiveness, and need for revision.

(2) **ADDITIONAL TERMS-** The agreement may provide for--

(A) the integration of the management plans of the Secretary of the Interior and the Secretary of the Navy;

(B) delegation to civilian law enforcement personnel of the Department of the Navy of the authority of the Secretary of the Interior to enforce the laws relating to protection of natural and cultural resources and of fish and wildlife; and

(C) the sharing of resources in order to most efficiently and effectively manage the lands.

(d) **Duration-** Any agreement for the military use of the Johnson Valley National Off-Highway Vehicle Recreation Area shall terminate not later than March 31, 2039.

SEC. 4. TRANSFER OF ADMINISTRATIVE JURISDICTION, SOUTHERN STUDY AREA, MARINE CORPS AIR GROUND COMBAT CENTER TWENTYNINE PALMS, CALIFORNIA.

(a) **Transfer Required-** Not later than September 30, 2014, the Secretary of the Interior shall transfer, without reimbursement, to the administrative jurisdiction of the Secretary of the Navy certain public land administered by the Bureau of Land Management consisting of approximately 20,000 acres in San Bernardino County, California, as generally depicted as the 'Southern Study Area' on the map referred to in section 2.

(b) **Use of Transferred Land-** Upon the receipt of the land under subsection (a), the Secretary of the Navy shall include the land as part of the Marine Corps Air Ground Combat Center Twentynine Palms, California, and authorize use of the land for military purposes.

(c) **Legal Description-**

(1) **PREPARATION AND PUBLICATION-** The Secretary of the Interior shall publish in the Federal Register a legal description of the public land to be transferred under subsection (a).

(2) **FORCE OF LAW-** The legal description filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary of the Interior may correct clerical and typographical errors in the legal description.

(d) **Reimbursement of Costs-** The Secretary of the Navy shall reimburse the Secretary of the Interior for any costs incurred by the Secretary of the Interior to carry out this section.

H.R. 1676 Whitepaper

In early 2013 the Department of the Navy and the U.S. Marine Corps issued a record of decision on the proposed expansion of the Marine Corps Air Ground Combat Center (MCAGCC) at Twentynine Palms, California. Their proposal would transfer 120,000 acres of Johnson Valley Off-Highway Vehicle area to exclusive military use and another 40,000 acres to shared use. The purpose is to conduct a brigade-level expeditionary force exercise of about 15,000 troops twice a year. In the exclusive use areas the exercise would combine air and land live-fire.

Johnson Valley OHV area is the largest open off-highway vehicle area in the country, totaling nearly 189,000 acres. It is managed by the U.S. Bureau of Land Management (BLM) and offers year-round recreation that attracts all kinds of outdoor enthusiasts. The area is also home to numerous events that draw thousands of competitors and spectators – up to thirty thousand in a single week. BLM estimates that Johnson Valley OHV area generates \$71.5 million annually to the local economy and \$191.2 million to the national economy. The area also includes several iron mines that could provide significant economic benefit in the future.

While the Department of the Navy claims it requires Johnson Valley land to perform new and different military exercises, their budget – greatly diminished through sequestration and other reductions – will almost certainly not allow funding for these exercises. In February, Chairman of the Joint Chiefs Martin Dempsey testified before the House Armed Services Committee that the military cannot fulfill their current mission if even one more dollar is cut. With deep cuts now in place, a costly purchase of Johnson Valley land, and plans for expensive new exercises, is imprudent and could further impede their ability to achieve their current mission.

Scrapers have always been a problem at the MCAGCC, coming on to the base to retrieve valuable metals left behind from exploded and unexploded ordnance. It is not uncommon to see Explosive Ordnance Disposal teams defusing dangerous materials removed from the base. These incursions could greatly increase if the Marines expand into an area that has grown exponentially in popularity among the recreation community. The capabilities of today's off-high vehicles have changed the question from *if* civilians can gain access to the base, to *when*. The military has not done an adequate job of planning for that eventuality.

H.R. 1676, as proposed by Congressman Cook, would preserve the Johnson Valley OHV area for recreation by making it the *first* National Off-highway Vehicle Recreation Area in the nation. It preserves all existing uses of the land, including several active mines. Second, the bill instructs BLM to authorize the Department of the Navy to use the land twice annually for up to 42 days, and bars them from using dud-producing ordnance that would functionally condemn the land for any other use.

Given the absolutely vital role Johnson Valley OHV area plays in the local economy, and the very real safety risks associated with the expansion, H.R. 1676 is the best and most equitable solution.

**AGENCY
REPORTS**



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

May 10, 2013

**Members of the
Governing Board:**

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Speaker of the Assembly
Appointee

Vice Chairman
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Mayor, Chino
Cities of San Bernardino County

Michael D. Antonovich
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John J. Benoit
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County of Riverside

Michael A. Cacciotti
Councilmember, South Pasadena
Cities of Los Angeles County/
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Josie Gonzales
Supervisor, Fifth District
County of San Bernardino

Joseph K. Lyou, Ph.D.
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Judith Mitchell
Mayor Pro Tem, Rolling Hills Estates
Cities of Los Angeles County/
Western Region

Shawn Nelson
Supervisor, Fourth District
County of Orange

Dr. Clark E. Parker, Sr.
Senate Rules Appointee

Jan Perry
Councilmember, 9th District
City of Los Angeles Representative

Miguel A. Pulido
Mayor, Santa Ana
Cities of Orange County

To: Mayors and Councilmembers

From: Dennis R. Yates,
Mayor/City of Chino
Vice Chairman, South Coast AQMD Governing Board
Representative, Cities of San Bernardino County

Attached are agenda items and outcomes of the May 3, 2013 SCAQMD Governing Board meeting, and a preview of the item(s) for discussion at the June 7, 2013 meeting.

PUBLIC HEARING ITEMS AT MAY BOARD MEETING:

Adopt Executive Officer's FY 2013-14 SCAQMD Budget and Work Program and CPI Fee Adjustment and Revise Board Member Assistant and Board Member Consultant Policy

The Executive Officer's Budget for FY 2013-14 represents the input over the past several months from Board members, staff, and the public. This year's process included meetings of the Budget Advisory Committee; a public hearing on March 1, 2013 to receive input on the SCAQMD's Goals and Priority Objectives; and two budget workshops, one for the Board held on March 14, 2013 and one for the public held on April 10, 2013. This submittal transmits the required appropriations and reserves necessary to adopt the proposed budget and revises the Board Member Assistant and Board Member Consultant Policy. The proposed budget incorporates the CPI adjustment pursuant to Rule 320.

Votes: 10 Yes; 0 No; 0 Abstain; 3 Absent

Annual Report for 2012 on AB 2588 Air Toxics Hot Spots Program

Air Toxics "Hot Spots" Information and Assessment Act of 1987 (AB 2588) requires local air pollution districts to prepare an annual report. Key accomplishments for 2012 include: (1) reviewed nine facility health risk assessments (HRAs) and approved seven HRAs; (2) notified two facilities to prepare air toxic inventory reports; (3) continued development of a mapping tool to display health risks from retail gas stations and perchloroethylene dry cleaners; (4) prioritized over 300 facilities; and (5) updated AB 2588 website information.

Votes: 11 Yes; 0 No; 0 Abstain; 2 Absent

Amend Rule 219 – Equipment Not Requiring a Written Permit Pursuant to Regulation II and Amend Rule 222 – Filing Requirements for Specific Emission Sources Not Requiring a Written Permit Pursuant to Regulation II

The proposed amendments add additional categories to the streamlined filing/registration program of Rule 222 and clarify and enhance the enforceability and the ability to appeal operating conditions issued pursuant to the provisions of that rule. Rule 219 is proposed to be expanded to exclude several categories of equipment with de minimis emissions from the requirement to obtain written permits. The proposed amendments will further facilitate the streamlining of the District's permitting system. This action is to adopt the resolution: 1) Certifying the Final Environmental Assessment for Proposed Amended Rule 219-Equipment Not Requiring a Written Permit Pursuant to Regulation II and Proposed Amended Rule 222-Filing Requirements for Specific Emission Sources Not Requiring a Written Permit Pursuant to Regulation II; and 2) Amending Rule 219 – Equipment Not Requiring a Written Permit Pursuant to Regulation II; and 3) Amending Rule 222 – Filing Requirements for Specific Emission Sources Not Requiring a Written Permit Pursuant to Regulation II.

Votes: 12 Yes; 0 No; 0 Abstain; 1 Absent

Amend Rule 445 – Wood-Burning Devices and Amend Rule 444 – Open Burning *

The 2012 Air Quality Management Plan (AQMP) was adopted by the SCAQMD Board in December 2012 and was subsequently approved by CARB in January 2013. In conjunction with the AQMP, modeling has indicated the benefits of episodic day fine particle emission reductions for attaining the federal 24-hour PM_{2.5} standard by 2014. The proposed rule amendments are intended to implement 2012 AQMP control measures BCM-01 [Further Reductions from Residential Wood-Burning Devices] and BCM-02 [Further Reductions from Open Burning]. PAR 445 – Wood Burning Devices will lower the threshold for a wintertime wood burning curtailment, establish criteria for a basin-wide curtailment, and set standards for solid-fuel labeling for wood and wood-based products by commercial firewood sellers. Additionally, PAR 444 – Open Burning will incorporate the winter season burn restriction consistent with PAR 445 and prohibit open burning in beach areas. Other minor amendments to both rules are proposed to improve rule implementation clarity relative to existing requirements. This action is to adopt the resolution: 1) Certifying the Final Notice of Exemption for Proposed Rules 445 – Wood Burning Devices and 444 – Open Burning; and 2) Adopting Proposed Amended Rule 445 – Wood Burning Devices and Proposed Amended Rule 444. **(Note: The portions of PAR 444 amendments related to open burning in beach areas have been continued to the June 7, 2013 Governing Board meeting.)*

Votes: 11 Yes; 0 No; 0 Abstain; 2 Absent

Adopt Proposed Rule 1114 – Petroleum Refinery Coking Operations

The proposed rule will reduce volatile organic compounds, particulate matter, hazardous air pollutants, sulfur compounds and methane emissions released during the delayed coking process at petroleum refineries. The proposed rule will establish a depressurization limit of less than two pounds per square inch gauge (psig) pressure prior to venting a coke drum to atmosphere, and includes options for alternative compliance schedules and interim limits for facilities not able to meet the less than two psig compliance deadline within six months of rule adoption, depending on the number of delayed coking units they operate. The proposed rule also includes deadlines for permit applications, installation of monitoring equipment and exemptions from certain Regulation IV requirements. This action is to adopt the resolution: 1) Certifying the CEQA Final Environmental Assessment for Proposed Rule 1114 - Petroleum Refinery Coking Operations; and 2) Adopting Rule 1114 – Petroleum Refinery Coking Operations.

Votes: 12 Yes; 0 No; 0 Abstain; 1 Absent

PUBLIC HEARING SET FOR JUNE 7 BOARD MEETING:

Amend Rule 444 – Open Burning - Provisions Related to Beach Fire Rings

Amendments related to beach fire rings will be considered; these provisions include paragraphs (b)(11) and (c)(7), subparagraph (d)(3)(G), and paragraphs (h)(5) and (6).

**ADDITIONAL
INFORMATION**

APPOINTING/ELECTING AUTHORITY	REGIONAL COUNCIL (12:00 noon)	POLICY COMMITTEES (Regional Council Members Serve on One Each) (Subregional Appointments) (County Commissions Appoint One to TC) (10:00 a.m.)		
		Community, Economic, and Human Development	Energy and Environment	Transportation
District 6 (Grand Terrace, Colton, Loma Linda, Redlands, Yucaipa) District 7 (San Bernardino, Highland) District 8 (Rialto, Fontana) District 9 (Rancho Cucamonga, Upland, Montclair) District 10 (Chino, Chino Hills, Ontario) District 11 (Barstow, Big Bear, Needles, Twentynine Palms, Yucca Valley) District 65 (Adelanto, Apple Valley, Hesperia, Victorville) San Bernardino County	J. Harrison L. McCallon D. Robertson P. Eaton E. Graham B. Jahn Vacant (G. Coleman) G. Ovitt	J. Harrison L. McCallon D. Robertson B. Jahn Vacant (G. Coleman)	E. Graham	P. Eaton G. Ovitt
SANBAG Acting as County Transportation Commission	A. Wapner	A. Wapner		A. Wapner
SANBAG Subregional Appointees* *One appointee to each policy committee for a total of three appointees per subregion, plus one additional appointee for every SCAG District over three in the subregion. SANBAG has a total of seven subregional appointees to the policy committees.		Julie McIntyre Vacant (Mike Leonard) Ray Musser	Diane Williams Vacant (E. Scott)	R. McEachron Vacant (A. Wapner)

Rules of Appointment

1. SANBAG policy stipulates that all SANBAG appointees be SANBAG Board Members.
2. SCAG President appoints Regional Council members to Standing and Policy Committees.

Terms of Appointment

Terms of appointment are two years, commencing on adjournment of the annual General Assembly in May of each year. Even-numbered District representatives' terms expire in even-numbered years; odd-numbered District representatives expire in odd-numbered years.

Stipend Summary

SCAG Regional Council members receive a \$120 stipend for attendance and travel to SCAG sponsored meetings. Regional Council members may also receive reimbursement for public transit expenses or a mileage reimbursement. Parking is validated at SCAG's downtown Los Angeles office for RC members. RC members are eligible to receive up to six (6) per diem stipends per month. Both RC members and Subregional Appointees, if eligible, may receive reimbursement (\$150 + taxes) for lodging (please review SCAG rules before making expenditure). Subregional Appointees shall receive a \$120 stipend for up to four Policy or Task Force meetings per month.

Meeting Information

The regular meetings of SCAG Regional Council and Policy Committees are on the 1st Thursday of each month at the SCAG offices located at 818 West 7th Street, 12th Floor in Los Angeles. Generally, the Policy Committee meetings start at 10 AM and Regional Council meetings start at 12:15 PM.

Policy Committees

Community, Economic, and Human Development: Provides policy recommendations to the Regional Council on subjects of housing, land use, resource, economic, community development, infrastructure, employment, and regional disaster preparedness issues. Reviews and recommends to the Planning Committee revisions to the Housing, Economy, Growth Management, Human Resources, and Finance Chapters of the Regional Comprehensive Plan and Guide.

Energy and Environment: Acts as the policy advisory committee to the Regional Council on environmental issues, including air and water, hazardous, solid waste management, natural resources conservation, and energy conservation. Reviews the Environmental Impact Report of the Regional Comprehensive Plan and Guide. Provides recommendations to the Planning Committee on state and federal legislative proposals and administrative guidelines affecting environmental quality, resource conservation.

Transportation and Communications: Acts as the policy advisory committee to the Regional Council on all regional matters pertaining to the movement of goods and people on land, water, and air. Reviews and recommends to the Regional Council all major utility development plans. Addresses the location, size, or capacity, timing, and impact of facilities.

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
<p>Audit Subcommittee of the Administrative Committee In November 2008, the Board approved the creation of an Audit Subcommittee of the Administrative Committee to strengthen the financial oversight function of the Board. Additional SANBAG Board Members may be appointed annually at the discretion of the Board President.</p>	<p>The responsibilities of the Audit Subcommittee shall be to:</p> <ul style="list-style-type: none"> • Provide a direct contact between the independent auditor and the Board of Directors before, during and after the annual audit. • Work with the auditor and SANBAG staff on reviewing and implementing practices and controls identified in the annual audit. 	<p>Audit Subcommittee (for FY 2011-2012 Audit) - SANBAG President – Janice Rutherford, Supervisor - Vice President – Mike Leonard, Hesperia - Immediate Past President – Larry McCallon, Highland - Presidential Appointment – Walt Stanckiewicz, Grand Terrace</p>
<p>Ad Hoc Committee on Litigation with San Bernardino County Flood Control District In January 2007, the SANBAG President was authorized to appoint an ad hoc review committee of SANBAG Board Members who do not represent local jurisdictions party to the San Bernardino County Flood Control District vs. SANBAG litigation relative to the Colonies Development. In April 2008, the role of this committee was expanded to include the Cactus Basin litigation.</p>	<p>Review and provide guidance on litigation with San Bernardino County Flood Control District regarding the Colonies Development and the Cactus Basin in Rialto.</p>	<p>Pat Morris, San Bernardino, Chair Richard Riddell, Yucaipa Larry McCallon, Highland</p>
<p>Bylaws In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's bylaws and recommend changes to strengthen SANBAG's corporate governance</p>	<p>Review SANBAG's bylaws and make recommendations to the Board on any necessary changes.</p>	<p>Rhodes "Dusty" Rigsby, Loma Linda - Chair Pat Morris, San Bernardino Mike Leonard, Hesperia Larry McCallon, Highland</p>
<p>Budget Process In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's budget preparation process and final budget document and make recommendations to help improve communication and transparency of SANBAG's budget to elected officials and the general public.</p>	<p>Review SANBAG's budget adoption process and final budget document and make recommendations on changes to improve the process and the final budget document to make them more useful and informative to Board Members and the public.</p>	<p>Pete Aguilar, Redlands - Chair Kevin Ryan - Principal Transportation Planner, City of Fontana Sam Racadio – Council Member, City of Highland Mike Podegracz, P.E. – City Manager, City of Hesperia</p>
<p>Contracting Process In July 2012, the SANBAG Board President appointed this ad hoc committee to strengthen SANBAG's procurement policies and procedures.</p>	<p>Review SANBAG's contracting policies and procedures and make recommendations to improve them.</p>	<p>Michael Tahan, Fontana - Chair Robert Lovingood, Supervisor Julie McIntyre, Barstow Walt Stanckiewicz, Grand Terrace Dennis Yates, Chino Alan Wapner, Ontario</p>

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
<p>Omnitrans Comprehensive Operational Analysis In January 2013, the SANBAG Board President appointed this ad hoc committee to work with Omnitrans Board members to review the Comprehensive Operational Analysis (COA) of Omnitrans and to make recommendations based on the COA review.</p>	<p>Review the Comprehensive Operational Analysis of Omnitrans and make recommendations to address projected fiscal shortfalls associated with Omnitrans operations and capital projects.</p>	<p>Janice Rutherford Supervisor Dick Riddell, Yucaipa Alan Wapner, Ontario Pat Morris, San Bernardino Deborah Robertson, Rialto Penny Lilburn , Omnitrans</p>
<p>Right of Way In February 2013, the SANBAG Board President appointed this ad hoc committee</p>	<p>Review Right of Way policies and make recommendations on changes and signature authority limits.</p>	<p>Curt Emick, Apple Valley James Ramos, Supervisor Deborah Robertson, Rialto Michael Tahan, Fontana</p>
<p>Legislative In March 2013, the SANBAG Board President appointed this ad hoc committee. This committee will consist of the SANBAG Board Officers.</p>	<p>Review proposed legislation at the state and federal level. Provide direction to staff on positions consistent with the Board-adopted legislative platform.</p>	<p>SANBAG President – Janice Rutherford, Supervisor SANBAG Vice President – Mike Leonard, Hesperia SANBAG Immediate Past President – Larry McCallon, Highland</p>

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<p>Transportation Technical Advisory Committee (TTAC) Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Administrative Officer.</p>	<p>SANBAG's Transportation Technical Advisory Committee was formed by SANBAG management to provide input to SANBAG staff on technical transportation-related matters and formulation of transportation-related policy recommendations to the SANBAG Board of Directors. The TTAC is not a Brown Act committee.</p>	<p>Generally meets on the first Monday of each month at 1:30 PM, at SANBAG.</p>
<p>City/County Manager's Technical Advisory Committee (CCM TAC) The committee is made up of up to two representatives of the County Administrator's Office and the city manager or administrator from each city and town in the County.</p>	<p>SANBAG's City/County Manager's Technical Advisory Committee was established in the Joint Powers Authority that established SANBAG. The primary role of the committee is to provide a forum for the chief executives of SANBAG's member agencies to become informed about and discuss issues facing SANBAG. It also provides a forum for the discussion of items of mutual concern and a way to cooperate regionally in addressing those concerns. The CCM TAC is a Brown Act Committee.</p>	<p>Meets on the first Thursday of each month at 10:00 AM, at SANBAG.</p>
<p>Public and Specialized Transportation Advisory and Coordinating Council (PASTACC) Membership consists of 13 members appointed by the SANBAG Board of Directors 6 representing Public Transit Providers 1 representing County Dept. of Public Works Agency 5 representing Social Service Providers</p>	<p>Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC's statutory responsibilities: (1) Review and make recommendations to SANBAG on annual Unmet Transit Needs, Federal Transit Administration and Measure 1 Program applications and reports. (2) Assist SANBAG in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan and disseminate information in reference to State law and recommendations as they relate to transit and specialized transit. (3) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit. (4) Address any special issues of PASTACC voting and non-voting members. The PASTACC is a Brown Act committee.</p>	<p>Meets the second Tuesday every other even month at 10:00 AM, at SANBAG.</p>
<p>Planning and Development Technical Forum (PDTF) Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Chief Executive Officer.</p>	<p>The SANBAG Planning and Development Technical Forum was formed by SANBAG management to provide an opportunity for interaction among planning and development representatives of member agencies on planning issues of multijurisdictional importance. The PDTF is not a Brown Act Committee.</p>	<p>Meets the 4th Wednesday of each month at 2:00 p.m. at the Depot (in the SCAG Office).</p>

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<p>Project Development Teams</p>	<p>Project Development Teams (PDTs) are assembled for all major project development activities by SANBAG staff. Teams are generally composed of technical representatives from SANBAG, member jurisdictions appropriate to the project, Caltrans, and other major stakeholder entities that have significant involvement in the project. PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions. PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development. The PDTs are not Brown Act Committees.</p>	<p>Varies with the PDT, at SANBAG.</p>

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
IIEP	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
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 st Century
TMC	Transportation Management Center
T MEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

San Bernardino Associated Governments



MISSION STATEMENT

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

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

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

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